Russian Federation vs. Anastasia Shevchenko

October 2021

TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE

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Human Rights Embassy is an international human rights nongovernmental organization based in Moldova and operating throughout the countries of the former Soviet Union and Europe. The organization's mission is to contribute to the promotion of and respect for human rights worldwide. To achieve this goal, Human Rights Embassy undertakes professional development trainings of judges, prosecutors, lawyers, and police officers; human rights trainings for NGOs and mass-media; trial monitoring; strategic litigation; solidarity campaigns for the protection of human rights lawyers/defenders; awareness raising campaigns; and advocacy.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable – including journalists, protesters, women, LGBTQ+ persons and minorities – and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

The legal assessment and conclusions expressed in this report are those of the author and not necessarily those of the Clooney Foundation for Justice.

EXECUTIVE SUMMARY

Katerina Hadzi-Miceva Evans, who is a member of the Trial Watch Experts Panel, assigned this trial a grade of D: while it is positive that the court hearings were open, the low grade is because of the arbitrariness, conditions, and length of Shevchenko's house arrest; the violation of her right to privacy, the arbitrary application of laws inconsistent with domestic and international standards on freedom of expression, freedom of association, and freedom of peaceful assembly; and her criminal conviction, as the result of which she will continue to live in uncertainty and fear. The process in its entirety resulted in serious harm to her and her family, as well as the deprivation of her fundamental rights.

From June 17, 2020 to February 18, 2021 Human Rights Embassy monitored the trial of Anastasia Shevchenko before the Oktyabrsky District Court in the Russian Federation as part of the Clooney Foundation for Justice's TrialWatch initiative. Shevchenko is a well-known activist and former coordinator of Public Network Movement Open Russia (PNM Open Russia), a civic association that advocates for human rights, rule of law, and political change through democratic processes. She was prosecuted and convicted under Russia's Law on Undesirable Organizations, which, among other things, provides for up to six years in prison for participation in what the authorities deem an "undesirable" organization. The case against Shevchenko constituted a severe violation of numerous rights, including her right to security of person, right to privacy, right to the presumption of innocence, right to freedom of expression, right to freedom of peaceful assembly, and right to freedom of association. More broadly, Shevchenko's prosecution reflects the narrowing of civic space in Russia pursuant to legislation that violates Russia's obligations under the International Covenant on Civil and Political Rights and the European Convention on Human Rights, both treaties to which Russia is party.

The Law on Undesirable Organizations is ripe for abuse. The term "undesirable" is vaguely defined as anything threatening Russia's constitutional order, security, or defense. The law's imprecision affords the authorities unfettered – and thus dangerous – discretion, permitting the *de facto* criminalization of movements and opinions that diverge from the government's agenda. This was borne out by Shevchenko's case.

At trial, the prosecution argued that PNM Open Russia had been designated as undesirable under the Law on Undesirable Organizations (more on this below). According to the law, the authorities can pursue criminal charges following two administrative convictions in one year for participation in an "undesirable" organization. The prosecution alleged that Shevchenko had "participated" in PNM Open Russia by: i) explaining the non-violent civic activities of PNM Open Russia at a civil society meeting; and ii) holding a flag with the political message ("#FEDUP") at an authorized and peaceful political rally.

Although the Oktyabrsky District Court found that through such actions Shevchenko intended to "infringe on the foundations of the constitutional order and security of the state, posing a threat to the protection of the interests of Russian citizens,"[1] it never explained how exactly Shevchenko had sought to undermine State security and order. Likewise, nowhere in the prosecution's presentation was it alleged that Shevchenko had planned specific acts of violence against the State, had incited or participated in acts of violence against the State, or had otherwise conspired to overthrow the ruling government outside of lawful processes. Rather, the specific acts that formed the basis of Shevchenko's criminal conviction were common manifestations of civic activism and corresponded with PNM Open Russia's stated aims and activities: namely, achieving positive change through peaceful democratic processes. Given the nature of the acts Shevchenko was engaged in and the lack of evidence of her participation in acts of violence against the State and/or attempts to overthrow the government, it appears that the objective of her prosecution was to punish her for her criticism of the authorities and protest activities – a violation of her right to freedom of expression, freedom of peaceful assembly, and freedom of association.

The punitive nature of the proceedings was further demonstrated by the arbitrary imposition of two years of extremely restrictive house arrest prior to and throughout her trial, during most of which Shevchenko, a single mother and caretaker of her elderly family members, was not allowed to leave her home for even the most basic of activities. She was also refused the opportunity to visit her terminally ill daughter until the day before her death. The investigators and prosecutors requesting extensions of Shevchenko's house arrest and the many levels of the judiciary that granted such requests consistently failed to adequately justify her deprivation of liberty. Indeed, there was no evidence that Shevchenko was a flight risk, would interfere with the proceedings, or would engage in criminal activities.

The courts' authorization of five months of intrusive video and audio surveillance of Shevchenko's residence (including a video camera directly above her bed), for which there was no justification, similarly indicated that the proceedings were a form of retaliation. The footage captured Shevchenko conversing with family members about civic activities, internal PNM Russia disputes, and personal matters. At points she was filmed in her underwear. The lack of a reasonable basis for this surveillance was evidenced by the fact that the recordings presented by the prosecution in court were not probative of the charged offense: namely, intentional participation in an undesirable organization. Indeed, the prosecution relied on publicly available information to make its case. The surveillance thus constituted a violation of Shevchenko's right to privacy.

Shevchenko's trial reflects the expansiveness of and corresponding uncertainty generated by the Law on Undesirable Organizations. Namely, the prosecution failed to

[1] Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pg. 60.

prove that the law even applied to PNM Open Russia. At trial, the defense presented witnesses and other evidence showing: i) that PNM Open Russia was different from the "Open Russia" UK organizations that had previously been deemed undesirable by the Prosecutor General's Office, as confirmed in a statement explicitly made by a representative of said office; ii) that PNM Open Russia was not an organization but an association; and iii) that PNM Russia was not foreign but composed of Russian members and created in accordance with Russian law. The prosecution did not provide concrete evidence in rebuttal of any of these points; instead, a number of prosecution witnesses provided evidence supporting the defense case. A prosecution witness representing the Ministry of Justice, for example, stated that PNM Russia appeared to be a domestic association. Nonetheless, the court's convicting verdict ignored all evidence in this regard (sometimes explicitly on the basis that it contradicted the State's position), indicating that the outcome of the case was predetermined. This violated Shevchenko's right to the presumption of innocence.

Shevchenko's case demonstrates how the Russian authorities are using the Law on Undesirable Organizations to achieve whatever outcome they desire, in line with the aims of the ruling party. With the judiciary acting in concert with the executive, such legislation can functionally extend to any individuals and/or entities deemed an irritation or obstruction to Russian President Putin and his allies. Recent efforts to expand the Law on Undesirable Organizations suggest that Shevchenko's case may be the tip of the iceberg: it is likely that politically-motivated retaliation carried out under this law will escalate unless the international community takes stronger action.

Consequently, despite increasing pressure and obstacles, the international community should continue to condemn Russian laws that negatively impact the freedoms of expression, peaceful assembly, and association; to fund local human rights defenders and civil society groups to litigate such cases, with a focus on training and funding of defense lawyers; and to support local actors to undertake measures to protect themselves against surveillance and attack. States should either initiate or expand on human rights sanctions against high-level Russian officials to ensure rapid, coordinated and targeted responses to violations of the freedoms of association, peaceful assembly, expression, and information. These should include travel bans and asset freezes on officials responsible for violations of these rights as part of crackdowns on civil society.

A. POLITICAL AND LEGAL CONTEXT

Repression and Surveillance of Dissent in the Russian Federation

The criminal proceedings against Shevchenko took place in an increasingly hostile context for opposition activists and human rights defenders in Russia. Over the last decade, the Russian authorities have carried out an escalating campaign against dissent.

Although freedom of expression is protected by Russia's Constitution,[2] those criticizing the government face detention, criminal charges, and other forms of harassment,[3] including raids of their homes and offices.[4] To this end, the Russian government has passed legislation that facilitates the prosecution of activists,[5] designed – as described by The Economist – to "squeeze" the opposition and civil society into submission.[6]

A sophisticated surveillance system, including "unfettered" monitoring of individuals' online activities, has accompanied the development of restrictive legislation and criminalization of dissent.[7] In recent years, opposition leaders, independent journalists, and activists have found their activities – both public and private – subject to "'total oversight.'"[8] Most recently, the Russian government has deployed its AI-driven facial-recognition system, facilitated by the installation of hundreds of thousands of CCTV

[2] See Constitution of the Russian Federation, Article 29(1).
[3] See United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 21. Available at https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/russia/; Amnesty International, "Amnesty International Report 2020/21: The State of the World's Human Rights", 2021, pgs. 304–305. Available at https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF; Human Rights Watch, "Moscow Police Arrest Nearly 200 on 'Undesirable' Charges", March 15, 2021. Available at https://www.hrw.org/news/2021/03/15/moscow-police-arrest-nearly-200-undesirable-charges.
[4] See Reuters, "Russia detains more than 1,000 people in opposition crackdown", July 26, 2019, Available at https://www.reuters.com/article/us-russia-politics-protests-idUSKCN1UM08H; The Guardian, "Russian police carry out mass raids against opposition activists", September 12, 2019. Available at https://www.theguardian.com/world/2019/sep/12/russian-police-raid-homes-and-offices-of-opposition-activists; The Washington Post, "Russian police raid homes, offices of opposition activists", July 9, 2020. Available at https://www.washingtonpost.com/world/europe/russian-police-raid-homes-offices-of-opposition-activists/2020/07/09/11bd1f30-c1ed-11ea-8908-68a2b9eae9e0_story.html; Amnesty International, "Human Rights in Eastern Europe and Central Asia - Review of 2019", April 16, 2020, pg. 26. Available at https://www.amnesty.org/en/documents/eur01/1355/2020/en/.
[5] See Amnesty International, "Human Rights in Eastern Europe and Central Asia - Review of 2019", April 16, 2020, pgs. 25–26.
[6] See The Economist, "If you can't suppress them, squeeze them: The Kremlin is building the legal framework for authoritarian rule", July 21, 2012. Available at https://www.economist.com/europe/2012/07/21/if-you-cant-suppress-them-squeeze-them.
[7] See Brookings Institute, "Policy Brief, Exporting Digital Authoritarianism: The Russian and Chinese Models", 2019, pgs. 6, 8. Available at https://www.brookings.edu/wp-content/uploads/2019/08/FP_20190827_digital_authoritarianism_polyakova_meserole.pdf.
[8] See United States Department of State, "Country Reports on Human Rights Practices for 2019", 2020, pg. 19. Available at https://www.state.gov/wp-content/uploads/2020/03/RUSSIA-2019-HUMAN-RIGHTS-REPORT.pdf (describing findings from a report issued by the Agora International Human Rights Group).

cameras in major cities like Moscow,[9] to crack down on dissent, including by identifying and detaining activists on their way to anti-government protests.[10]

2012 Law on Foreign Agents

A major step in this *de facto* criminalization of Russian civil society came with the passage of the "Law on Foreign Agents" in 2012.[11] Among other things, the law requires non-governmental organizations (NGOs) that are working on "political activities" and that have received any amount of money from foreign sources to register with the Ministry of Justice as "foreign agents."[12] An organization is "considered to carry out political activity if, regardless of its statutory goals and purposes stated in its founding documents, it participates (including through financing) in organising and implementing political actions aimed at influencing decision-making by state bodies intended for the change of state policy pursued by them, as well as shaping of public opinion for the aforementioned purposes."[13] As noted by the Council of Europe and others, this definition encompasses routine activities conducted by civil society and human rights groups.[14]

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[9] Moscow reportedly had 193,000 surveillance cameras in use as of January 2021. See Radio Free Liberty Radio Europe, "We See You!: How Russia Has Expanded Its Video-Surveillance System", January 19, 2021. Available at https://www.rferl.org/a/russia-video-surveillance/31052482.html.

[10] Reuters, "'Face control': Russian police go digital against protesters", February 11, 2021. Available at https://www.reuters.com/article/us-russia-politics-navalny-tech-idUSKBN2AB1U2.

[11] Russian Federation, Federal law no. 121-FZ of 20 July 2012 "On Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activities of the Non-Commercial Organizations Performing Functions of a Foreign Agent." The Law on Foreign Agents enacted a series of amendments to various codes.

[12] See Council of Europe Commissioner of Human Rights, "Third party intervention by the Council of Europe Commissioner for Human Rights", July 5, 2017, paras. 7–8. Available at https://rm.coe.int/third-party-intervention-by-the-council-of-europe-commissioner-for-hum/1680731087. See also BBC News, "Russia to label individuals as 'foreign agents' under new law", December 3, 2019. Available at https://www.bbc.com/news/world-europe-50643705 (explaining that the term "'[f]oreign agent' was a Soviet-era term of abuse for political dissidents."); Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021. Available at https://rm.coe.int/expert-council-conf-exp-2021-1-opinion-amendments-to-russian-legislati/1680a17b75; The Economist, "Put in his place: Vladimir Putin comes under fire abroad for repressive laws at home", April 13, 2013. Available at https://www.economist.com/europe/2013/04/13/put-in-his-place.

[13] Council of Europe Commissioner of Human Rights, "Third party intervention by the Council of Europe Commissioner for Human Rights", July 5, 2017, para. 10.

[14] See Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, para. 103 ("As the Commissioner for Human Rights of the Council of Europe has underlined, 'the activities qualified as 'political' under the Law on Foreign Agents are among the most commonly-practiced, basic and natural methods for civil society institutions to perform their work. Moreover, they constitute important elements of the democratic process. In his view, the application of the Law on Foreign Agents against civil society groups advocating for changes in law and practice, or against those scrutinizing the human rights compliance of decisions, actions and policies of public authorities, greatly undermines their role as a public watchdog in a democratic society.'"). See also Human Rights Watch, "Russia: Government vs. Rights Groups", June 18, 2018. Available at https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle.

In 2014, the Russian legislature passed amendments that permitted the Ministry of Justice to independently add NGOs to the registry.[15] Once on the list, organizations and their members may face sanctions for failing to comply with requirements such as labeling their publications as having been issued by a foreign agent and following laborious reporting and accounting rules.[16] "Malicious non-compliance" can result in imprisonment of up to two years.[17] Since the passage of the Law on Foreign Agents, the operating environment for human rights defenders in Russia has "considerably deteriorated."[18]

International and regional condemnation of the law has been widespread. The Council of Europe Commissioner of Human Rights has stated that the law is "open to the possibility of misuse as a repressive tool against human rights defenders"[19] and unduly interferes with fundamental rights such as freedom of expression and association.[20] The Parliamentary Assembly of the Council of Europe has likewise characterized the legislation as "limiting the media's and civil society's access to independent funding, tarnishing their reputation and obstructing their activities, thus restricting the exercise of fundamental freedoms and reducing the space for independent and dissident actors in Russia."[21] Human Rights Watch,[22] Amnesty International,[23] and other watchdogs have called for the law's repeal.

