Political Repression and Political Prisoners in Russia 2018–2019

Memorial Human Rights Centre
Programme for the Support of Political Prisoners. 2020

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1. Introduction. Politically motivated prosecutions and political prisoners: methods, criteria and statistics

1.1. The term "political prisoner" as used by Memorial Human Rights Centre.

Memorial Human Rights Centre has maintained a list of Russian political prisoners since 2010. The nature of Russian law enforcement and judicial systems makes it probable that in Russia the number of convicted people who are innocent, or whose guilt has not been proved in accordance with procedures established by law, amounts at least to tens of thousands. Assessments of this kind are made both by human rights experts and by those who have fallen victim to the system and have been forced to study it through their own experience. Nevertheless, among these wrongly convicted persons it seems necessary and important to distinguish "political prisoners" (i.e. in any definition of the term people deprived of their liberty not for the sake of the protection of legitimate public interests, but in order to protect the narrow interests of those in power through the wilful and purposeful actions of the latter). Targeted unlawful deprivation of liberty, whether as punishment for the exercise by its victims of their basic rights, or whether on the basis of their belonging to a group, membership of which should not be grounds for prosecution, or for the realisation of some other of the authorities' goals, represents a special danger even in comparison with the deprivation of liberty of those persons who happen to be accidental victims of the law enforcement and judicial systems. The compilation of lists of such political prisoners is aimed, on the one hand, at recording the most serious targeted human rights violations by the Russian state, assessing the prevalence of such violations and their dynamics, and, on the other, at supporting the victims of these violations and ensuring public solidarity with them.

When using the term "political prisoner" to refer to a set of persons who have been deliberately and unjustifiably deprived of their liberty, it must be borne in mind that the meaning of the term has undergone significant changes over the decades, and even today various definitions of the term, both those that are more or less made explicit and those that are intuitive, often come into conflict with each other. An

objective approach to the use of this term is obviously necessary in order to enable an informative and meaningful analysis of the situation with regard to political prisoners and an evaluation of its dynamics.

The basis for an objective approach of this kind is provided by PACE Resolution №1900 (2012). *Memorial Human Rights Centre* at present uses the term "political prisoner" on the basis of the International Guidelines Defining the Term "Political Prisoner" that develops and adapts for practical application the approach set out in the *PACE Resolution*.

We consider deprivation of liberty to be detention of an individual in any place that they may not leave

> *as consequence of any form of compulsion, exercised by public officials, or with the knowledge and connivance of a public official or state body, or by way of a decision of a court or an administrative or other body or public official.*

In other words, this notion includes pre-trial custody and house arrest, as well as deprivation of liberty as a punishment and the use of measures of a medical nature at an in-patient facility.

In accordance with these guidelines, the term "political prisoner" includes, on the one hand, those deprived of their liberty solely because of their political, religious or other convictions, on the basis of their non-violent exercise of rights and freedoms guaranteed by the *International Covenant on Civil and Political Rights* or the *European Convention on Human Rights and Fundamental Freedoms*; solely because of non-violent actions in defence of human rights and fundamental freedoms; solely on the basis of gender, race, skin colour, language, nationality, ethnicity, social origin or ancestry, birth, citizenship, sexual orientation and gender identity, material position or other features or on the basis of strong links with communities united by such features. In practice, this group of political prisoners are those that come under the designation "prisoner of conscience" as defined by *Amnesty International*.

On the other hand, the use by *Memorial Human Rights Centre* of the term "political prisoner" also includes those who, where political motives are present, have been deprived of their liberty in violation of their right to fair trial and other rights and freedoms guaranteed by the above-mentioned international treaties, or on the grounds of charges based on falsified evidence where no such event or crime took place; or those persons whose terms in detention or the conditions in which they are held are clearly disproportionate to the offence with which they have been charged, and also those deprived of liberty selectively in comparison with other persons.

We consider political motives to be motives for action or inaction by those with public authority that are intended to strengthen or maintain their hold on power or to enforce the cessation or change in character of the public activities of persons against their will.

Not included in the list of political prisoners, according to the *Guidelines*, are those who have committed an offence of violence against the person, except in cases of necessary defence or an emergency; or committed a hate crime against person or property or called for violence on national, ethnic, racial, religious or other grounds; or finally, those whose violent acts are intended to abolish or limit rights and freedoms guaranteed under the *International Covenant on Civil and Political Rights* or the *European Convention on Human Rights and Fundamental Freedoms*.

At present *Memorial Human Rights Centre* maintains two lists of political prisoners: those who have been deprived of liberty for exercising their rights to freedom of conscience or their religious identity ("religious list"), and a list of all other political prisoners ("general list"). This division has been made solely for the purpose of understanding and analysis of the category of political prisoners. Those whose names figure in both lists equally meet the criteria for recognition as a political prisoner, and the total number of political prisoners in Russia in the opinion of *Memorial Human Rights Centre* is the sum of the numbers of individuals contained in both these lists.

The application of the totality of criteria described above presupposes the necessity for an argued reasoning in their application to a specific case of deprivation of liberty. Of course, in a number of instances related to the prosecution of the first group of political prisoners who could be called "prisoners of conscience," the charge itself (for example, under **Article 284.1 of the Russian Criminal Code**, penalising "undesirable organisations" for carrying out their activities or **Article 280.1 of the Russian Criminal Code**, penalising incitement to violate the territorial integrity of the Russian Federation) could have such an obvious unlawful nature that the deprivation of liberty on such grounds would practically unambiguously demand that the person be considered a political prisoner. In the majority of cases of deprivation of liberty that give grounds to consider the prosecuted individual a political prisoner, it is still necessary to study the essence of the case and the evidence for the charges that have been laid. Moreover, in nearly most cases there are a number of grounds to recognise an individual as a political prisoner. And it must be said that the criteria of the *Guidelines*, on which *Memorial Human Rights Centre* bases its decisions, presuppose in any case a need to check each instance of deprivation of liberty of the potential political prisoner for the exceptions related to violence or incitement of violence.

On the basis of the approach set out above, the lists of political prisoners drawn up by *Memorial Human Rights Centre* are clearly not exhaustive and are more properly to be considered a reliable assessment of the minimal number of political prisoners in Russia.

In fact, before the conclusion of the preliminary investigation, neither the accused themselves nor their legal representatives, still less human rights defenders, have the opportunity to discover the position and arguments of the prosecution. This often makes it impossible, before the case has been transferred to the court, to fully evaluate the grounds for the charges and the presence or absence of falsifications and other significant violations of the law, and therefore the relationship between the concrete circumstances of the criminal prosecution and the criteria of recognition as a political prisoner. Typical examples of such a situation are the case of Pskov opposition activists ***Liya and Artyom Milushkin***, charged with selling drugs, and the case of the Saratov opposition activist ***Sergei Ryzhov***, awaiting trial on charges of preparing an act of terrorism. In a number of cases, in particular in cases concerning state secrets or other information classified by law (to which, for example, cases involving alleged espionage or treason usually belong), no one has the possibility to learn the charges brought by the prosecution and the evidence of guilt of the suspects even after conviction. A characteristic example of such a case is that of the Ukrainian journalist ***Roman Sushchenko***, convicted on charges of espionage and handed over to Ukraine in an exchange on the basis of "35 for 35" and consequently pardoned in September 2019. Moreover, with each year an ever greater number of criminal cases are considered by courts in the Russian Federation using a special procedure, a form of plea bargain, which means there is no examination of the evidence. In 2018 almost 88% of judgments were handed down on this basis. It would seem that in many instances there is agreement to consider a case on the basis of a special procedure (guaranteeing punishment that does not exceed two-thirds of the maximum sentence) not so much because the evidence gathered by the prosecution is convincing but because the suspect rationally takes the view that a decision to convict has already been taken and it is pointless to try to maintain one's innocence in court. The grounds for such a view are strengthened by the statistics of acquittals by Russian courts. The share of acquittals is continuously falling and in 2018 was 0,235% of all cases considered in the courts. After cases of private prosecutions and those involving jury trials are subtracted, the percentage was approximately a very meagre 0,01%. For all the likelihood that in many instances of deprivation of liberty where there is evidence of a political motivation, suspects have been forced to admit guilt, the impossibility of examining the evidence of the prosecution (especially in cases where the suspect is represented by a government-appointed lawyer), makes it impossible to come to a well-founded conclusion as to whether a person is a political prisoner. As examples of such cases it is possible to cite those of convicted

residents of Ukraine: Ukrainian citizen ***Oleksiy Syzonovych***, convicted of preparing a terrorist act (also handed over to Ukraine as part of the "35 for 35" exchange in September 2019), and Russian citizen ***Viktor Shur***, convicted of treason.

In addition, there are a number of instances of deprivation of liberty that have features of a politically motivated prosecution as well as serious violations of the rights of defendants or convicted persons, and selective or inappropriate punishment, in which the person deprived of liberty was prosecuted for their acts of violence or incitement to violence, which excludes the possibility of considering political prisoners under the criteria adopted by *Memorial Human Rights Centre*. Such a view, however, entails neither approval of the deprivation of liberty of the given individuals nor still less recognition of their prosecution as justified and lawful. Vivid examples of these kinds of cases are those of the journalist and blogger ***Boris Stomakhin*** and the former soldier ***Askhabali Alibekov*** who were released in September 2019 after having served the terms to which they were sentenced.

Finally, collection and analysis of the materials of the criminal case is a procedure that demands a significant amount of time and work, and consequently often specific cases of political prisoners are added to our lists only after a certain delay.

Everything stated above gives grounds to assert that the real number of persons who meet the criteria for recognition as a political prisoner, and all the more those subjected to politically motivated unlawful and/or unjust deprivation of liberty, significantly exceeds the number of names contained in the lists of *Memorial Human Rights Centre*. It is difficult to reliably assess the full scale of politically motivated deprivation of liberty. However, it can certainly be said that the number of such cases is at least twice and possibly three times greater than the minimum reliable assessment, as set out in the lists of political prisoners of *Memorial Human Rights Centre* at any one specific moment.

To at least partially compensate for this lack of completeness, *Memorial Human Rights Centre* maintains an additional list of persons prosecuted and deprived of liberty in which indications of political motivation and serious violations of the law are most likely present.

This list includes the names of prisoners who have not yet been recognised as political prisoners, but in whose criminal prosecution the above-mentioned indications were particularly evident, and also of those persons who correspond to all the criteria for recognition as a political prisoner except for the absence of violent actions or incitement to violence.

This "additional" list does not pretend to comprehensiveness with regard to all relevant cases of deprivation of liberty, even to the extent to which our primary lists of political prisoners strive to be comprehensive.

1.2. Statistics of the Memorial Human Rights Centre

For all the lack of comprehensiveness and conditionality of the lists of political prisoners drawn up by *Memorial Human Rights Centre*, they succeed in showing a dynamic in the number of political prisoners that gives a sense of the tendencies of political repression. Unfortunately, at least since 2015, the number of political prisoners in the Russian Federation has continued to rise (see Figure 1 and Table 1).

Evolution of the number of political prisoners in Russia in 2015-2019

Figure 1

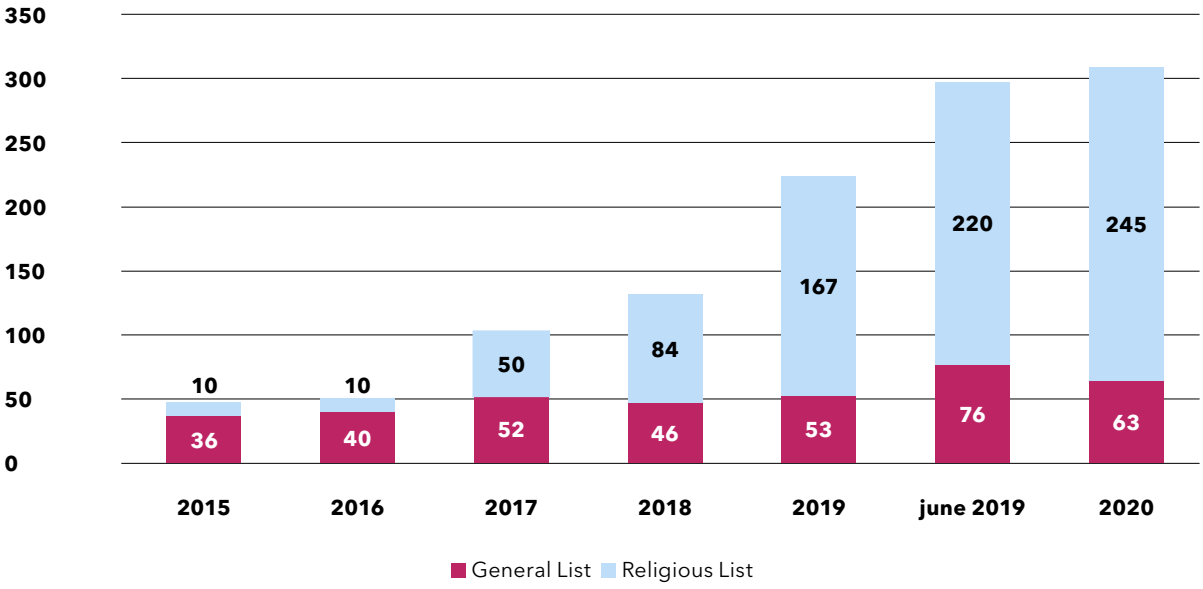


Table 1
(the data shown are for the beginning of each respective year)

	2015	2016	2017	2018	2019	june 2019	2020
General List	36	40	52	46	53	76	63
Religious List	10	10	50	84	167	220	245
Total	46	50	102	130	220	296	308

At the end of 2014 the number of political prisoners fell significantly thanks to an amnesty and pardons issued on the eve of the Sochi Olympics. However, subsequently we see a continuous increase in the numbers of political prisoners, and the steepness in the rise excludes the possibility it could be a result of the methodology used by *Memorial Human Rights Centre* in drawing up the lists. Since the beginning of 2015 the total number of political prisoners has risen by a factor of more than six.

As can be seen from Table 1, the main addition to the rise in the total number of political prisoners over these years has been the increase in the number of those deprived of liberty for the exercise of freedom of conscience and religion, while the number of other political prisoners over the whole period 2015-2018 remained approximately the same and rose significantly only in 2019 as a result of the inclusion in the number of political prisoners of 24 Ukrainian sailors as prisoners of war (which was again reduced after their release and the release of several other Ukrainian political prisoners in September of that year). There was a particularly significant rise in the number of political prisoners in the years 2018-2019. In 2018 the number rose from 130 to 220 (by 90 individuals or 69%); in the first five months of 2019 by a further 76 (an increase of 35%), and by the end of 2019 by a further 12, despite the release of a large number of political prisoners as a result of the prisoner exchange with Ukraine under the "35 for 35" formula in September.

Moreover, the assessment of the number of political prisoners over the course of a year solely by counting the number of names included in the lists at a specific time is not a very accurate reflection of reality. Such an assessment fails to take into account the renewal of the contents of the list. During the year, some individuals are released, while others are deprived of liberty (and are recognised as political prisoners). Thus, in the course of 2018, 26 persons were released whose names were in the "general" list of political prisoners at the start of the year, or were included in the list in the course of the year (five persons were given non-custodial sentences by the courts, one was released on parole, the charges against one other were dropped during the investigation, one fled the country while under house arrest, and 15 persons were released after serving their sentences). In addition, four persons on the "religious" list were released. Both lists for this period increased considerably. In total, 250 people were victims of politically motivated deprivation of liberty in 2018, while the

"rotation" in the "general" list was significantly greater since the average term for deprivation of liberty to which individuals were sentenced was significantly lower than the analogous term for prisoners in the "religious" list.

In addition to the increase in the number of political prisoners, it is worth pointing out the increase in the number of those persons deprived of liberty who were victims of criminal prosecutions that involved probable indications of political motivation and serious violations of the law. At the beginning of October 2019 there were 110 such individuals, a large number of whom will very likely be added to the lists of political prisoners after completion of the analysis of the circumstances of their prosecution.

1.3. Victims of politically motivated prosecution

Just from the above, it is plain that individuals from a very wide range of groups fall victim to political repression and suffer deprivation of liberty. Such groups can be defined in various ways, and many of those prosecuted can be immediately classified as members of several groups. However, analysis of the structure of prosecutions from the point of view of their targets is without doubt useful, in particular as a way to understand the motives of the authorities. Such an analysis allows a better understanding of the content and variety of these motives, characterised in general as a "political motive for prosecution."

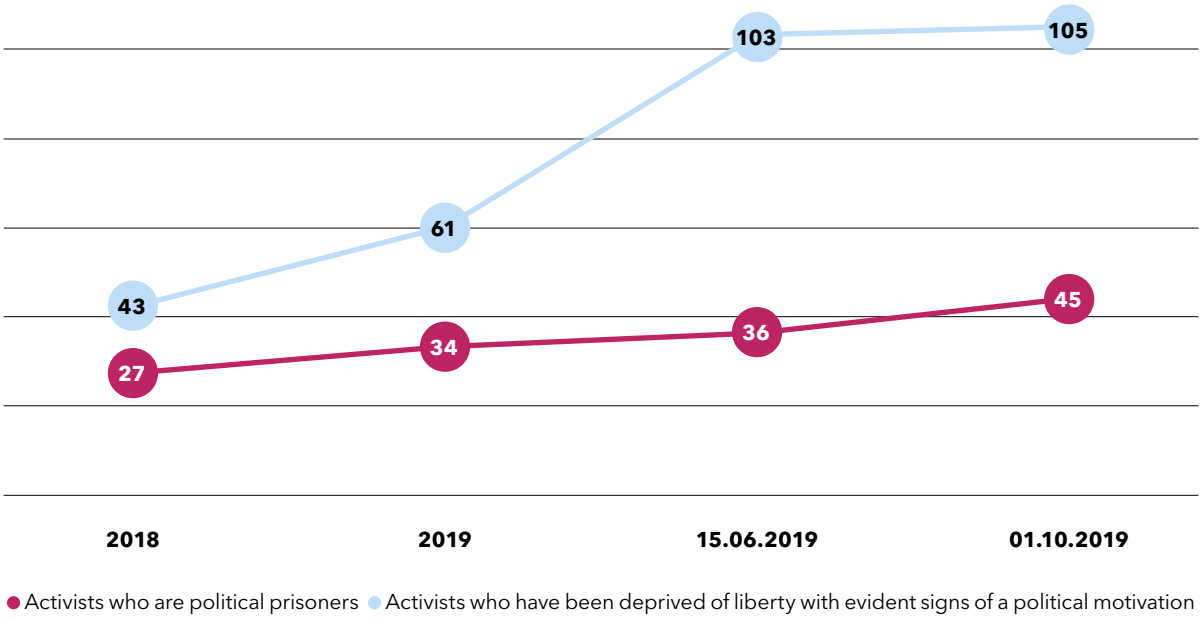
It is quite natural to assume that the most common variant of political motivation for prosecution should be the public activity of the victim, the motive of enforcing cessation of that kind of lawful activity.

