

DARYA KOSTROMINA

Programme for the Support of Political Prisoners
Memorial Human Rights Centre

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CRIMINAL PROSECUTIONS FOR TERRORISM IN RUSSIA
AND ABUSES BY THE STATE

A SERIES OF SURVEYS

#1 How the system was created

For many years we have been analysing criminal prosecutions in which there is a clear political component. These include a large number of prosecutions for terrorism. Among these are cases concerning a range of different kinds of people: Muslims, anarchists, supporters of Ukraine and Russian nationalists, as well as migrant workers who happened to attract the attention of law enforcement. Some prosecutions have been based on completely fabricated charges, in some cases the charges have been fabricated in part. Sometimes insignificant damage to property has been designated as terrorism. Sometimes the terrorist label has been applied to a current of religious or political thought. Sometimes prosecutions have been brought for calls to revolution. At times individuals have been held to account for the actions of others; at times FSB investigators have invented a non-existent group and arbitrarily nominated an individual as its leader.

These cases have one thing in common: they all go under the forbidding label of terrorism. A label that makes the prosecution more severe and repels the public.

For several years now we have known that what is taking place cannot be classified as 'local excesses,' nor the fantasies of individual investigators. These are large-scale political repressions that constitute a system created under the cover of a fight against terrorism. Individual instances have become dozens of cases, and these in turn have turned into hundreds. The whole system is reminiscent of a plane that slowly moves along the runway, gathers speed, accelerates and then takes off.

Gloomy predictions have begun to become true. The machine of repression, having set up a conveyor belt to produce unjustified jailings of Islamic fundamentalists for terrorism (along with some justified jailings), moved on to the issue of 'revolutionary conspiracies' of anarchists, nationalists and other activists of the political opposition. The cases of Artpodgotovka and Network have become signs of the new period we are living in. Unfortunately, future predictions are yet more gloomy.

With this current survey, we begin publication of a series of reviews of the application of anti-terrorism law for the purposes of political repression. Our task is to show the most common methods of fabrication of such cases, the main trends and the dynamics of prosecutions.

To begin with, two clarifications are in order.

First of all, in this survey we do not use the term 'political prisoner.' Among the suspects and defendants in the cases mentioned in our survey there are those Memorial has recognised as political prisoners, those who might in future be recognised as such, those who have been refused such recognition, and those whose cases have yet to be considered by Memorial. In the framework of our current task, this matter is of no significance. The focus here is not on specific individuals but on the actions of the state.

Secondly, sometimes we shall mention prosecutions under anti-extremism laws (in the context of the confusion of terrorism with extremism, for example). We do not consider here the issue of the permissibility of prosecution for extremism. In other words, such a phrase as, 'formerly, for such an action charges were brought under anti-extremism law, and now under anti-terrorism law,' should not be taken to mean that 'to bring charges under anti-extremism law is good.' The correct conclusion is that 'political repression is becoming increasingly severe.'

The Evolution of Anti-Terrorist Prosecutions in Russia

Our first survey deals with the changes to criminal legislation made in recent years and the scale of prosecutions under anti-terrorism articles of the Russian Criminal Code.

Statutory basis

Combating terrorism in Russia is based on Federal Law No. 35, 'On Combating Terrorism,' and the following articles of the Russian Criminal Code.

- 205 – Act of terrorism (explosion, arson or other actions creating fear among the public, threatening the lives of people or causing significant damage to property);
- 205.1 – Aiding and abetting terrorist activity (recruitment, collusion, organisation, financing, and so forth);
- 205.2 – Public incitement of terrorist activity or public justification of terrorism or propaganda of terrorism;
- 205.3 – Undergoing training for the purposes of carrying out terrorist activity;
- 205.4 – Organisation of a terrorist group or participation in it;
- 205.5 – Organisation of the activity of a terrorist organisation or participation in the activity of such an organisation;
- 205.6 – Failure to report an offence;
- 361 – An act of international terrorism.