Nonetheless, not only has the Russian government not narrowed or repealed the law but it has amended it periodically[24] to cast a broader net, in what Freedom House has called

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[15] Amnesty International, "Unfair Game - Persecution of Human Rights Defenders in Russia Intensifies", 2019, pg. 19. Available at https://www.amnesty.org/download/Documents/EUR4609502019ENGLISH.pdf.
[16] See id; Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, paras. 8, 15; Council of Europe Commissioner of Human Rights, "Third party intervention by the Council of Europe Commissioner for Human Rights", July 5, 2017, para. 7.
[17] See Amnesty International, "Serious Deterioration of Human Rights in Russia: An Update to the Council of Europe", February 18, 2021, pg. 3. Available at https://www.amnesty.eu/wp-content/uploads/2021/02/AICoEbriefingRussia18Feb2021.pdf.
[18] Parliamentary Assembly of the Council of Europe, "Strengthening the protection and role of human rights defenders in Council of Europe member States", January 11, 2016, para. 18. Available at https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22309&lang=en.
[19] Council of Europe Commissioner of Human Rights, "Opinion of the Commissioner for Human Rights - Legislation and Practice in the Russian Federation on Non-Commercial Organization in the Light of Council of Europe Standards: An Update", July 9, 2015, para. 48. Available at https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-on-the-legislation-and-pr/16806da772.
[20] Council of Europe Commissioner of Human Rights, "Third party intervention by the Council of Europe Commissioner for Human Rights", July 5, 2017, para. 12.
[21] See Parliamentary Assembly of the Council of Europe, "Resolution of 19 December 2019 on the Russian 'foreign agents' law", December 29, 2019, para. H. Available at https://www.europarl.europa.eu/doceo/document/TA-9-2019-0108_EN.html.
[22] See Human Rights Watch, "Russia: Rights Defender Faces Criminal Charges", July 15, 2020. Available at https://www.hrw.org/news/2020/07/15/russia-rights-defender-faces-criminal-charges.
[23] See Amnesty International, "Russia stepping up its onslaught on freedom of association", August 4, 2015, pg. 4. Available at https://www.amnesty.org/download/Documents/EUR4622232015ENGLISH.pdf.
[24] See Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, paras. 14–15.

a "relentless campaign."[25] In 2017, the legislature extended the law's scope to include media outlets receiving foreign funding,[26] and, in 2019, to include private persons such as bloggers and independent journalists who "disseminate information to an unspecified number of people."[27] In December 2020, the legislature again amended the law to, among other things, extend to all individuals as well as to "public associations" (civil society movements and initiatives that do not have an official registration status) and to provide for increased penalties in certain instances.[28] As with the original law, the amendments have been roundly denounced by international and domestic organizations and institutions. According to the Council of Europe, for example, the amendments have "exacerbate[d] the hostile environment for the work of NGOs" and "call[ed] into question the very substance of the rights guaranteed in Articles 8 [right to privacy], 10 [freedom of expression] and 11 [freedom of assembly and association] of the European Convention."[29]

As of the end of 2020, 75 groups had been classified as "foreign agents" by the government.[30] Notably, the "foreign agent" label has been used to discredit the work of human rights organizations and other civil society bodies[31] and, as a result of the law, many such organizations have shut down.[32] Journalists and media organizations have also struggled: at the end of 2020, two Radio Free Europe/Radio Liberty journalists were

[25] See Freedom House, "Freedom in the World 2021: Russia". Available at https://freedomhouse.org/country/russia/freedom-world/2021 (stating that "[i]n December 2020, Putin extended the provisions of the foreign agent law to recognize individuals and informal organizations as potential foreign agents. . . . The law also expands the definition of 'foreign support' beyond financing and makes it the responsibility of individuals to self-declare their status as foreign agents, or risk fines or prison time.").

[26] See Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, para. 14. See also Radio Free Europe/Radio Free Liberty, "Journalist Watchdog Warns that Russia is 'Killing Off' Independent Media", June 16, 2021. Available at https://www.rferl.org/a/russia-independent-media-foreign-agents-rsf/31311354.html.

[27] Human Rights Watch, "Russia: 'Foreign Agents' Bill Threatens Journalists", November 18, 2019. Available at https://www.hrw.org/news/2019/11/18/russia-foreign-agents-bill-threatens-journalists#. See also Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, para. 15.

[28] See Amnesty International, "Serious Deterioration of Human Rights in Russia: An Update to the Council of Europe", February 18, 2021, pgs. 3–4.

[29] Council of Europe, "Expert Council on NGO Law - Opinion on the Compatibility with European Standards of Recent and Planned Amendments to the Russian Legislation Affecting NGOs", February 19, 2021, paras. 132, 134.

[30] Freedom House, "Freedom in the World 2021: Russia".

[31] See Amnesty International, "Unfair Game - Persecution of Human Rights Defenders in Russia Intensifies", 2019, pg. 19; Council of Europe Commissioner of Human Rights, "On the Legislation of the Russian Federation on Non-Commercial Organizations in Light of European Standards", July 15, 2013, para. 57. Available at https://rm.coe.int/16806da5b2.

[32] See Amnesty International, "Unfair Game - Persecution of Human Rights Defenders in Russia Intensifies", 2019, pgs. 19–20; Amnesty International, "Russia stepping up its onslaught on freedom of association", August 4, 2015, pg. 2; Council of Europe Commissioner of Human Rights, "Third party intervention by the Council of Europe Commissioner for Human Rights", July 5, 2017, para. 41.

ordered to register as foreign agents and since January 2021 the outlet has been "hit ... with 520 violations and fines totaling nearly $2.4 million."[33]

In upholding in full the provisions of the Law on Foreign Agents in 2014, the Russian Constitutional Court concluded that the legislation did not conflict with the fundamental right to freedom of association and that the term "foreign agent" was neutral.[34]

2015 Law on Undesirable Organizations

The "Law on Undesirable Organizations,"[35] adopted in 2015, is also part of the Russian government's "toolkit for imprisoning human rights defenders and activists."[36] The law added new provisions to several sets of legislation, including the criminal[37] and administrative offense[38] codes, in order to sanction the management of, or participation in, the activities of "foreign or international non-governmental organizations" deemed "undesirable" by the Russian authorities. The power to classify an organization as "undesirable," which is defined as threatening Russia's defense, security, or constitutional order, rests with the Prosecutor General's Office: the Prosecutor General's Office sends its decision onward to the Ministry of Justice, which subsequently publishes online that an organization has been classified as "undesirable."[39] When an individual commits two administrative violations in one year for managing or participating in the activities of an "undesirable" organization (administrative violations incur fines), he or she may be subject

[33] Voice of America, "Russia Using Foreign Agent Law to Attack Journalism, Media Say", June 10, 2021. Available at https://www.voanews.com/press-freedom/russia-using-foreign-agent-law-attack-journalism-media-say. See also Radio Free Europe/Radio Free Liberty, "Journalist Watchdog Warns that Russia is 'Killing Off' Independent Media", June 16, 2021.

[34] See Decision of the Constitutional Court of the Russian Federation, No. N 10-P, April 8, 2014. Available at https://rg.ru/2014/04/18/ks-dok.html. See also Amnesty International, "Russia stepping up its onslaught on freedom of association", August 4, 2015, pg. 2.

[35] Russian Federation, Federal Law of 23 May 2015 #129-FZ "On Introduction of Amendment to Certain Legislative Acts of the Russian Federation" (hereinafter "Undesirable Organizations Law").

[36] Amnesty International, "Russia: First criminal case under 'undesirable organizations' law marks a new level of repression", January 21, 2019, pg. 3. Available at https://www.amnesty.org/en/latest/news/2019/01/russia-the-first-criminal-case-under-the-undesirable-organizations-law-marks-a-new-level-of-repression/.

[37] The "Undesirable Organizations Law" introduced Article 284.1 of the Criminal Code, "The Implementation of Activity on the Territory of the Russian Federation by a Foreign and International Nongovernmental Organization in Respect of Which the Decision Has Been Made to Deem Its Activity Undesirable on the Territory of the Russian Federation," which punishes management of, or participation in, the activities of an "undesirable" organization with up to six years' imprisonment if the person has already committed two administrative violations that same year.

[38] The "Undesirable Organizations Law" introduced Article 20.33 of the Administrative Offense Code, "The Implementation of Activity on the Territory of the Russian Federation by a Foreign and International Nongovernmental Organization in Respect of Which the Decision Has Been Made to Deem Its Activity Undesirable on the Territory of the Russian Federation," which punishes management of, or participation in, the activities of an "undesirable" organization with fines of up to 15,000 rubles for individuals and 100,000 rubles for legal entities.

[39] See Amnesty International, "Russia stepping up its onslaught on freedom of association", August 4, 2015, pg. 3; Trial Monitor's Notes, December 10, 2020.

to criminal prosecution and a penalty of up to six years' imprisonment if he or she continues to participate in or manage such activities.[40]

The Law on Undesirable Organizations has been widely criticized. The European Commission for Democracy through Law (the Venice Commission), for example, has concluded that due to the "lack of specific criteria/prohibitions for misconduct of NGOs and the vague and imprecise terms as to the grounds on the basis of which the activities of a foreign or international NGO may be deemed 'undesirable,'" the law does not meet the requirement of legality found in the Convention and unduly interferes with the freedoms of expression, peaceful assembly, and association.[41] The Expert Council on NGO Law which is part of the International Non-Governmental Organizations Conference of the Council of Europe has similarly found the law wanting in numerous areas, stating that its broadness renders it "prone to arbitrary application in a manner that cannot be remedied through judicial control" and therefore incompatible with the European Convention on Human Rights.[42] The Council has further noted that the legislation's blanket ban on the dissemination of any materials linked to an "undesirable" organization, regardless of their content, constitutes an undue interference with the right to freedom of expression under the Convention.[43]

Watchdogs have also commented on the law, with Amnesty International asserting that it was "'expressly designed to curtail freedom of expression and association,'"[44] and Human Rights Watch deeming the law's purpose to be to "squeez[e] the very life out of Russian civil society" by targeting "Russian activists and Russian groups" and isolating them from international partners.[45]

Many organizations have been fined under the Law on Undesirable Organizations and individuals associated with such organizations have been detained, fined, and/or prosecuted.[46] Those sanctioned for "participation" in an "undesirable" organization's

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[40] Russian Federation Criminal Code, Article 284.1.

[41] See Venice Commission, "Opinion on Federal Law No. 129-Fz On Amending Certain Legislative Acts (Federal Law On Undesirable Activities of Foreign and International Non-Governmental Organizations)", Opinion No. 814/2015, June 13, 2016, paras. 41, 59, 61–62. Available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)020-e.

[42] See Conference of INGOs of the Council of Europe, "Expert Council on NGO Law Opinion on Federal Law of 23 May 2015 #129-Fz 'On Introduction of Amendments to Certain Legislative Acts of the Russian Federation' (Law on 'Undesirable' Organisations)", November 2015, para. 71. Available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804902de.

[43] Id. at para. 73.

[44] Amnesty International: "Russia begins blacklisting 'undesirable' organizations", July 28, 2015. Available at https://www.amnesty.org/en/latest/news/2015/07/russia-begins-blacklisting-undesirable-organizations/. See also Human Rights Watch, "Russia: Persecution of 'Undesirable' Activists", January 18, 2020. Available at https://www.hrw.org/news/2020/01/18/russia-persecution-undesirable-activists.

[45] See Human Rights Watch, "Russian civil society deemed 'undesirable'", May 20, 2015. Available at https://www.hrw.org/news/2015/05/20/russian-civil-society-deemed-undesirable.

[46] See Parliamentary Assembly of the Council of Europe, "Report: Restrictions on NGO activities in Council of Europe member States", Doc. 15205, January 6, 2021, paras. 18–19. Available at https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28906&lang=en; Amnesty

activities have, among other things, re-posted articles associated with an "undesirable" organization, linked to an "undesirable" organization's (defunct) website, and held a single-person picket.[47] As documented by bodies such as the Parliamentary Assembly of the Council of Europe, the law has forced the closure of domestic NGOs funded by foreign donors as well as the "termination of operations of the major international and foreign donor organisations that supported the activities of Russian NGOs."[48]

In June 2021, the Russian legislature's lower chamber approved a bill expanding the definition of undesirable organizations to "'any foreign or international NGOs that provide services or transfer money to NGOs that have the status of an undesirable organization in Russia'": this means that "Russian citizens and organizations located in any country of the world will be barred from taking part in the activities of foreign nongovernmental organizations (NGOs) that are labeled 'undesirable' in Russia."[49]

Also in June, the lower chamber approved a bill that would permit the authorities to open a criminal case against individuals without any previous administrative offenses for holding a leadership role in an undesirable organization, subjecting such individuals to a potential criminal penalty of six years, and to open a criminal case against individuals with only one previous administrative offense for association with an undesirable organization, subjecting such individuals to a potential criminal penalty of four years.[50] "Under another amendment, anyone making donations, or organizing crowdfunding or providing unspecified 'financial services' to the blacklisted organizations can immediately face criminal charges and up to five years in prison."[51] Both of the aforementioned bills were approved by the upper chamber of the legislature and signed into law by President Putin.[52] As of July 2021, the "undesirables" list contained 40 organizations spanning a broad range of civil society actors in Russia.[53]

International, "Human Rights in Eastern Europe and Central Asia - Review of 2019", April 16, 2020, pgs. 4, 25–26; Amnesty International, "Unfair Game - Persecution of Human Rights Defenders in Russia Intensifies", 2019, pgs. 21–22.

[47] See Parliamentary Assembly of the Council of Europe, "Report: Restrictions on NGO activities in Council of Europe member States", Doc. 15205, January 6, 2021, para. 19; United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pgs. 37–38.

[48] See Parliamentary Assembly of the Council of Europe, "New restrictions on NGO activities in Council of Europe member States", Resolution 2226, June 27, 2018, para. 7. Available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24943&lang=en.

[49] Radio Free Europe/Radio Free Liberty, "Russian Bill Approved Expanding 'Undesirable' Organizations Law", June 9, 2021. Available at https://www.rferl.org/a/russian-lawmakers-bill-undesirable-organizations/31298911.html.

[50] Human Rights Watch, "New 'Undesirables' Law Expands Activists' Danger Zone", June 17, 2021. Available at https://www.hrw.org/news/2021/06/17/new-undesirables-law-expands-activists-danger-zone.

[51] Id.

[52] Radio Free Europe/Radio Free Liberty, "Putin Signs Law Criminalizing Links to 'Undesirable' Organizations", June 29, 2021. Available at https://www.rferl.org/a/putin-law-criminalizing-undesirable-organizations/31331290.html.

[53] Russian Federation Ministry of Justice, "List of foreign and international non-governmental organizations whose activities are recognized as undesirable on the territory of the Russian Federation", updated July 9, 2021. Available at https://minjust.gov.ru/ru/documents/7756/.

Open Russia

The organizations "OR (Otkrytaya Rossia) (Great Britain)" and "Open Russia Civic Movement, Open Russia (UK)" were added to the "undesirables" list on April 26, 2017.[54] The same day, a representative of the Prosecutor General's office stated that the Russia-based public network movement Open Russia (PNM Open Russia) – as opposed to the listed organizations supposedly registered in the UK (more on this below) – was not affected by the decision.[55] The following day, however, riot police searched the PNM Open Russia offices in Moscow, which observers attributed to upcoming nationwide anticorruption protests organized by the group.[56] In December 2017, the Russian government blocked the group's website.[57]

Since that date, the authorities have been steadily ramping up pressure on journalists and activists perceived as being affiliated with the movement,[58] often with devastating consequences. In October 2020, the editor-in-chief of an independent media site, Irina Slavina, died after setting herself on fire in front of the police headquarters in Nizhny Novgorod.[59] Over the preceding several years, she had experienced continuous harassment, including administrative prosecutions for her journalism and political activity.[60] On the day before her death, the authorities raided her home looking for evidence of her ties to PNM Open Russia as part of a criminal investigation under the Law on Undesirable Organizations.[61]

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[54] Prosecutor General's Office of the Russian Federation, "The Prosecutor General's Office of the Russian Federation decided to declare the activities of a number of foreign non-governmental organizations undesirable in the territory of the Russian Federation", April 26, 2017. Available at http://genproc.gov.ru/smi/news/news-1186636/; Russian Federation Ministry of Justice, "List of foreign and international non-governmental organizations whose activities are recognized as undesirable on the territory of the Russian Federation", updated July 9, 2021.

[55] Echo of Moscow, "The Prosecutor General's Office has declared two organizations called 'Open Russia' undesirable", April 26, 2017. Available at https://echo.msk.ru/news/1970616-echo.html.

[56] Radio Free Europe/ Radio Liberty, "Pressure Mounts as Police Search Moscow Office of Khodorkovsky NGO", April 27, 2017. Available at https://www.rferl.org/a/russia-moscow-police-search-khodorkovsky-ngo-office/28455615.html.

[57] The Moscow Times, "Russia Blocks Khodorkovsky's Open Russia Website", December 12, 2017. Available at https://www.themoscowtimes.com/2017/12/12/russia-bans-khodorkovskys-open-russia-website-a59906.

[58] See Meduza, "The trials of Open Russia: How the Russian government uses laws against 'undesirable organizations' to target activists from a single human rights group", April 24, 2019. Available at https://meduza.io/en/feature/2019/04/24/the-trials-of-open-russia. See also Amnesty International, "Russia: Heartless charges against activist who supported detained colleague", January 31, 2019. Available at https://www.amnesty.org/en/latest/news/2019/01/russia-heartless-charges-against-activist-who-supported-detained-colleague/ (describing criminal charges filed against Roman Zaitsev for posting articles about Shevchenko's arrest).

[59] Organized Crime and Corruption Reporting Project, "Journalists Call for Probe into Russian Colleague's Self-Immolation", October 5, 2020. Available at https://www.occrp.org/en/daily/13206-journalists-call-for-probe-into-russian-colleague-s-self-immolation.

[60] Id.

[61] Id.