In point of fact, in broad terms such public activity includes multifarious kinds of political opposition, human rights and civil society activities, socially important journalism and publications on the Internet, and participation in protests. We see that the reaction of the authorities to such a wide range of activities is one of the most common reasons for politically motivated deprivation of liberty.

The quantitative data is shown in Figure 2.

Activists deprived of liberty

Figure 2



The number of persons assigned to this group in the lists of political prisoners of *Memorial Human Rights Centre* (without taking into account those whose prosecution was related to the exercise of freedom of conscience) ranged in this period from 27 to 45 individuals. If, in addition to political prisoners, we consider as well those activists in the widest sense of the word whose prosecution bears clear indications of political motivation and violation of the law, but who were not included in the lists of political prisoners for various reasons, then in the course of the last 18 months we see an evident increase in the number of persons deprived of liberty for reason of their public activity, from 43 to 105.

Journalists, in the broad sense, can also be considered as belonging to the class of activists prosecuted for their public activism and the exercise of their civil rights. At the beginning of 2018, *Memorial Human Rights Centre*'s lists contained three journalists; by October 2019 only one was left, Dagestani journalist ***Abdulmumin Gadzhiev*** (taking into account "probable" victims and victims of religious persecution, these figures change to five and three respectively). The same group can also be considered to include human rights defenders, of whom there were two individuals in the lists of political prisoners at the beginning and at the end of the period covered. The deprivation of liberty of ***Oyub Titiev***, head of the *Memorial*'s Grozny office, began in January 2018 and ended in June 2019, and therefore falls wholly within the period under review.

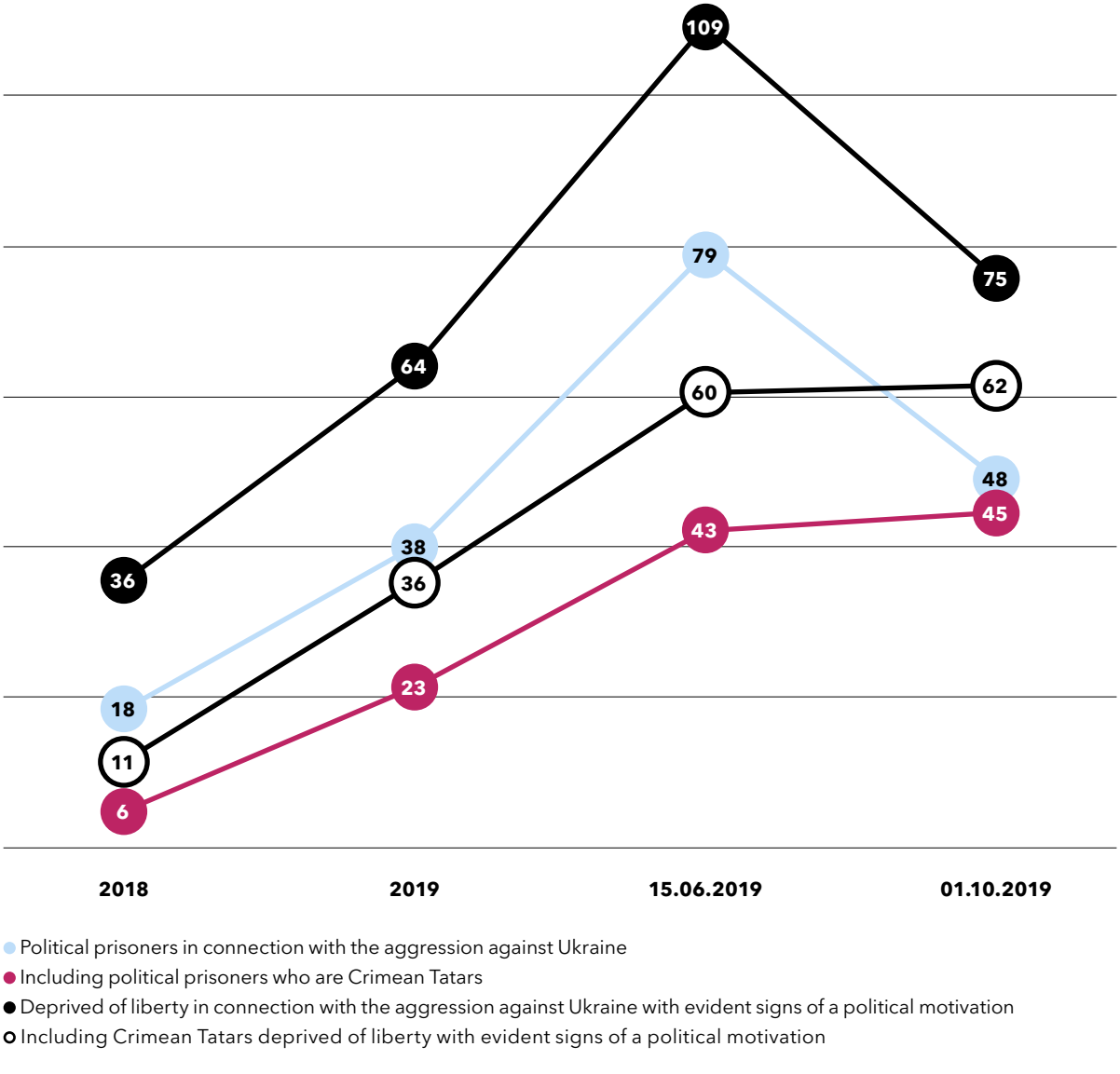
What distinguishes all members of this group is that persecution and deprivation of liberty have been reactions to their lawful actions, to their exercise of their rights and freedoms of expression and opinion, assembly and association. Repression against

members of this group is to a large extent selective, often targeting individuals who have carried out actions for which many others are not prosecuted. This suggests that in addition to the motive of enforcing cessation of the activities of the those prosecuted, in almost all cases there is also a motive of preventing behaviour considered undesirable by the authorities. By means of exemplary repressive measures the authorities signal to society, marking out a "danger zone" for public civic activity and the exercise of civil rights.

Another large group of prisoners, primarily Ukrainian citizens, are those prosecuted in connection with the aggression of the Russian authorities against Ukraine. Quantitative characteristics of the prosecutions of this group are shown in Figure 3.

Individuals deprived of liberty in connection with the conflict with Ukraine

Figure 3



The number of persons prosecuted in connection with the conflict with Ukraine and included in the list of political prisoners increased from the beginning of 2018 to June 2019 from 18 to 79 people. Including the numbers of those deprived of liberty where there are clear indications of political motivation in connection with this conflict, the numbers increased from 36 to 109. Of these, Crimean Tatars included in the lists of political prisoners increased from six to 43 (from 11 to 60 people, if all those deprived of liberty with clear indications of political motivation are included). By 1 October 2019, the number of prisoners belonging to this group had decreased because of the release of 35 people during the exchange that September.

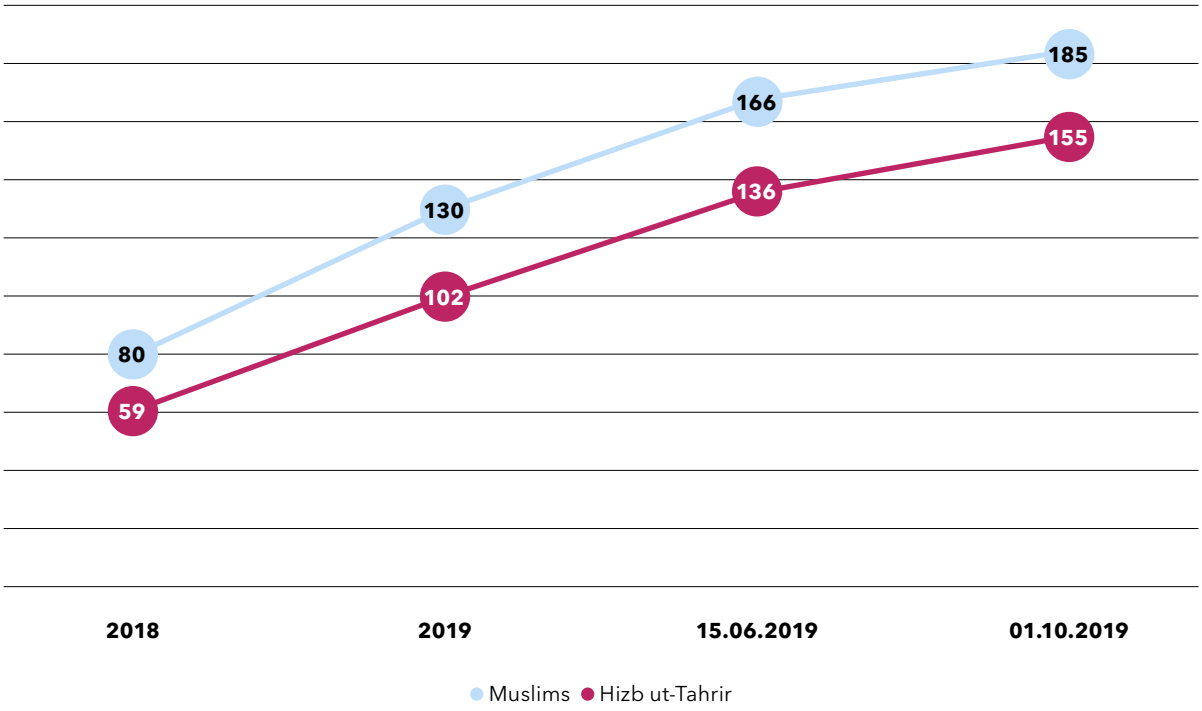
The motive for prosecuting most of the prisoners in this group, with the exception of Crimean Tatars, appears to be to increase support for the anti-Ukrainian propaganda campaign by means of these convictions. In the vast majority of cases its victims are absolutely random.

The motivation for prosecuting Crimean Tatars is usually different. We consider that such prosecutions in most cases are aimed at influencing the Crimean Tatar population in Crimea, intimidating and suppressing their organised activity. In many cases, the obvious goal is to enforce a cessation of the public civil and human rights activities of Crimean Tatars.

Finally, it is clear that different confessional groups can be distinguished among political prisoners prosecuted in connection with the right to freedom of religion and religious affiliation. Most of these are Muslims, most of whom, in turn, have been charged with participating in *Hizb ut-Tahrir al-Islami* (a religious and political organisation designated as terrorist and banned in Russia). Numerical data for these prosecutions are shown in Figure 4.

Muslims prosecuted on the account of their religion and recognised as political prisoners

Figure 4



The total number of Muslims included in the lists of political prisoners deprived of their liberty in connection with their exercise of freedom of religion or religious affiliation increased from 80 in early 2018 to 185 by October 2019. Of these, the number imprisoned on charges related to participation in *Hizb ut-Tahrir* rose from 59 to 155. The total number of people deprived of liberty in connection with such charges in Russia and the Crimea as of the end of September 2019 was at least 300 people. Other groups of Muslim political prisoners are followers of the Turkish theologian *Said Nursi* who have been charged with participation in *Nurjalar*, an organisation that has been declared extremist and banned in the Russian Federation. The number of those deprived of liberty on such charges during the period under review remained virtually unchanged (four at the beginning of the period and five at the end), while the number deprived of liberty for participation in the movement *Tablighi Jamaat*, that has also been declared extremist and banned, increased from zero to nine).

It is worth noting the practice of fabricating terrorist charges against Muslims who have not participated in any organised religious or social activity. These individuals became random victims of the desire of law enforcement agents to improve their performance indicators by reporting the successful solution of terrorist crimes, and to use these cases for purposes of propaganda, maintaining the image of the threat of Islamic terrorism. The only current examples of this kind in the lists of political

prisoners are those of the 15 convicted in the case of the alleged planned bombing of a cinema in Moscow. However, it is particularly difficult to identify and convincingly substantiate falsification of evidence in cases of this kind that involve charges of real criminal acts. For this reason, although there are indications of falsification of this kind in many prosecutions of Muslims on terrorism charges, these individuals do not appear in the lists of political prisoners.

Religious groups other than Muslims who have been persecuted include *Jehovah's Witnesses* (declared extremist and banned), whose numbers in the lists of political prisoners have risen from one to 66, and several leaders and members of the St. Petersburg organisation of the *Church of Scientology*, four of whom were still imprisoned as of June 2019.

Analysing groups of political prisoners in these ways, it is impossible not to note that the explicit targets of criminal prosecution have been organised structures, especially those that at least to some extent are international in nature. These include all the above-mentioned Muslim organisations, *Jehovah's Witnesses*, *Nurjalar*, the *Open Russia Movement*, defendants in the Moscow *New Greatness* case, the Kaliningrad *B.A.R.S.* case, the *Network* case in Penza and St. Petersburg and numerous prosecutions concerning the *Artpodgotovka* group. These efforts, it seems, derive from the authorities' fear of any attempts at independent self-organisation on the part of citizens.

1.4. Rights violated by politically motivated prosecution

In all cases of unlawful politically motivated deprivation of liberty the right to a fair trial is violated. This follows from the most widely adopted definition of the term "political prisoner." Deprivation of liberty of a person solely on the grounds of their political, religious or other beliefs, or for the non-violent exercise of rights and freedoms guaranteed by fundamental international legal instruments, or solely because of non-violent activities aimed at protecting human rights and fundamental freedoms, or solely on the basis of sex, race, colour, language, religion or other similar characteristics, is possible only if a court acts contrary to these international instruments.

The same applies to other grounds for designating a person a political prisoner: falsification of evidence of guilt, selectivity of the use of deprivation of liberty, the inappropriateness of the duration and conditions of deprivation of liberty with regard

to the imputed offence. In fact, all those accused of crimes in the Russian Federation are deprived of the right to a fair trial to a considerable extent because of the evident accusatory bias of the courts, the absence of full adversarial proceedings and the extremely low number of acquittals referred to above. The specific manifestations of violation of the right to a fair trial are manifold: the refusal to admit evidence put forward by the defence, the a priori confidence of the court in evidence presented by the prosecution and, conversely, distrust in the evidence of the defence, and much more.

However, in addition to violating the right to fair trial, politically motivated deprivation of liberty is often directly aimed at suppressing specific substantive civil rights. In many cases, such a criminal prosecution restricts and violates these rights in one way or another, even if its immediate target is something else.

This applies to freedom of expression and opinion, freedom of conscience, and the rights of assembly and association.

The freedom of expression is violated by the practice of applying the articles of the **Criminal Code** that penalise expression against persons who exercised this right without calling for violence using actions that do not pose a public danger (**Articles 148, 280, 280.1, 282, 205.2 of the Russian Criminal Code**). Freedom of expression is also violated by fabricated prosecutions clearly related to the exercise of that freedom (for example, the fabrication of cases against journalists).

The violation of freedom of expression under **Articles 212.1** and **284.1 of the Russian Criminal Code** should be noted separately. **Article 212.1** criminalises violations of the established procedure for organising or conducting a public event; **Article 284.1** criminalises carrying out the activities of an "undesirable" organisation. Both articles require convictions for several administrative offences as a prerequisite for criminal liability. Statements that do not call for violence may also be considered such offences.

The right of assembly is violated both by "core" articles of the Criminal Code (**Articles 212, 212.1 of the Russian Criminal Code**) and by the practice of prosecuting participants in peaceful protests on charges of using violence against the authorities (**Article 318 of the Russian Criminal Code**).

The right of association is violated by the practice of arbitrary designation of civil society and religious organisations and associations as extremist or terrorist and subsequent prosecution of their actual or suspected members for extremism (**Articles 282.1** and **282.2 of the Russian Criminal Code**) and terrorism (**Articles 205.4** and **205.5 of the Russian Criminal Code**). Examples of such practices include the

prosecution of members of the *New Greatness* organisation, the community of supporters of the *YouTube* channel of *Artpodgotovka* run by *V. Maltsev*, the *B.A.R.S.* movement, *Jehovah's Witnesses*, *Hizb ut-Tahrir* and other religious organisations.

A new instrument for the suppression of the right of association is **Article 284.1 of the Russian Criminal Code**, which provided the basis for the prosecution of members of the *Open Russia Movement*.

Finally, freedom of conscience is violated by **Article 148** (primarily with regard to atheists) and **Article 282** (the abovementioned practice of applying **Articles 282.2** and **205.5** to participants in unjustifiably banned religious organisations) **of the Russian Criminal Code**.

1.5. Articles of the Criminal Code as instruments of politically motivated prosecution

Special mention should be made of the variety of instruments (charges and relevant articles of the **Criminal Code**) used to prosecute political prisoners.

Table 2 shows the articles of **the Criminal Code** of the Russian Federation used to prosecute persons included in the lists of political prisoners compiled by *Memorial Human Rights Centre* as of the beginning of 2019 (where a person was prosecuted with regard to several episodes, but only under one article of **the Criminal Code**, this was counted only once).

The table shows that at the beginning of 2019, 13 different articles of **the Criminal Code** were used to prosecute political prisoners included in the list of those deprived of liberty for exercising the right to freedom of religion and religious affiliation; 30 articles of **the Criminal Code** were used to prosecute all other political prisoners; and in total, 36 articles of **the Criminal Code** were used to prosecute persons recognised as political prisoners at that time. This situation is relatively stable: the list of articles of **the Criminal Code** used to prosecute political prisoners and the total number of these articles used in the period from the beginning of 2018 to June 2019 differed from the data in Table 2 by no more than 10%.

