



Russian Federation v. Yulia Tsvetkova

May 2021

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR

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

The **Clooney Foundation for Justice's TrialWatch initiative** is focused on monitoring and responding to trials around the world that pose a high risk of human rights violations. TrialWatch is global in scope and focused on trials targeting journalists, LGBTQ persons, women and girls, minorities, and human rights defenders. It works to expose injustice and rally support to secure justice for defendants whose rights have been violated.

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



Human Rights Embassy is monitoring the criminal prosecution of artist and human rights activist Yulia Tsvetkova in the Far East of the Russian Federation as part of the Clooney Foundation for Justice's TrialWatch initiative. Tsvetkova faces up to six years in prison under Article 242 of the Russian Criminal Code, which prohibits the dissemination of pornography to minors over the Internet. While the Central District Court of Komsomolsk-on-Amur has closed the proceedings, this decision is inconsistent with Tsvetkova's right to a public trial.

The trial comes after more than seventeen months of investigation, four of which Tsvetkova spent under house arrest. The criminal charges stem from Tsvetkova's posting of drawings of female genitalia (in a series called "A woman is not a doll") on a social media page she administered entitled "Vagina Monologues." The drawings were part of a body-positive women's empowerment campaign.

Tsvetkova's trial, which started on April 12, has been closed to the public. According to credible sources, the court has justified this decision based on the "pornographic" nature of the images as well as on the presence of minor victims. The decision to close the trial has not been made public.

The right to a public trial is guaranteed by Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Russia is party to both treaties.

In accordance with the right to a public trial, any closure of criminal proceedings must be strictly necessary, balancing the right of an accused to public scrutiny of his or her trial and the protection against potential abuse that such scrutiny entails with the countervailing interest at issue. In the present case, it does not appear that the images posted on the "Vagina Monologues" page, which are not violent, do not feature minors, do not feature real individuals, and do not depict degrading treatment, justify closing the trial on the basis of public morals.

Further, the victims listed in the indictment – individuals who viewed the page when they were minors – are no longer minors and, in any event, it is unclear how testifying publicly about having viewed the "Vagina Monologues" page would cause such individuals harm. As such, the protection of juvenile interests is inapposite.

Even if the court decides that either the public morals or juvenile persons exception applies, there can be no justification for closing the entirety of the trial. International and regional standards require that courts close only the portions of a trial necessary to protect whatever public interest has been invoked. In this case, the court could examine certain witnesses and evidence *in camera* and hold the remainder of hearings in public.

As such, in order to comply with its obligations under the ICCPR and ECHR, at the upcoming hearing on May 24 the Central District Court of Komsomolsk-on-Amur should grant the defense's petition to open the proceedings or, at the very least, should close only certain portions of the trial to the general public.

BACKGROUND



A. ACTIVISM AND CRIMINAL CHARGES

Yulia Tsvetkova is a 27 year-old LGBTQ and women’s rights activist from Komsomolsk-on-Amur, in the Far East of the Russian Federation. Among other things, Tsvetkova has directed a youth theater that challenges gender stereotypes and has provided “inclusive sex education for LGBTQ adolescents.”¹

Over the past two years, Tsvetkova has been convicted of administrative offenses in connection with her activism.² Specifically, on December 11, 2019, Tsvetkova was found guilty of “propaganda of non-traditional sexual relations among minors,” an administrative offence under Article 6.21 of the Russian Code of Administrative Offences, and fined 50,000 Rubles (US\$ 780) for administering two LGBTQ-themed online communities on VKontakte, a popular Russian social media network.³ Both online communities had the marking “18+,” in compliance with Russian law.⁴ On July 10, 2020 she was again convicted under Article 6.21 for posting a drawing with the caption “Family is where love is. Support LGBT+ families” on social media.⁵ The drawing, which depicted two same-sex couples with children, was published in support of a same-sex couple who fled Russia with their adopted children out of fear that the children would be taken by the State.⁶ According to Amnesty International, on July 7, 2020 the authorities initiated a third administrative case against Tsvetkova pursuant to Article 6.21.⁷

Tsvetkova is currently facing trial under Article 242 of the Russian Criminal Code for the alleged distribution of pornographic materials to minors through the internet.

Article 242 reads in pertinent part:

2. Distribution, public demonstration or advertising of pornographic materials or objects among minors or involvement of a minor in the circulation of pornographic products committed by a person who has reached the age of eighteen [is prohibited]

¹ Indictment, Investigation Department Khabarovsk Krai, January 24, 2021, pgs. 5-6.