The government continues to routinely arrest, charge, and detain members of the movement.[62] Most recently, in March 2021, the authorities again raided the offices of PNM Open Russia in Moscow.[63] In May 2021, PNM Open Russia announced "it would shut down after coming under increasing pressure from Russian authorities" and "to protect its members from prosecution."[64]

Arbitrary Arrest and Deprivation of Liberty

The Russian authorities routinely arrest and detain opposition leaders, civil society activists, and human rights defenders, a practice that has become easier to justify with the advent of the Law on Foreign Agents and the Law on Undesirable Organizations. As observed by the U.S. Department of State, "[w]hile [Russian] law prohibits arbitrary arrest and detention, authorities engaged in these practices with impunity."[65] According to Freedom House, such violations are driven by the priorities of the executive: "[s]afeguards against arbitrary arrest and other due process guarantees are regularly violated, particularly for individuals who oppose or are perceived as threatening to the interests of the political leadership and its allies."[66] Judges may face reprisals if they decline to order pre-trial detention of defendants (more on issues with judicial independence below).[67]

Correspondingly, the European Court of Human Rights has found that domestic courts consistently fail to provide adequate justification for ordering and extending the pre-trial detention of suspects in criminal cases.[68] The Court has also concluded that the Russian authorities have used arrest and detention to suppress the legitimate exercise of fundamental rights, such as the right to peaceful assembly.[69] Notably, the authorities often impose restrictive and/or prolonged house arrest on opposition activists and human rights defenders.[70]

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[62] See Human Rights Watch, "Russian Court Extends Activist's Pretrial Detention", March 29, 2021. Available at https://www.hrw.org/news/2021/03/29/russian-court-extends-activists-pretrial-detention. See also Human Rights Watch, "Russia: Persecution of 'Undesirable' Activists", January 18, 2020.

[63] Radio Free Europe/Radio Liberty, "Offices of Khodorkovsky-Founded Media, Pro-Democracy Organizations Raided in Russia", March 19, 2021. Available at https://www.rferl.org/a/offices-khodorkovsky-media-democracy-organizations-raided-russia/31160227.html.

[64] Deutsche Welle, "Open Russia Opposition Group Shuts Down Under Pressure", May 27, 2021. Available at https://www.dw.com/en/open-russia-opposition-group-shuts-down-under-pressure/a-57693178.

[65] United States Department of State, "Country Reports on Human Rights Practices for 2019", 2020, pg. 13.

[66] Freedom House, "Freedom in the World 2020 – Russia".

[67] International Commission of Jurists Center for the Independence of Judges and Lawyers, "Russian Federation - Country Profile", June 6, 2014, pg. 16. Available at https://www.icj.org/wp-content/uploads/2014/06/CIJL-Country-Profile-Russian-Federation-June-2014.pdf.

[68] See European Court of Human Rights (Grand Chamber), Bykov v. Russia, App. No. 4378/02, March 10, 2009, paras. 64–68; European Court of Human Rights, Panchenko v. Russia, App. No. 45100/98, February 8, 2005, paras. 106–09.

[69] See European Court of Human Rights, Navalnyy and Yashin v. Russia, App. No. 76204/11, December 4, 2014, para. 52.

[70] The Guardian, "Prominent Supporters of Alexei Navalny Face 'Indefinite' House Arrest", March 17, 2021. Available at https://www.theguardian.com/world/2021/mar/17/prominent-supporters-alexei-navalny-indefinite-house-arrest-pussy-riot-kremlin-protests; AP News, "Moscow Court Puts Navalny's Allies Under

Judicial Independence

The independence of the Russian judiciary been questioned by various international and domestic organizations and institutions.[71] The Council of Europe's Commissioner for Human Rights, for example, has raised concerns in this regard, observing that appointment and dismissal procedures "provide insufficient guarantees for objective and fair proceedings" and that "judges remain exposed to pressure from powerful political and economic interests."[72] In its 2019 and 2020 human rights reports on Russia, the U.S. Department of State similarly stated: "judges remained subject to influence from the executive branch, the armed forces, and other security forces, particularly in high-profile or politically sensitive cases, as well as to corruption."[73]

The UN Special Rapporteur on the Independence of Judges and Lawyers has likewise remarked on continuing executive influence, citing "many allegations of direct and indirect threats to – and improper influence, interference and pressure on – the judiciary, which continue to adversely affect its independence and impartiality."[74] The Special Rapporteur noted reports of the judiciary functioning in "close" cooperation with the prosecution and the executive.[75]

The problem of judicial collusion has resulted in, and is exacerbated by, violations of fair trial rights. Per the U.S. Department of State's 2019 report, "executive interference with the judiciary and judicial corruption [has] undermined [the right to a fair trial]."[76] Abuses

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House Arrest", January 30, 2021. Available at https://apnews.com/article/alexei-navalny-allies-house-arrest-4338dac693cbb424a06a07deed37184f; Reuters, "Factbox: In Jail, Charged, or Abroad; Russian Opposition Figures Under Pressure", June 8, 2021. Available at https://www.reuters.com/world/europe/jail-charged-or-abroad-russian-opposition-figures-under-pressure-2021-06-07.

[71] See United States Department of State, "Country Reports on Human Rights Practices for 2019", 2020, pg. 15; United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 15; Freedom House, "Freedom in the World 2021 – Russia" (stating that "[t]he judiciary lacks independence from the executive branch, and career advancement is effectively tied to compliance with Kremlin preferences. The Presidential Personnel Commission and court chairmen control the appointment and reappointment of the country's judges, who tend to be promoted from inside the judicial system rather than gaining independent experience as lawyers."); Council of Europe Commissioner for Human Rights, "As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain", February 25, 2016. Available at https://www.coe.int/en/web/commissioner/-/as-long-as-the-judicial-system-of-the-russian-federation-does-not-become-more-independent-doubts-about-its-effectiveness-remain.

[72] Council of Europe Commissioner for Human Rights "As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain", February 25, 2016.

[73] United States Department of State, "Country Reports on Human Rights Practices for 2019", 2020, pg. 15; United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 15.

[74] Human Rights Council, Report of The Special Rapporteur on the Independence of Judges and Lawyers, U.N. Doc. A/HRC/26/32/Add.1, April 30, 2014, para. 14.

[75] Id. at para. 16.

[76] United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 16. See also United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 16.

chronicled by various organizations and institutions include "lack of justification for verdicts rendered";[77] violation of the principle of equality of arms;[78] violation of the right to call and examine witnesses;[79] and violation of the right to counsel.[80]

Meanwhile, acquittals are rare. As detailed by the Carnegie Moscow Center, judicial officers are aware that acquittals will be overturned on appeal in most cases, tainting their reputation.[81] In 2019, only 0.36% of defendants were acquitted in trials before judges; [82] an analysis the year prior showed that on average, Russian judges issued a not guilty ruling once every seven years.[83] Consequently, convictions "appear[]predetermined."[84]

B. CASE HISTORY

Anastasia Shevchenko was formerly a participant in and regional coordinator of the Public Network Movement Open Russia (PNM Open Russia). The exiled oligarch Mikhail Khodorkovsky established a previous version of Open Russia in 2014, defining it as "a nationwide platform that brings together all Russians interested in creating a better life for themselves and their children."[85] The movement was created in a "network structure" designed to allow for "cooperation of small groups of [the] public that gradually amass experience in joint action to assert their interests."[86]

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[77] Human Rights Council, Report of The Special Rapporteur on the Independence of Judges and Lawyers, U.N. Doc. A/HRC/26/32/Add.1, April 30, 2014, para. 16.
[78] Council of Europe Commissioner for Human Rights "As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain", February 25, 2016. See also International Commission of Jurists, "Russian Federation - Country Profile", June 6, 2014, pg. 16 (stating that "the prosecution services – said to be the least reformed institution in Russia since Soviet times – retain undue influence in criminal proceedings. Reportedly, as a matter of course more weight is given to the prosecution's arguments than to the defence's and judges may face consequences, including dismissal, if they are not perceived as being 'attentive' enough to the prosecution's demands.").
[79] Perseus Strategies with support from Memorial Human Rights Center, "The Kremlin's Political Prisoners: Advancing a Political Agenda by Crushing Dissent", May 2019, pgs. 117–18. Available at https://www.perseus-strategies.com/wp-content/uploads/2019/04/The-Kremlins-Political-Prisoners-May-2019.pdf.
[80] Perseus Strategies with support from Memorial Human Rights Center, "The Kremlin's Political Prisoners: Advancing a Political Agenda by Crushing Dissent", May 2019, pgs. 120–21.
[81] Carnegie Moscow Center, "The Problem with the Russian Judiciary", January 22, 2018. Available at https://carnegie.ru/commentary/75316.
[82] See United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 15.
[83] See Carnegie Moscow Center, The Problem with the Russian Judiciary, January 22, 2018, https://carnegie.ru/commentary/75316.
[84] See United States Department of State, "Country Reports on Human Rights Practices for 2020", March 30, 2021, pg. 15.
[85] Khodorkovsky.com, "Mikhail Khodorkovsky Launches Open Russia", September 17, 2014. Available at https://khodorkovsky.com/mikhail-khodorkovsky-launches-open-russia/.
[86] Id.

In 2016 in Helsinki,[87] a group of Russian citizens convened to adopt the charter of Public Network Movement Open Russia. On April 15, 2017, participants in the movement revised the charter.[88] Under the current iteration, the PNM Open Russia is "a voluntary, self-governing mass public association comprised of participants and not having membership, pursuing political, social and other socially useful goals supported by the members of the Movement."[89] Its defined goals include "building a lawful government in Russia," "creating conditions for the effective implementation of the rights and freedoms of citizens of the Russian Federation," promoting and facilitating fair and free elections, creating a fair and independent justice system and an effective law enforcement system, and building civil society.[90] Its primary mechanisms for achieving these aims are public campaigns, rallies, debates, meetings, legal aid to citizens, and other non-violent initiatives.[91]

As referenced above, on April 26, 2017, after the adoption of the new PNM Open Russia charter, the Prosecutor General's Office of the Russian Federation declared "OR (Otkrytaya Rossia) (Great Britain)" – this organization was later renamed "Human Rights Project Management – and "Open Russia Civic Movement, Open Russia (UK)" as "undesirable organizations" and published notice of such on its website.[92] It is unclear what organization the Prosecutor General's Office was referring to with respect to "Open Russia Civic Movement, Open Russia (UK)," as no identifying details were provided.

The same day, an official representative of the Prosecutor General's Office publicly clarified that the "undesirables" classification relating to "Open Russia" applied only to specific organizations registered in the UK, and that the Public Network Movement Open Russia – the Russian association operating in Russia – was not affected, stating: "The data that we have published [in the list of 'undesirable organizations'], they do not relate to the public network movement 'Open Russia.' What has been published concerns movements recognized as undesirable on the territory of the Russian Federation - these are British movements that are registered in England: 'Open Russia,' Open Russia Civic Movement and Open Russia. As for, as I said, the public network movement 'Open Russia', we have nothing against their activities."[93]

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[87] Trial Monitor's Notes, January 15, 2021.
[88] See Charter, Public Network Movement "Open Russia", revised April 15, 2017, pg. 1.
[89] See id. at Article 1.1.
[90] See id. at Article. 4.1.
[91] See id.at Article 4.2.
[92] Prosecutor General's Office of the Russian Federation, "The Prosecutor General's Office of the Russian Federation decided to declare the activities of a number of foreign non-governmental organizations undesirable in the territory of the Russian Federation", April 26, 2017. See also Radio Free Europe/ Radio Liberty, "News Analysis: Moves Against Khodorkovsky's Open Russia Seen as Attempt to Control Elections", April 27, 2017. Available at https://www.rferl.org/a/russia-khodorkovsky-moves-against-open-russia-seen-to-control-elections/28455637.html.
[93] On April 26, 2017, Alexander Kurennoy, the official representative of the Prosecutor General's Office, made the statement. Echo of Moscow, "The Prosecutor General's Office has declared two organizations called 'Open Russia' undesirable", April 26, 2017.

On December 8, 2017, the Prosecutor's Office of Taganrog opened an administrative case against Shevchenko for participating as a representative of PNM Open Russia in a politically-oriented debate two months earlier at a restaurant-club in Taganrog – a representative of United Russia, President Putin's party, also participated.[94] On January 19, 2018, an administrative judge in the Taganrog Judicial District of the Rostov Region found that Shevchenko had participated in the debate, pronounced her guilty of committing an administrative offense under Article 20.33 of the Russian Federation Code of Administrative Offenses – which, as mentioned above, proscribes participation in the activities of foreign or international NGOs declared "undesirable" by the authorities – and fined her 5,000 rubles.[95] The Taganrog City Court upheld the decision on appeal.[96]

About four months later, the prosecution charged Shevchenko with a second administrative offense violation under the same article in relation to her organization of meetings and lectures for PNM Open Russia in preparation for impending elections to the Rostov Region Legislative Assembly.[97] On July 6, 2018, an administrative judge in the Oktyabrsky Judicial District of Rostov-on-Don found Shevchenko guilty and fined her 5,000 rubles.[98] On appeal, the Taganrog City Court once again upheld the conviction in full.[99]

Shortly thereafter, on August 30, 2018, the Ministry of Internal Affairs obtained a judicial warrant from the Proletarskiy District Court to carry out secret surveillance of Shevchenko inside her home for a period of 120 days,[100] extended on November 30, 2018 for an additional 120 days.[101] In its decision extending the surveillance, the court found that the measure was warranted because Shevchenko had twice been convicted of administrative offenses, she "plan[ned] to organize actions of civil disobedience" in order to "exert pressure on the authorities," and she might be using her apartment to store materials "of an extremist nature" and as a place for "meeting with unidentified persons in order to discuss with them possible criminal activity, including planning and preparing crimes against public security and the state."[102]

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[94] See Taganrog Prosecutor's Office, Decree on Initiation of an Administrative Offense Case, December 8, 2017, pgs. 2-3.
[95] See Taganrog Judicial District of the Rostov Region, Decision on imposition of administrative penalty, Case No. 5-12-11-18, January 19, 2018.
[96] Taganrog City Court of the Rostov Region, Decision, Case No. 12-149/2018, March 6, 2018.
[97] See Prosecutor's Office of Oktyabrsky District of Rostov-on-Don, Decision to initiate an administrative offense case, May 30, 2018; Oktyabrsky District Court of Rostov-on-Don, Decision, Case No. 5-1-31 9/2018, July 6, 2018.
[98] See Oktyabrsky District Court of Rostov-on-Don, Decision, Case No. 5-1-31 9/2018, July 6, 2018.
[99] See Taganrog City Court of the Rostov Region, Decision, Case No. 12-149/2018, March 6, 2018.
[100] The Proletarskiy District Court of Rostov-on-Don order authorizing extension of secret surveillance makes reference to its August 30, 2018 order, Order No. 604c, which authorized the initiation of the surveillance; however, the latter document was never disclosed to Shevchenko in spite of repeated requests from her defense attorneys.
[101] Proletarskiy District Court of Rostov-on-Don, Order No. 815, On the limitation of the right to inviolability of home, November 30, 2018, pg. 2.
[102] Id. at pg. 1.

Consequently, the Proletarskiy District Court authorized the police "to conduct a covert operational-search activity 'observation' ... using secret audio and video recordings" for an additional 120 days.[103] The decision contained no further specification as to the types of surveillance authorized or limitations imposed on the investigators in conducting the surveillance. Pursuant to the initial warrant and its extension, the police secretly installed video and audio recording equipment in Shevchenko's home, including a video camera hidden in an air conditioning unit over her bed, and monitored activities and conversations inside her home for almost five months.[104]

On January 18, 2019, the Department of Internal Affairs branch in Rostov-on-Don initiated a criminal case against Shevchenko under suspicion of violating Article 284.1 of the Criminal Code.[105] As referenced above, Article 284.1 criminalizes management of, or participation in, the activities of a designated "undesirable" foreign or international non-governmental organization by any person who has already been sanctioned under the Code of Administrative Offenses twice in one year for related activities.[106] The investigation alleged that Shevchenko had violated this provision with two concrete acts: attending a meeting of PNM Open Russia in 2018 where she told participants about the movement's planned activities [107] and participating in a rally where she held up materials

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[103] Id. at pg. 2.

[104] Shevchenko's daughter reported this information over social media in January 2019. See Human Rights Watch, "A Perversion of Justice in Russia: Police Surveil Activist's Bedroom with Hidden Camera", January 23, 2020. Available at https://www.hrw.org/news/2020/01/23/perversion-justice-russia. At trial, the prosecution played several of the videos recorded in Shevchenko's bedroom in which she is seen speaking on the telephone or to members of her family. See Trial Monitor's Notes, December 24, 2020.

[105] See Senior Investigator of the Department of Internal Affairs, Department of the First Investigation Directorate (Rostov-on-Don) of the Main Investigation Directorate of the Investigative Committee of the Russian Federation, Decree to Initiate and Conduct a Criminal Case, Case No. 11902007712000003, January 18, 2019.