Articles of the Russian Criminal Code used in the prosecution of political prisoners included in Memorial Human Rights Centre's lists as of the beginning of 2019

Table 2

Article of the Russian Criminal Code	Name of the article	Number of instances of use of the article with respect to persons included in the list		
		Non-religious	Religious	Total
105	Murder	5		5
115	Intentional minor injury to health	1		1
116	Assault	1		1
135	Perverse actions	1		1
150	Involving a minor in a crime		2	2
162	Robbery	2		2
163	Extortion	1		1
166	Misappropriation of a car … without intending theft	1		1
171	Illegal business		4	4
205	Act of terrorism	2	15	17
205.1	Aiding and abetting terrorist activities	1	7	8
205.2	Public incitement of terrorist activities, public justification of terrorism or advocacy of terrorism		3	3
205.4	Organisation and participation in a terrorist group	6		6
205.5	Organisation of the activity of a terrorist organisation and participation in the activity of such an organisation		89	89
209	Banditry	3		3
210	Organisation of a criminal group or participation in it	1		1
212	Riot	9		9
213	Hooliganism	1		1
222	Unlawful acquisition, transfer, sale, possession, transport or carrying of weapons, their main components or ammunition	8	19	27
222.1	Unlawful acquisition, transfer, sale, possession, transport or carrying of explosives or explosive devices	5		5
223	Unlawful manufacture of weapons		15	15
223.1	Unlawful manufacture of explosives, unlawful manufacture, modification or repair of explosive devices	1		1
226	Theft or extortion of weapons, ammunition, explosives or explosive devices	1		1
228	Unlawful acquisition, possession, transport, manufacture, modification of narcotic substances	4		4
242.2	Use of a minor for the purposes of making pornographic materials or objects	1		1
275	Treason	4		4
278	Violent seizure of power or keeping power by violence		38	38

Article of the Russian Criminal Code	Name of the article	Number of instances of use of the article with respect to persons included in the list		
		Non-religious	Religious	Total
279	Armed mutiny	1		1
280	Incitement to carry out extremist activity	5		5
282	Incitement of hatred or enmity, as well as abasement of dignity	4	8	12
282.1	Organisation of an extremist group	21	4	25
282.2	Organising the activities of an extremist organisation	4	87	91
282.3	Financing of extremist activities		3	3
317	Attempt on the life of a law enforcement officer	1		1
318	The use of violence against a public official	4		4
Total number of instances of use of articles of the Criminal Code:		30	13	36

The share of articles of **the Criminal Code** that can be characterised as undoubtedly political, i.e. directly aimed at unjustified restriction of the rights and freedoms of citizens, used in the prosecution of political prisoners is very small. They include **Article 148** (*"Violation of freedom of conscience and religion"*), **Article 212.1** (*"Repeated violation of the established procedure for organising or conducting an assembly, meeting, demonstration, march or picket"*), **Article 280.1** (*"Public incitement of actions aimed at violation of the territorial integrity of the Russian Federation"*), **Article 284.1** (*"Carrying out activities on the territory of the Russian Federation by a foreign or international NGO whose activities have been designated as undesirable on the territory of the Russian Federation"*) and **Article 330.1** (*"Malicious evasion of obligations placed on non-profit organisations performing the functions of a foreign agent under Russian law"*) **of the Russian Criminal Code**. At the beginning of 2019, there were no persons prosecuted under these articles in the lists of political prisoners, although later persons deprived of liberty in relation to charges under **Articles 212.1, 280.1, 284.1 of the Russian Criminal Code** did appear in the lists.

Much more frequently, articles of **the Criminal Code** are applied against political prisoners which, in principle, can be lawfully applied against real socially dangerous actions prohibited by law. However, because of the vagueness and ambiguity of their wording and the blatant flaws of law enforcement these articles are often used to criminalise actions which are perfectly legal from the point of view of **the Russian Constitution** and international agreements signed by Russia. These are a group of anti-extremist and anti-terrorist articles that penalise not an actual terrorist act or preparation for it, but participation in organisations and communities declared to be terrorist; the financing, justification or propaganda of terrorist activities; and hooliganism, treason, riot and other similar norms.

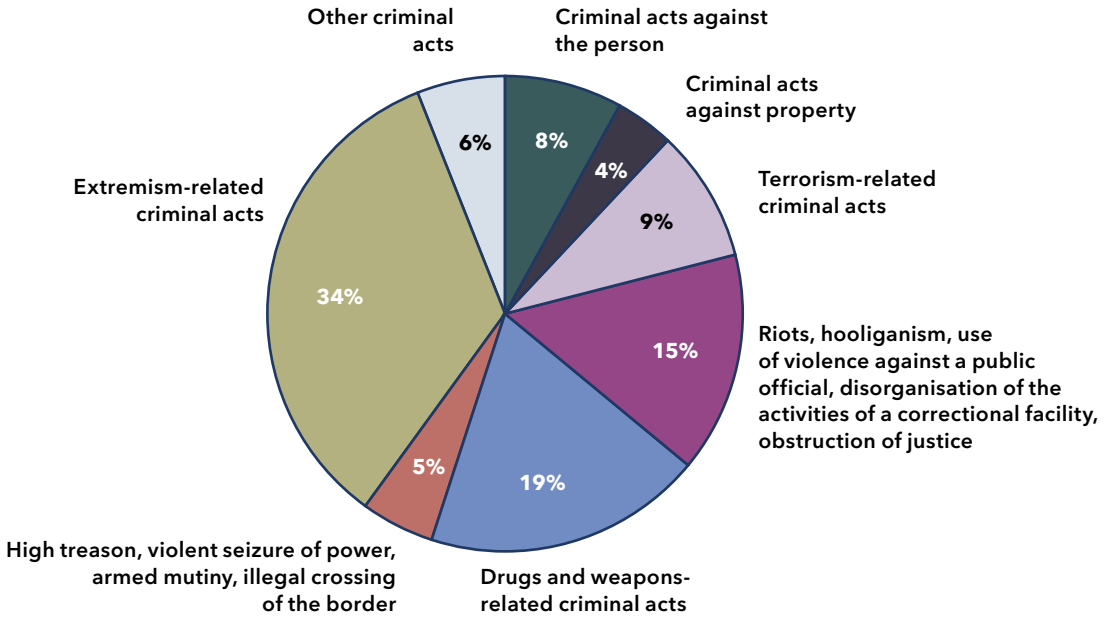
Often, however, in cases of unjustified politically motivated deprivation of liberty on the basis of charges under this group of articles, in addition to the knowingly improper legal qualification of the actions actually carried out, there is also a direct fabrication of the grounds for prosecution. This latter takes the form both of the falsification of physical evidence and the testimony of witnesses by the investigators on the one hand, and through the biased evaluation of evidence by the court, which shows a clear preference for evidence presented by the prosecution, on the other.

The criminal prosecution of political prisoners accused of unquestionably criminal acts is based solely on the falsification of evidence and the blatant bias of the court in its assessment. Such charges can be deemed to belong to a third group of articles of **the Criminal Code** used for prosecution of political prisoners. A wide range of crimes can and do fall into this group, including murder, battery, robbery, terrorism, violence against a public official, and the possession, manufacture and other acts related to drugs and weapons.

Figures 5, 6 and 7 show the frequency of articles of **the Criminal Code** used to prosecute political prisoners as of the beginning of 2019, grouped by the nature of the prosecution and of the imputed crime. Figure 5 shows the frequency of charges against all political prisoners except for prosecuted in connection with religion; Figure 6 shows the charges against "religious" political prisoners; Figure 7 shows the charges against all political prisoners in total.

Groups of articles of the Criminal Code applied against political prisoners (2019; all political prisoners except those prosecuted on account of their religion; 53 persons; 100 charges)

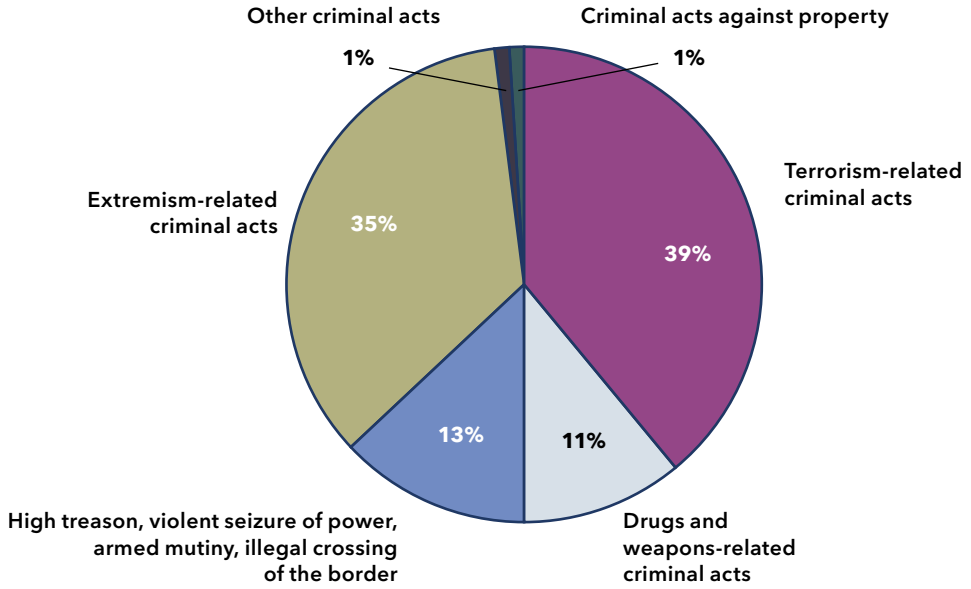
Figure 5



Anti-extremism articles of **the Criminal Code** were the articles most widely used against political prisoners not prosecuted in relation to the exercise of freedom of religion and religious affiliation; in second place were articles related to weapons and drugs.

Groups of articles of the Criminal Code used against political prisoners (2019; prosecuted on account of their religion; 167 persons; 294 charges)

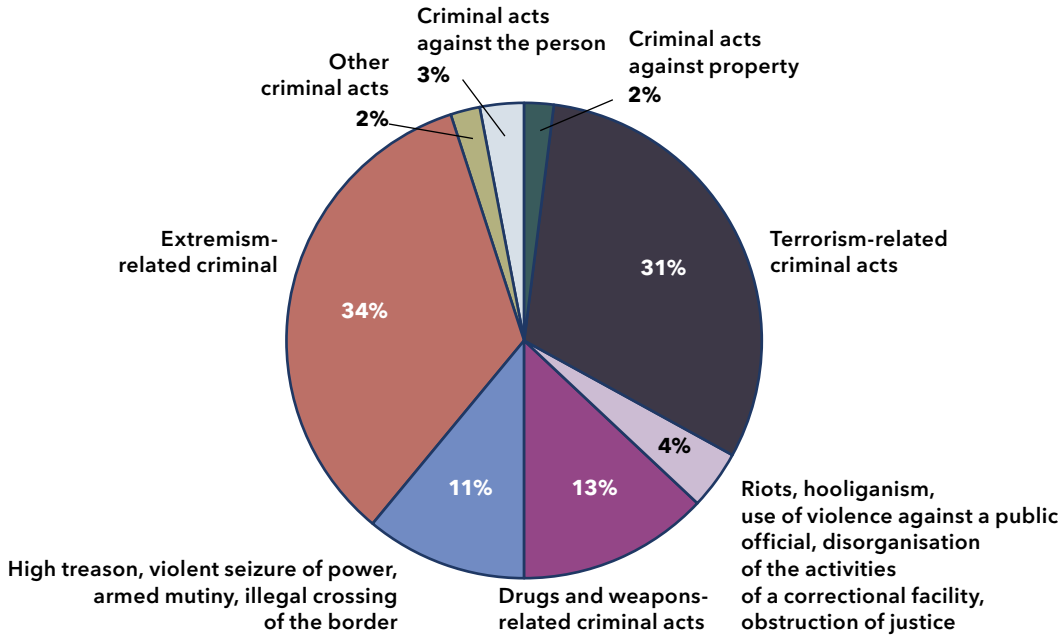
Figure 6



Charges used to deprive people of their liberty on account of their exercise of freedom of religion and religious affiliation have, in the first place, been related to terrorism and, in the second place, to extremism.

Groups of articles of the Criminal Code used against political prisoners (2019; all political prisoners; 220 persons; 396 charges)

Figure 7



It should be noted that, in comparison with the situation at the beginning of 2019 shown in the diagrams, the frequency of articles of **the Criminal Code** used to prosecute political prisoners has undergone two significant changes: first, as a result of the release of a large group of Ukrainian citizens in an exchange there has been a sharp fall in the number of cases of involving **Article 322 of the Russian Criminal Code** (*"Illegal crossing of the state border of the Russian Federation"*), under which 24 Ukrainian sailors were prosecuted, and secondly, after the protests in Ingushetia in March and in Moscow in July 2019, dozens of citizens were prosecuted under **Article 318 of the Russian Criminal Code** (*"Use of violence against a public official"*).

1.6. Other approaches to the concept of "political prisoners"

Among approaches to identifying victims of politically motivated deprivation of liberty, the approach of *Amnesty International*, which uses the concept of "prisoner of conscience," should be mentioned first. This term is used to refer to:

> *"a person whose freedom is restricted by imprisonment or otherwise by reason of his political, religious or other good faith belief, ethnic origin, sex, colour, language, national or social origin, economic status, origin, sexual orientation or other grounds, and who has not resorted to violence or incited violence or hatred."*

In fact, the notion of "prisoner of conscience" is fully contained within the notion of "political prisoner" used by *Memorial Human Rights Centre*, but the latter is much broader. Only individuals who have been deprived of their liberty explicitly and directly for the exercise of their civil rights, and precisely on charges of exercising them, are in fact recognised as prisoners of conscience in Russia. Such transparency about lawlessness on the part of the state is much rarer than lawlessness that is to some degree camouflaged. Those recognised as prisoners of conscience in recent months have been: ***V. Yegorov***, ***V. Mordasov***, ***Y. Sidorov*** and ***V. Shamshin***, ***A. Shevchenko***, ***M. Benyash***, imprisoned ***Jehovah's Witnesses***, and ***O. Titiev***. The recognition of ***O. Titiev***, head of *Memorial Human Rights Centre*'s office in Chechnya, as a political prisoner stands out as a special case, since he was a victim of fabricated charges, formally unrelated to his human rights activities. This is an important and valuable manifestation of the high standard of protection of human rights defenders. Nevertheless, the great majority of victims of similarly manifestly falsified politically motivated deprivation of liberty do not qualify as prisoners of conscience. Furthermore, *Amnesty International* does not keep a consolidated list of prisoners of conscience, so it is difficult to obtain an overall picture of even the most egregious cases of politically motivated deprivation of liberty based on the practice of recognising individual prisoners of conscience.

One of the largest groups of political prisoners, as shown above, consists of citizens and residents of Ukraine, including Crimea. Ukrainian civil society organisations and media compile and maintain various "lists of political prisoners," which are sometimes drawn upon by Ukrainian state bodies. For example, there is a list of Ukrainian citizens deprived of liberty for political reasons in Russia and occupied Crimea published on the website of the *Political Prisoners of the Kremlin Association*, and a list entitled "Political Prisoners. Ukrainian Prisoners in Crimea and Russia" on the website of the project LB.ua.

However, such lists contain neither a description of the methodology nor an explanation of the meaning of the term "political prisoner" or its equivalents, nor the rationale for including specific individuals in the lists. In addition, they include both persons deprived of liberty and those subject to criminal prosecution without deprivation of liberty.

In this context, it seems more correct to use other terms, such as "Ukrainian hostages of the Kremlin," as in the list of the human rights project *Let My People Go*.

Political activists, both of left-wing and anarchist as well as Russian nationalist tendencies, often single out groups of "their own" political prisoners. We could not, however, find up-to-date lists or data systematically compiled about such prisoners. The only possible exception is the *list of the Anarchist Black Cross*, which includes imprisoned anarchists and those of similar views. The approach taken in compiling the list is described thus: "We support all anarchists who are victims of repression and their supporters who have been prosecuted for their political activities or for actions that do not contradict the ideals of anarchism."

The project *New Chronicle of Current Events* claims to provide an exhaustive account of political prisoners. Its authors state they use the term "political prisoner" to mean a person who is subject to criminal prosecution because of their political, religious or atheistic beliefs, or because of their civil or political activity, provided the person concerned committed no act of violence and did not incite violence. In accord with this definition, the lists of political prisoners published on the website of the *New Chronicle of Current Events* included, in addition to persons deprived of their liberty, also victims of criminal prosecution who are at large. At the same time, the project's authors did not explain the grounds on which criminal defendants could be included in the list, which did not add to its credibility and made it difficult to use its data to assess the scale of political repression in Russia. Since 2016, the *New Chronicle of Current Events* has not published lists of political prisoners.

2. Targets of politically motivated prosecution

2.1. The definition of a target of politically motivated prosecution. Classification of prosecutions in terms of targets

Behind dry statistics lie human destinies. Each criminal case is different from every other, and every political prisoner is a unique personality. Nevertheless, it is impossible to analyse the ongoing repression without dividing the whole range of cases into different categories. In the case of political repression in Russia, the easiest way to do this is to identify targets of prosecution and thereby show the logic of dividing political prisoners into several large categories.

In this chapter of our report, we draw distinctions primarily in terms of the target of prosecution, which we consider to be a social group that shares certain common features. The social groups distinguished by us differ in their size, but each of them, regardless of whether they are religious, professional, or characterised by a type of activity undesirable for the authorities, actually exists and occupies an important place in modern Russian life.

At the same time, because the repressions are not concentrated in certain regions, but took place in 2018 throughout the country, the only group identified geographically is that of residents of Crimea and Sevastopol, due to the status of these territories and the significant peculiarities of the application of Russian law on that territory in circumstances when the international community and international law do not recognise these territories as part of Russia.

2.2. Groups prosecuted as part of the political repressions in the years 2018-2019

All persons prosecuted for political reasons in 2018 and in the first half of 2019 can be divided into two large categories: those prosecuted for political reasons per se and those prosecuted for political reasons in connection with the exercise of freedom of religion. Let us first analyse the composition of the first category.

2.2.1 Political prisoners (not prosecuted on account of their religion) and their subgroups

Politicians and political activists

The group whose prosecution as a result of political repressions appears most obvious and 'natural" (but because of this does not become lawful or legitimate) is that of politicians and political activists, usually of an opposition nature. In the first place, these are participants in numerous associations of the so-called 'non-systemic opposition." They include opposition activists of a range of views: liberals, socialists and communists, anarchists, nationalists (both Russians and representatives of other ethnic groups) as well as "general" opposition activists. At the same time, some participants in the systemic political parties, which can be the most influential part of the opposition at regional and local level, have also been prosecuted for political reasons.

In 2018 and the first three quarters of 2019, supporters of opposition politicians ***Aleksei Navalny*** and ***Mikhail Khodorkovsky*** were most actively prosecuted. This was seen in the criminal cases against activists of Navalny's headquarters, employees of the *Anti-Corruption Foundation* and members of the *unregistered Russia of the Future* party and, accordingly, *Open Russia*, as well as in the prosecution of unorganised opposition supporters who attended public events organised by ***Navalny***'s local offices in Moscow and the regions. Particularly noteworthy have been the cases of ***Anastasia Shevchenko*** and ***Yana Antonova***, supporters of *Open Russia*, the prosecution of ***Sergei Fomin*** and ***Aleksei Minyaila***, in the framework of the Moscow Case, who worked at the election headquarters of *Liubov Sobol*, and the prosecution of the *Anti-Corruption Foundation*.

Participants in public protests

In some cases, participants in protests prosecuted on charges of assaulting police officers or for participating in riots are fairly well-known political activists. This was especially the case with regard to the events at Manezhnaya Square on 11 December 2010 and at Bolotnaya Square on 6 May 2012.