² See Amnesty International, “Russian Federation: Further information: Activist to stand trial for her drawings: Yulia Tsvetkova”, January 29, 2021. Available at <https://www.amnesty.org/en/documents/eur46/3598/2021/en/>; Euronews, “Russian feminist artist on trial for alleged 'pornography'”, April 12, 2021. Available at <https://www.euronews.com/2021/04/12/russian-feminist-artist-on-trial-for-alleged-pornography>.

³ Id.

⁴ Amnesty International, “Russian Federation: Further information: Activist to stand trial for her drawings: Yulia Tsvetkova”, January 29, 2021.

⁵ Id.

⁶ See id.

⁷ Id.

3. The deeds provided for by Parts One or Two of this article committed by:

b) using mass media, including information and telecommunications networks (including the Internet)
- shall be punished by imprisonment for a term of two to six years with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to fifteen years.⁸

The charges under Article 242 stem from drawings of vaginas that Tsvetkova posted in 2018 and 2019 on a feminist page she administered on VKontakte entitled “Vagina Monologues.”⁹ Tsvetkova has described the drawings as “artistic images of female genitals.”¹⁰ As detailed by the Moscow Times, the posts were part of a series called “A woman is not a doll,” which aimed to challenge the objectification of women’s bodies, and to destigmatize female genitalia.¹¹ Each image was accompanied by a written caption describing women with “hair on their bodies,” “fat,” and “wrinkles.” All of the captions end with the statement: “And that’s normal!”¹²

In reference to this series, the indictment states that Tsvetkova “deliberately and illegally distribut[ed] pornographic materials and publicly show[ed] them on the Internet, including among persons who have not reached the age of majority ... in free access for an unlimited number of people of different age categories ... [such] cynical naturalistic images of female genital organs depicted there [are] deeply contrary to ethical standards and moral principles.”¹³ The “Vagina Monologues” VKontakte page currently contains an 18+ disclaimer.¹⁴

The indictment outlines various criteria employed by one of the prosecution’s experts to determine whether the images in question could be characterized as pornography. The criteria mentioned include:

- The representation of “the sexual sphere of a person impersonally, focusing on the female genitalia”;
- The simplification of “the meaning and significance of the human sexual sphere,” in particular by reducing “the idea of human sexuality and the idea of female genitalia (‘vagina’) to being an exclusive source of bodily pleasure, while ignoring

⁸Criminal Code of the Russian Federation, June 13, 1996. Available at <https://docs.cntd.ru/document/9017477>.

⁹ See Indictment, Investigation Department Khabarovsk Krai, January 24, 2021.

¹⁰ Id. at pg. 7.

¹¹ AFP/The Moscow Times, “Russian Feminist Activist Goes on Trial for ‘Body-Positive’ Drawings”, April 12, 2021. Available at <https://www.themoscowtimes.com/2021/04/12/russian-feminist-activist-goes-on-trial-for-body-positive-drawings-a73560>.

¹² Id.

¹³ Indictment, Investigation Department Khabarovsk Krai, January 24, 2021, pg. 2.

¹⁴ See “Vagina Monologues” (Монологи Вагины). Available at <https://vk.com/public168504579>.

the topic of heterosexual relationships, pregnancy, childbirth, family relationships”;

- The imposition of “erroneous ideas about the sexual sphere of a person,” involving “a stereotype of female sexuality as an isolated phenomenon that exists outside of sexual relations with men”;

- The “stimulat[ion] of the sexual interest and sexual arousal of visitors”;

- “Dehumanization ... ignoring the individual and personal characteristics of a woman”;

- “[I]nstrumental manipulation” through promotion of “the idea of ‘removing the stigma from the vagina and female physiology in general’ through exaggerated distorting aestheticization of female sexuality”;

- Dissemination of the “author’s ideas about the imaginary danger of stigmatizing women on the basis of gender”; and

- The drawing of attention to “the female genital organ, stimulating sexual interest outside of the context of the woman’s personality, of her life situation, of heterosexual romantic relationships and intimate emotional experiences”.¹⁵

The indictment corroborates Tsvetkova’s own statements that the drawings were intended to destigmatize the female body: according to the indictment, Tsvetkova “believed” that such renderings were “the norm, promoting such images and thereby encouraging the public to introduce them into ordinary use.”¹⁶ The indictment lists as victims several individuals who viewed the images when they were minors.

B. PROCEDURAL HISTORY

The criminal case against Tsvetkova stemmed from complaints filed by Timur Bulatov,¹⁷ an anti-LGBTQ activist who heads organizations such as the “First Moral Russian Front.”¹⁸ Bulatov has been described as “routinely troll[ing] members of the gay community online,” and has campaigned for children to be removed from gay couples and for the dismissal of schoolteachers perceived as gay.¹⁹ Bulatov reported Tsvetkova to the police after viewing the “Vagina Monologues” page, deeming the images featured to be pornographic and “damag[ing] to the psychological and mental development of

¹⁵ Id. at pg. 13.

