

ПРАВООЗАЩИТНЫЙ ЦЕНТР "МЕМОРИАЛ"

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Politically-motivated criminal prosecutions and political prisoners in the Russian Federation. September 2015.

Despite the fact that there were individual cases of politically-motivated illegal prosecutions in the 1990s too, they acquired a systematic nature from the first presidential term of Vladimir Putin in the early 2000s.

During the period from 2003 to 2015 the number of people subjected to political repressions and political prisoners increased slowly but inexorably. As of mid-September 2015 there are 45 people on the list of political prisoners compiled by the Memorial Human Rights Centre. They are: Afanasyev, G.S., Bagavutdinkova, Z.Z., Bazarbayev, M.T., Barabanov, A.N., Berezyuk, I.A., Bobyshev, S.V., Bondareva, N.V., Valiyev, R.R., Vitishko, Y.G., Galiullin, R.F., Garifyanov, A.R., Gaskarov, A.V., Dadin, I.I., Idelbayev, R.V., Izokaitis, A.A., Ishevsky, D.V., Kashapov, R.R., Kolchenko, A.A., Kostenko, A.F., Krivov, S.V., Kudayev, R.V., Kulagin, Y.V., Kutayev, R.M., Lepeshkina, A.V., Lutskevich, D.V., Margolin, A.E., Matveyev, I.V., Navalny, O.A., Nasyrov, V.G., Nepomnyashchikh, I.A., Osipova, T.V., Pivovarov, A.S., Pichugin, A.V., Podrezov, V.A., Polikhovich, A.A., Razovozzhayev, L.M., Reznik, S.E., Savchenko, N.V., Satayev, R.R., Sentsov, O.G., Sutuga, A.V., Tikhonov, L.I., Udaltsov, S.S., Khamadayev, A.A., Kharebava, Y.Z., Shaykhutdinov, F.A.

In total in the past year the number of political prisoners came to no fewer than 73 people. This number is a minimum estimate, based on analysis of accessible materials of criminal cases, as in many cases the materials are secret or not accessible for analysis. In this connection we should assume that the total number of political prisoners in Russia is 100-150 people, not counting those who are being subjected to illegal or politically-motivated criminal prosecutions, but who used violence or called for violence on ethnic, religious or other grounds, and so were not included in the number of political prisoners. The number of people being subjected to political repressions without being imprisoned is another several dozen.

By political repressions and political prisoners we mean repressions and imprisonment in the sense of PACE Resolution No. 1900 (2012). These are, firstly, those cases that can be described by using the term “prisoner of conscience”, when the criminal prosecution or imprisonment was employed exclusively due to political, religious or other convictions, and also in connection with the non-violent implementation of freedom of thought, conscience or religion, freedom to express opinions and information, freedom of peaceful assembly and association, or other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms. And, secondly, they are cases of prosecutions for political reasons by the authorities, implemented with a violation of the right to a fair legal investigation, or other rights and freedoms guaranteed by the International Covenant on Civil and Political Rights or the European Convention for the Protection of Human Rights and Fundamental Freedoms, or with a clear violation of the law, selectively, insufficient public danger in the actions or on the basis of falsification of proof of guilt.

We can try to systemise the cases of political repressions in Russia, and, above all, politically-motivated imprisonments, by different motivations.

Structuring the political repressions by their target, we can identify several groups.

The first group, whose prosecutions symbolise a transition to the use of instruments of criminal law for political ends, includes the owners and employees of the YUKOS company, and also people connected to them. In the large YUKOS case no fewer than 15 people have been subjected to imprisonment. At present out of all those convicted, Alexei Pichugin has already been in prison for over 12 years, sentenced to life imprisonment on a charge of murder.

Another such group, which became one of the first targets of politically-motivated prosecutions during and in the first years after the war in Chechnya, is Chechens, frequently found criminally responsible on false charges of terrorism. At present this trend has stopped.