In 2018 the situation was different. None of the participants known to us convicted under **Article 318 of the Russian Criminal Code** were permanent political activists. Moreover, of those convicted for participation in the rally on 26 March 2017 on Moscow's Tverskaya Street who continued to serve their sentences in 2018, only ***Dmitry Borisov*** and ***Stanislav Zimovets*** clearly articulated consistent opposition views. All other defendants and convicts stated they happened to be at the rally accidentally and only at the rally itself did they come to resist what they considered to be outrageous and unjustifiably brutal actions by the police.

However, as early as the next year, 2019, during the prosecution of peaceful protesters in ***Moscow*** and ***Magas***, there was a mass unjust prosecution not only of ordinary protesters, but also of well-known opposition activists, such as ***Yegor Zhukov*** and ***Akhmed Barakhoyev***. These two cases have become the most significant examples of prosecution of participants in protests in recent years. Despite the great differences in the political situation, the make-up of the rally participants, their goals and objectives, these cases have much in common.

In Ingushetia, after the signing of the agreement on the Chechen-Ingush border in the autumn of 2018, a political crisis broke out accompanied by mass demonstrations by the national-democratic opposition dissatisfied with both the agreement, which they considered to be against their interests, and with the fact that it was signed without consultation with broad sections of Ingush society. After a relative lull in the winter of 2018-2019, rallies in the capital of Ingushetia, Magas, resumed in March 2019. They continued to be exclusively peaceful in nature until the unsuccessful attempt to disperse them on the morning of 27 March 2019 when protesters resisted the National Guard officers who for the first time used violence against them. A few days later, mass arrests of dozens of protesters who had taken part in the rally began in the republic, with ordinary protesters accused of violence against the police. As of 1 May 2020, a total of 44 people have been prosecuted for criminal offences with regard to the events in Magas. The prosecution of three of these individuals has been discontinued; 34 persons had been charged with violence against law enforcement officials as of 27 March 2019. Eight leaders of the Ingush opposition, recognised by *Memorial* as political prisoners, have been charged with organising this violence and creating and participating in an extremist group, while another activist has been charged with inciting violence against law enforcement officers that did not endanger their health.

The Moscow case concerning the events of 27 July 2019 and the subsequent repressive measures were also the result of an acute political crisis related to the mass withdrawal of candidates for the *Moscow City Duma* from the elections. The peaceful, uncoordinated opposition protest on 27 July 2019 was violently dispersed, followed by criminal charges for alleged organisation of rioting and violence against police and OMON officers. The charge of riot, owing to its obvious absurdity, was eventually dropped against all defendants, while eight defendants were released on grounds of innocence. However, 15 persons were charged with an offence under **Article 318, Part 1, of the Russian Criminal Code** and, in the case of ***Yegor Zhukov***, **Article 280, Part 2, of the Russian Criminal Code**. Nine of these individuals were sentenced to terms ranging from one to three-and-a-half years' imprisonment.

On 3 and 10 August 2019 the forcible dispersal of peaceful protests was repeated, as a result of which an actor ***Pavel Ustinov***, who happened to be in central Moscow by chance and was charged with committing an offence under **Article 318, Part 2, of the Russian Criminal Code**, and a civil society activist, ***Konstantin Kotov***, who was charged with an offence under **Article 212.1 of the Russian Criminal Code**, were criminally prosecuted. While ***Ustinov*** was given a suspended sentence after an unprecedented solidarity campaign, ***Kotov*** was sentenced to four years in a general regime penal colony.

Human rights defenders and lawyers

An important, though limited, part of political repression in Russia is the prosecution of human rights defenders. To a certain extent, this group can be considered to include lawyers where these are prosecuted solely for defending the legitimate rights and interests of their clients. This is particularly true in cases where their defendants have been prosecuted under "extremist" articles of the **Russian Criminal Code** or in other criminal or administrative cases that are clearly politically motivated. The most striking example of such prosecutions in 2018 were the criminal cases brought against the lawyers ***Mikhail Benyash*** in Krasnodar region and ***Roman Ozhmegov*** in Altai region.

Of the prosecutions of human rights defenders in the narrow sense of the word, the most well-known and blatant has been the prosecution of our colleague from *Memorial* ***Oyub Titiev***, which took place throughout 2018 and was accompanied by a large-scale campaign of solidarity with him. In our view, ***Oyub Titiev***'s release on parole in the spring of 2019 was, to a large extent, a result of this campaign. ***Yury Dmitriev***, historian, chair of the Karelian branch of the *Russian Memorial Society* and member of the Commission for the Restoration of the Rights of Rehabilitated Victims of Political Repression of the government of the Republic of Karelia, and ***Emir-Usein Kuku***, an activist who works to assist Crimean Tatar victims of political repression and has been sentenced to 12 years in a strict regime penal colony, continue to

remain behind bars. Since May 2018, the founder and coordinator of the *Crimean Solidarity* movement, ***Server Mustafayev***, has been in custody on charges of participation in a terrorist organisation and preparing the violent seizure of power. All three human rights defenders have been recognised by *Memorial Human Rights Centre* as political prisoners on the grounds of the evident unlawfulness of their prosecution.

Journalists

A certain, albeit small, number of political prisoners are journalists. The lists of political prisoners of the *Memorial Human Rights Centre* in the period under review include four journalists who have been victims of political repression.

After he was unlawfully remanded in custody in April 2016, journalist of the online publication *Kavkazsky Uzel* ***Zhalaudi Geriev*** became, in our opinion, a victim of drugs being planted on him. He was recognised as a political prisoner by *Memorial Human Rights Centre*. Despite the obvious fabrication of the criminal case, he spent a total of three years behind bars.

Igor Rudnikov, a deputy of Kaliningrad regional Duma and editor of the independent newspaper *Novye kolyosa Igorya Rudnikova*, became victim of a provocation when an attempt was made to charge him with extorting $50,000 from the head of the regional Investigative Committee. On 17 June 2019, Moskovsky district court in St. Petersburg in practice acquitted the journalist when it found him guilty only of attempted abuse of powers and failure to comply with the obligation to file a notice of foreign citizenship. He was released from custody in the courtroom.

In the summer of 2019 two high-profile cases fabricated against journalists became known at the same time: those of investigative journalist ***Ivan Golunov*** of *Meduza* and ***Abdulmumin Gadzhiev***, editor of the *"Religion"* section of the newspaper *Chernovik* (Makhachkala).

The case against ***Golunov***, the victim of drugs planted on him, was dropped as a result of a powerful campaign of solidarity among the journalistic community and mass protests that lasted throughout the time he was in custody and under house arrest, even extending to the day after his release (12 June 2019).

As for the prosecution of ***Gadzhiev***, recognised by *Memorial* as a political prisoner, it was on-going at the time of writing, despite the illogical, and even absurd, nature of the charges. It should be noted that in ***Gadzhiev***'s case, unlike that of ***Golunov***, the investigators directly incriminated him with his professional activities, stating that his 2013 interview with an Islamic preacher constituted participation in the banned *Islamic State* terrorist organisation.

Bloggers and writers on public issues

Bloggers and independent journalists of opposition views are far more often victims of politically motivated prosecutions than the employees of media organisations. This is due to several factors, the most important of which, in our opinion, are the following:

- bloggers and independent journalists who are not staff members of media organisations and are less able to rely on journalistic solidarity are poorly protected from the arbitrariness of law enforcement and security agencies;
- often representatives of this category of victims of prosecution are, in addition, opposition politicians and activists who have a high visibility in a given region, something that exposes them in advance to a higher intensity of prosecutions by law enforcement officials;
- editors and staff of independent media outlets as a rule work to professional standards that reduce the potential grounds for prosecution, while bloggers often exercise the right to public criticism in a more outspoken manner which makes them easier targets for law enforcement and security agencies.

As a result of the increasing spread of social media, the number of journalists from independent media is much smaller than the number of opposition bloggers. In Russian law there is a formal definition used to classify a social network user as a blogger (more than 3,000 visits a day to their pages by individual users). However, the potentially repressive norm of maintaining a register of bloggers, introduced in 2014, was not applied in practice and was abolished in 2017. Nevertheless, we consider this artificial separation of bloggers from other users of social networks, solely on the basis of their popularity, to be superfluous and for that reason we do not use it in our work.

Scientists

Historically, one of the first significant groups of political prisoners in modern Russia has been that of scientists falsely accused of treason, both because of the departmental interests of the counterintelligence agency and for the purpose of deliberately increasing spy mania, forming an image of Russia as a fortress besieged by enemies. These prosecutions directly infringed the right to free exchange of information guaranteed by **Article 10 of the European Convention on Human Rights and Fundamental Freedoms**. In most cases of this kind where there are grounds for doubt, *Memorial* has not been able to formulate a position because of the very limited amount of information available, making it impossible to assess the validity of the conclusions of FSB investigators and judges. Such trials are almost always held in camera.

Nevertheless, thanks to the efforts of the human rights organisation *Team 29*, journalists, lawyers and the scientific community, in some instances violations of law by the FSB and the degree of absurdity of the charges have been revealed. This has made it possible to state with complete certainty that certain cases meet the criteria for recognition of a political prisoner. These cases include those of several individuals serving long sentences: ***Svyatoslav Bobyshev*** (released early in September 2019 after nine and a half years of imprisonment), ***Gennady Kravtsov*** and ***Vladimir Lapygin***, as well as that of 76-year-old ***Viktor Kudryavtsev***, who is awaiting trial and is currently under travel restrictions having been released from a pre-trial detention centre because he is suffering from cancer.

Other victims of spy mania

Not all victims of spy mania in Russia are scientists. Some "spies" never had any access to state secrets, including a group of Sochi residents convicted on charges of cooperation with Georgian intelligence. Currently one of them, 64-year-old air traffic controller ***Pyotr Parpulov***, who has been declared a political prisoner by *Memorial Human Rights Centre*, remains in prison.

Since access to the criminal case files of these people is even more limited because of the secrecy regime surrounding these investigations, as well as the lack of a professional community that could assess the legitimacy of the allegations, *Memorial* has been unable to take a position with regard to most of these cases.

Nevertheless, we continue to follow closely the criminal prosecutions of Ukrainian citizen ***Viktor Shur***, the employee of the Department for External Church Relations of the Moscow Patriarchate ***Yevgeny Petrin*** and many others that show clear signs of violation of the rights of the accused and convicted.

Ukrainians and residents of Crimea

Since the spring of 2014, the anti-Ukrainian campaign in government-owned media and in the statements of top-ranking Russian officials has not ceased. One of the components of this campaign has been the initiation of criminal proceedings against persons who publicly express a position different from the official position on events in Ukraine and directly against Ukrainian citizens, including those living in the Crimea. Among Ukrainian citizens imprisoned in the Russian Federation have been individuals who opposed the annexation of Crimea (***Oleg Sentsov*** and others accused of alleged "terrorism," ***Volodymyr Balukh***, ***Edem Bekirov***), ***Roman Sushchenko*** and ***Yury Soloshenko*** who have been charged with espionage, participants in *the Right Sector*, which has been banned in Russia, and also Ukrainian military personnel, primarily 24 Ukrainian sailors and officers of the Ukrainian Security Service captured on 25 November 2018.

After the exchange of political prisoners and prisoners of war between Russia and Ukraine under the "35 for 35" formula, which took place on 7 September 2019, the number of Ukrainian political prisoners in Russia decreased significantly, and their composition changed. Thus, immediately after the exchange, 45 of the 48 residents of Ukraine and Crimea recognised by *Memorial Human Rights Centre* as political prisoners, were Crimean Tatars, formally prosecuted for membership of Islamic organisations that are legal in Ukraine but banned in Russia, primarily *Hizb ut-Tahrir al-Islami*. Prosecutions of members of this group continue. At the end of 2019 *Memorial*'s lists of political prisoners were supplemented with the name of Ukrainian citizen ***Oleksandr Marchenko***, and by the beginning of 2020 they already included 11 Crimean Tatars who had been deprived of liberty between late 2017 and early 2019. The actual number of Ukrainians and Crimeans prosecuted by Russian law enforcement agencies for political reasons is obviously much higher. Thus, according to the Ukrainian civil society campaign #LetMyPeopleGo, as of 8 September 2019 their number was 86, including those to whose criminal case files *Memorial* does not have access and those who for one reason or another have not been recognised as political prisoners.

Accidental victims of politically motivated prosecutions

The listing of many categories of persons prosecuted for political reasons does not mean that political repression in the Russian Federation is carried out in a strictly targeted manner. Frequently, its victims are accidental individuals who have nothing to do with politics and who have been prosecuted strictly because of the self-interest of law enforcement agencies for statistical or propaganda purposes. Most of these individuals are prosecuted for acts committed on the Internet, such as reposting, careless comments during disputes on the Internet, and posting "extremist" materials.

Sometimes the victims of political repression are random individuals who are held accountable for actions committed outside the Internet. These include ***Pavel Zlomnov***, a resident of St. Petersburg initially accused of arms trafficking and, according to the Public Monitoring Commission, tortured but once again remanded in custody on charges of justifying the actions of an Arkhangelsk left-wing radical who blew himself up in the city's FSB building. The *Zlomnov* case is a vivid example of how political repression is applied to people who initially had no connection with politics.

2.2.2 Persons prosecuted for political reasons related to their exercise of freedom of religion

Muslims

For 15 years *Memorial* has observed various forms of pressure to which Muslims in Russia are subjected, including the fabrication of criminal prosecutions for non-existent crimes of an extremist or terrorist nature. Government propaganda uses and aggravates domestic Islamophobia and fuses Islam and terrorism in the minds of ordinary people. Civilian oversight of such prosecutions is minimal, and the security services are able to exaggerate disclosure rates many times over (thereby demonstrating their own "usefulness"), manipulate ideas about the terrorist threat, and substitute an imitation of the fight against terrorism for the real thing.

Under the pretext of fighting real Islamic terrorism, in the Russian Federation hundreds of people have been imprisoned because of the lack of accountability of government and official religious authorities, where they have not simply been accidental victims of fabrications. Muslims who have been unlawfully prosecuted for political reasons can be divided into several main categories.

Participants in Hizb ut-Tahrir al-Islami (an organisation designated as terrorist in Russia)

The Islamic party *Hizb ut-Tahrir al-Islami* is referred to as an international terrorist organisation in numerous criminal cases reviewed by *Memorial Human Rights Centre*. The organisation was banned by the *Russian Supreme Court* on 14 February 2003. The decision of the *Supreme Court of the Russian Federation* devoted three sentences to the activities of *Hizb ut-Tahrir*, the first of which states the organisation's goal as the creation of a world Islamic caliphate, the second notes the conduct of largescale Islamic propaganda and the third mentions the ban on its activities in Uzbekistan and some Arab countries. Since these formulations alone cannot serve as a basis for the recognition of the organisation as terrorist, we believe the designation of *Hizb ut-Tahrir* as a terrorist organisation is unlawful, and therefore charges of terrorism solely based on a person's membership of *Hizb ut-Tahrir* are unlawful.

Since November 2013, when **Article 205.5** (*"Organisation of the activities of a terrorist organisation"*) was introduced into the *Russian* **Criminal Code**, the mere fact of joining *Hizb ut-Tahrir* or participating in the activities of the organisation has been sufficient to be convicted of terrorism, the sanction for which is up to 20 years' imprisonment. The prosecution of criminal cases for membership in *Hizb ut-Tahrir* has been made extremely simple, requiring minimal effort to achieve "high results" (in some instances, resulting in the conviction of dozens of defendants in a single case). At the same time, in recent years the adoption of new laws restricting

constitutional civic rights has been justified on the basis of the terrorist threat. In this way, the simulation of success against "terrorists" works to strengthen the powers of the authorities.

Hizb ut-Tahrir's policies and texts published on its websites are largely incompatible with democracy and human rights as set out in the *Universal Declaration of Human Rights* and those international instruments based upon it, and *Hizb ut-Tahrir*'s proposed creation of a future Caliphate discriminates on the basis of religion and gender. Nevertheless, in the democratic states of North America and Western Europe, with the exception of Germany, the organisation's activities are legal and there have been no prosecutions for membership. The ban on the organisation's activities in Germany is linked to anti-Semitic publications and statements.

As of 20 October 2019, the *Memorial Human Rights Centre* is aware of at least 301 people deprived of their liberty for involvement in *Hizb ut-Tahrir*. This list, published on the *Memorial* website, is clearly not exhaustive. Incomplete as it is, however, it allows us to understand the scale of repression against the organisation's members.

At least 197 people have been convicted, 50 of whom received sentences ranging from 10 to 15 years and 58 received sentences of 15 years or more. In the first half of October 2019, criminal trials of 30 defendants were proceeding. At that time *Memorial*'s list also included 55 people under investigation. The names of a number of those under investigation are still unknown to us. Nineteen individuals previously on the lists have been released after serving their terms of imprisonment; charges were dropped against one person.

As of 1 October 2019, *Memorial* had recognised 155 defendants as political prisoners in criminal prosecutions for involvement in *Hizb ut-Tahrir*. Issues related to the recognition of defendants in other cases as political prisoners are considered as soon as procedural documents in these very similar cases are received.

Participants in Tablighi Jamaat (an organisation designated as extremist in Russia)

Tablighi Jamaat is an international proselytising Islamic movement with millions of followers around the world. The movement was founded in the Indo-Pakistan region (Mevat Province, British India) in the 1920s as a response to Western Christian missionary initiatives. The founders aimed to bring "nominal Muslims" to Islam - those who recognise themselves as Muslims but do not fully perform the religious rites. Participants in *Tablighi Jamaat* travel to other regions and countries to promote the basics of Islamic teaching. During such trips, preachers usually live in mosques and explain the values of the Koran and Islamic rites in the streets. *Vitaly Ponomaryov*, an expert on Islamic extremism in the post-Soviet region, points out that political topics are not addressed in the movement's sermons.

On 7 May 2009, Supreme Court judge *Nikolai Romanenkov* banned the organisation as "extremist," and since then the mere fact of joining *Tablighi Jamaat* or participating in its activities has been sufficient to warrant a conviction under **Article 282.2 of the Russian Criminal Code**. It became unnecessary to prove that extremist activities had been prepared or carried out. It should be noted that neither the *Supreme Court*'s decision to ban *Tablighi Jamaat*, nor the materials of the criminal cases investigated in Russia, contain any specific facts testifying to extremist or any violent activity by the organisation.

In the view of *Memorial Human Rights Centre*, as in that of the *Sova Centre*, the *Tablighi Jamaat* movement is engaged in the propaganda of Islam and has not been responsible for any calls for violence. *Memorial Human Rights Centre* believes that the decision of the *Russian Supreme Court* is unlawful, and therefore it is also unlawful to charge people with extremism solely on the basis of their participation in *Tablighi Jamaat*.