[106] Criminal Code of the Russian Federation, Article 284.1, Carrying out activities on the territory of the Russian Federation by a foreign or international non-governmental organization in relation to which a decision has been made to recognize its activities as undesirable on the territory of the Russian Federation, provides: "Management of activities on the territory of the Russian Federation of a foreign or international non-governmental organization, in respect of which a decision has been made to declare its activities undesirable on the territory of the Russian Federation in accordance with the legislation of the Russian Federation, or participation in such activities, committed by a person who was previously brought to administrative responsibility for similar act twice within one year, shall be punishable by a fine in the amount of three hundred thousand to five hundred thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to three years, or by compulsory works for a term of up to three hundred and sixty hours, or by compulsory labor for a term of up to five years, with restraint of liberty for a term of up to two years or without it, or imprisonment for a term of two to six years with the deprivation of the right to hold certain positions or engage in certain activities for a term of up to ten years or without it. Note: A person who has voluntarily ceased participation in the activities of a foreign or international non-governmental organization, in respect of which a decision has been made to declare its activities undesirable in the territory of the Russian Federation, shall be exempted from criminal liability, unless his actions contain a different corpus delicti."

[107] See Senior Investigator of the Department of Internal Affairs, Department of the First Investigation Directorate (Rostov-on-Don) of the Main Investigation Directorate of the Investigative Committee of the Russian Federation, Decree to Initiate and Conduct a Criminal Case, Case No. 11902007712000003, January 18, 2019, pg. 4 (Alleging that on September 27, 2018, Shevchenko attended a meeting of Open Russia at which she "explained the main activities of PNM 'Open Russia' (Great Britain) for 2018" and "briefed meeting participants on the need to introduce civilians into various protest groups under the

from the movement's "#FEDUP" campaign, the main purpose of which, according to the charge sheet, was "to discredit the executive authorities."[108] The protest referred to in the charge sheet had been authorized by the local authorities.[109]

Shevchenko was arrested pursuant to the Article 284.1 charge on January 21, 2019;[110] the same day, her home was searched and various materials were seized by the police.[111] On January 23, 2019, the Leninsky District Court in Rostov-on-Don granted the criminal investigator's request to place Shevchenko under house arrest while the preliminary investigation continued, for an initial term of one month and 25 days.[112] The court's decision states that Shevchenko was "accused of committing a serious crime, against the foundations of the constitutional order and security of the state, for which it is possible to impose a penalty in the form of long-term imprisonment" and that Shevchenko "[could] hide from law enforcement bodies on the territory of the countries of the Baltic region."[113] The only concrete information provided in support of the latter assertion is a vague reference to "materials" presented by the investigator allegedly demonstrating the risk that Shevchenko might abscond to the Baltics.[114]

Over the following year, courts in Rostov-on-Don granted eight requests from the investigator to extend Shevchenko's house arrest during the preliminary investigation (prior to the filing of the indictment); in each instance, the courts failed to specify concrete factual circumstances necessitating such a measure, akin to the initial order described above.[115] The only additional ground given to support the investigator's request was that

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pretext of providing free legal aid and manufacturing campaign posters, and the importance of holding thematic accounts in Internet social networks and participation in elections at various levels").

[108] Id. at pgs. 4–5 (alleging that on October 28, 2018, "as a member of the Federal Council of PNM 'Open Russia' (Great Britain)," at a rally organized in a park by several opposition activists, Shevchenko "showed symbols from the protest campaign '#FEDUP', taking place on the territory of the Russian Federation, the main purpose of which is to discredit the executive authorities.").

[109] This was asserted by the defense at trial and was not contested by the prosecution. See Trial Monitor's Notes, February 4, 2021.

[110] See Leninsky District Court in Rostov-on-Don, Ruling [on imposition of house arrest as pre-trial detention measure], January 23, 2019, pg. 1.

[111] See Trial Monitor's Notes, January 28, 2021.

[112] Leninsky District Court in Rostov-on-Don, Ruling [on imposition of house arrest as pre-trial detention measure], January 23, 2019, pg. 2 (imposing initial term of one month and 25 days, until March 17, 2019, inclusive).

[113] Id. at pg. 2.

[114] Id.

[115] See Leninsky District Court in Rostov-on-Don, Decision, March 15, 2019 (extending house arrest for three months, until June 17, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, June 14, 2019 (extending house arrest by three months, until September 17, 2019; amended by Appeal Decision, Rostovsky Regional Court, June 25, 2019, Case No. 22K-3994/2019 (limiting term of extension to July 20, 2019)); Leninsky District Court in Rostov-on-Don, Decision, July 16, 2019 (extending house arrest by one month, until August 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, August 16, 2019 (extending house arrest by two months, until October 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, October 15, 2019 (extending house arrest by two months, until December 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, December 17, 2019 (extending house arrest by 28 days, until January 17, 2020, inclusive); Leninsky District Court in Rostov-on-Don, Decision, December 31, 2019 (extending house arrest for 3 days, until

Shevchenko had previously "systematically traveled abroad" and lived in a rented apartment.[116]

After the confirmation of the prosecution's indictment against Shevchenko on February 26, 2020, courts in Rostov-on-Don continued to extend Shevchenko's house arrest on request by the prosecution – initially for a period of six months[117] and then periodically afterwards – based upon the same generalized reasons given by the senior investigator during the preliminary investigation.[118]

During the first year of her house arrest, Shevchenko was completely confined to her home excepting extremely rare outings authorized at the investigator's discretion and was prohibited from using the internet or otherwise communicating with anyone outside of her house except law enforcement and emergency services.[119] She was therefore prevented, as a single mother of two minor children and caregiver for her elderly mother, from caring for her family. Repeated requests from Shevchenko to accompany her minor children to school or doctor's appointments were refused by the senior investigator in charge of her case.[120] The senior investigator also repeatedly refused requests from Shevchenko to visit her severely disabled teenage daughter during the last days of her daughter's terminal illness;[121] Shevchenko was finally allowed to visit her daughter just one day before she died.[122]

Each time Shevchenko's house arrest was extended, she appealed the decision on the basis of the lack of justification for the measure given by the investigator and by the

January 20, 2020, inclusive); Rostov Regional Court in Rostov-on-Don, Decision, January 16, 2020 (extending house arrest by two months, until March 20, 2020, inclusive).

[116] See, e.g., Rostov Regional Court in Rostov-on-Don, Decision, January 16, 2020 (extending house arrest by two months, until March 20, 2020, inclusive), pg. 3.

[117] See Oktyabrsky District Court in Rostov-on-Don, Decision, March 18, 2020 (on imposition of house arrest for six months as a preventive measure from the date of the receipt of the criminal case by the court, until September 1, 2020).

[118] See Oktyabrsky District Court in Rostov-on-Don, Decision, November 26, 2020 (extending house arrest to March 1, 2021). See also Kommersant, "Anastasia Shevchenko's House Arrest Extended", August 31, 2020. Available at https://www.kommersant.ru/doc/4474814 (pertaining to August 31, 2020 extension).

[119] The court orders ordering and extending house arrest defined its terms, which for the first year did not allow Shevchenko to leave the house for any reason without the permission of the investigator, which was to be granted only for court hearings and other official reasons.

[120] See Decree to Refuse a Petition, Senior Investigator for Especially Important Cases, Lieutenant Colonel of Justice, Case No. 11902007712000003, April 18, 2019 (refusing petition to accompany her minor son to an appointment with an allergist).

[121] See Decree to Refuse a Petition, Senior Investigator for Especially Important Cases, Lieutenant Colonel of Justice, Case No. 11902007712000003, January 28, 2019 (refusing in full Shevchenko's petition to be allowed to visit her ill daughter, accompany her minor son to school, and take brief walks).

[122] Decree to Satisfy a Petition, Senior Investigator for Especially Important Cases, Lieutenant Colonel of Justice, Case No. 11902007712000003, January 30, 2019 (granting Shevchenko's petition to leave house arrest to visit ill daughter).

ordering court in its decision; each time, the decision to extend her house arrest was confirmed at the first and second instances of appeal.[123]

In January 2020, after Shevchenko had been under house arrest for a year, the Third Cassation Court of General Jurisdiction in Sochi (the first level of appeal) confirmed the extension of her house arrest but amended its terms to allow for maximum two-hour daily walks, visits to medical institutions after informing the parole officer, and the use of phone or internet only "to communicate with close relatives, the regulatory authority, the investigator, the defense lawyer, and court staff."[124] On August 31, 2020 the Oktyabrsky District Court relaxed the terms of Shevchenko's house arrest to allow her to visit the closest pharmacies and shops.[125]

Shevchenko's trial commenced on June 17, 2020.[126] The prosecution presented its case over the course of six months and 13 court hearings. Although Shevchenko's affiliation with PNM Open Russia and participation in related activities were not contested by the defense, the prosecution called Aleksey Shilchenko (a self-declared member of the "National Liberation Movement," a nationalist political movement that believes that the Russian State has lost its sovereignty to Western interests)[127] to testify as to her involvement with the association.

Shilchenko stated that he had seen Shevchenko introduce herself "as the coordinator of the regional branch of the Public Network Movement Open Russia of Great Britain" at a restaurant-club in Taganrog (the event that was the basis of her first administrative offense conviction) and that he therefore reported her to the authorities; on cross-examination, however, he could not confirm that Shevchenko said "Great Britain" when introducing herself and could not remember a single specific detail from the event itself.[128] Shilchenko also asserted that Shevchenko had participated in other Open Russia-related activities after the debate and that she had received payment for her work on behalf of Open Russia.[129] He subsequently admitted, however, that he had only seen information

[123] See Fourth Cassation Court of General Jurisdiction, Cassation Decision, Case No. 77-146/2020, February 12, 2020 (confirming Leninsky District Court Decision of June 14, 2019 extending house arrest until September 17, 2019 and Rostov Regional Court Appeal Decision of June 25, 2019, except the operative part prohibiting communication, which is removed); Fourth Cassation Court of General Jurisdiction, Cassation Decision, Case No. 77-914/2020, July 15, 2020 (confirming Leninsky District Court Decision of December 31, 2019 to extend house arrest and Rostov Regional Court Appeal Decision of January 22, 2020, except the operative part prohibiting communication, which is removed); Rostov Regional Court, Appeal Decision, Case No. 22к-1970/2020, April 10, 2020 (refusing Shevchenko's appeal against the March 18, 2020 decision of the Oktyabrsky District Court extending her house arrest to September 1, 2020).

[124] See Third General Jurisdiction Court of Appeal, Appeal Decision, Case No. 55k-46/2020, January 29, 2020, pg. 5.

[125] See Kommersant, "Anastasia Shevchenko's House Arrest Extended", August 31, 2020.

[126] See Trial Monitor's Notes, June 17, 2020.

[127] See National Liberation Movement, "About the Movement." Available at https://www.rusnod.ru/index/o-dvizhenii/.

[128] Trial Monitor's Notes, September 7, 2020.

[129] Id.

about her activities on Facebook and that he had assumed she was paid because she was unemployed, a single mother, and frequently traveled abroad.[130] The prosecution presented a number of other witnesses who testified about having seen Shevchenko once or twice at PNM Open Russia events, about the PNM Open Russia Charter, and/or about their general knowledge of Shevchenko's involvement in the organization.[131]

While the prosecution also called an official from the Ministry of Justice to support its assertion that the PNM Open Russia was a "foreign NGO," her testimony undermined this claim. Victoria Logachyova, the Head of the Department for Non-Commercial Organizations in the Rostov Branch of the Ministry of Justice, stated that she had told investigators that the PNM Open Russia was "foreign" based on the fact that its charter was adopted in Helsinki – but was unable to explain how that would link the movement to the UK.[132] She also testified that per Russian law, a "foreign non-governmental organization" is an entity that is established outside of Russia in accordance with the laws of another country and which does not form part of the State structure or make a profit.[133] On cross-examination, she stated that the PNM Open Russia Charter indicated that the movement was a Russian association, and that its Charter complied with the Russian law governing associations.[134]

The prosecution also presented a number of audio and video files obtained through the secret surveillance operation that took place at Shevchenko's home in 2018.[135] Some of the clips showed Shevchenko talking on her telephone in her bedroom; other videos showed Shevchenko speaking with her minor daughter and mother.[136] The content of these conversations was largely inaudible during the trial sessions, and the portions that were clear pertained primarily to the general activities of PNM Open Russia, internal disputes, and Shevchenko's opinions about PNM Open Russia's work. The clips contained no information directly related to the charged acts.

During the two-day presentation of its case, the defense challenged the prosecution's claim that the PNM Open Russia and the "undesirable" organization Open Russia (UK) were one and the same (as noted above, it is unclear what organization the Prosecutor General's Office was referring to in designating "Open Russia Civic Movement, Open Russia (UK)" as undesirable, as no identifying details were provided, and it is unclear if such an organization as registered in the UK even existed). Among the defense's key

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[130] Id. Asked by the defense attorney about the source of his claim that Shevchenko was paid to participate in the activities of Open Russia, Shilchenko responded, "I cannot give exact figures, but considering how many times an unemployed woman, a mother of two children, traveled abroad, I can roughly imagine." Asked again about the source of his information, he admitted he had no source.
[131] See Trial Monitor's Notes, September 10, 2020; Trial Monitor's Notes, September 24, 2020; Trial Monitor's Notes, October 1, 2020; Trial Monitor's Notes, December 10, 2020.
[132] See Trial Monitor's Notes, December 10, 2020.
[133] See id.
[134] Id.
[135] Trial Monitor's Notes, December 24, 2020.
[136] Id.

witnesses was Maria Baronova, a journalist, opposition political candidate, and co-founder of the PNM Open Russia, who testified as to the origins of the movement, its structure, and its rules. She testified that only Russian citizens were allowed to participate in the PNM Open Russia, that it was created in compliance with Russian law as an "association" (not a non-governmental organization), that it had no ties to the United Kingdom or any other foreign country, and that the movement was financed by its own membership, not from external sources.[137] These assertions were subsequently confirmed by a second defense witness and co-founder of the PNM Open Russia, Alexey Pryanishnikov.[138] Baronova also testified that she personally designed the logo for the #FEDUP campaign and that it was not connected to a British organization.[139] Finally, she testified that because of the April 26, 2017 statement of the official representative of the Prosecutor General's Office that the Russia-based PNM Open Russia was not on the "undesirables" list, she and her colleagues had understood that they were free to continue working as normal without risk of prosecution.[140]

The defense correspondingly presented the results of an investigation by a UK notary demonstrating that there was no organization or company registered as "Open Russia Civic Movement" (the organization added to the "undesirables" list in 2017 by the Prosecutor General's Office) in the UK.[141] In its closing arguments, the defense emphasized that the prosecution had failed to show the existence of a non-governmental organization or any other entity in the UK by the name of Open Russia, undermining the prosecution's assertion that the movement was a "foreign non-governmental organization" based in the UK.[142] The prosecution submitted no further evidence in rebuttal.

On February 18, 2021, the Oktyabrsky District Court found Shevchenko guilty of violating Article 284.1 of the Criminal Code and sentenced her to four years imprisonment, ruling that a lesser punishment could not serve the interests of justice; it then suspended her sentence subject to strict parole conditions.[143] Shevchenko was released directly from the courtroom.

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[137] Trial Monitor's Notes, January 15, 2021. "Open Russia had nothing to do with another country; we did not interact with any other country in any way."
[138] Trial Monitor's Notes, January 28, 2021.
[139] Trial Monitor's Notes, January 15, 2021.
[140] "Later on that evening [after the announcement of the General Prosecutor's Office on the 'undesirable' classification of Open Russia (Great Britain)], Kurennoy announced via the 'Echo of Moscow' and 'Meduza' that it was not about the Russian movement Open Russia, but about a British organization. Therefore, there were no issues with those who created the Open Russia movement. That is what was said, literally. Well, we thought, we wondered what was happening, but it seemed that everything was fine, normal, and we could continue working. At the beginning, I remember that I insisted by telling journalists: So, we cannot be undesirable because we haven't registered anything." Trial Monitor's Notes, January 15, 2021.
[141] Trial Monitor's Notes, January 28, 2021.
[142] Trial Monitor's Notes, February 4, 2021.
[143] See Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pgs. 54–55.

In total, the period of Shevchenko's deprivation of liberty – from her initial arrest (January 21, 2019) to the subsequent imposition of house arrest (starting on January 23, 2019) until the issuance of the first instance judgment (February 18, 2021) – amounted to two years and 29 days.

METHODOLOGY

A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, Human Rights Embassy deployed monitors to the trial of Anastasia Shevchenko before the Oktyabrsky District Court in Rostov-On-Don in the Russian Federation. The trial was in Russian and the monitors were able to follow the proceedings. The monitors did not experience any impediments in entering the courtroom and were present for the entirety of the trial. The monitors used the CFJ TrialWatch App to record and track what transpired in court and the degree to which the defendant's fair trial rights were respected.

B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade, TrialWatch Expert Katerina Hadzi-Miceva Evans reviewed notes taken from the proceedings and court documents provided to her. Hadzi-Miceva Evans concluded that the authorities committed severe violations throughout the proceedings. At the pre-trial stage, Shevchenko's prolonged house arrest constituted an arbitrary deprivation of liberty, while the surveillance of her residence violated her right to privacy and freedom of peaceful assembly. Moreover, the prolonged house arrest exceeded the maximum term and conditions for deprivation of liberty during a preliminary investigation under Russian law.