¹⁶ Id. at pg. 2.

¹⁷ Id. at pgs. 4, 6.

¹⁸ BBC News, “Anti-gay campaign drives out Russian teacher in Krasnoyarsk”, December 22, 2016. Available at <https://www.bbc.com/news/world-europe-38403923>.

¹⁹ Radio Free Europe/Radio Liberty, “A Grim Death, A Confession -- But No Closure in Russian LGBT Activist’s Killing”, September 18, 2019. Available at <https://www.rferl.org/a/after-the-slaying-of-a-russian-lgbt-activist-a-suspect-confesses----but-few-are-convicted/30171342.html>.

minors.”²⁰ Notably, Bulatov previously filed several complaints against Tsvetkova in 2019 in connection with her alleged “promot[ion of] a homosexual lifestyle among adolescents,” involvement with the aforementioned youth theater group, and activity on VKontakte.²¹

The criminal case was formally initiated by the Komsomolsk-on-Amur police department on October 24, 2019.²² Tsvetkova was subsequently detained on November 20, 2019 and put under house arrest two days later.²³ She was released from house arrest on March 16, 2020, subject to travel restrictions.²⁴ Since 2019, police investigators have filed several indictments against Tsvetkova, with the prosecution “return[ing] three of these indictments for further investigation.”²⁵ The most recent indictment was submitted by the investigative committee on January 24, 2021 and approved by the deputy prosecutor of Khabarovsk Krai on February 8, 2021.²⁶

At a preliminary hearing on March 31, 2021, the Central District Court of Komsomolsk-on-Amur decided to close the proceedings. The order closing the trial has not been made public, but, according to credible sources, the decision was based on the “pornographic” nature of the images and the presence of minor victims.²⁷ The trial opened on April 12, 2021. The first hearing in the trial addressed a motion to change the judge and the addition of two defense lawyers, while the second hearing, on May 6, commenced the prosecution’s presentation of witnesses.

On May 24, the court will address outstanding procedural requests, including a defense petition to open the proceedings to the public.

²⁰ Indictment, Investigation Department Khabarovsk Krai, January 24, 2021, pgs. 4-5.

²¹ *Id.* at pgs. 5-6.

²² *Id.* at pg. 6.

²³ Amnesty International, “Russian Federation: Activist Faces Jail for Female Body Drawings”, September 2, 2020. Available at <https://www.amnesty.org/download/Documents/EUR4629772020ENGLISH.pdf>.

²⁴ See Human Rights Watch, “Joint Letter to Russia’s Prosecutor General on Unfounded Charges Against Yulia Tsvetkova”, March 5, 2021. Available at <https://www.hrw.org/news/2021/03/04/joint-letter-russias-prosecutor-general-unfounded-charges-against-yulia-tsvetkova>.

²⁵ *Id.* See also Indictment, Investigation Department Khabarovsk Krai, January 24, 2021.

²⁶ Indictment, Investigation Department Khabarovsk Krai, January 24, 2021.

²⁷ See Amnesty International, “Russia: Feminist activist Yulia Tsvetkova’s absurd ‘pornography’ trial starts”, April 9, 2021. Available at <https://www.amnesty.org/en/latest/news/2021/04/russia-feminist-activist-yulia-tsvetkovas-absurd-pornography-trial-starts/>.

ANALYSIS



RIGHT TO A PUBLIC TRIAL

Overarching Standards

The right to a public trial is guaranteed by Articles 14 and 6 of the ICCPR and the ECHR, respectively. Article 14(1) of the ICCPR states, in pertinent part:

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Article 6(1) of the ECHR similarly entitles accused persons to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Public hearings help ensure the integrity of the judicial process, protecting against potential abuse of a defendant’s rights. In addition to safeguarding the rights of an accused, the right to public hearings reflects the public’s right to understand and monitor how justice is administered.