In all prosecutions of which we are aware concerning participation in *Tablighi Jamaat*, defendants were not charged with propaganda of violence, voicing extremist threats, humiliation or discrimination on grounds of religion or ethnicity. They were only accused of searching for and convincing new supporters, reading in groups and storage of the organisation's literature. Currently, we know of at least nine persons convicted for participation in *Tablighi Jamaat* who are in detention, and of three persons who received suspended sentences. Eight of these were prosecuted in Moscow, and four others in Crimea.

Followers of Said Nursi

For more than 15 years in Russia the followers of the Turkish Islamic thinker *Said Nursi* (1878-1960), who studied the *Risale-i Nur* collection of his works and interacted with each other but did not form a structured organisation, have been persecuted. During this time, the repressions that started with the expulsion of Turkish citizens and pressure on private educational institutions attended by Turkish citizens were gradually tightened and a legal basis was created for them. The authorities' actions were accompanied by propaganda creating the image of an enemy spreading foreign political influence.

Since 2008 when the *Supreme Court of the Russian Federation* ruled, at the request of the Prosecutor-General of the Russian Federation, that the international religious association *Nurjalar* was extremist, peaceful Muslims have been criminally prosecuted for alleged participation in the activities of an organisation that has never really existed. In Russia regular group study of *Said Nursi*'s books is in fact systematically equated with a criminal offence, as evidenced by the 2012 report of Memorial Human Rights Centre.

According to our estimates, as of 1 October 2019, at least five followers of *Nursi* were in prison, and another three convicted and given suspended sentences. Two of those held in detention and the three who were given non-custodial sentences were convicted of involvement in the activities of *Jamaat Hizmet*, a movement declared by the court to be the Gülen branch of *Nurjalar*. It is important to note that the international Islamic organisation *Hizmet*, headed by Turkish preacher *Fethullah Gülen*, is an independent organisation that is not banned in Russia, and the attempt to link it with *Nurjalar* is artificial and inaccurate, which makes the prosecution of Russian Gülenists even more unlawful and absurd.

Salafis

Supporters of Salafism or a return to "pure Islam," free, in their opinion, from all innovations and closest to the original seventh century doctrine, are one of the relatively marginal groups of Muslims in Russia. Since representatives of real terrorist groups, such as *ISIS* and the *Caucasus Emirate*, which are banned in Russia, also hold Salafist views, in the view of the authorities and a significant part of society, including many Muslims and residents of the North Caucasus, all Salafis are perceived as active or potential extremists and terrorists. *Memorial Human Rights Centre* has always opposed such a radical approach and considers dialogue with the moderate part of this community to be necessary. For this reason, we condemn the political repression of well-known members of the community who have certainly rejected terrorism and have never given any reason to doubt the contrary.

Two representatives of this branch of Islam are currently in detention and recognised by *Memorial* as political prisoners. They are ***Magomednabi Magomedov***, an imam from the Dagestani city of Khasavyurt, and ***Abdulmumin Gadzhiev***, a journalist for the Dagestani newspaper *Chernovik*. The prosecution of both, while formally conducted under anti-terrorist legislation, is, in our opinion, related to their religious beliefs and does not pursue any "anti-terrorist goals." The two individuals have repeatedly and consistently advocated the peaceful resolution of social conflicts and dialogue among different groups in Dagestani society and have condemned terrorism.

There are several reasons for the relatively low number of Salafis in the lists of political prisoners of *Memorial Human Rights Centre*. First, most of the adherents of this branch of Islam who have been unjustly prosecuted were charged with offences of a terrorist nature, something which makes it much more difficult to recognise a person as a political prisoner because of the exceptional complexity of cases of this kind and their particular sensitivity in terms of public opinion. Second, persecution of Salafis is to a large extent carried out through extra-legal mechanisms, above all in Chechnya, but also in Dagestan, where since the early 2000s numerous cases of enforced disappearances and extra-judicial executions of representatives of 'non-traditional Islam," who often had no connection with the terrorist underground, have been noted by *Memorial Human Rights Centre*'s *Hot Spots* programme. Third, many

de facto Salafist Muslims do not publicise their views but call themselves Sunni Muslims (which does not prevent the security services from persecuting them as Salafis). All this makes it extremely difficult to distinguish repressive measures against this group from the general current of repression against Muslims, especially when they target representatives of other organisations whose members also include Salafis (for example, the banned organisation *Hizb ut-Tahrir al-Islami*).

Representatives of traditional Islam and Islamic clergy

In a number of instances, representatives of traditional forms of Sunni Islam in Russia and the organised Islamic clergy have been prosecuted. In 2017 the *Voice of Islam* website published information about the criminal prosecution of at least six imams, including those who are not Salafis.

One of the most striking examples of such prosecutions is that of the imam of the Yardam mosque in Moscow, ***Makhmud Velitov***. Without evidence, he was accused of justifying terrorism in his prayer for the alleged member of Hizb ut-Tahrir *Abdulla Gappayev*, killed in Dagestan. Despite the absurdity of the accusation and the total lack of evidence of inciting violence, the elderly Imam was condemned to three years in a general regime penal colony, which he served in full. He was released in September 2019.

In some cases, the sole basis for criminal proceedings against Muslims is that they belong to historically non-Muslim peoples. The consistent marginalisation of "Russian Muslims" (when using this term, we must stipulate that there are representatives of other ethnic groups among them) is manifested both in terms of pressure on their associations and organisations that are actually banned in Russia, and in the creation of a negative image of these individuals and groups used to justify grassroots repression. Russian Muslims as a group are accused without any justification of a wholesale propensity for terrorism and extremism. In relation to these individuals and groups the authorities, who for many years have been popularising grassroots Islamophobia in order to create an image of the enemy, and the media and "experts" who support them, do not even observe the norms of political correctness that are used in describing other Muslim groups. In a typical article on the website of the government media outlet *RIA Novosti*, for example, one can read that allegedly two-thirds of Russian Muslims hold extremist views, and that this group supports anti-Russian forces in the CIS, and that there are among them many terrorists and extremists, etc.

Accidental victims of Islamophobia

Some of the Muslims who have been prosecuted have become accidental victims of the "war on terror" that requires the uncovering of ever more terrorist cells. In most cases, *Memorial Human Rights Centre* cannot unequivocally judge the guilt or

innocence of those prosecuted because of the incompleteness of information and the impossibility of a full analysis of all the case materials. However, in at least one case we have recorded largescale violations. This is the case of 15 Muslims detained in Moscow in 2013 and charged with preparing a terrorist attack on the *Kirghizia* cinema. We can state with certainty that most of the defendants did not know each other, and that the only link between them was they all happened to be staying in a Muslim hostel in eastern Moscow at the time of their arrest. From our point of view, there is every reason to believe that the unjustified prosecution of Muslims of this kind on terrorist charges is a widespread phenomenon.

Non-Muslim victims of religious persecution

Jehovah's Witnesses

Until 2017, it was almost exclusively Muslims who were prosecuted for practising a particular religion. Rare exceptions were attempts to initiate criminal proceedings against *Jehovah's Witnesses* for the organisation of extremist communities. In 2017 and, especially, in 2018 however the situation changed dramatically, and members of this religion took second place, in terms of the numbers of political prisoners, to supporters of the banned *Hizb ut-Tahrir al-Islami*.

According to Memorial Human Rights Centre, at least 33 *Jehovah's Witnesses* were in custody or in correctional facilities at the end of October 2019, and at least 28 were under house arrest. In addition, we were aware of at least 145 *Jehovah's Witnesses* who had been subjected to other forms of pre-trial restraint or had served non-custodial sentences.

We classify all these individuals as political prisoners because the charges brought against them on the sole ground that they, as faithful *Jehovah's Witnesses*, took part in rites and gatherings or distributed materials of this confession are discriminatory and violate international law, in particular freedom of religion. The most common charge under **Article 282.2 of the Russian Criminal Code** is that the believer was a member of an organised religious group and is undoubtedly unlawful. The charges laid against *Jehovah's Witnesses* under **Articles 282** and **282.3 of the Russian Criminal Code** are similarly discriminatory because they criminalise the legitimate activities of believers: namely the distribution of religious materials and financing of their communities.

Supporters of the Church of Scientology

Five leaders of the *Church of Scientology of St. Petersburg* have been charged by the FSB of debasing the dignity of several parishioners (**Article 282.1, Part 2, Point "c", of the Russian Criminal Code**), creating an extremist community (**Article 282.1, Part 1, of the Russian Criminal Code**) and illegal entrepreneurship (**Article 171,**

Part 2, Points "a" and "b", of the Russian Criminal Code). They have been subject to criminal prosecution since June 2017. In our view, they have been victims of discrimination based on their religion, and their criminal prosecution is certainly illegal. At the time of writing, this criminal case is the only prosecution of followers of this belief, but we are concerned that it may act as a precedent and mark the beginning of repressive measures against one more religious group.

Earlier, in 2011, *Shchyolkovo town court* had declared seven works by Scientology Founder *L. Ron Hubbard* extremist. The ruling, based on the claim that Scientologists want to destroy all but their own social groups, does not seem credible. The court held that the goal of Scientologists was to form the "right" social group as a counterweight to all others and to expand their own throughout the world.

Other victims of religious persecution

The situation of other religious groups is steadily worsening in the context of increasing persecution of those expressing dissent, including in the religious sphere. The most significant examples of the prosecution of representatives of religious groups not listed above would seem to be the criminal case initiated against supporters of the Buddhist movement *Aleph*, considered an offshoot of the *Aum Shinrikyo*, a recognised terrorist organisation in Russia. Aleph condemned the violence used by members of its parent organisation. Despite the absence of any manifestations of terrorism on their part and their apparent general lack of interest in politics, *Aleph* supporters were identified as members of a terrorist group, declared wanted and arrested in absentia by FSB officers who found in this case an easy way to "uncover" yet another terrorist organisation and thereby advance their departmental interests.

In addition to religious persecution by means of criminal prosecution, there are also many other forms of persecution of religious communities in Russia. For example, in the framework of the "Yarovaya package" of laws there have been cases of administrative proceedings against representatives of Protestant churches in the regions. Jews (for example, in the city of Sochi) and neo-pagans (it is worth noting the situation in Stavropol region) also encounter difficulties with regard to performing their religious rituals, although in the latter case the probable motive is links some of them are alleged to have with Ukrainian nationalists and a negative attitude towards the military conflict in the East of Ukraine, rather than any theological aspects of their religion. Representatives of many other religious groups, considered by the authorities ‘non-traditional" for Russia, also experience various restrictions and repressive measures.

2.3. Groups that have ceased to be victims of mass prosecutions.

Some groups actively prosecuted in the first decade of the century ceased to be the target of large-scale political prosecutions in the 2010s. Examples of such groups are defendants in the Yukos case who were actively prosecuted during the break-up of the Yukos company and ethnic Chechens prosecuted during active phase of hostilities in Chechnya. In the first case, however, despite the liquidation of the *Yukos Oil Company* and the release of most of the defendants (except for ***Aleksei Pichugin***, who was sentenced to life imprisonment) this did not mean that the methods used by the authorities with regard to ***Mikhail Khodorkovsky***, his structures, partners and employees have fundamentally changed. ***Khodorkovsky*** himself and his former business partner ***Leonid Nevzlin*** are on international wanted warrants on charges of organising contract killings.

As for Chechens, unfortunately, the cessation of the fabrication of criminal cases against "Chechen terrorists" after 2007 did not mean that the human rights situation in Chechnya or in Russia as a whole improved. Rather, in our view, there were two parallel ongoing processes: 1) the so-called "stabilisation" on the territory of the republic, which essentially meant the transfer of all power to *Ramzan Kadyrov* and law enforcement agencies under his control; and 2) the completion of the transformation of the terrorist underground, the struggle against which had seen widespread violations of human rights, which finally ceased to be nationalist/separatist in nature and became a Caucasus-wide jihadist underground. In this context, Muslims in general (including ethnic Chechens), and especially, but not exclusively, Salafis became the new target for unlawful prosecutions that involved the "uncovering" of fictitious terrorist plots.

The prosecution of *Eduard Limonov*'s supporters, who are members of the *Other Russia* party, also deserves mention. Prosecutions of this group practically stopped after 2012 and 2014 when, during the so-called "Russian Spring," the *Other Russia* strongly supported the policy of the Russian authorities towards Ukraine, and there have been very few instances in recent years. Unfortunately, the party's representatives rejected all assistance from *Memorial* after *Memorial* recognised Ukrainian prisoner of war ***Nadia Savchenko*** as a political prisoner of war. Since then we have had no access to the materials of the criminal cases against Limonov's supporters and can only judge them from media reports.

2.4. The targets of prosecution in terms of intersectional analysis

The above relatively brief classification, however, only allows for the making of very approximate distinctions between categories of political prisoners. This is because victims of political prosecutions often have multiple social roles or identities, including those that, in the Russian context, increase the chances of becoming victims of criminal prosecution or systemic discrimination. In these conditions, it is important to list at least briefly the most vulnerable groups and examples of the impact of the socio-demographic status of suspects and defendants on their situation after the initiation of criminal proceedings.

2.4.1 Multiple identities of the targets of politically motivated prosecution

Members of groups with multiple identities, each of which carries increased risk of prosecution, but which in combination with others increase still further the risk of prosecution, include, as practice shows, at least the following:

- Crimean Tatars charged in the cases of real or fictitious participation in activities of *Hizb ut-Tahrir al-Islami*, prosecuted both for involvement in *Hizb ut-Tahrir* and because they belong to almost the only group in Crimea that actively opposed unification with Russia in 2014;
- journalists and writers on public affairs involved in opposition organisations and activist groups;
- participants in the Russian nationalist movement who took anti-war or, even more, pro-Ukrainian positions during the active phase of the conflict between Russia and Ukraine in 2014-2015. As far as can be judged, law enforcement agencies are especially intolerant of solidarity with Ukraine on the part of individuals with nationalist views, something which may be related to official statements about the special role played by the *Right Sector*, an organisation banned in Russia, during the Kiev Maidan and the conflict in the Donbass.

2.5. Religious and ethnic groups disproportionately subject to politically motivated prosecutions

Some population groups in Russia and the territories controlled de facto by its authorities are subject to much more severe persecution by security agencies than others. As a result, they constitute a disproportionately large number of political prisoners. These groups include:

- *Jehovah's Witnesses* make up about 0.1% of Russia's population, but this does not prevent their members constituting about 15% of Memorial's list of political prisoners;
- Muslims, both those prosecuted for religious as well as purely political reasons. The latter, in particular, include members of the Ingush, Tatar and Bashkir national-democratic movements who profess Islam but are prosecuted solely because of their opposition views;
- members of the Crimean Tatar minority, prosecuted both on charges of membership in Islamic groups banned in Russia but permitted in Ukraine, as well as on charges unrelated to religion.

As can be seen, the members of the third category are wholly included in the second, which once again confirms the high degree of intersection of identities of political prisoners.

2.6. Politically motivated prosecutions from a regional perspective

In 2018 and 2019, political repression continued in a targeted manner across Russia, concentrating on regions of high protest activity, such as Moscow, St. Petersburg, the Republic of Ingushetia and the Arkhangelsk and Sverdlovsk regions.

As of 1 October 2019, the situation in Crimea continued to be generally difficult: repressive measures against members of the Crimean Tatar minority intensified as they were charged with participating in the banned *Hizb ut-Tahrir al-Islami* organisation. Apart from Crimea, the majority of those prosecuted on charges of participation in *Hizb ut-Tahrir al-Islami* lived in two Volga region republics dominated by ethnic groups that traditionally practise Islam: Tatarstan (71 individuals charged) and Bashkortostan

(66 individuals charged). There were also significant numbers of individuals prosecuted on these charges in Moscow (32), St. Petersburg (19), Chelyabinsk region (20) and Dagestan (11). In other regions, the number of prosecutions was insignificant due to the sporadic nature of criminal cases involving participation in *Hizb ut-Tahrir*.

We must also mention the particularly difficult situation of human rights in general, and of political repression in particular, in the regions of the North Caucasus and the South of Russia, especially in the Chechen Republic. The proximity to zones of long-term military conflicts, the prevalence of informal social and economic relations, the high profile of law enforcement agencies, along with possibly other factors, have led to the formation of a legal culture in these territories that is repressive even by Russian standards. This "southern Russian" legal culture is characterized by a lower threshold of tolerance for criticism of the authorities, repressive reactions by law enforcement agencies, the active use of planting drugs on opponents of the authorities, and numerous prosecutions on often unusual charges such as "attempted organisation of riots" in the Rostov case of ***Yan Sidorov*** and ***Vladislav Mordasov***, numerous cases of "espionage" and "treason" against ordinary citizens of Sochi, and the most active use of **Article 284.1 of the Russian Criminal Code** compared to all other Russian regions.

At the same time, the combination of arbitrariness of law enforcement agencies with the real presence of an armed underground and supporters of various terrorist organizations, extremely difficult access to information about the circumstances of criminal cases and the very high number of prosecutions make it virtually impossible for us to fully analyse most criminal cases with potential signs of illegality and political motivation in Chechnya, Dagestan and some other regions of the North Caucasus. The low representation of cases of criminal prosecution in these regions on the lists of political prisoners does not mean a lower level of political repression, but merely reflects the objective difficulties in drawing up accurate and complete lists.

2.7. Social status of victims of political repression

Analysis of the lists of prosecuted political prisoners has not allowed us to draw definite conclusions about the social composition of political prisoners in Russia and to what extent they are representative of Russian society. The higher percentage of workers among participants in the banned *Hizb ut-Tahrir al-Islami*, *Artpodgotovka* and *Jehovah's Witnesses* is, in our view, not a result of any prejudice on the part of law enforcement officials or their desire to find "easier" targets, as can happen with the prosecution of persons accused of criminal offences.

At the same time, we believe there is at least one group whose members have a higher risk of falling victim to politically motivated persecution precisely because of their low socio-economic status. These are Muslim migrant workers who are a convenient target for the fabrication of criminal cases of a terrorist nature. *Memorial* does not yet have complete statistics that would allow us to speak with certainty about the prevalence of this phenomenon, but the cases of the terrorist attack in the St. Petersburg metro, the alleged preparation of a terrorist attack on the *Kirghizia* cinema in Moscow and some others have revealed a tendency to bring prosecutions against migrant workers living in dormitories, and so forth, on charges of terrorism and to consider them as members of alleged terrorist cells.

At the same time, the above-mentioned predominance of persons of working-class social groups among a number of categories of political prisoners in Russia, the markedly high percentage of ethnic and religious minorities among them, and their lack of links with professional communities of lawyers, journalists and NGO activists, make it extremely difficult in some cases for them to defend themselves.