Subsequently at trial, the prosecution failed to even prove that Shevchenko had participated in the activities of an undesirable organization, presenting evidence and witnesses that were not credible and/or revealed major gaps and inconsistencies in the case. The court's conviction of Shevchenko despite serious doubts as to her guilt raises concerns about the independence of the judiciary. More broadly, the Law on Undesirable Organizations is, on its face, a violation of the freedoms of association, peaceful assembly, privacy, and expression as guaranteed by international and European standards.

ANALYSIS

A. APPLICABLE LAW

The following analysis is based upon the International Covenant on Civil and Political Rights (ICCPR);[144] the case law of the United Nations Human Rights Committee, which monitors implementation of the ICCPR; the European Convention on Human Rights (ECHR);[145] and jurisprudence from the European Court of Human Rights, which monitors the implementation and enforcement of the Convention. Russia acceded to the ICCPR in 1973 and ratified the ECHR on May 5, 1998, subject to certain reservations.[146] This analysis also refers to the Russian Federation's Criminal Code, Criminal Procedure Code, and Code of Administrative Offenses.

B. INVESTIGATION AND PRE-TRIAL STAGE VIOLATIONS

Arbitrary and Unlawful Deprivation of Liberty

Under Article 5(1) of the ECHR and Article 9(1) of the ICCPR, any deprivation of liberty must be in accordance with domestic legislation. Both Articles also prohibit arbitrary deprivation of liberty.

As noted by the United Nations Human Rights Committee, the concept of arbitrariness should be "interpreted broadly" and encompasses "elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."[147] Deprivation of liberty pursuant to criminal charges "must be reasonable and necessary in all the circumstances."[148] Where deprivation of liberty is not reasonable or necessary, it becomes arbitrary.[149] Further, as stated by the Human Rights Committee, "the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention."[150]

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[144] U.N. General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations, Treaty Series, Vol. 999, pg. 171 (hereinafter "ICCPR").
[145] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (hereinafter "ECHR").
[146] These reservations are not relevant to the present analysis.
[147] Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12 (internal citations omitted). See also Human Rights Committee, Izmet Oscelik et al v. Turkey, U.N. Doc. CCPR/C/125/D/2980/2017, May 28, 2019, para. 9.3.
[148] Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12.
[149] See id.
[150] Id. at para. 13.

House arrest constitutes a deprivation of liberty for the purposes of Article 9.[151] Accordingly, the Committee has found a violation of Article 9(1) where the authorities have failed to provide adequate grounds for ordering house arrest[152] and a violation of Article 9(3), which entitles defendants to trial within a reasonable time or release from deprivation of liberty, where the period of house arrest has continued beyond that for which the authorities can provide sufficient justification.[153]

Article 5(1) of the European Convention on Human Rights explicitly enumerates permissible justifications for detention, including "arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent [a suspect] committing an offence or fleeing after having done so." When it comes to the extension of pre-trial detention, domestic courts must assess not only whether there continues to be reasonable suspicion that the accused committed the charged crime but also whether the grounds for detention given by the requesting authorities remain "relevant" and "sufficient."[154] Notably, domestic courts may not reverse the burden of proof by requiring the defendant to demonstrate adequate justification for her release.[155]

In parallel with Article 5(1), Article 5(3) entitles defendants to trial within a reasonable time or release. According to the European Court, the purpose of Article 5(3) is "to require ... provisional release once [the accused's] continuing detention ceases to be reasonable."[156] Similar to the UN Human Rights Committee, the European Court has held that house arrest constitutes a "deprivation of liberty" within the meaning of Article 5 of the Convention,[157] and has applied the same requirements to house arrest as those applied to other forms of detention: that the domestic courts demonstrate "relevant" and "sufficient" reasons for the measure.[158]

In *Bykov v. Russia*, the defendant had spent one year, eight months, and 15 days in detention from the time of his arrest through the duration of his criminal trial; the domestic courts reviewed and rejected his petitions for release at least ten times.[159] Examining

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[151] Id. at para. 5. See also Human Rights Committee, Gorji-Dinka v. Cameroon, U.N. Doc. CCPR/C/83/D/1134/2002, March 17, 2005, para. 5.4.
[152] See Human Rights Committee, Abbassi v. Algeria, U.N. Doc. CCPR/C/89/D/1172/2003, March 28, 2007, para. 8.3.
[153] See id. at para. 8.4.
[154] European Court of Human Rights (Grand Chamber), Bykov v. Russia, App. No. 4378/02, March 10, 2009, para. 64.
[155] Id.
[156] Id. at para. 61.
[157] See European Court of Human Rights (Grand Chamber), Buzadji v. The Republic of Moldova, App. No. 23755/07, July 5, 2016, para. 104 (holding that "[a]ccording to the Court's case-law . . . house arrest is considered, in view of its degree and intensity, to amount to deprivation of liberty within the meaning of Article 5 of the Convention").
[158] See id. at para. 123.
[159] European Court of Human Rights (Grand Chamber), Bykov v. Russia, App. No. 4378/02, March 10, 2009, para. 65.

these rulings, the European Court noted that domestic judges had repeatedly justified the extension of detention by referring to the gravity of the charges and invoking the generalized "likelihood of his fleeing, obstructing the course of justice and exerting pressure on witnesses," but had "omitt[ed] to substantiate [these grounds] with relevant and sufficient reasons."[160] This, in combination with the fact that the courts' decisions "did not evolve to reflect the developing situation and to verify whether these grounds remained valid at the advanced stage of the proceedings,"[161] led the European Court to conclude that the Russian authorities had violated Article 5(3).[162]

Likewise, in *Buzadji v. the Republic of Moldova*, the applicant, a suspect in a criminal case, was remanded to pre-trial detention for two and a half months and then moved to house arrest for approximately seven and a half months pending trial.[163] In assessing his Article 5 claim, the European Court found that the courts had relied on "stereotyped and abstract" reasons for ordering and extending his pre-trial detention, without providing concrete data to support such assertions;[164] the Court further observed that "[t]he decisions ordering and prolonging house arrest did not rely on any reasons in support of such a measure other than the seriousness of the offence imputed to him."[165] In light of these issues, as well as a lack of consistency in the courts' decisions, the Court ruled that the domestic authorities had violated the applicant's rights under Article 5(3).[166]

Against these standards, Shevchenko's house arrest clearly constituted an arbitrary deprivation of liberty and thus a violation of her rights under Article 9 of the ICCPR and Article 5 of the ECHR. Shevchenko was arrested on January 21, 2019 and subsequently remained under court-ordered house arrest for over two years – until her first-instance conviction on February 18, 2021. In ordering and repeatedly extending her house arrest, the authorities failed to identify individualized, concrete reasons for why the measure was reasonable and necessary under the circumstances.[167] The January 23, 2019 order of the Leninsky District Court that initially placed Shevchenko under house arrest justified its decision entirely on the following:

> [Shevchenko] is accused of committing a serious crime, against the foundations of the constitutional order and security of the state, for which it is possible to impose a penalty in the form of long-term imprisonment. As the investigator explained

[160] Id.
[161] Id.
[162] Id. at paras. 67–68.
[163] See European Court of Human Rights (Grand Chamber), Buzadji v. The Republic of Moldova, App. No. 23755/07, July 5, 2016, paras. 13–40.
[164] See id. at para. 122.
[165] See id. at para. 121.
[166] See id. at paras. 122–23.
[167] See Oktyabrsky District Court of Rostov-on-Don, Decision, November 26, 2020 (listing generalized reasons such as the possibility that Shevchenko could travel abroad and the fact that she was previously held administratively liable for participating in the activities of foreign non-governmental organizations declared "undesirable").

> at the hearing, not all evidence in the criminal case has been collected. The court also takes into account the information contained in the investigative material, that Shevchenko A.N. can hide from law enforcement bodies on the territory of the countries of the Baltic region. Taking into account the above circumstances, and also taking into account the gravity of the charge, the circumstances of the commission of the incriminated crime, the evidence presented to the court is sufficient at this stage of the criminal investigation to choose a preventive measure in the form of house arrest in order to exclude the possibility of Shevchenko A.N. hindering the criminal proceedings, as well as excluding the possibility of Shevchenko A.N. hiding from the body of preliminary investigation and the court. Under such circumstances, and also taking into account the data on the personality of Shevchenko A.N., the court believes that another, milder measure of restraint in relation to her, including bail and the prohibition of certain actions, cannot be chosen.

This explanation lacks specifics, relying on "stereotyped and abstract" justifications and assumptions of how a person in Shevchenko's position might act as opposed to concrete evidence demonstrating the risks: that a Russian citizen could theoretically abscond to the Baltic countries, for example, does not mean that it is likely that he or she will do so. Over the following two years, the court orders extending Shevchenko's house arrest repeated the generic grounds provided in the initial order without attempting to connect them concretely to Shevchenko. [168]

Notably, in one court hearing concerning the extension of Shevchenko's house arrest, the prosecution simply stated that the grounds for house arrest had "not disappear[ed]," without further explanation.[169] The defense objected, pointing out that the prosecution had not provided any reasons for Shevchenko's continued deprivation of liberty.[170] As

[168] See Leninsky District Court in Rostov-on-Don, Decision, March 15, 2019 (extending house arrest for three months, until June 17, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, June 14, 2019 (extending house arrest by three months, until September 17, 2019; amended by Appeal Decision, Rostovsky Regional Court, June 25, 2019, Case No. 22K-3994/2019 (limiting term of extension to July 20, 2019)); Leninsky District Court in Rostov-on-Don, Decision, July 16, 2019 (extending house arrest by one month, until August 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, August 16, 2019 (extending house arrest by two months, until October 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, October 15, 2019 (extending house arrest by two months, until December 20, 2019, inclusive); Leninsky District Court in Rostov-on-Don, Decision, December 17, 2019 (extending house arrest by 28 days, until January 17, 2020, inclusive); Leninsky District Court in Rostov-on-Don, Decision, December 31, 2019 (extending house arrest for 3 days, until January 20, 2020, inclusive); Rostov Regional Court in Rostov-on-Don, Decision, January 16, 2020 (extending house arrest by two months, until March 20, 2020, inclusive); Oktyabrsky District Court in Rostov-on-Don, Decision, March 18, 2020 (imposition of house arrest for six months as a preventive measure from the date of the receipt of the criminal case by the court, until September 1, 2020).
[169] Trial Monitor's Notes, August 31, 2020.
[170] Id.

with its prior decisions on house arrest, the court granted the extension and did not require further justification from the prosecution.[171]

This failure was perpetuated by the two appellate-level courts (first and second level) reviewing the detention extension orders. Whenever Shevchenko's house arrest was extended, the defense appealed the decision, asserting that the investigator and court had neglected to put forth concrete information supporting the argument that detention was warranted.[172] At each stage, the appellate courts dismissed the appeals, extending Shevchenko's house arrest without requiring the lower courts to provide evidence of why deprivation of liberty was warranted under the circumstances.

In keeping with the case law of the UN Human Rights Committee and the European Court, the imposition of house arrest without specific justification violated Shevchenko's right to be free from arbitrary deprivation of liberty.

Furthermore, Shevchenko's deprivation of liberty under house arrest between January 23, 2020 and February 26, 2020 was not in accordance with a prescribed legal procedure, and was therefore unlawful under the ICCPR and ECHR: namely, it exceeded the maximum term for deprivation of liberty during a preliminary investigation, as laid out in Russian law.

Russian law permits house arrest as a form of deprivation of liberty for charged suspects during the "preliminary investigation" period, which ends when an indictment is filed;[173] the relevant provisions state that such detention may be ordered for an initial period of up to two months, with the possibility of an extension by court order at the end of this term.[174] Any extension of house arrest past 12 months may only be granted in "exceptional cases," where the individual in question is accused of committing "especially grave crimes", and only up to an absolute maximum of 18 months, after which he or she must be released.[175]

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[171] Id.

[172] See Cassation Appeal [against Leninsky District Court in Rostov-on-Don, Decision of July 16, 2019 (on extending house arrest until August 20, 2019) and Rostov Regional Court Appeal Decision of July 30, 2019], Sergey Badamshin representing Anastasia Shevchenko, Case No. 11902007712000003, November 26, 2019, pg. 3; Appeal [against 03/18/20 Leninsky District Court order to extend house arrest until 09/01/20], Case No. 1190200771200003, C.A. Kovalevich representing Anastasia Shevchenko, March 19, 2020, pg. 3; Cassation Appeal [against 12/31/19 Leninsky District Court order to extend house arrest until 01/20/20 and Rostov Regional Court Appeal Decision confirming extension], Sergey Badamshin representing Anastasia Shevchenko, Case No. 1190200771200003, [undated], pgs. 3–5 (pointing to the lack of factual data given to support the court's assertion that Shevchenko could flee the country or attempt to hide from the court); Appeal [against 03/18/20 Oktyabrsky District Court order to extend house arrest until 09/01/20], Sergey Badamshin representing Anastasia Shevchenko, Case No. 1190200771200003, pgs. 2–3.

[173] See Russian Federation Criminal Procedure Code, Article 215.

[174] Id. at Article 107(2).

[175] Id. (establishing that the maximum term for house arrest is the same as that found in Article 109, which provides in relevant part: "The period of detention in custody for more than 12 months may be extended only in exceptional cases with respect to persons accused of committing especially grave crimes, by a judge of the court specified in part three of Article 31 of this Code, or a military court of the corresponding level at the request of the investigator, filed with consent in accordance with the jurisdiction of the

"Especially grave crimes" are defined in Russian law as those crimes which may be punished with an imprisonment term exceeding ten years or a more severe punishment.[176] The crime with which Shevchenko was charged carries a possible prison term of two to six years,[177] making it a "grave crime" under Russian law,[178] not an "especially grave crime." The maximum time that the authorities could legally keep Shevchenko under house arrest pending the filing of an indictment was 12 months.

Shevchenko's period of deprivation of liberty during the preliminary investigation exceeded 12 months, as her house arrest commenced on January 23, 2019 and the indictment against her was approved only on February 26, 2020.[179] Therefore the time Shevchenko spent under house arrest between January 23, 2020 and February 26, 2020 was not in accordance with Russian law, and was unlawful in violation of Article 9 of the ICCPR and Article 5 of the ECHR.

C. VIOLATIONS AT TRIAL

Right to the Presumption of Innocence

International and Regional Standards

The presumption of innocence is a cornerstone of the right to a fair trial. It requires that anyone accused of a crime be considered innocent until proven guilty in line with a prescribed procedure set forth by domestic law and in accordance with international law.[180] As stated by the United Nations Human Rights Committee, the presumption "imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle."[181] The presumption of innocence encompasses the *in dubio pro reo* principle, under which a court must resolve remaining

Chairman of the Investigative Committee of the Russian Federation or the head of the investigative body of the corresponding federal executive body (with the corresponding federal executive body), up to 18 months.").

[176] Russian Federation Criminal Code, Article 15(5).

[177] Id. at Article 284.1.

[178] Id. at Article 15(4). Grave crimes are those punishable with a maximum prison term of up to ten years.

[179] See Appeal Decision, Third General Jurisdiction Court of Appeal, Case No. 55k-46/2020, January 29, 2020. This decision slightly amends (by allowing for short daily walks and a few other concessions) the decision of the Rostov Regional Court from January 16, 2020, which extended Shevchenko's house arrest through March 20, 2020 – to 14 total months of house arrest.

[180] ICCPR, Article 14(2) provides "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." ECHR, Article 6(2) provides the same. See also Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

[181] Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30. See also Human Rights Committee, Saidov v. Tajikistan, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.4.

uncertainties at the conclusion of the presentation of evidence in the defendant's favor.[182] The European Court has thereby held that "dismissing all evidence in the defendant's favour without justification" violates the presumption of innocence, imposing "an extreme and unattainable burden of proof."[183]

Correspondingly, a convicting verdict that is not sufficiently reasoned as to discrepancies and contradictions in the evidentiary record may contravene the presumption of innocence.[184] The European Court has held that "judgments of courts and tribunals should adequately state the reasons on which they are based,"[185] which includes an assessment of the reliability and accuracy of relevant evidence. In *Nechiporuk and Yonkalo*, for example, the European Court examined a case where the convicting court did not adequately address the defendant's arguments that a key prosecution witness may have been coerced into his testimony.[186] In convicting the defendant on the basis of that testimony without explaining why it was credible and "ignoring a specific, pertinent and important point" raised by the defense,[187] the court violated the presumption of innocence and, more broadly, the accused's right to a fair trial.