As stated by the European Court of Human Rights:

[T]he holding of court hearings in public . . . protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society.²⁸

The right to a public trial is a qualified right. The ICCPR provides for exceptions based on “reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.” Article 6(1) of the ECHR similarly provides that:

the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security

²⁸ European Court of Human Rights, *Werner v Austria*, App. No. 21835/93, November 24, 1997, para. 45. See also European Court of Human Rights, *Axen v. Germany*, App. No. 8273/78, December 8, 1983, para. 25; European Court of Human Rights, *Diennet v. France*, App. No. 18160/91, September 26, 1995, para. 33; European Court of Human Rights, *Hummatov v. Azerbaijan*, App. Nos. 9852/03 and 13413/04, November 29, 2007, para. 140.

in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

As stated by both the United Nations Human Rights Committee and European Court, “holding proceedings, whether wholly or partly, *in camera* must be strictly required by the circumstances of the case.”²⁹ Thus, “before excluding the public from criminal proceedings, the national court must make a specific finding that exclusion is necessary to protect a compelling governmental interest and must limit secrecy to the extent necessary to preserve that interest.”³⁰ In undertaking such a calculus, courts must balance the benefits of closing the proceedings with the potential damage to the rights of an accused.³¹

Correspondingly, as an alternative to closing the whole trial, courts must consider whether closing just part of the proceedings³² or other measures, such as “selective attendance,” would be sufficient.³³ For example, in *Yam v. the United Kingdom*, the European Court – finding no violation of Article 6(1) – deemed it significant that an *in camera* order had been “limited to the extent necessary to protect the interests at stake and applied only to a specific part of the applicant’s defence. The vast majority of the trial – and the whole of the prosecution’s positive case – was held in public.”³⁴

Public Morals

As noted above, courts are permitted to close all or parts of a trial to protect public morals where strictly necessary. Because cases on the closure of legal proceedings in connection with pornographic materials have infrequently come before the United Nations

²⁹ See European Court of Human Rights, *Welke and Bialek v. Poland*, App. No. 15924/05, March 1, 2011, para 74; European Court of Human Rights, *Martinie v. France*, App. No. 58675/00, April 12, 2006, para 40; European Court of Human Rights, *Yam v. the United Kingdom*, App. No. 31295/11, January 16, 2020, para 54. The Human Rights Committee has stated that the public may only be excluded from proceedings in “exceptional circumstances.” Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 29.

³⁰ European Court of Human Rights, *Yam v. the United Kingdom*, App. No. 31295/11, January 16, 2020, para 54; European Court of Human Rights, *Belashev v. Russia*, App. No. 28617/03, May 4, 2009, para 83.

³¹ European Court of Human Rights, *Belashev v. Russia*, App. No. 28617/03, May 4, 2009, paras. 83-84; European Court of Human Rights, *Yam v. the United Kingdom*, App. No. 31295/11, January 16, 2020, para. 57.

³² See European Court of Human Rights, *Belashev v. Russia*, App. No. 28617/03, May 4, 2009, para. 84; European Court of Human Rights, *Yam v. the United Kingdom*, App. No. 31295/11, January 16, 2020, para. 62.

³³ See European Court of Human Rights, *T. v. United Kingdom*, App. No. 24724/94, December 16, 1999, para. 85.

³⁴ European Court of Human Rights, *Yam v. the United Kingdom*, App. No. 31295/11, January 16, 2020, para. 62.

Human Rights Committee and European Court of Human Rights,³⁵ jurisprudence on other types of limitations placed on pornographic materials for the purposes of protecting public morals is instructive.

In a case where an artist held an exhibition that featured images depicting adolescents and young women in sexual positions or acts (with the goal of critiquing the accessibility of child pornography), the European Court found that the closure of the exhibition and criminal conviction of the artist did not violate her right to freedom of expression.³⁶ The Court noted that the artist's conviction was based on the need to "protect morals as well as the reputation or rights of others."³⁷ Decisive factors appeared to be the "violent and degrading" nature of the pictures and the fact that "the faces of many of the children or young women in the pictures were clearly recognisable and their reputation and right to private life had to be protected."³⁸

With respect to sexually explicit materials, the United Nations Human Rights Committee has likewise emphasized that restrictions are appropriate where images "portray[] women and girls as objects of violence or degrading or inhuman treatment."³⁹

Notably, in cases in which "policies and decisions ... embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority," including where authorities act to prevent a supposedly "distorted image of the social equivalence of traditional and non-traditional sexual relationships," the European Court has refused to uphold restrictions on Convention rights on the basis of public morals.⁴⁰

In the present case, it does not appear that the closing of the trial can be justified on the basis of public morals: in other words, on the basis of protecting the public from allegedly obscene evidence or witness testimony that would be presented at trial. First, nowhere in the indictment is it alleged that the images are violent. Second, the images do not feature minor individuals, let alone real individuals. Third, given that the images feature female genitalia, not mutual sexual acts, the women shown in the drawings are not the object of degrading treatment. Indeed, the images are part of a body-positivity campaign aimed at empowering women of all shapes and sizes.