We see, therefore, that widespread anti-Caucasian, anti-migrant and Islamophobic attitudes in Russia have a negative impact on the degree of public attention paid to victims of politically motivated prosecutions from ethnic and religious minorities. Similarly, the almost complete absence of *Jehovah's Witnesses*, due to the specifics of their religious doctrine, in non-religious media, government agencies, large businesses, and NGOs, has made them an ideal target of religious persecution among 'non-traditional religions" and "sects" of non-Islamic orientation.

In other words, a lack of adequate representation of a number of social groups in media and in public awareness leads to the fact that repression against them is becoming more and more widespread, while public support for political prisoners focuses on participants in opposition rallies and citizens of Ukraine who are closer and "easier to understand" for the residents of large cities.

At the same time, we also know that persons of high social status prosecuted on politically motivated charges lose any kind of preferential treatment that might be seen in such cases where "ordinary," non-political charges in question. This can be seen in the criminal prosecutions of ***Mikhail Khodorkovsky***, ***Platon Lebedev***, ***Yevgeny Urlashov*** and other representatives of the economic and political elite. To a large extent, this depends on who initiates the prosecution. From 2015 it has increasingly been the FSB that runs high-profile criminal cases against ministers, deputies of the State Duma, members of the *Federation Council*, governors and mayors. The status, privileges and social ties of the defendant in such cases ceases to have significance, and not only in the matter of sentencing. It is impossible for such defendants to have regular meetings with their lawyers because they are held in the FSB-administered *Lefortovo pre-trial detention centre*, known for its shortage

of offices for lawyers to meet their defendants. So-called "high-status" remand prisoners are also deprived of access to hot water and amenities provided in other pre-trial detention facilities, and even of illegal mobile phone communications that, so far as is known, are available in all other Moscow pre-trial detention facilities.

2.8. Gender imbalance

An important and practically unchanging feature of *Memorial*'s monitoring of political prosecutions over many years is its gender imbalance. The percentage of women in cases where a political motive can be found is extremely low compared to that of men, apparently because of the cultural attitudes of law enforcement officers and court officials who consider women from potentially disloyal categories less dangerous, and the fact that these such prosecutions, on average, have a much greater public resonance. A striking example of this is the campaign for the release of ***Anna Pavlikova*** and ***Maria Dubovik***, both of whom are suspects in the *New Greatness prosecution*, which resulted in their release from the pretrial detention facility and transfer to house arrest.

Previously, a considerable number of women had been prosecuted in spy cases related to the alleged cooperation of Sochi residents with Georgian intelligence before the Five-Day War in 2008, as well as prosecutions of supporters of *Eduard Limonov*. The percentage of women prosecuted in all other types of cases never exceeded 5%.

In 2018-2019 the prosecution of a large number of *Jehovah's Witnesses*, whose organisations are banned in Russia, led to a significant number of women being recognised by *Memorial* as political prisoners.

Apart from women professing the *Jehovah's Witnesses'* faith or charged in the *New Greatness case*, in 2018 in Russia, according to our data, there was only one female political prisoner, ***Matlyuba Nasimova*** who was given an 11-year sentence on a trumped-up case of preparing a terrorist attack on the *Kirghizia* cinema. In 2019, in what may indicate a dangerous upward trend in the number of female political prisoners, to their number were added ***Anastasia Shevchenko***, a member of the *Open Russia* movement, who is under house arrest, and ***Zarifa Sautieva***, an Ingush opposition activist, who was remanded in custody.

3. Articles of the Russian Criminal Code and political repression

This chapter will show which articles of the **Russian Criminal Code** were used in politically motivated prosecutions between 2018 and 2019 and the kinds of judicial harassment associated with specific articles. The following criminal articles used by the authorities for purposes of political repression range from purely political articles, whose sole function is to penalise the peaceful exercise of rights, to general criminal articles.

3.1. Articles solely penalising exercise of the rights of assembly and association

In 2019 **Article 284.1 of the Russian Criminal Code** was first applied ("*Carrying out the activities of an undesirable organisation on the territory of the Russian Federation*"). This article had first appeared in 2015. It penalises the management of an undesirable organisation or the third instance of participation in the activities of such an organisation in a single year. The first two instances of participation are considered administrative offences and are punished under **Article 20.33 of the Russian Code of Administrative Offences**. In its turn, a foreign or international NGO may be recognised as undesirable. Such a decision is made by the *General Prosecutor's Office* of the Russian Federation in an extra-judicial procedure.

Article 20.33 of the Russian Code of Administrative Offences provides for a fine from 5,000 roubles to 15,000 roubles for individuals, while **Article 284.1 of the Russian Criminal Code** penalises acts classified as serious, punishable by up to six years in a penal colony.

There were 19 groups on the list of undesirable organisations at the end of 2019, including foundations, research institutions and NGOs. In April 2017 the *Prosecutor General's Office* included two British organisations in the list: *Open Russia Civic Movement* and *Otkrytaya Rossiya*. These organisations were founded by ***Mikhail Khodorkovsky***, a former Russian oligarch and then political prisoner who served ten years in prison and was pardoned by *Vladimir Putin* in 2013.

In Russia, ***Khodorkovsky*** and other citizens subsequently created the *Open Russia* non-governmental movement in November 2016. *Aleksandr Kurennoi*, a spokesperson for the Prosecutor General's Office, assured the media that recognition of the British NGOs as "undesirable" would not affect the work of the Russian movement ("Our initiatives concern only societies registered in Britain," he stressed).

Nevertheless, in 2018 participants in the Russian *Open Russia* movement began to find themselves prosecuted under administrative law, and from the beginning of 2019 a campaign was run to bring charges against them under **Article 284.1 of the Russian Criminal Code**. The first victim of this campaign was the Rostov activist ***Anastasia Shevchenko*** who has been under house arrest since 23 January 2019.

Shevchenko has been charged with speaking at a meeting of the Open Russia movement in Ulyanovsk in the autumn of 2018 and then attending a rally, entitled "Had Enough," in that city, "the main purpose of which was to discredit the executive authorities." This followed her having been twice found guilty under administrative law, the first time for taking part in debates, the second time for organising a lecture.

Yana Antonova (Krasnodar) and ***Maksim Vernikov*** (Yekaterinburg) were also subsequently charged under **Article 284.1 of the Russian Criminal Code** for involvement in *Open Russia*. They have not been remanded in custody at the time of writing; their trials are ongoing.

In 2019, **Article 212.1 of the Russian Criminal Code** was "resuscitated" (*"Repeated violation of the established procedure for organising or holding an assembly, rally, demonstration, march or picket"*).

The article was introduced into the **Russian Criminal Code** in 2014 in the context of a long tradition of detention and administrative penalties under **Article 20.2 of the Russian Code of Administrative Offences** for participation in demonstrations that did not have the agreement of the executive authorities. Participation in an event that had not been agreed with the authorities may lead to a criminal charge under **Article 212.1 of the Russian Criminal Code** if a person has already received three administrative penalties during the previous six months. The criminal article provides for a maximum penalty of five years in a penal colony.

In 2015 four Moscow opposition activists were charged under **Article 212.1 of the Russian Criminal Code**. In all four cases there was falsification of evidence. In particular, single pickets, which do not require official agreement, were described by the police as mass demonstrations "*involving about two people*."

The case against ***Mark Galperin*** did not go to trial. ***Vladimir Ionov*** and ***Irina Kalmykova*** left Russia during the trial: the former was granted political asylum in Ukraine and the latter in Lithuania.

Ildar Dadin was the victim the most severe prosecution at the time. He was sentenced to three years in a general regime penal colony, which on appeal was reduced to 30 months. In autumn 2016 he reported he had been tortured in Karelia penal colony No. 7.

> *In February 2017, the Constitutional Court of the Russian Federation issued* ***Ruling No. 2-P*** *that violation of the established procedure for organising or holding an assembly, rally, demonstration, march or picket by a person who has been previously held administratively liable at least three times in the course of 180 days for offences under* ***Article 20.2 of the Russian Code of Administrative Offences*** *is not in itself sufficient grounds for criminal liability, which can only be imposed if the violation caused or posed a real threat of causing harm to the health of citizens, the property of individuals or legal entities, the environment, public order, public safety, or other constitutionally protected values.*

The *Supreme Court* soon acquitted ***Dadin*** on a technicality: at the time the case was initiated, the penalties for his previous administrative offences had not entered into force. Part of public opinion took this as a signal that **Article 212.1 of the Russian Criminal Code** would no longer be applied. Political analyst *Yekaterina Shulman*, for example, said:

> ***Dadin*** *was someone who deliberately tested this legislation. Thanks to him and thanks to his defenders, thanks to this campaign, it seems that this article will no longer be used. We have not improved our legislation, unfortunately, but we have actually repealed one of the new repressive articles of the* **Russian Criminal Code**.

However, contrary to expectations and the position of the *Constitutional Court*, in 2019 three new prosecutions under **Article 212.1 of the Russian Criminal Code** were initiated. In September 2019, Moscow activist ***Konstantin Kotov*** was sentenced to four years in a general regime penal colony. On four occasions he was found guilty of taking part in demonstrations that did not have the agreement of the authorities, and on one occasion he had urged people to take part in a demonstration. The court agreed with the charge that ***Kotov***'s actions posed a real threat to public order and constitutionally protected values. For example, from the prosecution's point of view, ***Kotov*** hindered members of the public moving freely around Moscow and sightseeing. In reality, the demonstrations were peaceful, small in scale, and ***Kotov*** did not violate public order in any way.

Two other cases concerned protests over landfill sites when activists who protested against the construction of landfills near their place of residence were prosecuted. In September 2019 ***Andrei Borovikov*** from the city of Arkhangelsk was sentenced to 400 hours of compulsory work. The case against ***Vyacheslav Yegorov***, a resident

of Kolomna near Moscow, has not yet gone to court. He remains at liberty under certain pre-trial conditions, and from February until July 2019 he was under house arrest.

3.2. Articles penalising expression

The **Russian Criminal Code** has at least a dozen articles that can be used to prosecute public statements. According to our observations, the following articles are most commonly used in prosecutions for political reasons:

Article 205.2 – *Incitement of terrorist activities, public justification of terrorism or advocacy of terrorism;*

Article 280 – *Incitement of extremist activities;*

Article 282 – *Incitement of hatred or enmity, as well as abasement of dignity;*

Article 280.1 – *Incitement of actions aimed at violating the territorial integrity of the Russian Federation;*

Article 148, Part 1 – *Public actions that express clear disrespect for society and are intended to offend the religious feelings of believers;*

Article 354.1 – *Rehabilitation of Nazism*.

In 2018 there was a partial decriminalisation of **Article 282, Part 1, of the Russian Criminal Code**. If an act described in this part of the article is committed for the first time in a year, it is subject to administrative liability under **Article 20.3.1 of the Russian Code of Administrative Offences** (for citizens a fine of up to 20,000 roubles, compulsory work up to 100 hours or up to 15 days in jail). In the event of a repeat offence within a year, prosecution under the criminal law may follow.

The decriminalisation was preceded by a public outcry triggered by the cases of ***Maria Motuznaya*** and other Internet users who publicly reported they were being prosecuted for reposting pictorial jokes in *VKontakte*. In July 2018, a 23-year-old resident of Barnaul, ***Maria Motuznaya***, decided to announce on *Twitter* that she was being prosecuted under **Article 282, Part 1**, and **Article 148, Part 1, of the Russian Criminal Code**. Journalists and human rights activists took up the case and similar stories were told by other Barnaul residents - ***Anton Angel***, ***Andrei Shasherin*** and ***Daniil Markin***. Prior to their trial, travel restrictions were imposed on all of them.

In October, the court sent ***Motuznaya***'s case back to the prosecutor's office. After a while, she left Russia. After the partial decriminalisation of **Article 282 of the Russian Criminal Code**, all the cases listed above were closed.

Decriminalisation has made possible a reduction in the sentences handed down to several political prisoners convicted under **Article 282 of the Russian Criminal Code**. ***Vadim Tyumentsev*** was released on parole having served almost four years of his five-year sentence; the sentence given to Tatar opposition activist ***Danis Safargali*** was reduced by eight months; and that of journalist and blogger ***Boris Stomakhin*** was reduced by two months.

Since February 2019 the new **Article 20.3.1 of the Russian Code of Administrative Offences** has been in use in Russia. As of 1 October 2019, the *Sova Centre* had learned of more than 90 instances of its use. Most often people prosecuted under this article were fined. Less frequently they were jailed or sentenced to compulsory work.

At the same time, **Article 280 of the Russian Criminal Code**, closely related to **Article 282 of the Russian Criminal Code**, remains in the arsenal of law enforcement agencies. According to the definition of extremism in the **Federal Law "On Combatting Extremist Activities,"** extremism includes incitement to social division, propaganda of superiority, and discrimination on ethnic, racial, religious, social or other grounds. Following the partial decriminalisation of **Article 282 of the Russian Criminal Code**, the law enforcement agencies are free to classify such acts under **Article 20.3.1 of the Russian Code of Administrative Offences** and, if they deem it necessary, under **Article 280 of the Russian Criminal Code**.

The definition of *"extremist activity"* is much broader; it also includes *"changing the foundations of the constitutional order"* and, in fact, applies to any calls to change the government. In 2018 Moscow opposition activist ***Mark Galperin*** was sentenced under **Article 280, Part 2, of the Russian Criminal Code** to a two-year suspended sentence for publishing the videos *"We are acquiring combat readiness on the streets!" and "My answer to REN TV – we must have a Maidan!"* On 4 December 2019 the *Reutov town court* changed ***Galperin***'s suspended sentence to an 18-month term of imprisonment in a low-security penal colony, justifying this decision by administrative violations related to participation in public events allegedly committed by ***Galperin***. A *Yabloko* activist from Tver region, ***Vladimir Yegorov***, was also given an 18-month suspended sentence in June 2018 for a post about "taking down the Kremlin rat," which was considered to be incitement to kill *Vladimir Putin*, and thus extremism. In March 2019, Vladivostok lawyer ***Dmitry Tretyakov*** was also given a two-year suspended sentence for reposting a post by *Arkady Babchenko* about street protests. ***Tretyakov*** spent a year before his conviction on remand, and ***Yegorov*** spent several

months in a remand centre. ***Galperin*** was kept under house arrest until the judgment, which gave him a suspended sentence; he was taken into custody after his suspended sentence was replaced with a real term of imprisonment.

In 2019 the relatively rarely used **Article 280.1 of the Russian Criminal Code** once again figured on Memorial's list of political prisoners. In March, ***Airat Dilmukhametov***, a participant in the Bashkir national movement who had previously served three years for "justifying terrorism," was arrested for an offence under this article. This time he is being prosecuted for a video in which he declared himself a presidential candidate in Bashkiria and stated his "intention to establish a new federation."

The year 2018 and the beginning of 2019 was a period of the "blossoming" of the most severe of all criminal articles punishing speech – **Article 205.2 of the Russian Criminal Code**. Firstly, the number of convictions in which this was the primary article not only grew in 2018 (as in the previous five years), but eventually turned out to be higher than the number of similar convictions under **Article 280 of the Russian Criminal Code**. Secondly, the prosecution of political activists, journalists, and human rights defenders under the article became more frequent.

In March 2018, civic journalist ***Nariman Memedeminov*** was arrested in annexed Crimea for an offence under this article: he was charged with having reported on events organised by *Hizb ut-Tahrir*. In October 2019 he was sentenced to 30 months in a low security penal colony. In May, Omsk writer on public affairs and human rights activist ***Viktor Korb*** was prosecuted for an offence under **Article 205.2 of the Russian Criminal Code** in connection with the publication of ***Boris Stomakhin****'s* final speech made at his open trial three years previously. Later, ***Korb*** left Russia.

On 31 October 2018 in Arkhangelsk, 17-year-old student and anarchist *Mikhail Zhlobitsky* blew himself up in the building of the FSB's regional headquarters. He died and three FSB officers were injured. Before the explosion, *Zhlobitsky* had published a post on *Telegram* in which he explained his motivation: *"I made up my mind to do this because the FSB has gone fucking crazy, fabricating cases and torturing people."* These tragic events were the starting point for a wave of repressive measures against people who expressed even the slightest positive attitude towards *Zhlobitsky*'s actions. In particular, Kaliningrad left-wing activist ***Vyacheslav Lukichyov***, who called *Zhlobitsky* a "real hero," was fined 300,000 roubles. By the time of his sentencing, he had served more than five months in a remand prison. In February 2019 the home of a journalist working for *Ekho Moskvy in Pskov*, ***Svetlana Prokopyeva***, was searched and she was charged with a criminal offence for her on-air discussion of the incident in which *Zhlobitsky* blew himself up.

It should be noted that since the middle of 2016, the use of the Internet is an aggravating circumstance under this article and terrorist statements on the Internet are classified under **Part 2** that provides for terms of imprisonment from five to seven years. The courts are not entitled to impose a suspended sentence or a period below the lower limit under this article (except in cases where there is a special procedure based on a full confession). The only alternative is heavy fines. However, in 80% of cases in 2018 the courts sentenced defendants to real terms of imprisonment under **Article 205.2 of the Russian Criminal Code**.

Another sad trend of the last one and a half or two years has been the use of **Article 205.2 of the Russian Criminal Code** to bring charges against convicted persons to extend their terms of imprisonment. This has been used against both political and "ordinary" prisoners. Several such cases are known where there have been obvious signs of falsifications, based almost entirely on the testimony of dependent witnesses (who are also convicts).

One of the most egregious of such cases is that of ***Pavel Zlomnov*** from St. Petersburg, detained in an arms dealing case. According to ***Zlomnov***, the case was fabricated and he was beaten by officers until he gave testimony under torture. ***Zlomnov*** reported the torture to members of the Public Monitoring Commission. On 30 January 2019, the day his detention on remand expired, ***Zlomnov*** was charged under **Article 205.2, Part 1, of the Russian Criminal Code**: according to the investigation, he had called *Zhlobitsky* a "*real hero of the people*" within the hearing of other detainees. ***Zlomnov*** was again taken into custody and subsequently transferred to house arrest. On 2 September 2019 it became know he had gone missing while under house arrest.

Earlier, three years were added to the term of imprisonment of anarcho-communist ***Ilya Romanov***, serving his sentence in Penal Colony No. 22 in Mordovia. A provocateur among the other convicts offered ***Romanov*** the use an illegal phone and helped him start an account on *Facebook*. Subsequently, the video, "Invitation to Jihad," was found on this account (***Romanov*** himself is a committed atheist and has no connection with Islam).