Prosecution and Defense Presentations

The Oktyabrsky District Court's conviction of Shevchenko effectively shifted the burden of proof because the prosecution failed to establish beyond reasonable doubt several elements of its case. Key uncertainties remained at the end of the trial; the court was obliged to resolve these doubts in Shevchenko's favor. In convicting Shevchenko instead, the court denied Shevchenko her right to be presumed innocent until proven guilty.

Specifically, the defense undermined aspects of the prosecution's case such as whether the PNM Open Russia was the same as the "Open Russia (UK)" foreign non-governmental organization that had been designated as "undesirable" by the Russian authorities; whether the PNM Open Russia constituted a "non-governmental organization" within the meaning of Article 284.1 of the Criminal Code; and whether the PNM Open Russia could be considered "foreign" or "international" within the meaning of Article 284.1 of the Criminal Code.

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[182] See European Court of Human Rights (Grand Chamber), Navalnyy v. Russia, App. Nos. 29580/12 & others, November 15, 2018, paras. 83–4 (quoting approvingly from relevant Chamber Judgment).
[183] See id. (citing to its case law with similar findings).
[184] See European Court of Human Rights, Ajdarić v. Croatia, App. No. 20883/09, December 13, 2011, paras. 46–52.
[185] See European Court of Human Rights, Nechiporuk and Yonkalo v. Ukraine, App. No. 42310/04, April 21, 2011, para. 272.
[186] See id. at paras. 277–281.
[187] See id. at para. 280. See also European Court of Human Rights, Rostomashvili v. Georgia, App. No. 13185/07, November 8, 2018, paras. 59–60.

With respect to the prosecution's claim that Shevchenko had participated in an organization found on the "undesirable" list,[188] the defense presented compelling evidence to the contrary, which the prosecution did nothing to refute. Particularly damning to the prosecution's case was the public statement of official representative of the Prosecutor General's Office Alexander Kurennoy that the "Public Network Movement 'Open Russia'" was different from the foreign NGO "Open Russia," which had been classified as "undesirable" by his office, and was not considered an "undesirable" organization.[189] The defense repeatedly highlighted this fact during trial, including through the testimony of Shevchenko and two other defense witnesses who were involved in the movement.[190]

Furthermore, the prosecution did not prove that the PNM Open Russia was a "non-governmental organization" within the meaning of Russian law. When asked by the prosecution how the law defined the term "foreign organization," prosecution witness Victoria Logachyova, the Head of the Department for Non-Commercial Organizations at the Ministry of Justice branch in Rostov, responded that it must be "set up outside the Russian Federation in accordance with the legislation of a foreign state, and if it is a non-profit non-governmental organization, the state authorities do not participate in it, thus it does not make a profit, it was not created to extract profit and distribute it among the participants."[191] Logachyova testified that from reviewing the PNM Open Russia Charter, it appeared that the movement had been established in accordance with the Russian Law "On Public Associations" and that "associations" were legally distinct from "organizations," which must be registered and are governed by a different law.[192] As described above,

[188] The "list of undesirable foreign or international non-governmental organizations," published by the Russian Federation Prosecutor's Office, currently contains 40 entries. Among them are: "Open Russia Civic Movement, Open Russia (UK)" and "OR (Otkrytaya Rossia) ("Open Russia") (Great Britain) (from 08.11.2017 - HUMAN RIGHTS PROJECT MANAGEMENT)." The list fails to specify any registration number or other identifying information relating to the organizations in question. The fact that there are two entries in the list containing the name "Open Russia" speaks to potential confusion over classification. See Russian Federation Ministry of Justice, "List of foreign and international non-governmental organizations whose activities are recognized as undesirable on the territory of the Russian Federation." Available at https://minjust.gov.ru/ru/documents/7756/.

[189] In April 2017, Echo of Moscow, a local news site, reported that the official representative of the General Prosecutor's Office had confirmed that the "undesirables" classification relating to "Open Russia" applied only to two organizations registered in the UK, and that the "Open Russia movement" registered in Russia was not affected. He was quoted by the news site as saying: "The data that we have published [in the list of 'undesirable organizations'], they do not relate to the public network movement 'Open Russia.' What has been published concerns movements recognized as undesirable on the territory of the Russian Federation – these are British movements that are registered in England: 'Open Russia', Open Russia Civic Movement and Open Russia. As for, as I said, the public network movement 'Open Russia,' we have nothing against their activities." See Echo of Moscow, "The Prosecutor General's Office has declared two organizations called 'Open Russia' undesirable", April 26, 2017.

[190] See Trial Monitor's Notes, January 15, 2021; Trial Monitor's Notes, January 28, 2021.

[191] See Trial Monitor's Notes, December 10, 2020.

[192] See id. ("[Defense attorney] Badamshin: [reading from the PNM Open Russia Charter] … Does this comply with the Russian legislation and, again, the question is, on the basis of at least these theses that we have now reviewed, the first 3 pages of this charter are closer to the Russian understanding of the charter of a public association of a non-profit association or a foreign one? Logachyova: Taking into account what was reviewed, it corresponds to the law 'On public associations' of the Russian Federation.")

defense witnesses Maria Baronova and Alexey Pryanishnikov, who were both involved in the founding of the PNM Open Russia, testified that the movement was legally an "association" established in accordance with the Russian law "On Public Associations," not a "non-governmental organization."[193]

Indeed, the prosecution failed even to prove that the PNM Open Russia was "foreign" or "international" or that it was linked to any foreign organization. Logachyova conceded during cross-examination that although she had told investigators that she believed that PNM Open Russia was "foreign" because it was founded in Helsinki, an organization's founding location is not actually a conclusive indicator in determining whether it is "foreign" under Russian law; that from its Charter PNM Open Russia appeared to be Russian, not foreign;[194] and that founding a movement abroad is not prohibited under Russian law.[195] Furthermore, defense witness and PNM Open Russia co-founder Maria Baronova testified that the movement was not registered in or associated with any foreign country and that the participation of foreign citizens was not allowed.[196]

Finally, the defense presented evidence from the UK organizational registry that there was no NGO registered in the UK under the name "Open Russia Civic Movement,"[197] casting additional doubts on the prosecution's claim that PNM Open Russia was a "foreign NGO" under Russian law. As noted above, prosecution witness Logachyova explained that to qualify as a foreign NGO, an organization must have been established under the legislation of a foreign country.

Nonetheless, in closing arguments the prosecution asserted that Logachyova had confirmed that the PNM Open Russia was "a foreign non-governmental organization."[198]

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[193] See Trial Monitor's Notes, January 15, 2021 ("[Defense attorney] Kovalevich: Please tell me whether Open Russia was being registered as an organization, and how and where was it registered: in Russia, in Great Britain, or in another country? How did it happen? Baronova: No. Open Russia had nothing to do with another country; we did not interact with any other country in any way. As for Russia, from the very beginning it was obvious that under the current semi-authoritarian, openly semi-authoritarian situation, we were unlikely to be registered. For this very reason, we built it based on Federal Law 82, which allows people, citizens of the Russian Federation, to gather peacefully and willfully, in associations and become members without governmental and local authorities' permission."); Trial Monitor's Notes, January 28, 2021.

[194] See Trial Monitor's Notes, December 10, 2020. ("Defense attorney Badamshin: [reading from the PNM Open Russia Charter] . . . the responsibilities of the movement: to comply with the Constitution of the Russian Federation, international regulations, federal constitutional laws, federal laws and other regulatory legal acts of the Russian Federation that do not contradict the Constitution of the Russian Federation, as well as this Charter. That is, in accordance with this paragraph, can we say that this is a foreign organization, do you admit that it is a foreign organization, or is it more, accordingly, like a Russian organization?" Logachyova: It looks more like a Russian one.").

[195] Id. ("Defense attorney Badamshin: Please tell me, are there any restrictions in federal legislation on the creation of a public association in the form of a movement by Russian citizens, but on the territory of another country? Well, that is, to hold a constituent congress, for example, in the city of Kiev. . . . Logachyova: There is no such restriction in the law.").

[196] See Trial Monitor's Notes, January 15, 2021; Trial Monitor's Notes, January 28, 2021.

[197] See Trial Monitor's Notes, January 28, 2021.

[198] See Trial Monitor's Notes, February 4, 2021.

The prosecution made no attempt to address the difference between an "association" and "organization" under Russian law or the fact no such organization was registered in UK.

The Court's Assessment

In light of the above, there were numerous and substantial uncertainties pertaining directly to whether Shevchenko actually committed the charged act – participating in the activities of an "undesirable" foreign NGO. In accordance with the *in dubio pro reo* principle, the court was required to resolve those doubts in her favor. This was particularly true given that her case was among the first to be prosecuted under Article 284.1, which, as noted above, has been criticized as unacceptably vague with respect to the definition of "undesirable" organizations and their activities.[199]

The court, however, decided on Shevchenko's guilt without substantively addressing these issues. With respect to Prosecutor Alexander Kurennoy's statement that the activities of PNM Open Russia were unaffected by the placement of Open Russia Great Britain on the list of undesirable organizations, the verdict glosses over this glaring flaw:

> The arguments of the defense attorney about the nature of the speech of the representative of the General Prosecutor's Office of the Russian Federation A.V. on radio 'Echo of Moscow' have no relation to the circumstances investigated in the court session about the actions of A.N. Shevchenko in the city of Ulyanovsk and in the city of Rostov-on-Don during participation in events held by the PNM 'Open Russia.'[200]

Similarly, the court undertakes no specific analysis regarding the potential qualification of PNM Open Russia as an association, not a non-governmental organization – and a Russian association at that. Instead, the judgment repeatedly references the asserted reliability, consistency, and lack of contradictions in the prosecution case:

> Evaluating the testimony of the above-mentioned prosecution witnesses examined during the trial, the court finds them true and trusts them, since the witnesses are not interested in the outcome of the case, they are warned of criminal liability for knowingly giving false testimony. Their testimony is

[199] See Venice Commission, "Opinion on Federal Law No. 129-Fz on Amending Certain Legislative Acts (Federal Law On Undesirable Activities of Foreign and International Non-Governmental Organisations)", Opinion No. 814/2015, June 13, 2016, para. 41. Available at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)020-e ("Despite the explanations given by the authorities, the Venice Commission is of the opinion that because of the lack of specific criteria/prohibitions for misconduct of NGOs and the vague and imprecise terms as to the grounds on the basis of which the activities of a foreign or international NGO may be deemed 'undesirable', the Federal Law cannot be considered as in compliance with the requirement of legality under Article 11(2) ECHR.").

[200] See Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pg. 52.

> consistent, logical, does not contain significant contradictions, is consistent with each other, and is also objectively confirmed by other written evidence in the criminal case, cited by the court above, which the court evaluates in their totality. The court has no grounds to distrust the testimony of the prosecution witnesses, since these persons have no grounds for slandering the defendant and have no interest in the outcome of the case.[201]

There is no mention of the fact that – as repeatedly raised by the defense – prosecution witness Logachyova testified that relevant criteria suggested that PNM Open Russia was a Russian public association. Beyond generally stating that "a long time has passed since the incident and, taking into account individual characteristics and individual perceptions, the interrogated witnesses give their vision of events, or do not remember certain details of what happened,"[202] there is no mention of the acute discrepancies – likewise raised by the defense – in the accounts of prosecution witnesses such as Shilchenko, who was unable to recall details of the event in Taganrog and was unable to confirm that Shevchenko referred to Great Britain when speaking.

While unequivocally accepting the veracity of the prosecution's account, the court dismisses evidence presented by the defense without examining its merits or attempting to assess how such evidence might undermine the prosecution case. The verdict, for example, rejects Shevchenko's testimony on the non-foreign nature of the PNM Open Russia on the basis that it "contradict[ed] all the materials of the criminal case examined during the judicial investigation," absent any further explanation:

> The court is critical of the testimony of the defendant A.N. Shevchenko that she was a member of the [PNM] 'Open Russia', which is not a foreign nongovernmental movement, which claims that this organization is not associated with the UK, is not registered there, is public, and therefore exists on the money of the participants, considers them to be untrue, **since they contradict all the materials of the criminal case examined during the judicial investigation**, including the protocols of investigative actions, expert opinions, the results of operational-search activities, the testimony of prosecution witnesses, and other investigated materials of the case, and believes that such testimony is a way to protect the defendant, given by her in order to avoid criminal liability for the deed.[203]

The court takes a similar approach to other defense witnesses, stating that the testimony of Baranova and Pryanishnikov "cannot be recognized by the court as valid, since from the totality of the evidence examined by the court of the prosecution and the defense ...

[201] Id. at pg. 49.
[202] Id.
[203] See id. at pg. 52 [emphasis added].

it was reliably known that the ['PNM'] Open Russia is a foreign organization, since this information was in the public domain."[204] The verdict also fully dismisses defense evidence on the absence of registration of any "Open Russia" organization in the UK, seemingly on the basis that this evidence was not in accordance with the Russian government's own position on the matter:

> Taking into account that, according to the information from the Register of the British Companies House, which was submitted by the defense, received at the request of the defense by notary Michael Robert Lindley on 12.04.2019, the Registration Chamber does not verify the accuracy of the information displayed, the court is critical of this evidence of the defense and considers it impossible to put it in the basis of the verdict, **since this information does not reflect the opinion of state bodies**, and the completeness and reliability of the information presented in these documents is questionable.[205]

In "dismissing all evidence in [Shevchenko's] favor without justification," the court violated the presumption of innocence.

Correspondingly, the verdict is inadequately reasoned, in contravention of the requirement that courts weigh and explain the value of different pieces of evidence in reaching a decision. As stated by the European Court, such deficiencies in reasoning can violate the presumption of innocence.[206] In the present case, the verdict simply summarizes prosecution witnesses' testimony in the order in which they testified during the proceedings,[207] and then summarizes all of the material evidence presented,[208] without explaining the relevance or probative value of respective pieces of prosecution evidence. At the end of these summaries, the court summarizes in abridged form the evidence presented by the defense,[209] then pronounces Shevchenko guilty.

Notably, at least one prosecution witness had a clear reason for personal bias against Shevchenko. Sergey Rulev, a journalist who testified for the prosecution that PNM Open Russia was a foreign organization and that he had seen Shevchenko participating in multiple Open Russia-related events,[210] had previously filed an administrative offense complaint against Shevchenko's minor daughter to the Taganrog Prosecutor's Office in

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[204] Id.
[205] See id. at pg. 53 [emphasis added].
[206] See European Court of Human Rights, Ajdarić v. Croatia, App. No. 20883/09, December 13, 2011, paras. 46–52; European Court of Human Rights, Nechiporuk and Yonkalo v. Ukraine, App. No. 42310/04, April 21, 2011, para. 272.
[207] See Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pgs. 7–20.
[208] See id. at pgs. 20–46.
[209] See id. at pgs. 46–49.
[210] See id. at pg. 7.

August of 2019, claiming that she had insulted him on Facebook.[211] The prosecutor's office ultimately refused to open the case due to the girl's age, but the incident suggests that there were reasons to doubt Rulev's impartiality towards Shevchenko.

The court's failure to assess the value of such testimony and other prosecution evidence (beyond the aforementioned generalized statements that prosecution evidence was consistent and logical) constituted an additional violation of the presumption of innocence.

Predetermined Outcome

Despite the above, the court concludes in its verdict not only that Shevchenko "participated in the activities of a foreign non-governmental organization," *but also* that she did so knowingly and with malicious intent:

> A.N. Shevchenko, realizing that during the year she was twice brought to administrative responsibility for participation in the activities of a foreign non-governmental organization - the Public Network Movement 'Open Russia', knowing for certain that the activities of this organization was recognized as undesirable on the territory of the Russian Federation, continuing to implement the intent to participate in its activities**, acting intentionally, in order to infringe on the foundations of the constitutional order and security of the state, posing a threat to the protection of the interests of Russian citizens**.[212]

This unsupported conclusion suggests a pre-determined outcome in Shevchenko's case. The wholesale rejection of evidence undermining the Russian government's position and ready acceptance of the prosecution's assertions – even when compellingly challenged by the defense – shows that the court placed "an extreme and unattainable burden of proof" on Shevchenko to demonstrate her innocence, and that her guilt was a foregone conclusion, in contravention of the presumption of innocence.