A number of the above articles of the Russian Criminal Code are formulated in such a manner that a number of other offences provided for by the following articles can be considered terrorism:

206 – Seizure of a hostage; 208 – Organisation of an illegal armed group or participation in it; 211 – Highjacking of an airplane or water-going vessel or railway rolling stock; 220 – Illegal handling of nuclear materials or radioactive substances; 221 – Theft or extortion of nuclear materials or radioactive substances; 277 – Attempt on the life of a government official or public figure; 278 – Violent seizure of power or holding power by violence; 279 – Armed insurrection; 360 – Attacks on persons or institutions that enjoy international protection.

From this it follows, in particular, that:

- ✓ inducement, recruitment or involvement of persons in any of these offences is deemed equivalent to terrorist activity (Article 205.1, Sections 1 and 1.1, of the Russian Criminal Code);
- ✓ financing these offences is financing terrorism (Commentary No. 1 to Article 205.1 of the Russian Criminal Code);
- ✓ incitement to commit offences provided for by these articles can be punished as incitement to terrorism (Commentary No. 2 to Article 205.2 of the Russian Criminal Code);
- ✓ a group, created to commit at least one of such offences, is considered to be terrorist (Article 205.4, Section 1, of the Russian Criminal Code) and so on.

The development of criminal law

The intricate complex of articles of the Russian Criminal Code that deal with combating terrorism has been developed over more than 15 years (see Table 1, Figure 1). Initially the Russian Criminal Code contained only Article 201, 'Terrorism,' which entered into force in 1996. This Article provided for sentences from five to 10 years in a prison colony for committing an act of terrorism, and in the presence of various aggravating circumstances a maximum sentence could rise to 15 or 20 years.

Table 1. Review of main changes in anti-terrorism criminal law

2002

Federal Law No. 103

- Introduction of Article 205.1 – Involvement in the commission of offences of a terrorist nature or other form or aiding or abetting their commission (up to eight years in a prison colony under Section 1, and up to 15 years under Section 2, if the offence was committed using an official position).
- Offences of a terrorist nature are acts provided for by Articles 205, 206, 208, 211, 277 and 360.

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2006

Federal Law No. 153

- Introduction of Article 205.2: Public incitement to commit an act of terrorism or public justification of terrorism (up to four years in a prison colony under Section 1, or up to five years under Section 2, if the offence was committed with the use of the mass media).
 - Article 205 was renamed 'Act of Terrorism,' and under Section 1 the minimum penalty was raised from five years in a prison colony to eight years, while the maximum penalty was raised from 10 to 12 years.
 - Article 205.1 was renamed 'Aiding and abetting terrorist activity,' and the list of offences, the aiding and abetting of which was classified under the given Article of the Russian Criminal Code, was broadened by Articles 278 (Violent seizure of power) and 279 (Armed insurrection).
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2008

Federal Law No. 321

- The maximum sentence under Article 205, Section 2 (Act of terrorism with aggravating circumstances) was increased from 15 to 20 years.
 - Introduction of life sentences for offences under Article 205, Section 3 (Act of terrorism involving an attack on nuclear energy facilities or with intent to kill a person).
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2010

Federal Law No. 352

- Introduction of Article 205.1, Section 3: Collusion in the commission of an act of terrorism (punishable by up to 20 years in a prison colony). Liability included assistance by advice or information and hiding the criminal or evidence of the crime.
 - Minimum and maximum sentences were raised as follows:
Article 205, Section 1: the minimum sentence remained unchanged; the maximum sentence increased from 12 to 15 years.
Article 205.1, Section 1: the minimum sentence was raised from four to five years; the maximum was increased from eight to 10 years.
Article 205.1, Section 2: the minimum sentence was raised from seven to eight years; the maximum remained at 15 years.
Article 205.2, Section 1: a new minimum sentence was set at two years; the maximum sentence increased from four to five years.
Article 205.2, Section 2: the maximum sentence was increased from five to seven years.
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2013

Federal Law No. 302

The following new articles were introduced into the Russian Criminal Code:

