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ARTICLES

Wasn't caught but will be judged: anti-war activists put on trial in absentia

Russian citizens who fled the country and openly oppose the war in Ukraine are now tried in absentia for «spreading fakes about the armed forces» (207.3 of the Criminal Code). Sentences have been passed for instagrammer Veronika Belotserkovskaya, former police officer Oleg Kashintsev, and former TV broadcaster Alexander Nevzorov. We are offering an insight into what a trial with no defendant looks like.

Текст на русском

DEPRIVED OF RANKS

«I told the truth, I am happy to repeat it. The Russian Federation is waging a criminal war, trying to seize Ukraine's territory. I do not consider this trial and verdict legal. The trial was held in an expedited manner; I was convicted quite quickly. Probably to deprive me of the rank of a major as soon as possible. They are aggravated by what I write, they hate that I dare express my thoughts as a retired police major», says Oleg Kashintsev.

On January 27, Kashintsev was **found guilty** of spreading «fake news» about the Russian military; his actions were recognised as 'motivated by hatred' (paragraph «e» of Part 2 of Article 207.3 of the Criminal Code) because of two posts on Telegram and Instagram. One publication contained a video of the interrogation of a Russian pilot shot down in Ukraine. The second was a collage: a photo of Vladimir Putin, Adolf Hitler and a red equals sign, as well as a caption criticising the war in Ukraine. The trial was held in three sessions, the former policeman was sentenced to eight years in prison.

Oleg Kashintsev worked for 18 years as a police officer in Rybinsk, a small town to the north-east of Moscow. He then participated in rallies in support of Alexei Navalny, **was detained** for picketing in Red Square, and fled to Belgium. In May 2022, he was **put on the wanted list** for the «fake news» case.

«Originally, I had a public defender. I found out that a criminal proceeding was initiated against me pretty much by accident. The public defender, I guess, had to notify me as a formality. They sent a notice as a paper letter through the Russian Post to my home address [in Rybinsk]. The proceeding was initiated in March [2022], and the defender only sent the letter in May. My relatives took a picture of the letter for me», says Kashintsev.

After that, the case was taken on by Ilnur Sharapov, a lawyer from «Online Freedoms Project» («Setevye Svobody»,

an NGO providing legal support to those persecuted for statements made online). According to Sharapov, this was the first trial in absentia in his many years of practice, but he did not notice much of a difference: «The usual trial, nothing special — only there is no defendant. Naturally, we provided the data that informed Kashintsev's posts. Publications in the media and UN materials that confirm that Russia is waging a war and there are casualties among civilians. According to the prosecution, this is all false information. The court predictably sided with the prosecutor's office».

Only a few of the several thousand politically motivated criminal cases opened during Vladimir Putin's presidency have resulted in sentences in absentia. These included **Dmitri Buchenkov**, a defendant in the Bolotnaya Square case who escaped Russia in the middle of his trial, businessman **Leonid Nevzlin** (business partner of Mikhail Khodorkovsky founder of reform-minded Open Russia and one of the many Russian prisoners of conscience according to Amnesty International), and financier **Bill Browder** (business partner of Sergei Magnitsky, a tax advisor that uncovered cases of corruption and misconduct by Russian government officials. Magnitsky died in the Matrosskaya Tishina detention centre 11 months after his arrest, his death triggering the development of the Magnitsky Act and the first list of Russian officials put under sanctions).

According to the available **court statistics**, 289 cases were heard in absentia out of almost **770,000** in 2021. There are 187 crimes under the new Article 207.3 of the Criminal Code in 2022, and 78 of them have been sent to court, according to the **statements** of Prosecutor General Igor Krasnov. Four trials are in progress or have already been held in absentia. The authorities attempted to send another case to trial, but the prosecutor's office returned it for additional investigation. All of these cases involve prosecution for anti-war statements made in the spring of 2022.

Krasnov says that out of all the fake news cases, 23 were filed against people whom investigators knew to be abroad. It is likely that we can expect trials in absentia in those fake news cases that have not yet been brought to court.

CUTTING TIES WITH RUSSIA

Alexander Nevzorov was a well-known television presenter in the late 1980s and 1990s. His '600 Seconds' was one of the most popular programmes during the Perestroika. Nevzorov was repeatedly elected to the State Duma, the lower house of the Russian Parliament.

He emigrated after the Russian invasion of Ukraine and was granted Ukrainian citizenship in the summer of 2022. He is a harsh and sarcastic critic of the Kremlin with a social media audience of many millions. A case was brought against him over remarks about the events in Bucha and the strike on a maternity hospital in Mariupol.

«No one [among Russian operatives or investigators] talked to me, I was not asked a single question, there was not a single attempt to get in touch with me. Given my publicity, they would have had no problem getting my email addresses, they had plenty of opportunities to contact me», Nevzorov says.

Nevzorov's trial was also done in only a few sessions. He was sentenced to eight years in prison, just like the Rybinsk policeman Kashintsev.

In early December, Interpol refused to comply with the request to extradite Nevzorov and another journalist, Andrei Soldatov, as well as Oleg Kashintsev and blogger Veronika Belotserkovskaya, to Russia. All of them are in Europe, and all but Soldatov have been tried in absentia, without the accused being present. Soldatov's case was returned to the police by the prosecutor's office. «Interpol motivated the refusal

by the fact that there is no article similar to 207.3 of the Criminal Code in the criminal legislation of the countries where the wanted persons are located.

«I am in contact with Interpol, there was a time when they taught me how to live: where I can go, where I cannot, where the laws function, where Russia's agent networks are terribly strong», Nevzorov notes.

