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Spies, Lies, Trials, and Trolls: Political Lawyering against Disinformation and State Surveillance in Russia

Freek van der Vet¹

<a>INTRODUCTION

With the emergence of social media and “big data,” both authoritarian and democratic regimes have unprecedented opportunities to monitor people’s online behavior, arm law enforcement and intelligence agencies with new surveillance equipment (Brayne, 2017), and engage in “trolling” or Internet manipulation (Bradshaw & Howard, 2017). Political regimes that some have described as “new authoritarian” (Guriev & Treisman, 2015), “networked authoritarian” (MacKinnon, 2011), or “surveillance states” (Soldatov & Borogan, 2015) have become particularly aggressive in manipulating information and giving unregulated surveillance powers to secret services. These “new” authoritarian leaders were first democratically elected but then consolidated their power by changing constitutions, extending their terms of office, and pushing through policies that oppress their opponents (Scheppele, 2018, p. 545). Unlike autocrats in the past who relied on mass incarceration or mass violence to suppress opposition, new autocrats resort to violence sporadically rather than systematically (Gel’man, 2016; Van der Vet, 2018). Rather than using brute force, their primary tool for gaining power is the manipulation of information. They are particularly aggressive in using information control to portray themselves as competent (Guriev & Treisman, 2015).

New authoritarian regimes withhold damaging government data (for instance, on corrupt government officials or court statistics) and suppress alternative political views to control

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opponents and uphold a public image of capable leadership (Guriev & Treisman, 2015). They use mass surveillance and unpredictable treason trials to intimidate people who hold potentially damaging information. They fund trolling programs aimed at influencing international and domestic public opinion. While Internet trolls are generally assumed to be unregulated individuals posting fake or misleading posts on social media, most trolls operate collectively in “government, military, or political party teams” (Bradshaw & Howard, 2017). New authoritarian regimes operate mass surveillance and “troll” programs with little to no judicial oversight.

As the capacity of states to control and monitor information grows, can lawyers and courts restrict these strategies of information manipulation, especially in authoritarian regimes where opportunities for legal activism appear to be diminishing? Studies on political lawyering have addressed how legal professionals promote basic legal freedoms, an independent judiciary, and civil society and give legal aid to victims of state coercion (Chua, 2019; Halliday et al., 2007, p. 10; Zemans, 1983). To those ends, political lawyers, in cooperation with political elites and civil society, employ a wide range of strategies beyond litigation: political lobbying, criminal defense, advocacy for the implementation of court judgments, and government consultancy (Boutcher & Chua, 2018; Chua, 2019; Vanhala, 2012). Scholars have examined how politically engaged lawyers operate in violent and repressive circumstances where governments are prone to curtail civil liberties: in the midst of revolution (Gobe & Salaymeh, 2016; Wilson, 2017); during national emergencies following acts of terrorism (Prabhat, 2016); and under authoritarian rule (Chua, 2019). However, we are only beginning to understand how lawyers work against emergent strategies of authoritarian information control, where secrecy and falsehoods complicate lawyers’ ability to locate victims and investigate strategic court cases.

Using Russia as a case study, I explore the strategies of a group of freedom-of-information advocates—consisting of political lawyers and open-government consultants—against three covert authoritarian strategies of information control: promoting state-sponsored falsehoods through “troll factories,” wiretapping telephone conversations without judicial oversight, and withholding information on public services, corruption, and government finances (Chikov & Gainutdino, 2016; Gainutdino & Chikov, 2011; Mostovshchikov, 2015; Team 29, 2017a, 2017c).² Drawing from semi-structured interviews with these Russian lawyers and open-government consultants, this chapter contributes to our understanding of legal mobilization under a new authoritarian regime that stores, controls, and manipulates information without oversight. It also broadens our understanding of how lawyers and consultants collaborate in these regimes and how they promote the freedom of information and “open government,” understood here as a transparent, accountable, and responsive government where citizens engage with public affairs and have easy access to information on government activities. Despite the range of obstacles the new authoritarian Russian regime places in the way of these lawyers, they develop creative and effective strategies that hold government to account. Rights advocates have been particularly effective at challenging the efforts of new autocrats to use information control to portray themselves as capable leaders by publishing rankings on government transparency that undermine the reputation of the government.

<a>POLITICAL LAWYERING UNDER NEW AUTHORITARIANISM

² Open-government consultants promote a transparent and accountable government. They also promote civic engagement in public affairs. In general, they consult political bodies on how to open up their data to the public. They also conduct research, train government officials, and promote new technologies that promote transparency.

While the study of legal mobilization has its roots in the US legal system, the growing scholarship on political lawyering has considered how lawyers use law to moderate state power in nondemocracies (Boutcher & Chua, 2018; Chua, 2012, 2014, 2019; Halliday et al., 2007; Moustafa, 2014; Wilson, 2017). In their volume on political lawyering outside Western democracies, Terence Halliday, Lucien Karpik, and Malcolm Feely (2007, p. 34) find that states where rights are enforced and civil society thrives allow for more robust activism by lawyers and the legal profession at large. Political lawyers work in the vanguard to expand rights and freedoms and in the rearguard to defend rights under direct threat. These lawyers take part in a larger “legal complex” of actors with legal training, including the judiciary and civil society activists.