- Article 205.3: Undergoing training for the purposes of carrying out terrorist activity (with a maximum penalty of 10 years in a prison colony). Liability included training for commission of crimes provided under Articles 205.1, 206, 208, 211, 277, 278, 279 and 360.
 - Article 205.4: Organisation of a terrorist group or participation in it (punishable by up to 20 years in a prison colony under Section 1 for organisers, and up to 10 years under Section 1 for participants). A terrorist group is considered to be a group of people who come together either for terrorist activity or for the commission of offences under Articles 205.1, 205.2, 206, 208, 211, 220, 221, 277, 278, 279 and 360.
 - Article 205.5: Organisation of the activity of a terrorist organisation or participation in the activity of such an organisation (punishable by up to 20 years in a prison colony under Section 1 for organisers, and up to 10 years in a prison colony under Section 2 for participants).
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2014

Federal Law No. 130

- Introduction of Article 205.1, Section 4: Organisation of the commission of at least one of the offences provided for under Articles 205, 205.3, 206 [Sections 3 and 4] or 211 [Section 4] of the Russian Criminal Code) or leadership of its commission, or the organisation of financing of terrorism, with a maximum sentence of 20 years in a prison colony, with the possibility of a life sentence.
 - The maximum sentence under Article 205.3 was raised from 10 to 20 years in a prison colony, with the possibility of a life sentence.
 - Introduction of life sentences under Article 205.4, Section 1, and Article 205.5, Section 1 (in other words, for the organisers of terrorist groups and cells of terrorist organisations).
 - The minimum sentence under Article 205.1, Section 3, was raised from eight to 10 years in a prison colony.
 - In addition to Article 205.1, regarding offences for which aiding and abetting was equated to aiding and abetting terrorism and whose financing was equated to the financing of terrorism, Articles 220 (Illegal handling of nuclear materials or radioactive substances) and 221 (Theft or extortion regarding nuclear materials or radioactive substances) were introduced.
 - Sentences below the minimum were banned for terrorist offences and for offences under Article 206, Sections 3 and 4), Article 211 (Section 4), Article 277, Article 278, Article 279 and Article 360.
 - It became possible to give sentences of up to 30 years in a prison colony for the aggregate of offences, if at least one of them were a terrorist offence (normally with a maximum sentence of 25 years) and up to 35 years for the aggregate of sentences (normally with a maximum sentence of 30 years).
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2016

Federal Law No. 375

- Introduction of Article 205.6: Failure to report an offence. This provided for criminal liability for failure to report to law enforcement agencies the preparation or commission of acts of terrorism, participation in illegal armed groups, violent seizure of power and other crimes, with a maximum penalty of one year in a prison colony.
 - Introduction of Article 361: An act of international terrorism. Section 1 provided for liability for acts of terrorism in other countries directed against Russian citizens 'for the purposes of destroying the peaceful coexistence of states and peoples' or against 'the interests of the Russian Federation.' The offence carries a maximum sentence of 20 years in a prison colony or life imprisonment. Section 1 concerned the financing of acts of international terrorism (up to 10 years in a prison colony).
 - Minimum and maximum sentences were raised as follows:
Article 205, Section 1: the minimum sentence was increased from eight to 10 years; the maximum sentence remained at 15 years.
Article 205, Section 2: the minimum sentence increased from 10 to 12 years; the maximum sentence increased from 15 to 20 years.
Article 205.5, Section 2: the minimum sentence increased from five to 10 years; the maximum sentence increased from 10 to 20 years.
 - Use of the Internet for the purposes of incitement of terrorism or the justification of terrorism was equated to the use of the mass media, in which case charges should be brought under the more severe Article 2015.2, Section 2.
 - In line with a Commentary added to Article 205.2: incitement to terrorism was thenceforth to be considered incitement to participate in an illegal armed group, violent seizure of power and other crimes included in the broad interpretation of terrorism in the Russian Criminal Code.
 - The age for criminal liability for terrorist offences was reduced from 16 to 14 years.
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2017