Another big group, subjected to illegal criminal prosecutions in the 2000s and early 2010s, mainly involving imprisonment, was an active opposition organisation with leftist-imperial leanings – the subsequently banned National Bolshevik Party of Eduard Limonov, which regularly practiced peaceful acts of direct action. Dozens of its members were victims of unfounded and illegal prosecutions. After 2012 this party switched to a position of support for the regime and the repressions against it virtually ended, although a few people, including Taisiya Osipova, sentenced to eight years in prison on a fabricated charge of distributing drugs, remain behind bars.

Political repressions against other groups, into which the people subjected to these repressions can be divided, continue currently.

In particular these are cases on charges of treason, directed mainly, but not exclusively, against scientists. Moreover, while previously these cases were mainly brought almost exclusively due to the corporate interests of the counter-intelligence bodies, wanting to demonstrate their efficiency by fabricating criminal cases in connection with the legal scientific exchange of information, at present the political trends of isolationism and the government's policy of creating a propaganda image of Russia as a fortress besieged by enemies are producing a political order from the highest level of government to fabricate such cases.

The number of cases of espionage and treason in the past 18 months has been growing inexorably, and their secrecy makes it more difficult to analyse them. Striking examples of such cases were the case of Svetlana Davydova, the mother of seven under-age children, who was taken into custody on a charge of treason for informing the Ukrainian embassy that the military base located below her windows was empty, and that on public transport its officers had been talking about being sent to Ukraine, and who was released thanks to a very strong public campaign, or that of Yekaterina Kharebava, who was sentenced in 2014 to six years in prison for a text message about the public deployment of Russian troops in the direction of the border, supposedly sent to a Georgian she knew in 2008, during the Russia-Georgia war.

As before, there are also cases of criminal prosecutions of journalists in connection with their professional activities. In conditions of serious control of the media by the government, criminal prosecutions are mainly in cases, when they happen, associated with the interests of regional authorities. At present the most typical representative of this group is the Rostov journalist Sergei Reznik, sentenced to two years, 11 months in prison for a combination of charges, from insulting representatives of the authorities in his texts to commercial fraud and giving false evidence.

Muslims who do not belong to the state-approved structures of the Spiritual Board of Muslims are a constantly growing group of people subjected to illegal prosecution. The most flagrant example is Rasul Kudayev, sentenced to life imprisonment on a false charge of participating in the terrorist attack in Nalchik in 2005, despite his alibi and the physical impossibility of his participation in the incriminating actions due to his health. Members of Hizb ut-Tahrir al-Islami are particularly actively subjected to persecution, repressed just for the fact of their membership of this organisation, without sufficient grounds and recognised as terrorist in violation of the recognised procedure for this in Russia. More and more often fabricated charges of preparing to seize power or of terrorist activity are added to this charge. Little public attention is paid to these prosecutions, which involve many dozens of Muslims.

An important group of political prisoners and those subjected to illegal political

prosecutions is people prosecuted in connection with their real or supposed public activity. A striking example is the virtually randomly selected participants of the demonstration of May 6, 2012, sentenced for using their right to free peaceful assembly on false charges of participating in mass riots and of violence against police, nine of whom, and also two people declared to be the organisers of riots, still remain behind bars.

Environmental activist Yevgeny Vitishko remains behind bars. Kaliningrad activists Mikhail Feldman, Dmitri Fonarev and Oleg Savvin were sentenced to one year and one month in prison on a charge of hooliganism, already served by them during their pre-trial detention, after raising the German flag on the building of a department of the FSB. Oleg Navalny remains behind bars, basically a hostage for his brother Alexei Navalny, sentenced to three-and-a-half years on a falsified charge of fraud, and Andrei Pivovarov, the head of the headquarters of the opposition party Parnas in the elections in Kostroma Oblast, is in custody on a false charge of illegal access to computer data and bribery, and trade union activist Leonid Tikhonov is serving a sentence on a false charge of fraud, as is accountant from the same trade union Natalya Bondareva, and Vladimir Podrezov has been sentenced to two years and three months in prison on a charge of vandalism for helping a Ukrainian get to the roof of a building to paint the star on its spire the colour of the Ukrainian flag.