D. OTHER FAIRNESS CONCERNS

Right to Privacy

Article 17(1) of the ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence." Any interference

[211] See Prosecutor's Office of Leninsky District in Rostov-on-Don, Decision on refusal to initiate an administrative offense case, August 9, 2019 (declining to initiate an administrative offense case against Shevchenko's minor daughter).
[212] Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pg. 50 [emphasis added].

with this right must be: i) in accordance with a law[213] that is "sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct data surveillance and under what circumstances";[214] and ii) necessary for, and proportionate to, a legitimate aim.[215]

Article 8(1) of the ECHR guarantees everyone "the right to respect for his private and family life, his home and his correspondence." Under the European Convention, this right may only be interfered with when such interference is i) prescribed by law; and ii) necessary in a democratic society to pursue a legitimate aim[216] found in the Convention,[217] meaning that the measure pursues a "pressing social need" and the measure is proportionate to the legitimate aim to be achieved.[218]

In the context of a government's surveillance of its citizens, the European Court has held that it is not sufficient that surveillance measures be provided for by law; the law itself must also adhere to rule of law standards.[219] This means that domestic legislation must be "sufficiently clear in its terms to give citizens an adequate indication as to the circumstances in and conditions on which public authorities are empowered to resort to any such secret measures."[220]

In *Zakharov v. Russia*, the Court – evaluating Russia's use of secret surveillance – reiterated its stance that domestic legislation must clearly indicate the "scope" and "manner" of the exercise of surveillance measures in order to ensure that citizens are protected against abuse.[221] Finding a violation of Article 8, the Court stated: "Russian

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[213] See Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy), April 8, 1988, para. 3.
[214] See United Nations High Commissioner for Human Rights, "Report: The right to privacy in the digital age", U.N. Doc. A/HRC/27/37, June 30, 2014, para. 23.
[215] Id. See also Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy), April 8, 1988, paras. 4, 7–8.
[216] The legitimate aims for which the right to privacy may be restricted are provided by Article 8(2): "national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."
[217] See European Court of Human Rights, Szabó and Vissy v. Hungary, App. No. 37138/14, June 12, 2016, para. 54 (quoting from previous case law).
[218] See European Court of Human Rights, Dudgeon v. the United Kingdom, App. No. 7525/76, October 22, 1981, paras. 51–53. See also European Court of Human Rights, Roman Zakharov v. Russia, App. No. 47143/06, December 4, 2015, para. 227.
[219] European Court of Human Rights, Khan v. the United Kingdom, App. No. 35394/97, May 12, 2000, para. 26.
[220] European Court of Human Rights, Halford v. United Kingdom, App. No. 20605/92, June 25, 1997, para. 49. See also European Court of Human Rights, Khan v. the United Kingdom, App. No. 35394/97, May 12, 2000, para. 26.
[221] See European Court of Human Rights, Zakharov v. Russia, App. No. 47143/06, December 4, 2015, para. 230. The Court has established the following safeguards which should be set out in law to avoid abuse of power: "the nature of offences which may give rise to an interception order; a definition of the categories of people liable to have their telephones tapped; a limit on the duration of telephone tapping; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed." See id. at para. 231.

legal provisions governing interceptions of communications do not provide for adequate and effective guarantees against arbitrariness and the risk of abuse which is inherent in any system of secret surveillance ... In particular, the circumstances in which public authorities are empowered to resort to secret surveillance measures are not defined with sufficient clarity."[222]

The Court has further held that authorities empowered by law to approve secret surveillance measures in criminal cases "must be capable of verifying the existence of a reasonable suspicion against the person concerned, in particular, whether there are factual indications for suspecting that person of planning, committing or having committed criminal acts or other acts that may give rise to secret surveillance measures."[223] Additionally, the authorizing body must assess whether interception is necessary in a democratic society and proportionate to the aims to be achieved.[224] To this end, the domestic authority must consider whether the aim may be achieved with less restrictive measures.[225]

In its 2017 *Dudchenko v. Russia* judgment, the European Court examined another Article 8 application in Russia, this time concerning court-authorized interception of a suspect's telephone calls during a criminal investigation. In determining whether the interference was lawful, the Court recalled its earlier finding that Russian legislation on surveillance did not provide adequate safeguards against abuse and found that such deficiencies persisted.[226] The Court further concluded that in authorizing telephone interception for 180 days, the domestic court had violated the applicant's Article 8 rights because it did not sufficiently analyze the evidence presented by the police officers who had requested the measure:

> Although the [domestic] court noted, without any further details, that the police had 'intelligence information' that the applicant was the leader of a gang and planned to commit extortions ... it did not mention any facts or information that would satisfy an objective observer that the applicant might have committed or planned the offences. There is no evidence that any information or documents confirming the

[222] See id. at para. 302.
[223] See id. at para. 260.
[224] Id. See also European Court of Human Rights, Dragojević v. Croatia, App. No. 68955/11, June 15, 2015, para. 94.
[225] European Court of Human Rights, Zakharov v. Russia, App. No. 47143/06, December 4, 2015, para. 260.
[226] European Court of Human Rights, Dudchenko v. Russia, App. No. 37717/05, November 7, 2017, paras. 95–97. In its earlier *Zakharov v. Russia* judgment, the Court observed that the Russian Constitutional Court had previously held that a domestic court authorizing surveillance must verify the existence of reasonable suspicion and only authorize surveillance if necessity and proportionality requirements are fulfilled; however, domestic courts are not obliged to follow this guidance, and, the European Court found that in practice, Russian judges do not undertake such analysis before authorizing the use of secret surveillance measures. See European Court of Human Rights, Zakharov v. Russia, App. No. 47143/06, December 4, 2015, paras. 262–263.

> suspicion against the applicant had actually been submitted to the judge.[227]

Correspondingly, the Court found that the Russian court had failed both to undertake the requisite "necessity" and "proportionality" assessment before authorizing the surveillance and to concretely demonstrate the infeasibility of alternatives to surveillance beyond a "vague and unsubstantiated" statement that it "seem[ed] impossible to obtain the information necessary to expose [the applicant's] unlawful activities by overt investigation."[228] According to the court, said explanation was not "sufficient" in light of the seriousness of the interference with the suspect's right to privacy.[229] This, in combination with the fact that the court had failed to ascertain that "reasonable suspicion" existed for criminal charges, gave rise to an Article 8 violation.[230]

In view of the foregoing, the covert surveillance measures used against Shevchenko and her family violated her right to privacy, in breach of Article 17 of the ICCPR and Article 8 of the ECHR. In Shevchenko's case, far beyond intercepting her telephone calls, the Proletarskiy District Court of Rostov-on-Don authorized the use of secret cameras and audio recording devices inside Shevchenko's home – including a camera positioned to point directly at her bed – for a lengthy initial period of 120 days, which was subsequently extended by an additional 120 days.[231] The recordings captured using these devices included extensive footage of Shevchenko in her bedroom, sometimes partially undressed, and having conversations with her minor children and elderly mother.[232]

As held in *Dudchenko*, the Russian law applicable to covert surveillance operations – which remains the same in relevant substance as when that case was decided – does not meet the "quality of law" requirement of the European Convention on Human Rights or ICCPR, meaning that it is ripe for abuse by the authorities. The provision in the Law on Operational Search Activities that was cited to justify surveillance in Shevchenko's case offers no more description of the measure to be used than a single word: "observation."[233] The law contains no limiting safeguards or guidance as to the circumstances under and manner in which the Russian authorities may conduct "observation" against individuals, as required by Article 17 of the ICCPR and Article 8 of the ECHR. Little clarity is provided by Article 186 of the Criminal Procedure Code, which allows for the authorization of surveillance of telephone "and other" communications by a court if there is reasonable

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[227] European Court of Human Rights, Dudchenko v. Russia, App. No. 37717/05, November 7, 2017, para. 97.
[228] Id. at para. 98.
[229] Id.
[230] Id. at paras. 99–100.
[231] See Proletarskiy District Court of Rostov-on-Don, Order No. 815, On the limitation of the right to inviolability of home, November 30, 2018.
[232] See BBC News, "Russian bedroom camera in aircon 'spied on activist'", January 24, 2020. Available at https://www.bbc.com/news/world-europe-51240977.
[233] Russian Federation, Law on Operational Search Activities, Article 6(6), provides "'Operational search measures': "When carrying out operational-search activities, the following operational-search activities are carried out: . . . 6. Observation."

suspicion that such communications contain information that is relevant to a criminal case above a certain level of gravity.[234]

Consequently, as in *Zakharov* and *Dudchenko*, the application of an insufficiently precise surveillance law violated Shevchenko's right to privacy.

In addition, the authorities violated Shevchenko's right to privacy because the surveillance constituted an interference that was not necessary for, or proportionate to, a legitimate aim. First, the Proletarskiy District Court, which authorized the surveillance (the following excerpts refer to the Court's extension order), failed to verify the existence of reasonable suspicion that Shevchenko had committed the alleged criminal offenses. In assessing the surveillance request, the only evidence adduced by the court with regard to criminal activity on Shevchenko's part was: i) a sentence stating that she had twice previously been convicted of administrative offenses; and ii) the following paragraph:

> [A]ccording to the available operational data, Shevchenko A.N., in order to exert pressure on the authorities, plans to organize actions of civil disobedience, with the involvement of socially dissatisfied groups of citizens, including from other regions of the Russian Federation, capable of providing forceful resistance to officers of the law enforcement agencies, as well as those associated with blocking the state and municipal institutions, federal highways, while using the initiative of the Government of the Russian Federation to raise the retirement age as an excuse to attract the general population.[235]

Based on this, the court finds that Shevchenko could "pre-qualify under" Articles 284.1 (participation in activities of an "undesirable" foreign organization), Article 318 (use of violence against a government official), and Article 319 (insulting a representative of the authorities).

The decision lacks concrete evidence to support the assessment that Shevchenko was "plan[ning]" criminal acts," providing no information on the "operational data" referenced. As such, the court failed to undertake the requisite evaluation of whether reasonable suspicion existed for criminal charges.

Second, the Proletarskiy District Court neglected to undertake a "necessity" or "proportionality" assessment when considering whether to authorize the invasive surveillance measures proposed by the police in Shevchenko's case. In *Dudchenko*, the surveillance at issue was the interception of telephone calls on the applicant's mobile

[234] Russian Federation, Criminal Procedure Code, Article 186(1).
[235] Proletarskiy District Court of Rostov-on-Don, Order No. 815, On the limitation of the right to inviolability of home, November 30, 2018, pg. 1.

phone for a period of 180 days;[236] ultimately, the interception of his calls pursuant to the relevant court order lasted for a period of four days, after which he was arrested.[237] In Shevchenko's case, by contrast, the police secretly entered her home, installed recording equipment, and monitored her bedroom – the innermost sanctum of any residence – using not just audio recording devices, but a video camera, for almost five straight months.

Yet instead of demanding concrete and compelling evidence from the investigator of this measure's necessity and balancing Shevchenko's right to privacy against the asserted aim of preventing criminal activity, the Proletarskiy District Court accepted at face value police claims that the surveillance would be useful for the investigation and stopped its analysis there:

> There is reason to believe that in the place of her actual residence ... Shevchenko A.N. may store objects and documents prohibited in civil circulation, as well as printed publications, electronic media, mobile telephone devices containing materials of an extremist nature. In addition, the said apartment may be used by A.N. Shevchenko as a place for meeting with unidentified persons in order to discuss with them possible criminal activity, including planning and preparing crimes against public security and the state.[238]

Finally, the court did not consider whether the use of secret video and audio equipment in Shevchenko's home was the least invasive alternative available to achieve the desired aim, as required by the ICCPR and ECHR. Even assuming that some form of surveillance of Shevchenko was in pursuit of a "pressing social need" – the prevention of detrimental activities by foreign organizations, which is in itself dubious given the vagueness of the aims articulated in the legislation – there should have at least been an assessment of alternative means of obtaining the relevant information apart from placing a video camera directly above Shevchenko's bed.

In light of the above, the secret recording of Shevchenko and her family in their home between August 2018 and January 2019 constituted an extreme violation of their right to privacy under Article 17 of the ICCPR and Article 8 of the ECHR.

The lack of necessity of the surveillance – and indeed, its futility – became clear during Shevchenko's trial. Even after five months of secret recording, the primary evidence

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[236] See European Court of Human Rights, Dudchenko v. Russia, App. No. 37717/05, November 7, 2017, paras. 6–8. In Dudchenko, the Court also examined a second court-ordered surveillance measure in the applicant's case pertaining to confidential communications with his attorney, but this section of the judgment is not relevant to the current case.
[237] Id. at para. 13.
[238] Proletarskiy District Court of Rostov-on-Don, Order No. 815, On the limitation of the right to inviolability of home, November 30, 2018, pg. 1.

presented by the prosecution at trial to demonstrate that Shevchenko committed the charged acts was obtained from the testimony of witnesses who were present at events in public places and through publicly available information, such as pictures of Shevchenko on Facebook at the "#FEDUP" rally. Although the prosecution played a number of clips from secret recordings made in Shevchenko's house during the trial,[239] none of them contained information that was specifically relevant to the charges at hand, as the defense pointed out repeatedly.[240]

It is also worth noting that the surveillance of Shevchenko with the objective of preventing her "plans to organize actions of civil disobedience, with the involvement of socially dissatisfied groups of citizens, including from other regions of the Russian Federation" violated her right to freedom of peaceful assembly. The UN Human Rights Committee noted in its recent General Comment on the right to freedom of peaceful assembly that Article 21 of the Covenant protects peaceful assemblies "wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof."[241] As will be discussed in more depth below, the right to freedom of peaceful assembly not only "protect[s] participants while and where an assembly is ongoing [but] … extend[s] to actions such as participants' or organizers' mobilization of resources; planning; dissemination of information about an upcoming event; preparation for and travelling to the event; [and] communication between participants leading up to and during the assembly" – in essence, to activities "associated" with the assembly.[242] As such, the State's implementation of surveillance in Shevchenko's residence – her "private space[]" – to restrict her alleged "plan[ning of] acts of civil disobedience" in coordination with "socially dissatisfied groups of citizens" violated not only her right to privacy but her right to assembly.

Abuse of Process

The ICCPR prohibits the abuse of judicial proceedings to intimidate, discriminate against, or punish individuals for the exercise of their rights. The UN Human Rights Committee, for example, has determined that detention on the basis of human rights and journalistic work violates the right to liberty protected by Article 9(1).[243]

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[239] Trial Monitor's Notes, December 24, 2020 (the prosecution plays several clips back-to-back without explaining their significance).

[240] See Trial Monitor's Notes, January 28, 2021 (asked about a conversation she had with her daughter and mother in her bedroom, Shevchenko replied, "firstly, I want to say that video filming at home, especially over a woman's or a man's bed, does not matter, is, of course, illegal and I would never have thought in my life that this would be considered as evidence in court. Moreover, the reason for installing a video camera in my room was, according to Krasnokutsky, the fact that at home I could discuss the blocking of highways, some unauthorized events or something else. As you can see from the wiretapping, I did not discuss any of this.").

[241] Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 6.

[242] Id. at para. 33.

[243] Human Rights Committee, Khadzhiyev and Muradova v. Turkmenistan, U.N. Doc. CCPR/C/122/D/2252/2013, 2018, para. 7.7.

Article 18 of the ECHR explicitly protects against abuse of process: "the restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed." Article 18 can only be applied in conjunction with one or more substantive rights delineated in the Convention[244] and establishes that such rights cannot be restricted for improper or ulterior purposes, which may include intimidation, punishment, and suppression of dissent.[245]

In evaluating whether legal proceedings are driven by improper motives, the European Court of Human Rights considers circumstantial evidence, including: the political context in which the prosecution was brought;[246] whether the court was independent from executive authorities;[247] whether "there was a political impetus behind the charges";[248] whether the authorities undertook actions against the applicant amidst their "increasing awareness that the practices in question were incompatible with Convention standards";[249] whether the prosecution had reasonable suspicion to bring the charges;[250] how the criminal proceedings were conducted;[251] and whether the ultimate decision was well-reasoned and based on law.[252]

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[244] See European Court of Human Rights, Gusinskiy v. Russia, App. No. 70276/01, May 19, 2004, para. 73.

[245] See id. at paras. 76-78; European Court of Human Rights, Cebotari v. Moldova, App. No. 35615/06, November 13, 2007, para. 53; European Court of Human Rights, Merabishvili v. Georgia, App. No. 72508/13, November 28, 2017, para. 353; European Court of Human Rights, Lutsenko v. Ukraine, App. No. 6492/11, August 1, 2012, para. 109; European Court of Human Rights, Tymoshenko v. Ukraine, App. No. 49872/11, May 22, 2013, para. 299; European Court of Human Rights, Mammadov v. Azerbaijan, App. No. 15172/13, May 22, 2014, para. 143; European Court of Human Rights, Mammadli v. Azerbaijan, App. No. 47145/14, April 19, 2018, paras. 104–05; European Court of Human Rights (Grand Chamber), Navalnyy v. Russia, App. No. 29580/12, November 15, 2018, paras. 175–76.