We have less knowledge, however, of how legal mobilization strategies develop following national security crises and creeping surveillance laws. In the wake of terrorist threats, states have passed legislation that enable security services to surveil, arrest, and interrogate terrorist suspects, putting considerable pressure on basic freedoms, such as rights to family life and privacy. By examining legal mobilization strategies following emergency laws and counterterrorism cases in Northern Ireland and post-9/11 United States, Devyani Prabhat (2016) found that these national crises change the legal field in which lawyers work, creating demands for new legal expertise on the criminal defense of terrorism suspects. In this sense, authoritative rules and crises not only provide new opportunities for legal mobilization, as Frances Zemans (1983) notes, but also create new legal expertise. The study of political lawyering under authoritarianism could show us how “human agency responds to the nature of repression to devise different strategies and tactics” (Chua, 2019, p. 356).

How do legal expertise and political lawyering strategies develop under new authoritarian regimes that pass surveillance laws due to national security concerns? The covert nature of new authoritarian strategies, as well as the lack of regulation over the activities of the secret services, hinders lawyers' ability to litigate against the regime and their capacity to find strategic court cases that could change surveillance laws. For example, the Russian security services—the Federal Security Service of the Russian Federation (Federal'naya Sluzhba Bezopasnosti Rossiyskoi Federatsii [FSB])—has lobbied for new laws on Internet control and surveillance (Soldatov, 2015), with minimal judicial oversight (Chikov & Gainutdino, 2016). These laws have increased the government's control of the Internet and social media networks and, with it, control over what can be said online (Druzin & Gordon, 2018).

The covert nature of these new authoritarian strategies presents two opportunities to expand the study of legal mobilization in nondemocratic regimes. First, how do lawyers operate in these new authoritarian regimes and which adjustments do they make in their practice when security services can wiretap with minimal judicial oversight? Second, how can lawyers mobilize the law against the withholding of public government data and against information distortion by troll factories?

<a>INFORMATION CONTROL IN RUSSIA

Russia's new authoritarian regime consolidated in 2012 when Vladimir Putin returned to the presidency for the third time. Putin, who had been president between 1999 and 2008, evaded a two-term constitutional limit by serving as prime minister from 2008 to 2012, switching positions with then Prime Minister Dmitry Medvedev. This so-called "tandem of power" also enabled Putin's return to the presidency. In 2012, Medvedev and Putin switched places once again when Medvedev left the presidency and returned as prime minister by leading the ballot of

the majority party United Russia (Edinaya Rossiya) in the parliamentary elections of 2011. Putin was reelected as president in 2012. After both national elections, protesters participated in mass demonstrations against alleged mass election fraud across Moscow and other major Russian cities.

In response to these mass public protests (Gel'man, 2013; Horvath, 2012), the State Duma passed new laws to regulate civil society, social media, and the Internet (FIDH, 2018; Muravyeva, 2017). One of these laws, Federal Law no. 121-FZ (better known as the Law on Foreign Agents) curtailed the foreign funding of nongovernmental organizations (NGOs) by forcing any NGO with foreign funding that engages in “political activities” to register as a foreign agent (inostrannye agency) with the Ministry of Justice (Crotty et al., 2014; Daucé, 2015; Flikke, 2015; Van der Vet & Lyytikäinen, 2015).³ As a result, dozens of organizations were forced to close or otherwise work with less or no foreign funding. The law restricts civil society's ability to check the government through alternative streams of information by discrediting NGOs registered as foreign agents. All NGOs must label their reports and online publications with “foreign agent” or else face administrative penalties. Because the foreign agent law is vague in defining “political activity,” investigators could label any activity or information produced by an NGO as a political activity.

Russians are starting to feel the consequences of these laws. Amendments to high treason and espionage legislation, passed in 2012, have led to a growing number of Russians randomly being investigated by the security services for both Internet and non-Internet-related infractions (Chelishcheva, 2016; Team 29, 2017a). Some suspects face up to twenty years in prison.

Between 2014 and 2017, over eighty people were prosecuted for sharing or “liking” posts on

³ Federal Law no. 121-FZ on Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent, July 20, 2012.

social media, receiving fines, prison sentences, or forced psychiatric treatment under the Criminal Code of the Russian Federation and the Administrative Offenses Code (Mostovshchikov, 2015; Team 29, 2017d; Van der Vet, 2019).