Criminal prosecutions on false charges of extremism for publications (often just reposts) in social media are becoming more and more widespread. Most of these prosecutions do not involve imprisonment, but the number of political prisoners in connection with such charges is growing: activists Darya Polyudova and Sergei Titarenko have spent 6 months each placed in pre-trial detention and activist Rafis Kashapov from the Tatar movement has been sentenced to three years in prison.

A new group of cases since Russia's occupation of Crimea and the start of aggression against Ukraine in Donbass are cases against Ukrainian citizens. The famous cases of the political prisoners Nadiya Savchenko and Oleg Sentsov, and also Alexander Kolchenko and Gennady Afanasyev, convicted in the same case, and the less well-known case of Crimean activist Alexander Kostenko, and there are repressions against Crimean Tatar activists. Other Ukrainian citizens are also in custody in Russia, the details and grounds for whose criminal prosecution are unknown, but who are almost certainly political prisoners.

Despite the fact that all the cases of criminal political repressions examined by us are united by the presence of a political motive for the prosecution on the part of the government, these motives vary: sometimes the aim of the repressions is to stop the legal activity of a citizen; often the aim is to put pressure on any kind of public activity not controlled by the government; or the aim is the corporate interest of the law-enforcement bodies, wishing to demonstrate the efficiency of their work; more and more often the main motive of the criminal prosecution is the government's desire to confirm the theses of official propaganda with sentences, or to frighten a broad sector of the public with targeted repressions.

The prosecutions of people included on the Memorial Human Rights Centre's list of political prisoners over the past year have been conducted under 33 articles of the Russian Criminal Code, and the maximum number of cases of use were under article 212 (mass riots) and article 318 (violence against a representative of the authorities) of the Russian Criminal Code – 14 cases; article 213 (hooliganism) – 13 cases, and article 278 of the Russian Criminal Code (actions aimed at a violent seizure of power or a violent change in the constitutional order) – nine cases; article 282.2 of the Russian Criminal Code (organising the activity of an extremist organisation) – eight cases; article 205.1 of the Russian Criminal Code (participating in terrorist activity) – six cases; article 214 (vandalism) and article 222 (illegal acquisition, transfer, sale, possession, transporting or carrying of a weapon, its parts and ammunition) of the Russian Criminal Code – five cases; article 105 (murder) and article 205 (terrorist act) of the Russian Criminal Code – four cases; article 282 (inciting hatred or enmity) and article 159 (fraud) – three cases. The remaining 21 articles were used as an instrument of political prosecution once or twice each. Moreover, the large number of uses of articles 212 and 318 was almost exclusively

associated with the Bolotnaya case on the events of May 6, 2012 in Moscow.

These tallies show that although in article 213 of the Russian Criminal Code (hooliganism), due to the vagueness of its formulation there is still a convenient instrument for the fabrication of criminal cases for political reasons, article 282.2 of the Russian Criminal Code (organising the activity of an extremist organisation) is a means of formal distribution of collective guilt in an extremely broad definition of extremist activity onto those citizens whose individual guilt is difficult to prove, and the crimes envisaged under articles 278 of the Russian Criminal Code (actions aimed at a violent seizure of power or a violent change in the constitutional order) and 205.1 of the Russian Criminal Code (participation in terrorist activity) are negatively perceived by society and are usually proven on the basis of interpreting the evidence of witnesses and analysing texts, and as an instrument of political repressions can be used for charging in the case of virtually any crime.

The key factor that influences the possibility to carry out politically-motivated criminal prosecutions, thus, is not so much repressive criminal legislation, but the political dependency of the courts and the investigators, and also the absence of real procedural guarantees in the criminal process. These factors became possible thanks to the monopolisation and absence of changeability of the government, which have turned democratic elections into an imitation. As the result the person exposed to politically motivated criminal prosecution (though and not only they) are deprived the right to fair trial.