[246] European Court of Human Rights, "Guide on Article 18 of the European Convention of Human Rights, Limitations on Use of Restrictions and Rights", August 31, 2018, para. 85. Available at https://www.echr.coe.int/Documents/Guide_Art_18_ENG.pdf (citing Merabishvili v. Georgia, App. No. 72508/13, November 28, 2017, para. 322; European Court of Human Rights, Khodorkovskiy v. Russia, App. No. 5829/04, May 31, 2011, para. 257; European Court of Human Rights, Khodorkovskiy and Lebedev v. Russia, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 901; European Court of Human Rights, Nastase v. Romania, App. No. 80563/12, December 11, 2014, para. 107; European Court of Human Rights, Rasul Jafarov v. Azerbaijan, App. No. 69981/14, March 17, 2016, paras. 159–61; European Court of Human Rights, Mammadli v. Azerbaijan, App. No. 47145/14, April 19, 2018, para. 103; European Court of Human Rights, Rashad Hasanov and Others v. Azerbaijan, App. No. 148653/13, June 7, 2018, para. 124).

[247] See European Court of Human Rights, Merabishvili v. Georgia, App. No. 72508/13, November 28, 2017, para. 324.

[248] See id. at para. 320.

[249] European Court of Human Rights (Grand Chamber), Navalnyy v. Russia, App. No. 29580/12, November 15, 2018, para. 171.

[250] See European Court of Human Rights, Khodorkovskiy v. Russia, App. No. 5829/04, May 31, 2011, para. 258; European Court of Human Rights, Khodorkovskiy and Lebedev v. Russia, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 908.

[251] European Court of Human Rights (Grand Chamber), Navalnyy v. Russia, App. No. 29580/12, November 15, 2018, para. 171.

[252] European Court of Human Rights, Nastase v. Romania, App. No. 80563/12, December 11, 2014, para. 108.

In Article 18 cases, the Court has further held that improper motive need not be the sole purpose for the prosecution, but the predominant one: in other words, even a prosecution that possesses a legitimate aim can be rendered unlawful due to ulterior motive.[253]

The European Court's Grand Chamber ruling in *Navalnyy v. Russia* provides contemporaneous guidance on abusive process in the Russian context. In finding that the repeated arrest and detention of Navalnyy violated his right to be free from arbitrary detention and his right to peaceful assembly (in addition to his fair trial rights), the Court concluded that the authorities were improperly motivated: specifically, that the proceedings were aimed at preventing Navalnyy from participating in the political process.[254] In accordance with precedent, the Court cited indicia such as patterns of harassment of political opposition members, the lack of justification for some of the arrests, the flawed conduct of the proceedings against Navalnyy, and the apparent targeting of Navalnyy amongst similarly-situated individuals.[255] As noted by the Court, "a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position."[256]

The political setting in which Shevchenko was prosecuted, the poor reasoning in judicial decisions ordering her house arrest and secret surveillance measures, the manner in which her trial was conducted, and the lack of justification in the court's convicting verdict all suggest an abusive process intended to silence and punish her for her political activism, rather than a legitimate criminal prosecution for the purpose of ensuring public order and safety.

Regarding the political context and potential political impetus of the trial, the proceedings against Shevchenko took place amidst an increasing crackdown on dissent and political opposition by the Russian authorities, as described in the background section. Activists associated with PNM Open Russia have been particularly targeted. Shevchenko herself is a prominent activist and outspoken critic of President Putin who, through her work, has explicitly sought to bring about a change in government through democratic processes. Her political activities, whether participation in protests or speaking roles at conferences, played a central role in the trial and no evidence was presented to show that Shevchenko's actions threatened public order or created any other sort of danger. Further, as discussed above, numerous organizations have documented the Russian judiciary's close ties to the executive and compliance with the executive's agenda, as evidenced by the low rate of acquittals in politically sensitive cases.

[253] European Court of Human Rights, Merabishvili v. Georgia, App. No. 72508/13, November 28, 2017, paras. 292–308.
[254] European Court of Human Rights (Grand Chamber), Navalnyy v. Russia, App. No. 29580/12, November 15, 2018, paras. 174–76.
[255] Id. at paras. 167–76.
[256] Id. at para. 175.

The conduct of the proceedings also suggests an ulterior purpose. As set forth above, there was no reasonable basis for Shevchenko's two-year house arrest: the prosecution offered no concrete evidence that she would flee, try to interfere with the proceedings, or commit another crime. The harsh terms of the house arrest, including the repeated refusal to allow Shevchenko to visit her dying daughter, suggest the use of this form of deprivation of liberty as a punitive measure rather than a preventive one. Moreover, the authorities' resort to invasive secret surveillance of Shevchenko and her family for almost five months exceeded any reasonable utility to the criminal proceedings, in addition to being a stark violation of her right to privacy. These circumstances point to an abusive process.

An additional indicator of the ulterior motive behind the charges was Shevchenko's ultimate punishment. While the court suspended her four-year jail sentence, it replaced it with a probationary period of four years during which, among other things, Shevchenko cannot engage in mass and/or public activities, such as protests. Again, the goal of the proceedings rings clear: Shevchenko is now unable to undertake many activities that had previously been features of her political activism with PNM Open Russia, such as participating in protests, speaking at conferences and organizing political rallies.

Finally, as discussed in the Presumption of Innocence section, the lack of reasoning in the court's convicting verdict is likewise evocative of exploitation of the criminal justice system for political ends. The trial court's inability to link Shevchenko's acts to the concrete crime with which she was charged, in conjunction with its wholesale dismissal of evidence tendered by the defense, suggest a pre-determined outcome designed to punish Shevchenko not for a legally defined criminal offense but for her political beliefs and the exercise of her rights.

Right to Freedom of Expression, Freedom of Peaceful Assembly, and Freedom of Association

The rights to freedom of expression, peaceful assembly, and association each enjoy robust protection under the ICCPR and the ECHR.[257] While these rights are not absolute, they can be restricted only under specific circumstances, when: i) the restriction is prescribed by law (the legality principle); ii) the restriction pursues a legitimate aim (among those expressly provided by the relevant articles); and iii) and the restriction is necessary and proportionate to the legitimate aim to be achieved.[258]

[257] ICCPR, Article 19, ECHR Article 10 (freedom of expression); ICCPR, Article 21, ECHR, Article 11 (freedom of assembly); ICCPR, Article 22, ECHR, Article 11 (freedom of association).
[258] See Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 22 (regarding restrictions on the right to freedom of expression); Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, September 17, 2020, para. 40 (regarding restrictions on the right to freedom of assembly); General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, U.N. Doc. A/HRC/20/27, May 21, 2012, para. 75 (regarding restrictions on the right to freedom of association). See also European Court of Human Rights, Primov and Others v. Russia, App. No. 17391/06, June 12, 2014, para. 121 (regarding Article 11).

The rights to freedom of expression, peaceful assembly, and association often overlap in the contest of political activism. Both the UN Human Rights Committee and the European Court have emphasized the fundamental importance of these rights in the functioning of a healthy democratic society and have highlighted the extremely limited scope of permissible restrictions.

"Prescribed by law," for example, refers not just to the existence of a legal basis for the restriction, but to the quality of the law involved. As stated by the Human Rights Committee, the relevant law must "be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement."[259] Correspondingly, a restriction is not permissible merely because it is "reasonable or expedient"; rather, it must be truly necessary and proportionate having due regard to "democracy, the rule of law, political pluralism and human rights."[260]

With respect to the rights to freedom of expression and peaceful assembly, the Committee has stated, respectively, that "[t]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential"[261] and that "[a]ssemblies with a political message should enjoy a heightened level of accommodation and protection"[262] due to the especially important status of political speech. To that end, the Committee has emphasized that any restriction on a peaceful assembly must "not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system,"[263] and any restriction on freedom of speech must not be used "to prohibit insults to the honor and reputation of officials or State organs."[264]

The Committee applies the same logic to freedom of association. In interpreting the Article 22 right to freedom of association, the Committee has stated that "the existence and operation of associations, including those that peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone of any democratic society."[265] The Committee has thus found that the refusal of a government to register a human rights organization, and the subsequent criminal

[259] Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 39.
[260] Id. at para. 40.
[261] See Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 20.
[262] See Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 32.
[263] See id. at para. 49.
[264] See id. See also Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 38.
[265] See Human Rights Committee, Pinchuk v. Belarus, U.N. Doc. CCPR/C/112/D/2165/2012, November 17, 2014, para 8.4.

conviction of the organization's co-founder on related tax-evasion charges (for operating a bank account with dedicated funds for the organization despite the organization's unregistered status), violated his right to freedom of association.[266]

Similarly, the European Court has underscored the importance of protecting political activism in the context of the rights to freedom of expression, association, and peaceful assembly; "the link between Article 10 [freedom of expression] and Article 11 [freedom of assembly and association] is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association."[267]

The Court has consequently condemned the use of criminal proceedings to repress the rights enshrined in Article 10 and Article 11. As stated by the Court, criticism of government – including through disseminating information that the country's leaders view as "endangering national interests" – should not "attract criminal charges" such as terrorism or an attempt to overthrow the constitutional order or government.[268] Further, where such charges are brought for speech offenses, the Court has noted: "pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty ... will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices."[269] Under such circumstances – where a journalist, for example, was held in pre-trial detention on terrorism charges for publishing articles critical of the ruling government – the Court has found that the authorities violated the Article 10 right to freedom of expression.[270]

Correspondingly, the Court has held that the term "restriction" in the context of freedom of peaceful assembly refers not only to interference with this right during an ongoing assembly, but also to the sanctioning of participants following its conclusion.[271] The Court has found a violation of the Article 11 right to peaceful assembly where there was a "a clear and acknowledged link" between the legitimate exercise of freedom of peaceful assembly and the government's punitive reaction, including the arrest, detention, and charging of the participant.[272] With respect to freedom of association, the Court has stated: that an organization's "political programme [is] considered incompatible with the current principles and structures of the ... State does not make it incompatible with the rules and principles of democracy. It is of the essence of democracy to allow diverse

[266] See id. at para 8.6.
[267] European Court of Human Rights, Primov and Others v. Russia, App. No. 17391/06, June 12, 2014, para. 92.
[268] See European Court of Human Rights, Şahin Alpay v. Turkey, App. No. 16538/17, March 20, 2018, para. 181.
[269] Id. at para. 182.
[270] Id. at paras. 32 (describing the articles published by the applicant), 183.
[271] See European Court of Human Rights, Ezelin v. France, App. No. 11800/85, April 26, 1991, para. 39.
[272] See European Court of Human Rights, Navalnyy and Yashin v. Russia, App. No. 76204/11, December 4, 2014, para. 52.

political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself."[273] As such, restrictions on associations based on their divergence from the agenda of the ruling party do not comply with the Article 11 right to freedom of association.[274]

Against this backdrop, the criminal prosecution and conviction of Shevchenko represents a grave violation of her rights to expression, peaceful assembly, and association.

First, the Law on Undesirable Organizations is insufficiently precise, in contravention of the legality requirement. As noted above, the term "undesirable" is defined in vague terms – as threatening Russia's defense, security, or constitutional order. No further guidance is provided and it is left to the Prosecutor General's Office to determine whether an organization is indeed undesirable. The procedures accompanying this determination are likewise riddled with uncertainty – as discussed at length above, different organizations may have similar names and the listing of "undesirable" organizations on the Ministry of Justice's website does not include identifying characteristics, such as registration numbers. This confusion was reflected in Shevchenko's case, where two organizations with the name "Open Russia" were listed on the Ministry of Justice's website, a representative of the Prosecutor General's office subsequently stated that PNM Open Russia would not be affected by the determination, and the authorities ultimately prosecuted Shevchenko for her affiliation with PNM Open Russia. As such, the Law on Undesirable Organizations and its corresponding procedures are so vague as to make it difficult for "members of society to decide how to regulate their conduct" and as to confer "unfettered or sweeping discretion on those charged with their enforcement."[275] This renders the law ripe for abuse, particularly of the rights to freedom of expression, freedom of association, and freedom of peaceful assembly, as demonstrated by Shevchenko's case.

Second it does not appear that the authorities possessed a legitimate objective in prosecuting and convicting Shevchenko. Although the Oktyabrsky District Court found that with her actions, Shevchenko intended to "infringe on the foundations of the constitutional order and security of the state, posing a threat to the protection of the interests of Russian citizens,"[276] it never explained how exactly Shevchenko had sought to undermine state security and order beyond engaging in routine opposition activities. Likewise, nowhere in the prosecution's presentation was it alleged that Shevchenko had planned specific acts of violence against the State, had incited or participated in acts of violence against the State, or had otherwise conspired to overthrow the ruling government

[273] European Court of Human Rights, Case of the United Macedonian Organization Ilinden-Pirin and Others v. Bulgaria, App. No. 59489/00, October 20, 2005, para. 61.
[274] Id. at paras. 61–63.
[275] Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 39.
[276] Oktyabrsky District Court of Rostov-on-Don, Verdict [in the case of Anastasia Shevchenko], February 18, 2021, pg. 50.

outside of lawful processes. Indeed, the specific acts that formed the basis of Shevchenko's criminal conviction were: i) participating in a meeting where she explained the non-violent civic activities of the PNM Open Russia; and ii) holding a flag with a political message ("#FEDUP") at a peaceful political rally that had been sanctioned by the authorities. These acts corresponded with PNM Open Russia's stated aims and activities: namely, enacting societal change through peaceful democratic processes. Given the nature of the acts Shevchenko was engaged in and the lack of explanation of or even allegations as to her participation in acts of violence against the State and/or attempts to overthrow the government, it appears that the objective of her prosecution was to punish her for her opposition activities.

Third, Shevchenko's prosecution violated necessity and proportionality requirements. As discussed above, political speech and activism is afforded high value under both the ICCPR and ECHR due to its fundamental importance to the survival of democracy. Without evidence that Shevchenko's acts were likely to cause harm, it is clear that restriction of her engagement in public dialogue and democratic processes, precisely the type of speech and assembly that the ICCPR and ECHR are designed to protect, was neither necessary nor proportionate.

By bringing criminal charges against and convicting Shevchenko for engaging in political speech, including her prolonged deprivation of liberty under house arrest, the Russian government violated her right to freedom of expression under Article 19 of the ICCPR and Article 10 of the ECHR.

The proceedings also represented a grave violation of Shevchenko's right to freedom of peaceful assembly. By prosecuting and convicting Shevchenko in spite of the non-violent nature of the PNM Open Russia meeting and the political rally, the court contravened the Human Rights Committee's holding that governments must not repress assemblies, including through the prosecution of participants, in order to "explicitly or implicitly … stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system." Again, the authorities' response was neither necessary nor proportionate.

Finally, the prosecution arbitrarily interfered with Shevchenko's right to participate in an association, the PNM Open Russia, in contravention of Article 22 of the ICCPR and Article 11 of the ECHR. That Shevchenko and the PNM Open Russia are not aligned with the Russian executive does not justify interference with their activities. On the contrary, the Human Rights Committee has repeatedly emphasized that associations "that peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population" are expressly protected by the ICCPR and essential for the functioning of any democratic society. [277]

[277] See Human Rights Committee, Pinchuk v. Belarus, U.N. Doc. CCPR/C/112/D/2165/2012, November 17, 2014, para 8.4.

CONCLUSION AND GRADE

Throughout Shevchenko's criminal prosecution for violating the Law on Undesirable Organizations, she faced severe violations of rights guaranteed under the ICCPR, ECHR, and other international treaties and documents. Her house arrest clearly constituted an arbitrary and unlawful deprivation of liberty, lacking justification and exceeding the maximum term for house arrest during a preliminary investigation as prescribed by Russian law. The continuous and invasive surveillance Shevchenko was subjected to without her knowledge violated her right to privacy and family life.

The case against Shevchenko demonstrates the lack of judicial independence and arbitrariness of decision-making in the Russian legal system. Instead of requesting concrete, individualized evidence so as to properly assess why either house arrest or surveillance was reasonable and necessary under the circumstances, in each instance courts utilized stereotyped and abstract justifications, often repeating the language of the initial decision.

Correspondingly, the court that convicted Shevchenko ignored gross discrepancies in the prosecution's case, indicating that the outcome was pre-determined and that the prosecution was mere retaliation for Shevchenko's human rights advocacy. Namely, given the lack of explanation or evidence as to Shevchenko's alleged participation in acts of violence against the State and/or attempts to overthrow the government, it appears that the objective of her prosecution was to punish her for her views and activities: a violation of her right to freedom of expression, freedom of peaceful assembly, and freedom of association.

Stepping back, the Law on Undesirable Organizations' *de facto* criminalization of NGOs and associations that diverge from the ruling party's agenda violates these same rights. The law has already been declared noncompliant with human rights standards by a range of international and European actors, as cited above. It is but one of a number of restrictive laws that have been enacted in Russia since 2012 as part of a crackdown on civil society.

The entirety of Shevchenko's trial was aimed at intimidating like-minded individuals and deterring them from undertaking similar advocacy and human rights activities or challenging the authorities. The case reflects the reach of a Russian legal system whose purpose is to crush dissent; a system that blatantly disregards not only domestic laws but international and regional treaties that Russia has ratified.

GRADE D

ANNEX

GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,"[278] and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant's reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

[278] ICCPR, Article 26.