The legislation on Internet surveillance culminated in a law that the State Duma passed in 2016 that amended public safety laws and anti-terrorism legislation under the so-called “Yarovaya package,” which is named after Irina Yarovaya, the deputy chairman of the Russian State Duma for the ruling United Russia party.⁴ Under the Yarovaya package, telecom providers must store the personal data of Russian users on Russian soil. It also forces telecom operators to provide law enforcement with information regarding users of communication services, services provided to those users, and “other necessary information.” In July 2018, when the law came into force, telecom providers were struggling to comply with the law and build the new infrastructure for data storage (Moscow Times 2018).

A final new authoritarian strategy is the spread of misleading information or pro-government social media posts through “internet trolls.” Trolls are often employed by the government or by a private company that serves business or political interests (Bradshaw & Howard, 2017). Russian trolls came under the international spotlight during the investigation of special counsel Robert Mueller into Russia’s interference and disinformation campaign during the 2016 US presidential elections. In February 2018, Mueller’s team indicted thirteen Russians, of whom twelve had worked for the Agency of Internet Studies (Chen, 2018).

⁴ Federal Law no. 374-FZ on Amendments to the Federal Law on Combating Terrorism and Certain Legislative Acts of the Russian Federation to Establish Additional Measures to Counter Terrorism and Ensure Public Safety, July 7, 2016, <http://kremlin.ru/acts/bank/41108>; Federal Law no. 375-FZ on Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation with Regard to Establishing Additional Measures to Counter Terrorism and Ensure Public Security, July 7, 2016. Implementation of the mass storage is unrealistic given the high costs (Digital Report Analytica, 2017).

The Russian government has thus employed three overlapping, covert forms of information control: first, securing its monopoly on information by curbing alternative forms of information through prosecutions and trolling; second, increasing the surveillance and mass storage of online communications and user data while simultaneously and unpredictably increasing surveillance and treason prosecutions; and, third, securing its monopoly on information by obscuring government data and regulating foreign ownership of NGOs and media organizations.

<a>TROLLS IN THE SHADOWS: MANIPULATING INFORMATION BY SECRET TROLL FACTORIES

This section examines how political lawyers discovered information control efforts in the government's use of the shadow economy in which trolls work.

Where the Russian Trolls Live

Based on a comparative study of troll agencies in twenty-eight countries Samantha Bradshaw and Philip Howard (2017, p. 3) found that most target domestic audiences and are funded predominantly through “public money, to help define and manage what is in the best interest of the public,” though some are funded by private sources. Troll agencies—or cyber troops—are “government, military or political party teams committed to manipulating public opinion over social media” (2017, p. 3).

In Russia, Bradshaw and Howard (2017, p. 17) found that social media manipulation comes from four sources: the government; government-recruited citizens who often hold a prominent position online or in society; civil society organizations (for instance, the pro-Kremlin youth movement Nashi); and private companies that operate on behalf of business or government interests. One of the most prominent examples of the latter group is the Agency of Internet

Studies (Internet-Issledovaniya, which is elsewhere translated as the Internet Research Agency), a secret Internet troll factory (fabrika internet trollei) in St. Petersburg that disseminates pro-Kremlin opinions. The teams working at this and similar Russian private companies are taught to use English and instructed to post on specific topics on social media, for instance, vKontakte, Twitter, and Facebook (Bradshaw & Howard, 2017; Chen, 2015). Employees of Russia's troll companies are told to portray themselves as ordinary people on social media and receive specific instructions on the types of comments they have to produce, including positive comments about the government (Chen, 2015; Soshnikov, 2016). In a 2014 article titled "Where the Trolls Live. And Who Feeds Them," the opposition newspaper Novaya Gazeta revealed that more than two hundred people worked in the Agency for Internet Studies at the time of writing the article. Trolls working at factories in Moscow and St. Petersburg were instructed by their supervisors to post up to one hundred comments daily (Garmazhapova, 2013).

Taking the Trolls out of the Shadows through Labor Rights Litigation

Lyudmila Savchuk was one such troll or *Kremlebot* (Kremlin bot) employed by the Agency for Internet Studies. Upon leaving her job in 2015, she filed a complaint with the Petrogradsky District Court, alleging that the Agency for Internet Studies did not offer its employees proper contracts and did not pay wages on time and demanding her unpaid wages (Petlyanova, 2015). In an interview with Novaya Gazeta, Savchuk explained that she initiated the court proceedings to attract public attention and "pull the troll factory into the light. [...] Now hundreds of thousands of people are talking about this" (Petlyanova, 2015). In August 2015, the Petrogradsky District Court ruled that the Agency for Internet Studies had to compensate Savchuk. Savchuk told Novaya Gazeta that she infiltrated the troll factory to expose their work to the public, claiming that she wanted to "close down that factory of lies" (Petlyanova, 2015).