3.3. Articles concerning extremist and terrorist associations

The criminalisation of religious and political groups is at the heart of the most widespread repression in Russia today. If a group is recognised by decision of the *Russian Supreme Court* as an extremist or terrorist organisation, involvement in such an organisation is punishable under **Articles 282.2** and **205.5 of the Russian Criminal Code**, respectively. Where there is no such decision of the *Supreme Court*, and the investigation and trial prove that an association was pursuing extremist or terrorist aims, the group is described as extremist or terrorist and involvement in it is punishable under **Article 282.1** and **Article 205.4 of the Russian Criminal Code**, respectively.

In the types of case, the decision to declare the organisation extremist or terrorist significantly facilitates the work of the prosecution. The only thing to prove is that the accused had some connection with the organisation. There is no need to prove that the accused committed or planned violent crimes, terrorist acts, or advocated violence, as the criminal nature of the group is already proven by the *Supreme Court*'s decision. If there is information about specific crimes committed by a member of the organisation, such charges are added. In themselves, **Article 282.2** and **Article 205.5 of the Russian Criminal Code** punish, in fact, merely "for the name."

One problem is that the severity of punishment "for the name" is too severe (often more severe than for crimes the group could have committed). First of all, this applies to **Article 205.5 of the Russian Criminal Code** that deals with terrorism: participation in a terrorist organisation (**Part 2**) provides for sentences of from 10 to 20 years' imprisonment; organisation of a cell (**Part 1**) is punishable by from 15 years' imprisonment to life. Under **Article 282.2**, participants (**Part 2**) may be imprisoned for terms from two to six years, and organisers (**Part 1**) may receive from six to 10 years.

A second problem is that even though there may have been no grounds for the *Supreme Court* decision that triggered the prosecution of dozens of people, it is virtually impossible to challenge it. *Memorial Human Rights Centre* considers in particular the designation of *Hizb ut-Tahrir al-Islami* as a terrorist organisation, and the designation of *Nurjalar*, *Jehovah's Witnesses* and the *Right Sector* as extremist organisations, to be wholly unjustified.

The "public face" of political repression under **Article 205.5 of the Russian Criminal Code** has been and continues to be prosecution for involvement in *Hizb ut-Tahrir*. As of 1 October 2019, the Russian authorities had detained more than 50 people in

such cases since the beginning of 2018 alone. Of these, 35 people had been detained in annexed Crimea since the beginning of 2019 (approximately 13% of all cases known to us of imprisonment by the Russian authorities on charges of involvement in *Hizb ut-Tahrir*).

From the beginning of 2018 through to October 2019, at least 96 people were convicted under **Article 205.5 of the Russian Criminal Code** of involvement in *Hizb ut-Tahrir*. In Ufa in 2018 a "record" was set when ***Rinat Nurlygayanov*** was sentenced to 24 years in a strict regime penal colony. The previous "historical maximum" had been the jailing for 19 years and two months of ***Asgat Khafizov*** from Kazan.

Article 282.2 of the Russian Criminal Code has also become one of the main instruments for the prosecution of "out of favour" religious groups. In 2017, the *Supreme Court of the Russian Federation* designated *Jehovah's Witnesses* an extremist organisation; at the same time the first cases against believers of this faith under **Article 282.2 of the Russian Criminal Code** were initiated. ***Dennis Ole Christensen***, a citizen of Denmark resident in Orel, was remanded in custody. The repressive campaign against *Jehovah's Witnesses* began to gain momentum in April 2018. As of 1 October 2019, more than 200 people are being prosecuted under **Article 282.2 of the Russian Criminal Code** on charges of involvement in this religious organisation. More than 30 other individuals were in detention on similar charges and at least 28 people were under house arrest at that date. In February 2019, ***Christensen*** was sentenced to six years in a general regime penal colony. In September 2019, six *Jehovah's Witnesses* were sentenced to terms ranging from two years to three and a half years in a general regime penal colony.

Another religious group subjected to repression using **Article 282.2 of the Russian Criminal Code** is the Islamic proselytising movement *Tablighi Jamaat*, banned in Russia in 2009. In 2018, eight followers of this movement were convicted and sentenced in Moscow to sentences ranging from four years to six and a half years in a general regime penal colony. In early 2019, judgment was handed down in the case of a Crimean cell of *Tablighi Jamaat*: ***Renat Suleimanov***, accused of organising this cell, was sentenced to four years in a general regime penal colony, while the three other defendants were given suspended sentences.

Finally, the article of the **Russian Criminal Code** concerning participation in an extremist organisation became one of the instruments of anti-Ukrainian repressive measures. This became possible when, in 2014, the *Supreme Court of the Russian Federation* recognised the Ukrainian nationalist organisation *Right Sector* as extremist and banned its activities in Russia. This decision was based on the fake text of the "appeal by *Dmytro Yarosh* to *Doku Umarov*" and allegations made by the prosecution in the case of ***Oleg Sentsov*** that were unfounded at the time of the ruling and which

were not even formally upheld by the verdict in that trial. The fact is that Russian law enforcement agencies are criminalising participation in the *Right Sector* not only in Russia, but also in Ukraine.

In 2018, at least four sentences were handed down under **Article 282.2, Part 2, of the Russian Criminal Code** for participation in the *Right Sector*. Ukrainians ***Mykola Dadeu*** and ***Roman Ternovsky*** temporarily lived in Russia with their families. While ***Dadeu*** had been a volunteer with *the Right Sector* in Ukraine at an earlier time and supported the Ukrainian army and volunteer formations, ***Ternovsky*** actively participated in the activities of the Kharkiv branch of *the Right Sector*. ***Dadeu*** was given 18 months in a low security penal colony and has already been released; ***Ternovsky*** was sentenced to 27 months in a general regime penal colony. He was released in August 2019.

Oleksandr Shumkov, a Ukrainian military serviceman, claims he was taken to Russia involuntarily. He had participated in *the Right Sector* since the beginning of the events in the Kiev Maidan, had worked as a guard for *Dmytro Yarosh* and participated in the *Right Sector* volunteer corps. However, these events took place before the *Russian Supreme Court* banned the *the Right Sector* in Russia. ***Shumkov*** later signed an agreement with the *Supreme Court* and ended his involvement with the *Right Sector*. He was sentenced to four years in a general regime penal colony.

One other conviction was that of the Russian citizen ***Denis Bakholdin*** who was sentenced to three and a half years in a general regime penal colony on charges of participating in an Anti-Terrorist Operation in the summer of 2015 as a member of the intelligence battalion of a volunteer corps of the *Right Sector*. ***Bakholdin*** was released after serving his full sentence.

While the criteria for participation in a terrorist or extremist organisation are highly formal, the criteria for participation in a terrorist or extremist group, on the contrary, are blurred. In many cases, the existence of a group is proven by the testimony of participants, including instances where the accused subsequently allege they gave false testimony under torture or other pressure. There are also other specific points related to charges under **Article 282.1** and **Article 205.4 of the Russian Criminal Code**.

Firstly, a person who joins a group may not know that it is extremist or terrorist, as there is no relevant court decision. However, an offence under **Part 2** of the relevant articles (*"Participation in a group"*) is considered to have been committed at the moment of joining, and under **Part 1** (*"Organisation of a group"*) from the moment of bringing together at least two people. These are the formulae contained in the **Rulings of the Plenum of the Supreme Court of the Russian Federation** of 9

February 2012, No. 1, "**On certain issues of judicial practice in criminal cases concerning crimes of a terrorist nature**" and of 28 June 2011, No. 11, "**On judicial practice in criminal cases concerning crimes of an extremist nature**."

Secondly, as a rule, all members of a group are considered collectively responsible for any action taken by any member of the group. This creates a great deal of room for abuse: people who may have little in common and who are barely acquainted can be brought together in a group, but nonetheless everyone will be held responsible for the offences.

The year 2018 is known for the two high-profile political prosecutions of the "*Network*" terrorist group (**Article 205.4 of the Russian Criminal Code**) in Penza and St. Petersburg and of the extremist *"New Greatness"* group (**Article 282.1 of the Russian Criminal Code**) in Moscow. The trials in these cases began in 2019.

Arrests in the *Network* case began in October-November 2017. Five people were subsequently detained in Penza – ***Dmitry Pchelintsev***, ***Ilya Shakursky***, ***Yegor Zorin***, ***Vasily Kuksov*** and ***Andrei Chernov***; ***Arman Sagynbayev*** was detained in St. Petersburg. In January 2018, ***Igor Shishkin***, ***Viktor Filinkov*** and ***Yuly Boyarshinov*** were detained in St. Petersburg; in July 2018, ***Maksim Ivankin*** and ***Mikhail Kulkov*** were detained in Moscow. Another defendant in the case is ***Aleksandra Aksyonova***, wife of ***Viktor Filinkov***; she has received political asylum in Finland.

The detainees were mostly anarchists and anti-fascists who were fond of airsoft (a sport in which participants simulate combat operations and other military-type situations). Airsoft training using large-scale model weapons forms the basis of the charges relating to training in the ways to violently seize power. The investigation also believes that the alleged members of *Network* discussed plans to overthrow the government "when the right time comes," called the "X Hour" in the case file. In February 2020, seven defendants in the Penza part of the *Network* prosecution were sentenced to terms of imprisonment ranging from six to 18 years.

In March 2018, eight men and two young women were detained in Moscow, one of whom was a minor at the time of detention. They were accused of forming an extremist group, *New Greatness*. *"Ruslan D."*, a law enforcement agent who infiltrated the group of young people who were discussing political issues, most likely worked actively to make the meetings systematic and to formalise the association. He also prepared a draft charter in which it was written that *"if national uprisings occur"* the group would take part in them.

Rustam Rustamov and ***Pavel Rebrovsky*** made plea bargains with the investigators. ***Rustamov*** received a suspended sentence; ***Rebrovsky*** was given a 30-month term of imprisonment. Later ***Rebrovsky*** rejected the plea bargain he had agreed with the

investigators, his sentence was cancelled and the case is currently being retried. ***Ruslan Kostylenkov***, ***Pyotr Karamzin***, ***Vyacheslav Kryukov*** and ***Dmitry Poletayev*** are all currently in pre-trial detention, while ***Anna Pavlikova***, ***Maria Dubovik***, ***Maksim Roshchin*** and ***Sergei Gavrilov*** are under house arrest.

The choice whether to classify a group as extremist or terrorist is largely arbitrary. In October 2017, for example, *Artpodgotovka*, a movement led by an opposition activist from Saratov, *Vyacheslav Maltsev*, was designated as extremist. *Maltsev* had for a long time hosted a *YouTube* channel of the same name on which he claimed that a revolution would take place in Russia on 5 November 2017. Fearing prosecution, he left the country in the summer of 2017 but continued to urge his supporters to gather on 5 November in the centre of Moscow. There was no revolution, no riot and no clashes with the police on that day, but law enforcement agencies began a wave of repressive measures in connection with the "Maltsev revolution."

Although the *Supreme Court of the Russian Federation* defined *Artpodgotovka* as an extremist organisation, many of *Maltsev*'s supporters have been, and are being, charged with a much harsher offence - participation in a terrorist group. Charges under **Article 205.4 of the Russian Criminal Code** against ***Sergei Ozerov***, ***Oleg Dmitriev*** and ***Oleg Ivanov***, who had been convicted in Moscow in 2019, were dropped but only because the prosecutor considered their group had been too short-lived and insufficiently stable. Other Moscow supporters of *Artpodgotovka* - ***Yury Korny***, ***Andrei Tolkachyov*** and ***Andrei Keptya*** are still facing charges under this article.

In 2018, the charges in the case of the Baltic Vanguard of the Russian Resistance (BARS) were also made more serious. Initially, ***Aleksandr Orshulevich***, ***Aleksandr Mamayev***, ***Igor Ivanov*** and ***Nikolai Sentsov***, all residents of Kaliningrad region, were remanded in custody in connection with charges under **Article 282.1 of the Russian Criminal Code**. However, in October 2018 they were charged with offences under **Article 205.4 of the Russian Criminal Code**. The members of the so-called "terrorist group" were charged with making inscriptions on walls, posting pictures on the *VKontakte* social network, and sticking up flyers along with other charges that would perplex anyone familiar with the concept of "terrorism." Subsequently, in the spring of 2020, already in court, the prosecution was forced to return to its original position.

3.4. Other articles concerning terrorism

For the purposes of political repression, the Russian authorities not only use charges of involvement in terrorist groups or advocacy of terrorism. Political prisoners are also charged with the actual preparation or execution of terrorist acts (**Article 205 of the Russian Criminal Code**) as well as various forms of aiding and abetting terrorist activities (**Article 205.1 of the Russian Criminal Code**).

Sergei Ozerov, ***Oleg Dmitriev*** and ***Oleg Ivanov***, who arrived in Moscow to look for work and at the same time to take part in the "*Maltsev* revolution," were convicted of preparing a terrorist attack. The apartment where they rented a room was searched on the night of 1 November. Bottles containing petrol were found on the balcony. It becomes clear from the circumstances of the case that most likely their fourth neighbour *Vadim Mayorov*, who inexplicably escaped arrest, brought the bottles and petrol to the apartment. Even if the bottles had belonged to the defendants in the case and they had been preparing to use Molotov cocktails in the "revolution," there is no reason to qualify this as an act of terrorism. Instead, the potential offences could include rioting, hooliganism, vandalism or arson. The prosecution did not even specify the target of the attack of these three alleged ill-doers, but confidently charged them with preparation of a terrorist attack. In January 2019, ***Ozerov*** and ***Dmitriev*** were each sentenced to eight years in a strict regime penal colony; ***Ivanov*** was given a seven-year term.

On 14 June 2019, ***Abdulmumin Gadzhiev***, a journalist for the independent newspaper Chernovik, was arrested in Dagestan. He was charged with financing terrorism (**Article 205.1, Part 4, of the Russian Criminal Code**) and participation in Islamic State (**Article 205.5, Part 2, of the Russian Criminal Code**). The investigators believe ***Gadzhiev*** transferred money to the accounts of the charitable foundations of *Abu Umar Sasitlinsky* (*Israil Akhmednabiev*). The investigators consider this Dagestani preacher organised the financing of terrorists through charitable foundations under the pretext of building mosques and helping poor Muslims. *Sasitlinsky* denies involvement in the crime and has gone into hiding abroad. In the same case, ***Abubakar Rizvanov***, head of the Ansar *Charitable Foundation*, and the entrepreneur ***Kemal Tambiev*** were also arrested. The latter said he testified against ***Gadzhiev*** under torture.

3.5. Articles concerning riot and violence against public officials

For many years now the authorities have been using two articles of the **Russian Criminal Code** as a means of repression against those who participate in street protests:

Article 318 – Use of force against a public official;

Article 212 – Riot.

As a rule, charges under these articles have certain features in common. For example:

- Any physical contact with a police officer may give rise to a criminal prosecution for use of force against a public official;
- A police officer does not need supporting documents about the damage they allegedly suffered; it is enough to declare they experienced physical pain; the court unconditionally accepts the testimony of police officers and their colleagues as true;
- Police violence is never evaluated or taken into account by the authorities as a context for defensive actions by demonstrators; the courts ignore the fact that in some cases the accused have suffered far more from the actions of the police than the police suffered from the actions of the accused;
- If there is the political will to do so, sporadic clashes with police officers can be described as riots.

In February 2018 businessman ***Dmitry Borisov*** from Moscow region was sentenced to a year in a penal colony for twitching his leg in a reflex action as five police officers were carrying him during an anti-corruption demonstration held on 26 March 2017. ***Mikhail Benyash***, a lawyer from Sochi, did not himself take part in the demonstrations but defended people who were prosecuted for offences under administrative law. He had intended to take part, including in Krasnodar on 9 September 2018, when protests against the increase in the retirement age were held all over Russia. However, shortly before the rally began, ***Benyash*** was seized by police officers in civilian clothes and severely beaten. He was diagnosed with traumatic otitis and multiple contusions, and an old injury to his knee was also again traumatised. Nonetheless, ***Benyash*** was charged with violence against police officers, spent six weeks in custody and was released on bail in October 2018. On 11 November2019 ***Mikhail Benyash*** was fined 30,000 roubles.

The "Maltsev Revolution" was the occasion not only for charges of terrorism, but also for prosecutions under articles that have become classics with regard to prosecutions of protestors. ***Vyacheslav Shatrovsky***, a worker from Kostroma region, was sentenced to three years in a general regime penal colony for an offence under **Article 318 of the Russian Criminal Code** after he had ended up on Pushkin Square on 5 November 2017 where the "revolution" was supposed to take place. After a collision with police officers, ***Shatrovsky*** received an open wound to his skull, but no criminal investigation was launched into his injury. According to the prosecution, ***Shatrovsky*** himself had hit police officer *Pavlov* on the back of the head and grabbed him by the neck. *Pavlov* was diagnosed with suspicion of a mild concussion, which was not confirmed later, and a scratch on his neck. However, there were indications that *Pavlov's* medical documents had been falsified.

Several participants in the events of 5 November 2017 are being prosecuted under **Article 30, Part 1, of the Russian Criminal Code** in association with **Article 212, Part 2, of the Russian Criminal Code** (*"Preparing to participate in riots"*), **Article 30, Part 3, of the Russian Criminal Code** in association with **Article 212, Part 2, of the Russian Criminal Code** (*"Attempting to participate in riots"*) and **Article 30, Part 3, of the Russian Criminal Code** in association with **Article 212, Part 1, of the Russian Criminal Code** (*"Attempting to organise a riot"*). ***Roman Maryan***, a resident of Krasnoyarsk region, was sentenced to 38 months in a general regime penal colony for travelling to Moscow by train at the end of October 2017 to take part in the "revolution."

Three residents of Rostov-on-Don and Rostov region were also charged with attempting to take part in riots, two of whom held a peaceful anti-government picket on 5 November 2017. In October 2019, ***Yan Sidorov*** and ***Vladislav Mordasov*** were sentenced by Rostov Region Court to six years six months, and six years seven months, respectively, both in a strict regime penal colony. ***Vyacheslav Shamshin*** was given a three-year suspended sentence.

In 2019 two examples of repressive measures regarding the use of **Article 212** and **Article 318 of the Russian Criminal Code** against protesters were most prominent: the Ingush case and the Moscow case.