³⁵ In *Muhammad Kaboudvand v. Islamic Republic of Iran*, the United Nations Working Group on Arbitrary Detention ruled that the exclusion of the public from the trial of Mr. Kaboudvand in connection with his reporting on prison conditions in Iran could not be justified on the basis of public morals. Working Group on Arbitrary Detention, *Muhammad Kaboudvand v. Islamic Republic of Iran*, U.N. Doc. A/HRC/WGAD/2012/48, August 27, 2013, paras. 6-7, 21.

³⁶ European Court of Human Rights, *Karttunen v. Finland*, App. No. 1685/10, Inadmissibility Decision, May 10, 2011.

³⁷ *Id.* at para. 22.

³⁸ *Id.* at paras. 3, 6. 23-24.

³⁹ United Nations Human Rights Committee, General Comment No. 28, U.N. Doc. CCPR/C/21/Rev.1/Add.10, March 29, 2000, para 22.

⁴⁰ European Court of Human Rights, *Bayev and Others v. Russia*, App. Nos. 67667/09, 44092/12, & 56717/12, November 13, 2017, paras. 67-71. See also Human Rights Committee, *Fedotova v. Russian Federation*, U.N. Doc. CCPR/C/106/D/1932/2010, November 30, 2012, paras. 10.4-10.8.

Further the language of the indictment raises concerns that the images in question have been deemed obscene – and hence damaging to public morals – due to the perception that they depict activity that is not heterosexual or, at the very least, non-traditional. The indictment, for example, refers to an expert’s opinion that the materials were pornographic because of their purported reduction of “the idea of human sexuality and the idea of female genitalia (‘vagina’) to being an exclusive source of bodily pleasure, while ignoring the topic of heterosexual relationships, pregnancy, childbirth, family relationships” and their promotion of “erroneous ideas about the sexual sphere of a person,” involving “a stereotype of female sexuality as an isolated phenomenon that exists outside of sexual relations with men.” As established by the European Court, restrictions on the basis of public morals that embody bias against members of the LGBTQ community or against non-traditional sexual relations cannot be justified.

Protection of Minors

As noted above, courts can exclude the public and/or press to protect the interests of minors where strictly necessary. The United Nations Human Rights Committee and European Court of Human Rights have declined to find violations of the right to a public trial in certain cases where proceedings were closed to protect minors who were defendants, victims, witnesses, or otherwise implicated. In *B. and P. v. United Kingdom*, for example, a court excluded the public from proceedings held to determine where minor children should live following a divorce. The European Court found that this decision did not violate the parent’s right to a public trial given that, among other things, the hearings involved discussion of the children’s private lives.⁴¹ In converse, in *T. v. United Kingdom*, the European Court found that in order to uphold the principle of a fair trial, the trial court should have closed the trial of an 11 year old for murder given the “feelings of intimidation and inhibition” engendered by public proceedings and the defendant’s “immaturity and ... disturbed emotional state.”⁴²

In the present case, the victims listed in the indictment who viewed the images as minors no longer appear to be minors, meaning that their involvement in the proceedings would not warrant the closure of trial on the basis of their underage status. Moreover, as noted above, the images at issue were not violent, did not feature minor or even real individuals, and did not depict women as objects of degrading treatment. Without specification as to the nature of potential harm, the basis for deeming public participation in the trial harmful to minor victims and/or witnesses is unclear.

⁴¹ European Court of Human Rights, *B. and P. v. United Kingdom*, App. Nos. 36337/97 and 35974/97, April 24, 2001, para. 38.

⁴² See European Court of Human Rights, *T. v. United Kingdom*, App. No. 24724/94, December 16, 1999, paras. 85-89.

Notably, the exclusion of the public on the basis of the protection of juvenile interests does not permit the closure of trials on the basis that minors writ large might attend or read about the proceedings.

Closing Only Part of the Trial

As discussed above, where courts must close proceedings to protect public interests, international and regional standards require that they do so only as strictly necessary, meaning that where possible only portions of the trial – not the entire trial— should be closed. This is consistent with the need to balance public interests with an accused’s right to a public trial and protection against potential abuse.

In the present case, even if the court decided that there was a need to shield the public from allegedly obscene materials or to protect the interests of juveniles, it would not be necessary to close the entire trial, but only certain hearings. Consequently, the sweeping closure of the trial violates Tsvetkova’s right to publicity and transparency, particularly given that she is facing six years in prison.

CONCLUSION



In accordance with the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, the trial of Yulia Tsvetkova should not be closed to the public or, at the very least, should only be closed in part. It is incumbent upon the court to comply with Russia's treaty obligations and protect Tsvetkova's right to a fair trial.