Savchuk was represented in court by Ivan Pavlov, the chief lawyer of Team 29, an informal collective of St. Petersburg-based lawyers and activists working on freedom-of-information cases and defending Russians accused of high treason.⁵ Initially registered as the Freedom of Information Foundation (FIF), the foundation closed its doors in 2012 in response to the growing pressure of the Law on Foreign Agents.⁶ Then, in an attempt to circumvent the Law on Foreign Agents, the lawyers created two separate, but cooperative, organizations out of the FIF: Team 29, a collective primarily working on the criminal defense of treason suspects (named after Article 29 of the Constitution of the Russian Federation, which safeguards the freedom to receive and distribute information), and Infometer, a commercial organization that consults on open government for officials and regional branches of government and audits courts' websites.⁷ Registering as a commercial organization allowed Infometer to circumvent the Law on Foreign Agents, which does not apply to companies. Likewise, working as an informal collective of lawyers allowed Team 29 to bypass the Law on Foreign Agents, which only applies to registered organizations (Van der Vet, 2018). Team 29 primarily represents people accused of high treason, but it also engages in legal activism on open access to archives and the freedom of information. Infometer and Team 29 work closely in pursuit of a range of strategies: domestic litigation, media outreach, creating ranking systems for open government, and international litigation.

A member of Team 29 explains that Savchuk's case was aimed to expose how the state engages in propaganda and how Internet factories work in a shadow economy:

The main goal was to raise public awareness about propaganda. People working in this troll factory have no labor rights; they own a grey salary. Political propaganda is nothing special, many countries use this practice. But I don't think they violate labor

⁵ "Team 29," <https://team29.org>.

⁶ Interview with NGO representative, St. Petersburg, February 2016.

⁷ "Audits of Websites of the Judiciary," http://read.infometer.org/projects/sud_sistema.

rights at the same time. The idea was to take it from the dark into the light. It was Lyudmila Savchuk's own idea. She came to us and we decided to help her. It was literally a labor rights case, but the goal was different: to make the situation public. We are still suing. After we sued them for the first time, [the troll factory] changed its legal entity. They run away and we are chasing them.⁸

In the interview with Novaya Gazeta, Savchuk stressed, in a similar vein, that she did not go to court to seek revenge or wish to receive financial compensation: "It is more important to me now to attract attention to the problem [government manipulation of social media]. With that goal in mind we brought the lawsuit to court" (Petlyanova, 2015). Savchuk gave the one-and-a-half months of salary that were paid to her in compensation (70,000 rubles) to charity (BBC Russia, 2015).

Instead of directly focusing on Russia's political misinformation tactics, Team 29 filed a labor rights claim against the Agency for Internet Studies to hold it legally accountable for labor rights violations. Complaining about social rights and welfare provision like the right to housing or work is a widespread practice in Russia. These resonate more with the Russian public than complaints on civil and political rights (Henry, 2009, p. 63). Such complaints also channel "violations of social rights into the realm of the bureaucracy, emphasizing the administrative or technocratic natures of 'the problem' rather than its human rights or political implications" (Henry, 2009, p. 63). For instance, the majority of the complaints brought before the national and regional Ombudsman (a national human rights institution) concern violations of housing and other social rights (Henry, 2012; Van der Vet, 2017). While it is unclear whether Team 29 considered making freedom-of-information claims against troll factories, it is unlikely that Team 29 would have been able to expose the inner bureaucratic workings of the troll factory before the Russian public had it based its claims on freedom of information. On their website, Team 29 chief lawyer Ivan Pavlov comments:

⁸ Interview with NGO representative of Team 29, January 2016.

We use all the legal means and methods possible to defend the freedom of information. If the labor codex helps us to achieve those aims, then we will use that arsenal. We are not only interested in representing the interests of the plaintiffs, but also in pulling [the Agency for Internet Studies] into the legal sphere. We try to take away this mask of anonymity so people will know who is concretely responsible for attacks on the internet, for trolling. (Soshnikov, 2016; Team 29, 2017d).

With a group of activists, Savchuk established the organization Informatsionnyi Mir (Informational Peace) in 2014 in St. Petersburg. The group calls itself a citizen's movement that aims to act as a "counterbalance to the information war, partly by the work of paid trolls, waged against citizens in the press and on the Internet."⁹ One of its main aims is to close the troll factory in St. Petersburg.

Bringing these labor rights cases against the Internet troll factory has had two outcomes. First, the litigation has revealed how a new authoritarian regime uses the shadow economy to hide troll factories and deny its employees labor rights. Savchuk's lawsuits prompted other employees to seek legal aid as well. After she won her case, Savchuk urged her former colleague Olga Mal'tseva to lodge a similar lawsuit against the Agency for Internet Studies (Team 29, 2017c). Mal'tseva, who had worked for a year and a half at the troll factory OOO "TEKA" in St. Petersburg, had been in contact with the British Broadcasting Corporation about her work at the troll factory and had shot and shared a video of her office space. When she asked her employer for a contract and official maternity leave, the troll factory fired her. According to Mal'tseva, she was offered compensation by her employer not to make the story public (Soshnikov, 2016). With the aid of Team 29, Mal'tseva lodged a case with the Nevsky District Court in St. Petersburg, arguing that the factory should pay her maternity leave benefits of 300,000 rubles (approximately US \$5,100). On February 22, 2017, the court rejected her claim. Team 29 lodged an appeal through the Nevsky District Court to the St. Petersburg City Court in March 2017.