Nevertheless, it is impossible not to attach significance to the obvious problems with the criminal legislation. New articles of the Russian Criminal Code are anti-constitutional and illegal in nature: 212.1 – multiple violations of the established order of organising or holding gatherings, meetings, demonstrations, marches or pickets, envisaging repeat punishment for the same action, and without observance of the established guarantees of rights of the accused, under which at present four people have been charged, one of whom, Ildar Dadin, is under house arrest; 280.1 – public calls for the implementation of actions aimed at violating the territorial integrity of the Russian Federation, in practice establishing punishment even for discussing non-violent actions of this type, under which at present three people have been charged, one of whom, Darya Polyudova, spent six months in pre-trial detention, and another, Rafis Kashapov, has been sentenced to three years in prison; 284.1 – the implementation of activity on the territory of the Russian Federation by a foreign or international non-governmental organisation in relation to which a decision has been made to recognise its activity as undesirable on the territory of the Russian Federation; 330.1 – persistently avoiding fulfilling the duties defined in the legislation of the Russian Federation on non-commercial organisations as fulfilling the functions of a foreign agent.

An age-old problem is the extremely broad description and interpretation of the concept of “extremism”, and some other aspects of the “political” articles of the Russian Criminal Code that are associated with it: part 1, article 213 (hooliganism for reasons of political, ideological, racial, ethnic or religious hatred or enmity or for hatred or enmity in relation to a social group), article 214 (vandalism), article 205.2 (public calls to carry out terrorist activity or public justification of terrorism), article 275 (state treason), article 280 (public calls to carry out extremist activity), article 282 (inciting hatred or enmity, and insulting human dignity), article 282.1 (organising an extremist group), article 282.2 (organising the activity of an extremist organisation), article 282.3 (financing extremist activity), and also articles envisaging punishment for fraud.

Gross violation of the rights of the persons accused under extremist and terrorist articles is their inclusion in Rosfinmonitoring list and blocking on this basis of their accounts and property. In fact even before sentence, after sentence even not connected with imprisonment and after completion of term of punishment these persons inflicted to serious extrajudicial punishment: deprivation of a possibility of legal job, to receive and to carry out payments.

In connection with the above we recommend to the OSCE, its member states and

international and non-governmental organisations:

- Special attention to cases of politically-motivated criminal prosecutions in Russia, especially in cases of political prisoners a demand to release imprisoned people who have been prosecuted on obviously falsified charges and/or exclusively due to their political, religious or other convictions, and also in connection with the non-violent implementation of freedom of thought, conscience and religion, freedom to express opinions and information, freedom of peaceful gatherings and association, and other rights and freedoms guaranteed by Russia's international obligations.
- Demand the abolition of article 212.1 of the Russian Criminal Code;
- Demand the abolition of article 284.1 and all amendments in the legislation establishing the status of an "undesirable organisation";
- Demand the abolition of article 330.1 and all amendments in the legislation establishing the status of organisations fulfilling the functions of a foreign agent;
- Demand an amendment to article 282.1 of the Russian Criminal Code, excluding penalties for calls for non-violent actions;
- Demand the specification and narrowing of the legislative definition and practical use of the legislation defining extremist activity, and also part 1, article 213, article 214, article 205.2, article 280, article 275, article 282, article 282.1, article 282.2 and article 282.3 of the Russian Criminal Code;
- Demand the abolition of the procedure of extrajudicial inclusion to the list of persons, whose accounts and property are a subject to blocking;
- Monitor violations and demand the observation of the obligations established as Russia's international obligations in the sphere of fair trial and of democratic procedures guaranteeing political competition and the changeability of government as a result of elections;
- Create a list of investigators, prosecutors, judges and other persons personally responsible for the human rights violations in connection with political repressions in Russia (similar with the Magnitskiy list), subject to sanctions outside of Russia.

Materials giving more details about the situation with political repressions and political prisoners in Russia, including in English, can be found on the Memorial Human Rights Centre website <http://www.memo.ru/s/283.html>, and requests to receive news on this topic in Russian or English may be sent to press@memohrc.org.

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