Federal Law No. 445

- Article 205.1, Section 1, was divided into two parts:
Part 1 provided for criminal liability for involvement in relatively minor offences, as provided for by Article 205.2, Sections 1 and 2, Article 206, Article 208, Sections 1-3, and Articles 211, 220, 221, 277, 278, 279 and 360, and set a maximum penalty of 15 years in a prison colony;
Part 1.1 provided for criminal liability for more serious offences, namely under Articles 205, 205.3, 205.4, 205.5, Article 206, Sections 3 and 4, and Article 211, Section 4, and set a maximum penalty of 20 years or life in a prison colony.
- The maximum penalty under Article 205.1, Section 2, was raised (inducement to engage in terrorism using an official position) from 15 to 20 years in a prison colony, and the imposition of life imprisonment was permitted.
- Article 361, Section 2, was amended to include, in addition to the financing of acts of international terrorism, the inducement, recruitment, arming and preparation of a person to commit such acts. The maximum penalty was increased to 20 years, and the imposition of life imprisonment was permitted.

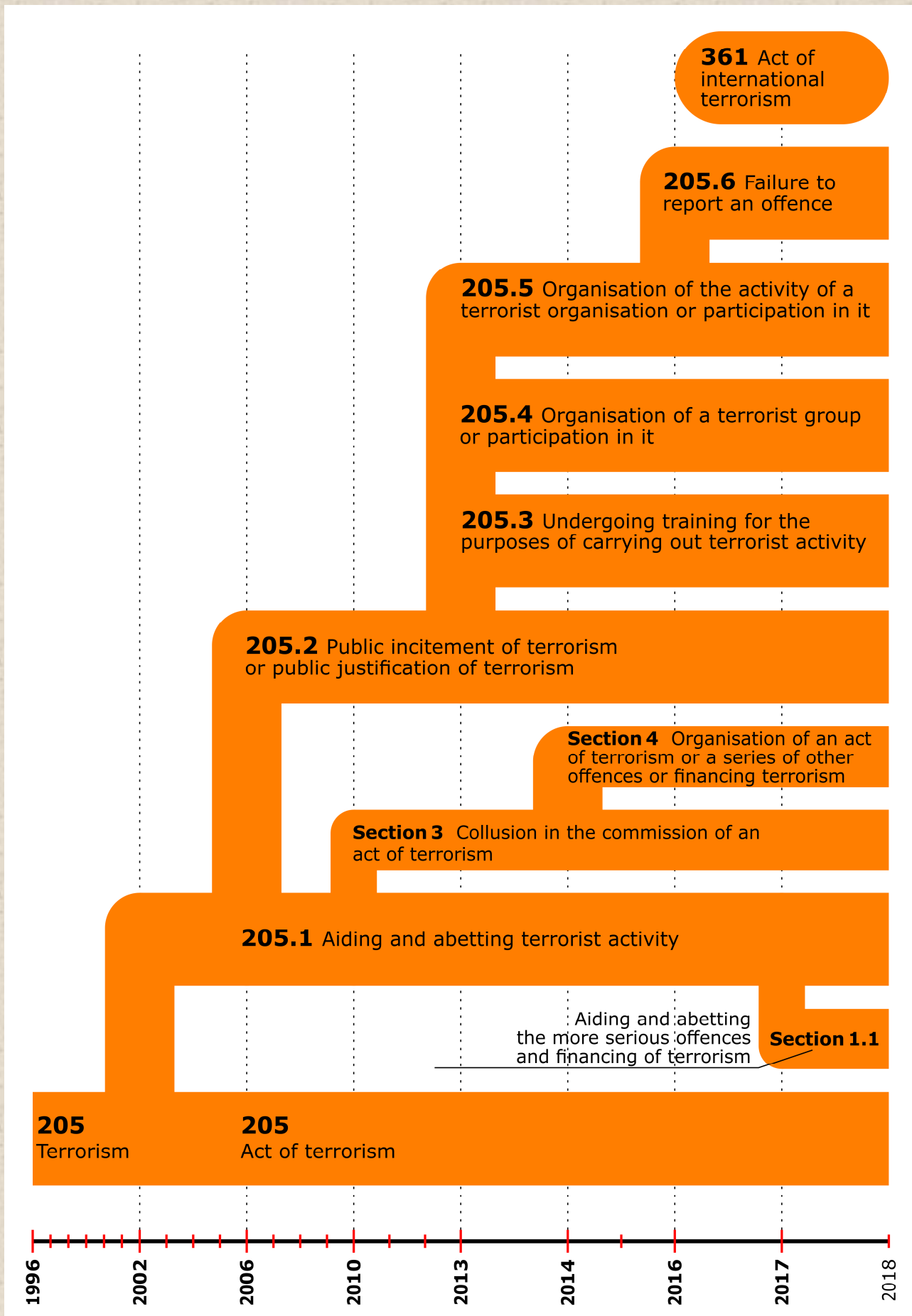


Figure 1. The development of 'anti-terrorism' articles in the Criminal Code

Summary:

- ✓ Over the last 16 years the number of articles of the Criminal Code specifically describing terrorist offences has increased from one to eight. The number of actions classified as criminal continuously increased, for example those so classified included undergoing training, financing, providing advice, and failing to report an offence.
- ✓ Penalties have been continuously toughened, and a peculiar kind of 'inflation' has been observed. Today, seven out of eight anti-terrorism articles of the Russian Criminal Code provide for the imposition of life sentences.
- ✓ New legislation has consistently equated revolutionary insurrections that are purely hypothetical with the conduct of military action as a member of illegal organisations and terrorism.

The trajectory of prosecutions over the past five years

The number of convictions, in which the main charge in the verdict is based on the group of Articles 205 – 205.6 of the Russian Criminal Code, began to grow unevenly from 2014 (see Table 2). In the years 2009-13 the annual number of such convictions varied approximately between 20 and 40.