⁹ "InfoPeace VKontakte," <https://vk.com/infopeace>. VKontakte is a Russian social media network.

A second outcome was that this litigation—and subsequent international news coverage—helped pull the troll factory out of secrecy and into the legal sphere. A year before Savchuk’s lawsuit, there were a few investigative articles that exposed the location and working practices of troll factories in St. Petersburg and Moscow (Garmazhapova, 2013). By exposing the shadow economy, secrecy, and the legal ambiguity in which the troll factory exists, Savchuk, Mal’tseva, and Team 29 have shown that “trolls” are often exploited employees who are denied labor rights and social benefits.

<a>STATE SURVEILLANCE AND TELEPHONE TAPPING

In this part, I examine the lack of judicial oversight over surveillance requests in Russia. I also look at how strategic litigation lawyers have challenged the secret services’ direct access to mobile networks at the European Court of Human Rights (ECtHR).

Russians under Surveillance

In a study sampling surveillance requests, the Russian NGO Agora reports that between 2007 and 2015 domestic courts sanctioned eavesdropping on around 10 percent of the Russian population (Chikov & Gainutdino, 2016; Team 29, 2017b). Courts granted all but 3.4 percent of the surveillance requests by security services (Chikov & Gainutdino, 2016, p. 10), indicating that judicial oversight on surveillance requests is minimal and that Russian courts cater to the interests of the security services (Soldatov, 2015, p. 72). During Soviet rule, when the security services began to develop new techniques to eavesdrop on telephone conversations, “no one gave any thought to supervising surveillance” (Soldatov, 2015, p. 74). Order no. 70, passed by the State Committee for Communications and Information Technologies in 1999, gives security services direct access to the networks of mobile telephone providers through installed equipment

and without an official request (Dedov, 2019; Rice, 2015).¹⁰ In other words, the FSB can eavesdrop on telephone calls, emails, and text messages without having to inform the operators whom they are targeting. Security services could gain access with the help of the operation system *Systema Operativno-Rozysknykh Meropriyatii* (SORM) (System of Operative Investigative Measures), which was developed by the *Komitet Gosudarstvennoi Bezopasnosti* (KGB), the forerunner of the FSB. Operating in Russia and parts of Central Asia since 1996, SORM aims to “provide the interception of any type of fixed or mobile communication” (Dedov, 2019, p. 393).

Order no. 70 specifies that mobile network providers must install specific equipment to allow the government to collect user data through SORM. Order no. 70 was never officially published, but it details that the “interception of communications is performed by law-enforcement agencies from a remote-control terminal connected to the interception equipment installed by the mobile network operators” (Dedov, 2019). It furthermore details what the equipment should be able to do, such as transmitting the data to a remote-control terminal. Andrei Soldatov (2015, p. 74) has found that, while FSB officials must get permission from the courts for wiretapping, “service providers do not have the right to know whose discussions or emails the intelligence agencies are intercepting.” Although secret services must seek court permission, the international monitor Privacy International (2015) has revealed that Russian district courts rarely request additional information from the FSB to assess if surveillance was necessary.

International Litigation against State Surveillance

¹⁰ Order no. 70 on the Technical Requirements for the System of Technical Facilities Enabling the Conduct of Operational-Search Activities Using Telecommunications Networks, Ministry of Communications of the Russian Federation, April 20, 1999.

In 2003, Roman Zakharov, a journalist at the St. Petersburg branch of the Glasnost Defense Foundation (Fond Zashchity Glasnosti) and the publisher of an aviation journal, went to court to challenge the expanding powers of the security services to tap telephone conversations. In his claim, Zakharov alleges that Russian legislation does not offer sufficient safeguards to protect individuals against arbitrary surveillance, particularly because the security services have the technological means to access all mobile communications.

In 2005, the Vasileostrovskiy District Court in St. Petersburg rejected Zakharov's complaint. The court ruled that Zakharov did not prove that the telecom operators had allowed the secret services unrestricted access. Additionally, the law required telecom providers to install eavesdropping equipment, and, therefore, Zakharov's right to privacy was not violated.¹¹

With the help of several NGOs, Zakharov brought his complaint to the ECtHR, the Council of Europe's (CoE) regional human rights court. Citizens of the CoE's member states can apply to the ECtHR after they have exhausted domestic remedies. Zakharov volunteered to bring the case to the ECtHR as a victim.¹² While Zakharov lent his name to the case, it was a class action that included several journalists and NGOs, among which was the St. Petersburg-based NGO Citizen's Watch (Grazhdanskii Kontrol'), an organization mainly working on access to justice. At a later stage, the London-based EHRAC, in cooperation with the Moscow Memorial Human Rights Center, took over the case.¹³

In his application to the ECtHR, Zakharov complained under Article 8 of the European Convention on Human Rights (ECHR) that domestic legislation on the surveillance of mobile and internet communications gives law enforcement agencies unrestricted access to

¹¹ ECtHR, Roman Zakharov v. Russia, Application no. 47143/06, Grand Chamber, December 4, 2015

¹² Interview with Roman Zakharov, St. Petersburg, January 2016.