Nadezhda Fedoseyeva, a public lawyer Nevzorov had no interaction with, appeared in court. She **objected** to the hearing in absentia: it was not clear from the case file whether Nevzorov had been properly notified of the trial. The judge did not accept Fedoseyeva's objection and conducted the trial.

«If the case is open, it probably means you cannot drag it out forever. There is a propaganda effect, too. Mocking me can be easily done in my absence. It's another excuse to cast doubt on my personal qualities», says Nevzorov.

Blogger Veronika Belotserkovskaya, another person convicted in absentia, got her property worth 153 million rubles (US\$ 2 million) **arrested**. Nevzorov is not afraid of property confiscations:

«They have already arrested something: to be honest, it doesn't bother me much. If they're going to take something away, that's fine, that's great! Makes it easier to cut my ties with this country called Russia. And they have to be cut, I don't want to have anything to do with it. The sentence I will be given is problematic for me only in one way: as long as it is valid, I won't be able to get rid of the Russian citizenship».

Belotserkovskaya was tried for her **Instagram posts** from March 2022 about the Russian army's destruction of Ukrainian cities and murder of civilians. She too was **sentenced** to 9 years in prison.

FREEDOM OF SPEECH

The cases of Kashintsev, Belotserkovskaya, and Nevzorov were transferred to the Basmanny District Court of Moscow, conveniently situated just around the corner from the Investigative Committee of Russia. The Committee often works with the Court.

Prokhor Potasov, composer, is currently living in Canada. He composed the anthem of Kirov, his home city in western Russia, where he is now on trial in the Pervomaisky District Court. «I imagine it is due to my sharing of the posts from BBC, Meduza, Radio Liberty... I think they are well-respected media, and I trust them. But even if all of it were fake, the freedom of speech has to be there», he tells us.

Protasov does not know why the police didn't stop at putting him on the international wanted list, as often happens, and why the case went to trial.

Protasov is saying he was never notified: he just randomly found out that his VKontakte (popular Russian social media platform) page had been blocked in Russia by the request of the Prosecutor's Office, but could still be opened with, a VPN. He checked law enforcement websites and found himself on the wanted list on the Russian Home Office website.

An «Online Freedoms» lawyer took the case — he refused to comment on the process at this stage. Protasov is following the trial via local media publications: «My mother was summoned to one of the court hearings. Some other witnesses get summoned, and they all say roughly the same thing. They saw some of my posts, it caused them emotional distress».



SAFE SPACES

The mechanism of trials in absentia also operates in other post-Soviet countries. In Belarus, for example, the practice was **introduced** after the protests of 2020 and mass immigration of the opponents of Alexander Lukashenko, the Belarussian dictator.

«In Belarus, trials in absentia are held primarily for the purpose of confiscation of property. This seems to be the main reason. Belarus has also adopted amendments allowing to deprive someone of citizenship if they are found guilty under articles related to extremism», says Ales Mikhalevich, a former Belarussian presidential candidate, now a lawyer in the Czech Republic specialising in extradition issues.

Mikhalevich says that, in regard to extradition to Russia, it doesn't matter whether the internationally wanted person is in the status of a suspect or convicted in absentia. The

procedure is the same, and either the country trusts the guarantees of the Russian Federation, or not.

Now, according to Mikhalevich, almost all members of the European Union refuse to extradite people at the request of the Kremlin. France is considering the possibility of extraditing people accused of murder, slave trade or drug transportation. For those accused of economic crimes, the entire European Union has suspended extradition. Germany does not even consider this in court — the Russian Federation receives refusals at the level of a prosecutor's office. The US, Canada, New Zealand and Australia also do not extradite Russians to Russia, but may try to get rid of a person requested by Russia if they are in the country on a visa.

«In Asia and Latin America, you need to consider each specific country's relations with Russia. That's why the United Arab Emirates and Brazil are unsafe. Turkey is a complicated case. I would not advise being caught in the extradition process there: even if it goes on for a very long time and a refusal is granted, being in a Turkish prisons is far from pleasant», Mikhalevich says.

According to him, Latin American countries like Colombia or Mexico are unlikely to be able to organise an extradition process: the state institutions are too weak. However, an internationally wanted Russian might not be allowed to enter those countries. In Asia, Singapore is a relatively safe country for Russians. They do not extradite to Russia, but the border guards will have questions for the person Russia is looking for.

TO BE TRIED AGAIN

According to Russian law, trial in absentia is allowed in exceptional cases.

«Courts rarely justify the exceptional status of a case. All they do is write in judicial acts: „the case is exceptional, therefore we consider it possible to consider it in absentia“. This, of course, is a violation of Article 6 of the Criminal Code, according to which all judicial acts must be motivated. Ideally, the court should have an actual argument to support their decision: for example, this is a complex multi-episode case, the conviction of the accused in absentia may prevent the continuation of their criminal activities abroad (if we were talking about drug trafficking crimes or terrorism, for example). But these days it’s hard to imagine», explains Valeria Vetoshkina, a lawyer with OVD-Info.

She believes that trials in absentia are beneficial to the state primarily because this procedure makes it easy to seize the convicted person’s property.

«The law says that if the accused returns to the territory of the Russian Federation, the verdict or court ruling issued in absentia, at the request of the convicted person or their defender, may be cancelled in cassation. In order to cancel the verdict in absentia in cassation, the defender or the convicted person himself must file a petition. If there is no such petition, then, when the convicted person crosses the border, they are automatically sent to serve the sentence», says Vetoshkina.

More to read



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Repressions Report. May 2024

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