If we consider the data for the first six months of 2018, there has been a decrease in the rate of increase: the general number of convictions for the year will, most likely, not be significantly above the figures for 2017.

During the period under discussion there was not a single acquittal in a prosecution under the terrorism articles of the Russian Criminal Code where these charges were the most serious in the case. This stands out even against the background of the extremely low percentage of acquittals in Russian courts on the whole. In 2013 the percentage of acquittals in all Russian courts was 0.62%. This figure subsequently fell and in the first half of 2018 was 0.22%. Nonetheless, there have been rare cases of acquittals under terrorism articles of the Russian Criminal Code where these they have not been the main charges in the case.

Table 2. The number of persons convicted under terrorism articles of the Russian Criminal Code (in terms of the most serious charge in the verdict)¹

	2013	2014	2015	2016	2017	First six months of 2018
205 Act of terrorism	16	27	17	26	28	17
205.1 Aiding and abetting terrorist activity	11	17	15	22	52	30
205.2 Public incitement to carry out terrorist activity or public justification of terrorism or propaganda of terrorism	2	10	26	47	76	39
205.3 Undergoing training for the purposes of carrying out terrorist activity	—	0	0	7	9	1
205.4 Organisation of a terrorist group or participation in it	—	0	2	2	1	0
205.5 Organisation of the activity of a terrorist organisation or participation in the activity of such an organisation	—	3	9	63	96	37
205.6 Failure to report an offence	—	—	—	—	14	20
Total number of those convicted under 'terrorism' articles of the Russian Criminal Code:	29	57	69	167	276	144

The most serious charge may not be the only one. An individual may be convicted at the same time of a number of terrorism offences. For example, a person found guilty of the organisation of a terrorist group could also be convicted of aiding and abetting terrorist activity, committing one or a number of terrorist acts and so on. In Table 2, in such a case, only the conviction for the organisation of a terrorist group will be reflected. Information about all the components of the offences provided for by Articles 205 – 205.6 of the Russian Criminal Code on the basis of which convictions were handed down are presented in Table 3.