¹³ <https://ehrac.org.uk/about-our-work/>.

telecommunications, allowing them to monitor any person without judicial oversight.¹⁴ He also alleged that the law contains insufficient procedural safeguards against unauthorized monitoring by law enforcement agencies. Finally, Zakharov claimed under Article 13 that he had no access to an effective domestic remedy as he was unable to challenge Order no. 70. Zakharov was initially unsure if he was a victim of telephone tapping himself.¹⁵

I had three contracts with three operators. They could not say that this had nothing to do with me. There were also reasons to suspect that I was bugged thanks to, or because of, my work at the Glasnost Defense Foundation. To be clear, we have no evidence of that. [We do know] that in the early 2000s the Federal Security Services could record the telephone conversations of everybody without exception.¹⁶

In the case at the ECtHR, the Russian government argued that Zakharov did not have a victim status and that he had not exhausted all domestic remedies before litigating at the ECtHR. The ECtHR disagreed, finding that Russian law does not allow people to challenge eavesdropping retrospectively and that there are no effective remedies for persons who suspect that they are under surveillance: “Russian law thus eschews an important safeguard against the improper use of secret surveillance measures.”¹⁷ The ECtHR therefore unanimously declared that Zakharov’s case was admissible, allowing him to apply in abstracto, without alleging that he had been a victim.¹⁸ In a Grand Chamber hearing, the ECtHR ruled in *Zakharov v. Russia* that the Russian state had violated Zakharov’s rights of private and family life under Article 8 of the ECHR and that Russia should pay him €40,000 in damages. While the ECtHR suggested that Russia reform its wiretapping legislation, Zakharov’s lawyer, Kirill Koroteev, explains that such changes are unlikely considering Russia’s history of ignoring ECtHR judgments (Kornya, 2015).

¹⁴ ECtHR, *Roman Zakharov v. Russia*. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, 213 UNTS 222.

¹⁵ Interview with Roman Zakharov, St. Petersburg, January 2016.

¹⁶ Ibid.

¹⁷ ECtHR, *Roman Zakharov v. Russia*, para. 300.

¹⁸ Ibid., para. 178.

The Zakharov ruling affected subsequent cases on the oversight of surveillance and spurred the passage of new laws on communication surveillance in other European countries (Milanovic, 2015; Rice, 2015). The CoE cited the case when it criticized the United Kingdom's Investigatory Powers Act, which expanded government oversight and the collection of bulk data, for failing to outline requirements to prove the necessity of surveillance (Commissioner for Human Rights, 2016).¹⁹ The Centre for Democracy and Technology (2016a, 2016b; Commissioner for Human Rights, 2016), a British NGO working on human rights and the Internet, submitted a brief to the Public Bill Committee referring to the Zakharov judgments to argue that "the broad descriptions of these [surveillance] powers fail to satisfy legality requirements outlined by the European Court of Human Rights." The Investigatory Powers Act was nonetheless passed by both UK Houses of Parliament and signed on 29 November 2016.

The Russian lawyers working with Zakharov ultimately had an impact on policies of state surveillance beyond Russia. Moreover, the lawyers forced the ECtHR to say that, under the current political system in Russia, it was likely that Zakharov and many other Russians were arbitrarily surveilled without their knowledge. Russian NGOs have been eagerly using the ECtHR as a platform for strategic litigation for causes ranging from torture and discrimination to prisoners' living conditions and victims of violent conflict in the North Caucasus (Hodson, 2011; Leach, 2008; Sperling, 2009; L. Sundstrom, 2012; L. Sundstrom et al., 2019; L. M. Sundstrom, 2014; Van der Vet, 2014). In 2015, this strategy seemed to have been undermined when the Constitutional Court of the Russian Federation (CCRF) ruled that the judgments of the ECtHR would not be automatically implemented if they were in conflict with the Constitution (CCRF,

¹⁹ Investigatory Powers Act 2016 (UK), c. 25.

2015; Mälksoo, 2016). Since the CCRF and the ECtHR have only disagreed in a handful of cases, the effect of the ruling have been widely debated.²⁰

Zakharov's case displays the dynamics of new authoritarianism and oppositional legal mobilization. It illustrates the extent to which legislation under new authoritarian regimes are prone to arbitrariness. While secret surveillance always carries the risk of abuse, that risk is higher in regimes where the intelligence community and law enforcement have the technological tools to get unrestricted direct access to all mobile and Internet communications (Dedov, 2019). It also confirms earlier studies on political lawyering that find that jurists often collaborate within a network of civil society organizations. By taking the complaint to the ECtHR, these NGOs had the strategic goal of highlighting how the country monitors citizens with direct access to telephone providers. The case furthermore sets new precedents in the case law of the ECtHR on surveillance and victimhood, affecting possible future applications on eavesdropping from other CoE member states.

<a>“SOVEREIGN OPENNESS”: REPUTATIONAL CONCERNS AND OPEN GOVERNMENT

This section examines legal mobilization in response to the new authoritarian strategy of hiding and blocking citizens' access to public data on, for instance, population statistics, corruption, salaries of government employees, or court judgments.

Open Government and Reputational Concerns of Political Elites

Open government—a movement promoting transparency in policy making, citizen participation in public affairs, and easy access to information on government services and public data—was once on the political agenda in Russia. Under Russian federal laws dating from 2006 to 2009, government bodies are required to make information on government activities available

²⁰ Interview with lawyer, Helsinki, January 2016; Interview with lawyer, St. Petersburg, February 2016.

to the public.²¹ The concept of “open data” first appeared in Russia in a 2012 presidential decree (Kabanov et al., 2017).²² Dmitry Medvedev, during his presidency between 2008 and 2012, pledged to promote open government as part of his broader modernization program for Russia’s society and economy. In February 2012, he signed the Decree on a Working Group to Draft Proposals for Developing the Russian Federation’s Open Government System.²³ The working group focused predominantly on social policy, human resources for the civil services, and battling corruption.

In December 2012, President Medvedev, members of the federal and regional government, and civil society activists attended an open-government conference in Moscow (Open Government Partnership, 2012). Among those activists were lawyer and FIF director Ivan Pavlov and FIF development manager Tatyana Tolsteneva. FIF, along with other civil society actors such as Transparency International, had participated in drafting Russia’s action plan to join the international Open Government Partnership (OGP) and presented its plan at this conference (Open Government Partnership, 2012). The OGP is a global network of seventy-five countries “for domestic reformers committed to making their governments more open, accountable, and responsive to citizens.”²⁴

Although initially Russia applied for membership to the OGP, Russia withdrew its membership application in 2013 after Vladimir Putin returned to the presidency. In a piece written for the OGP, Ivan Pavlov (2013), who helped draft the action plan on open government,

²¹ Federal Law no. 8 on Access to Public Information of State and Municipal Authorities, February 2009; Federal Law no. 149 on Information, Information Technologies, and Information Protection, July 2006.

²² Presidential Decree no. 601 on Basic Directions of Public Administration System Improvement, May 7, 2012.

²³ Presidential Decree no. 150 on a Working Group to Draft Proposals for Developing the Russian Federation’s Open Government System, February 8, 2012, <http://en.kremlin.ru/events/president/news/14467>, <http://kremlin.ru/acts/bank/34772>.

²⁴ Open Government Partnership, <http://www.opengovpartnership.org>.

claimed that Russia was moving toward “sovereign openness,” referring to a system that promotes openness as long as it attracts foreign investment and benefits the economy but restricts citizens’ access to government data and the freedom to distribute information. Within this system of “sovereign openness,” Infometer, Team 29’s sister organization, promotes the freedom to access information on public affairs and government services and consults with government agencies. Relying on the legal requirements in Russian federal law about the kind of information that government agencies should make available to the public, Infometer monitors local and regional government websites for their “informational openness.”²⁵

Infometer measures openness through an audit system with a database that includes 3,131 registered government bodies. After giving government bodies an initial “openness rating,” Infometer gives those entities time to improve the availability of government data on their websites—for instance, information on available public services, government policies, and government spending—and, based on this information, it provides its ranking.²⁶ According to an Infometer representative, the ranking audit “gives us the possibility to get into the system.”²⁷ To that end, Infometer also created an information portal for online consulting and where government officials can request information on their audit. Once a one-month “communication period” is over, Infometer publishes the final ranking. According to a representative of Infometer, this ranking system creates competition and fosters reputational concerns among officials to induce them to open data to the public:

Officials do not feel that the public demands openness. Usually, they say that they don’t want to publish anything because nobody visits their website, and nobody cares about how we, for example, “fight corruption in the Voronezh region.” They do not feel the demand. But they have a competitive spirit and they don’t want to end up last.

²⁵ “Infometer: About,” <https://read.infometer.org/about>.

²⁶ “Infometer: About.”

²⁷ Interview with representative of Infometer, February 2016.

To pressure government officials into compliance, Infometer encourages national and local newspapers to publish the rankings. As one Infometer official explained, “every government body in Russia monitors the mass media and what the mass media writes about this body. [...] If the ranking of the government website is good, a government newspaper will make an article about it. If it is bad, the anti-government newspaper will write an article on it.”