On average, in cases where the most serious charge in the verdict is a terrorism offence, there are approximately one and a half times more offences in each case than there are convicted persons. Moreover, the rate of increase in the number of offences approximately coincides with the rates of increase shown in Table 2.

¹ Source: Judicial Department of the Supreme Court of the Russian Federation: <http://cdep.ru/index.php?id=79>.

Table 3. General number of offences, on the basis of which convictions were handed down²

	2013	2014	2015	2016	2017	First six months of 2018
205 Act of terrorism	34	44	23	104	34	22
205.1 Aiding and abetting terrorist activity	19	19	31	35	87	42
205.2 Public incitement to carry out terrorist activity or public justification of terrorism or propaganda of terrorism	3	13	35	66	111	60
205.3 Undergoing training for the purposes of carrying out terrorist activity	—	0	0	7	9	2
205.4 Organisation of a terrorist group or participation in it	—	0	6	11	13	2
205.5 Organisation of the activity of a terrorist organisation or participation in the activity of such an organisation	—	3	10	69	115	45
205.6 Failure to report an offence	—	—	—	—	19	23
Total number of offences under 'terrorism' articles of the Russian Criminal Code:	56	79	105	292	388	196

* There have to date been no convictions under Article 361 (Act of International Terrorism).

We assume that the dynamic of convictions under terrorism articles of the Russian Criminal Code is related to a number of factors.

1. Article 205.5 of the Russian Criminal Code, that made its appearance at the end of 2013 and provided for liability for participation in the activity of a terrorist organisation, was immediately actively used by investigators. Since 2016, convictions under this Article have become very numerous. In 2017 the number of convictions for all offences provided for by Article 205.5 exceeded one hundred.
2. According to our information, more than half of those convicted under Article 205.5 were prosecuted on charges of involvement in the banned organisation Hizb ut-Tahrir al Islami. It is precisely this group that is at the current time the main focus for 'anti-terrorism' prosecutions. Previously, large numbers of people associated with this organisation had been prosecuted under Article 282.2 (Participation in the activity of a banned organisation).

² Source: Judicial Department of the Supreme Court of the Russian Federation: <http://cdep.ru/index.php?id=79>.

3. Since 2014, Article 205.2 has been frequently used and the number of people convicted under this Article has grown. Approximately 27-28% of all convictions for 'terrorism' in recent years have been handed down under Article 205.2. In practice, this means they have been convicted merely for expressing their opinions.
4. Since about 2014 the FSB has conducted a campaign to combat the international terrorist organisation Islamic State. In the course of this campaign, Russian citizens have been considered insurgents of this organisation and as such to have received its support and financing. Combating Islamic State is necessary. However, at the same time such a campaign opens up a wide field for abuses. The official wish to publicise the Russian military campaign in Syria has given rise to a need for demonstrative trials and the 'improvement' of statistics regarding the prosecution of supporters of Islamic State. As a rule, the articles of the Russian Criminal Code that have been used are 205.5 (sometimes in combination with Article 30, if what is at issue is an incomplete attempt to commit an offence), 205.1 and 205.2.

Court jurisdiction of terrorist offences

Since 2015, prosecutions under Articles 205, 205.1-205.5 and 206 of the Russian Criminal Code have been solely under the jurisdiction of the Moscow and North Caucasus district military courts, while appeals in such cases have been heard exclusively by the college for military service personnel of the Supreme Court of the Russian Federation. Cases have been heard by three sitting judges. Before 2015, the transfer of a trial involving terrorism charges to a district military court had been possible, at the request of the Prosecutor General or his deputy, if there was a danger for participants in the trial or their relatives.

In July 2016 an amendment entered into force that added the Volga District Military Court to the list of courts hearing terrorism cases. In 2017 the Far East District Military Court also began to hear such cases.

Such a change in court jurisdiction has not affected the procedures for hearing criminal cases. However, a standardization in terms of the trials can be observed. Dozens of terrorism cases have been heard by only four courts, and only five judges have heard all appeals concerning convictions for terrorism in Russia.