These quantitative, evidence-based methods have become prominent in monitoring state compliance with human rights conventions or, in this case, “openness.” Rankings and technical assessments are, according to Sally Engle Merry (2016, p. 207), always political: “Each measurement system constructs a theory of social life and strategies for change, but the theory of each is embedded in the way data are collected, arranged, and presented.” States sometimes use these international ratings and rankings to exert influence in diplomatic relations, a practice that Judith Kelley (Kelley, 2017, p. 7) calls “scorecard diplomacy.” Rankings distill complex behavior into simple scores, making it easy to identify states that engage in certain behavior (Kelley, 2017, p. 12; Kelley & Simmons, 2015). Scorecard diplomacy is an effective pressure tool because states care about their reputation when compared to other countries on the same scale. This generates “reputational concerns” about states’ current and future ratings (Kelley, 2017, p. 20). This concern, however, is only triggered insofar as NGOs or other actors expose state performance (Kelley, 2017, p. 57). Simmons and Kelley (Kelley & Simmons, 2015, p. 55) argue that the ability to disseminate those rankings constitutes an “exercise of social power.”

Because international rankings do not capture the internal disparities and political conflicts of Russia’s federal system, Infometer created its own ranking system based on reputational concerns within Russia’s vertical power system (Kabanov et al., 2017). The vertical power relationship between the federal government and regional elites not only “helps to force

innovation by vertical coercion” but also reduces self-directed innovation by regional political elites, who tend to be more concerned with meeting the demands of the central power and minimizing reputational damage (Kabanov et al., 2017, p. 468). Infometer uses a ranking system based on the quantitative measurement of openness and internal competition to push local government bodies into opening their data to citizens. Through setting quantitative standards on open access and presenting their findings as facts, Infometer creates standards for what can be considered open and closed without further examining how visitors use government websites.

These online ranking tools interlace with political lawyering in three ways. First, in general, Infometer and Team 29 work closely together. While they are separate organizations, both programs were once the same organization, the Freedom of Information Foundation, which combined litigation and nonlegal strategies to promote the freedom to disseminate and receive information in Russia. Second, Infometer and Team 29 set up a legal project called Municipal Combat (Munkombat), which gives legal aid to people who want to hold municipal authorities accountable for not making information on government services open to the public or for withholding information about corruption or the income of officials.²⁸ Munkombat’s website is styled after the video game Mortal Kombat, asking visitors to “choose your declarant.” In 2015, a citizen of St. Petersburg used Munkombat to get information on the income of the head of a municipal district in St. Petersburg. Munkombat’s lawyers argued that the lack of information violated Federal Law no. 8-FZ on Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government and Federal Law no. 273-FZ on Combating Corruption.²⁹ The Okyabrsky District Court of St. Petersburg agreed and ordered the

²⁸ “Munkombat,” <http://mk.team29.org/>.

²⁹ Federal Law no. 8-FZ on Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government, February 9, 2009; Federal Law no. 273-FZ on Combating Corruption, December 25, 2008.

publication of the official's income. Third, Infometer and Team 29 fostered the development of legal petitioning by launching the online tool Infodozor in 2015. Using the data on government openness from the results of Infometer's rankings, Team 29 created a "heat map" indicating the levels of information transparency of various government websites. Citizens could use the maps to monitor the level of openness on municipal government's websites and familiarize themselves with the existing laws that required government bodies to make the information available (Agentstvo Sotsial'noi Informatsii 2015). If the user could not find the government information they were looking for, they could use the Infodozor tool to file a complaint with the prosecutor's office (Lenizdat.ru, 2015).

<a>CONCLUSION

This chapter has examined three strategies of information control in new authoritarian regimes: (1) spreading falsehoods through "troll factories"; (2) wiretapping telephone conversations without judicial oversight; and (3) hiding government data. Using Russia as a case study, I have examined how a group of collaborating rights advocates—political lawyers and open-government consultants—innovate new legal mobilization strategies when the government distorts and hides information with minimal judicial oversight. The chapter confirms earlier studies on political lawyering in nondemocratic regimes that have found that political lawyers creatively engage in legal and nonlegal strategies in response to authoritarian control. I offer additional evidence of how these lawyers have cooperated with a broader network of civil society organizations, have invented new strategies, and have nurtured connections with political elites. Studying lawyering against covert authoritarian tactics furthermore reveals the internal mechanisms of authoritarianism and social control (Chua, 2019; Stern, 2017).

The chapter complicates our understanding of the role of political lawyering in new authoritarian regimes in two ways. First, it exposes how the government uses the law to develop new forms of information control and obscure those strategies through vague legislation. Second, it complicates our understanding of the dynamics between political lawyers and political elites, courts, and civil society. I show how Russian political lawyers work with elites, courts, and civil society to clarify legal concepts and expose governmental malfeasance. Lawyers and open government activists were particularly adept at using the new authoritarian regime's reliance on information control to their own advantage by using rankings to undermine the public image of political elites and government bodies. As authoritarian regimes continue to expand their campaigns of disinformation and informational control, the challenge for political lawyers will be to locate and exploit new government vulnerabilities.

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