On 26 March 2019 in Magas, capital of the Republic of Ingushetia, a rally was held as part of a protest campaign against the transfer of part of the republic's territory to neighbouring Chechnya without adequate public discussion. According to *Memorial*, about 20,000 people took part in the protest. The protesters demanded the resignation of the head of Ingushetia, of the region's government and parliament, the holding of direct free elections for head of the republic and for the regional parliament, and that no amendments should be made to the local law on referendums. Approximately 400 people remained at the site of the rally after it had ended and

announced an indefinite protest. On the morning of 27 March 2019, the protesters were dispersed by force. In the following days more than twenty Ingush opposition activists were charged with offences under **Article 318, Part 2, of the Russian Criminal Code** (*"Use of violence against a public official that is dangerous to life and health"*). The investigative officials claimed that

> *…participants in an unauthorised rally…. used violence against them [police officers] that was dangerous to their health, striking law enforcement officers with their hands and feet on various parts of their bodies and limbs, and also throwing stones, chairs, metal turnstiles and other improvised items at them.*

The investigation believes that the violence against the police was organised by six leaders of the Ingush opposition. They were charged with an offence under **Article 33, Part 3, in conjunction with Article 318, Part 2** (*"Organisation of the use of violence against a public official dangerous to life and health"*) **of the Russian Criminal Code**. They are all being held in pretrial detention. At least 21 of the "ordinary" participants in the rally charged with offences under **Article 318, Part 2, of the Russian Criminal Code** were being held on remand in October 2019.

A series of demonstrations were held in Moscow in the summer of 2019 in connection with the refusal to allow independent candidates to stand in the Moscow City Duma elections. On 27 July 2019 police violently dispersed one such demonstration. More than a thousand participants were detained and dozens were beaten. Moscow Mayor *Sergei Sobyanin* stated publicly that he considered the events to be riots that had been planned in advance by the protesters. On 31 July 2019, arrests in the case began. Police violence and detentions continued at subsequent protests.

In September, five people were convicted under **Article 318, Part 1, in conjunction with Article 212, Part 2, of the Russian Criminal Code**. Of these, only the actor ***Pavel Ustinov*** received a suspended sentence as a result of the great public outcry which his case acquired. The four others were sentenced to serve terms in a general regime prison colony ranging from two years to three and a half years. As of 1 October 2019, three more people had been remanded in custody and one was under house arrest pending trial for offences under these articles.

Article 321, Part 2, of the Russian Criminal Code (*Use of violence against a member of staff of a place of imprisonment or remand*) is in many ways similar to **Article 318 of the Russian Criminal Code**, but it applies to places of deprivation of liberty. Evidence of guilt is even more based on the testimony of the "victims" (the staff of prison colonies and remand centres) and the accused has virtually no chance to prove their innocence. It is impossible to find an alternative video or, as a rule, to persuade other convicts (highly dependent on the administration of the penal colony or remand centre) to testify for the defence.

In 2018, ***Volodymyr Balukh***, a resident of Crimea of pro-Ukrainian beliefs, who had already been previously convicted in a fabricated case of possessing weapons, was convicted of an offence under this article. ***Balukh*** was accused of striking police captain *Valery Tkachenko*, head of the temporary detention facility in Razdolne, in the stomach with his elbow, after which he went into the cell, took up a bottle of washing detergent and hit him again on the right hand. The defence claims *Tkachenko* was the first to attack ***Balukh***, regularly insulting him and humiliating him on ethnic grounds. ***Balukh*** was sentenced to three years in a general regime penal colony, a sentence that in fact added a further 17 months to his previous sentence. ***Balukh*** was subsequently released as part of the prisoner exchange between Russia and Ukraine.

3.6. Some other crimes against state authority

In a number of cases, the Russian authorities also use **Article 275 of the Russian Criminal Code** (*"High treason"*) and **Article 276** (*"Espionage"*) for politically motivated prosecutions. These articles are closely related in meaning, the difference being that the former is used against Russian citizens and the latter is used against foreigners.

The main feature of such cases is a maximal lack of transparency. In some cases, defendants claim they were not even able to find out what exactly they were accused of because this information was a state secret. This is one of the reasons why the public knows little about such cases. As a rule, *Memorial Human Rights Centre* is unable to obtain complete or objective information about prosecutions for treason and espionage, so it is often difficult to class defendants as political prisoners. For example, in 2018 the Ukrainian journalist ***Roman Sushchenko***, whom the FSB describe as a staff intelligence officer of the Ukrainian Ministry of Defence, was convicted. We are unable to analyse the charges against him, but we assume that this prosecution was politically motivated. ***Sushchenko*** was also released in September 2019 in the prisoner exchange between Russia and Ukraine.

In 2018, in annexed Crimea, judgments were handed down in one of the prosecutions for preparation of sabotage in August 2016 (**Article 30, Part 1, of the Russian Criminal Code in conjunction** with **Article 281, Part 2, Point "a"**): ***Yevgen Panov*** was sentenced to a term of eight years, and ***Andriy Zakhtei*** was given six years six months, both in strict regime prison colonies. ***Dmytro Shtyblikov***, ***Volodymyr Dudka*** and ***Oleksiy Bessarabov*** were accused of preparing acts of sabotage in November 2016. ***Shtyblikov***, who had pleaded guilty, had been sentenced to five years in a penal colony in 2017; ***Dudka*** and ***Bessarabov***, who maintained their innocence, were sentenced to 14 years' imprisonment. Prosecutions in such cases, as well as in those

involving charges for preparing terrorist attacks, are characterised by numerous opportunities for abuses on the part of investigators. The evidence on which the prosecution is based consists of planted weapons and testimony obtained through use of torture. All this, as in the prosecutions for treason, is accompanied by a significant lack of transparency.

Article 322, Part 3, of the Russian Criminal Code ("*Illegal crossing of the State border of the Russian Federation as a member of an organised group*") became a new instrument for repressive measures against Ukrainian prisoners of war in 2018. While previously some political prisoners had been charged additionally with an offence under **Article 322, Part 1, of the Russian Criminal Code** (for example, ***Leonid Razvozzhayev*** and ***Nadia Savchenko***), and this was done to disguise the fact of the forced removal of the defendants to Russia, in November 2018, as a result of the conflict in the Kerch Strait, Russia captured 24 crew members of the Ukrainian Navy ships Berdyansk, Nikopol and Yana Kapu. The 24 crew members were charged with the criminal offence of a group border violation. They were also subsequently released as a result of the prisoner exchange.

3.7. Articles concerning possession of drugs and weapons

The prosecution of the Moscow investigative journalist ***Ivan Golunov***, who worked for *Meduza*, has become the most well-known instance of planting drugs by police for at least the last few years. ***Golunov*** spent five days in detention in June 2019 and was released with all charges dropped. However, a number of activists and journalists were less fortunate and became victims of political prosecutions based on the drug-related **Article 228 of the Russian Criminal Code** ("*Illegal acquisition, possession, transportation, manufacture and possession of narcotics, psychotropic substances or their analogues, as well as illegal acquisition, possession and transportation of plants containing narcotic or psychotropic substances or parts thereof*"). There were a series of such cases in the years 2018 - 2019.

In January 2018 the head of *Memorial*'s Grozny office, ***Oyub Titiev***, was arrested. He was accused of having on him just over 200 grams of marijuana. Despite public attention on the trial and convincing evidence that the marijuana was planted on him, ***Titiev*** was sentenced to 4 years in a penal colony. In June 2019, he was released on parole. ***Mikhail Savostin***, an opposition activist and businessman from Mineralnye Vody, was arrested in April 2018 and received a suspended sentence after spending

more than a year in a remand prison. According to the investigators, when law enforcement officers stopped his car, ***Savostin*** threw a bag of marijuana under the car's wheel.

In January 2019, spouses ***Artyom Milushkin and Liya Milushkina*** from Pskov region, both opposition political activists, were detained. They have been charged with possession and sale of amphetamines. ***Artyom Milushkin*** has been remanded in custody, while ***Liya Milushkina*** is under house arrest. At almost the same time as the ***Golunov*** case, in June 2019 it became known that a bag of marijuana had allegedly been planted on the Circassian journalist, ***Martin Kochesoko***. ***Kochesoko*** spent more than two weeks in detention before being transferred to house arrest.

A feature of charges under this article is that it is usually difficult for the accused to prove the planting took place. A person can only challenge police reports with his or her own narrative, and the degree of public trust will depend on his or her reputation. Formally, the guarantee of the legality of actions of law enforcement officers is considered to be the witnesses of the search (or representatives of the public), but in fact these witnesses are usually either people dependent on the authorities, in some cases accompanying many investigative actions (the so-called "professional witnesses"), or they do not exist - their personal data is invented and their signatures are falsified. Accused persons often say they are forced to touch the compromising find so that later their fingerprints or biological traces can be found on it.

The same is true for the group of articles of the **Russian Criminal Code** concerning illicit manufacture and possession of weapons and explosives:

> **Article 222** – *Illegal acquisition, transfer, sale, storage, transport or carrying of arms, their main parts, or ammunition;*
>
> **Article 222.1** – *Illegal acquisition, transfer, sale, storage, transport or carrying of explosives or explosive devices;*
>
> **Article 223** – *Illegal manufacture of weapons;*
>
> **Article 223.1** – *Illegal manufacture of explosives, illegal manufacture, alteration or repair of explosive devices.*

In December 2018 an activist of the Crimean Tatar national movement, ***Edem Bekirov***, was remanded in custody on a charge under **Article 222, Part 2, of the Russian Criminal Code in conjunction with Article 222.1, Part 2**. He was accused of handing over to a second person a bag with 47 blocks of TNT weighing 11.62 kg and 192 bullets for a Makarov pistol and giving instructions that they be put in a cache.

Allegedly the second person complied with the order, and then made a confession. At the same time, information about the identity of this second person is classified. ***Bekirov*** was released in the prisoner exchange between Russia and Ukraine.

Azat Miftakhov, a postgraduate student at Moscow State University who was detained on 1 February 2019, was suspected of manufacturing an explosive device. The investigators did not succeed in having him remanded in custody as, apparently, at the time the court decided on pre-trial restrictions the evidence in the case was insufficient. But ***Miftakhov*** was not released either - he was charged with an offence under **Article 213, Part 2, of the Russian Criminal Code** ("Hooliganism committed by a group of people in a prior conspiracy") in connection with the attack on the *United Russia* offices on 31 January 2018 when a window was broken and a smoke bomb thrown into the premises, without anyone being injured.

Charges under articles of the Criminal Code concerning weapons are often brought in addition to the main charge, such as preparing a terrorist attack or sabotage. In particular, such charges were laid against the above mentioned "Sevastopol saboteurs." Other defendants in similar cases (such as, for example, ***Hlib Shabliy*** and ***Oleksiy Stogniy***) have been charged solely with weapon-related offences.

3.8. Articles concerning economic crimes

Traditionally, articles used in politically motivated prosecutions include those that concern *theft* (**Article 164 of the Russian Criminal Code**), *embezzlement* (**Article 160 of the Russian Criminal Code**), *extortion* (**Article 163 of the Russian Criminal Code**), *fraud* (**Article 159 of the Russian Criminal Code**) and *legalisation of illegally acquired property* (**Article 174 of the Russian Criminal Code**). Such articles are often used against public officials or business people.

For example, in June 2018 the head of Serpukhov municipal district, ***Aleksandr Shestun***, was taken into custody accused of having sold municipally owned plots of land to a company he controlled at a reduced price in 2010. The probable cause of the prosecution was ***Shestun***'s conflict with the governor of Moscow region, *Andrei Vorobyov*, because since 2014 ***Shestun*** had resisted the merger of the Serpukhov district into a single urban district with the city of Serpukhov.

The former chair of a homeowner's association in Reutov near Moscow, ***Yevgeny Kurakin***, in June 2019 was re-arrested in a case of fraud. During 2014-2015 ***Kurakin*** was held on remand for 18 months; in 2017, after an unprecedentedly long trial, the *Reutov town court* returned the case to the prosecutor's office. However, the

prosecution in the case has now resumed. ***Kurakin*** is accused of purchasing utility services from the *Veles* management company which was opposed by the Reutov town authorities, rather than from other suppliers. There is every reason to believe that the criminal prosecution is in fact related to ***Kurakin***'s efforts to protect the housing rights of himself and his neighbours.

In recent years, there have been several cases of charges of extortion brought against journalists and activists who publish information about the abuses by officials. In Kaliningrad, ***Igor Rudnikov***, editor of the newspaper *Novye kolyosa*, spent more than a year and a half in pre-trial detention. The investigators claimed ***Rudnikov*** extorted $50,000 in return for stopping publication of defamatory information about the head of the Kaliningrad branch of the *Investigative Committee of the Russian Federation*, Lieutenant General *Viktor Ledenev* (*Novye kolyosa* published articles alleging that General Ledenev was in fact the owner of undeclared real estate worth 150-200 million roubles). In June 2019, ***Rudnikov*** was released and the charges against him were reclassified under **Article 30, Part 3, in conjunction with Article 330, Part 1, of the Russian Criminal Code** (*"Attempted abuse of powers"*).

It is probable that ***Aleksandr Valov***, editor-in-chief of the online publication *BlogSochi*, has been in a similar situation since January 2018. According to the prosecution, in 2016, ***Aleksandr Valov*** offered, for a payment of 300,000 roubles, to delete an article from the website about the seizure of a section of the public beach in Sochi by *Yury Napso*, a *State Duma* deputy from the *LDPR* party, along with other compromising information and he received the money. ***Valov*** also ostensibly demanded from *Napso* a monthly payment of 20,000 roubles – 30,000 roubles to prevent the publication of critical materials about him.

3.9. Articles concerning physical violence and murder

Unjustified accusations of murder (**Article 105 of the Russian Criminal Code**) are periodically used by the Russian authorities as an instrument of political repression. For example, the former *Yukos* employee ***Aleksei Pichugin*** remains in prison. The Ukrainian ***Andriy Kolomiets***, who was charged only with participating in the Kiev Maidan and throwing Molotov cocktails, was convicted of attempted murder.

In 2018 and the first half of 2019 we registered no politically motivated prosecutions using this article. However, the authorities used **Article 119, Part 1, of the Russian Criminal Code** (*"Threat of murder or serious injury to health"*) in an unexpected

manner. In May 2019 one of the best known election observers, ***Roman Udot***, was placed under house arrest. The reason for this was that more than a year before he had spoken emotional, angry words to *NTV* journalists *Aleksandr Miroshnichenko* and *Eduard Zhuravlyov*, who had been chasing after him. He had exclaimed: "I will kill you, I will definitely kill you." Only a year later it turned out the journalists "took the threat for real," although they had not previously filed complaints about the matter. In November 2019, ***Udot*** was convicted and sentenced to compulsory work.

4. Forms of Politically Motivated Prosecution.

In this chapter we examine the conduct of politically motivated prosecutions in all their various stages: from the imposition of pre-trial restrictions on the accused to the oversight of convicted persons who have served their sentences.

4.1. Pre-trial restrictions

Almost all accused persons are subject to some kind of restrictions before and during the trial, and after the trial until the appeal against the conviction has been heard. In accordance with **Article 97 of the Russian Code of Criminal Procedure**, a form of pre-trial restriction is selected if there are sufficient grounds to believe the accused will abscond, continue to engage in criminal activity, threaten witnesses or destroy evidence.

There are several types of restrictive measures of which the following are the most common:

- remanding in custody;
- house arrest;
- imposition of travel restrictions;
- prohibition of certain actions.

Pre-trial restrictions in the form of remanding in custody, house arrest or prohibition of certain actions are imposed and extended by the court upon request of the investigators. The court must consider whether the restriction is justified. In reality, courts almost always take the side of the investigators. According to data from the Judicial Department of the *Supreme Court*, in 2018 the courts granted about 90% of all applications for remanding in custody and about 88% of applications for house arrest. As for the extension of these measures, the rate is even higher: about 98% of applications for extension of custody and 95% of applications for extension of house arrest were granted.

As of 1 October 2019, 26 people from the general list of political prisoners and more than 70 from the list of those prosecuted on grounds of their religion were held in pretrial detention. A further six persons from the general list and 44 from the religious list were held in custody while awaiting their appeals to be heard by the courts.

The matters of the reasonableness and duration of detention are considered in detail in Chapter 6.

House arrest is used much less frequently. As of 1 October 2019, under house arrest were: some of the defendants in the New Greatness case (***Anna Pavlikova***, ***Maria Dubovik***, ***Maksim Roshchin***, ***Sergei Gavrilov***), ***Anastasia Shevchenko***, charged with cooperating with *Open Russia*, ***Yegor Zhukov***, a student at the *Higher School of Economics* charged with extremism, ***Sergei Fomin***, charged in the Moscow riot case, more than 30 people accused of being *Jehovah's Witnesses* and three Scientologists from St. Petersburg. Earlier in 2019, ***Roman Udot***, a member of the board of the *Golos* movement, and ***Vyacheslav Yegorov***, an environmental activist from Kolomna, had been held under house arrest.

House arrest is in fact used as a milder analogue of detention. According to our observations, as a rule house arrest is selected instead of custody either on humanitarian grounds (old age, serious illness, etc.) or where the case has a high public profile (including where the defendant is famous). However, none of these circumstances guarantees that the court will not choose custody as a form of pre-trial restriction.

In addition to the prohibition on leaving home, house arrest may include a ban on communication with certain people (often with witnesses or other defendants in the case), on use of the Internet, and on the receipt or sending of correspondence. In some cases, the court will allow limited time for walks. Formally, some restrictions under house arrest can be even stricter than in a remand centre: remand prisons provide for detainees to take walks and they are able to send and receive letters.

In the past, if the defendant were sentenced to a term of imprisonment, one day of house arrest was counted as one day served in a penal colony. However, from the middle of 2018 one day of house arrest has been counted as equal to only half a day in a penal colony.

Among non-custodial measures, the most frequent is the imposition of travel restrictions.

In 2018, the Code of Criminal Procedure introduced as pre-trial restrictions the prohibition of certain actions. According to **Article 105.1 of the Russian Code of Criminal Procedure**, the court may prohibit the defendant from leaving the house

during certain periods of time, staying in certain places, attending certain events, communicating with certain persons, sending and receiving postal and telegraphic messages, using means of communication and the Internet, driving a car, and so on.

Certain bans were imposed on ***Andrei Borovikov***, a resident of Arkhangelsk accused of repeated violation of the rules of public assembly, from May to September 2019. He was forbidden to participate in public protests, to communicate with the organisers of a rally to be held on 7 April 2019 against an illegal landfill site in Shies, and to use means of communication for the organisation of public protests. Another known case of the application of such restrictions has been that of ***Roman Udot***. He was completely banned from using mobile phones and the Internet, as well as from leaving his apartment at night.

In these two cases, the ban on certain actions enabled the authorities to halt activities they considered undesirable, namely participation in rallies and election observation, respectively.

It is extremely rare in cases we have observed for the courts to agree to bail. An example of the use of bail is that of Sochi lawyer ***Mikhail Benyash***, who was accused of assaulting police officers. In October 2018 he was released from detention on bail of 600,000 roubles after a major public campaign on his behalf.

4.2. Deprivation of liberty

4.2.1 Penitentiary regimes

There are five types of prison regimes in Russia: an open regime penal colony [or "settlement-colony"], a general regime penal colony, a strict regime penal colony, a special regime penal colony and a prison (incarceration). Only the first two can be assigned to women.

Of all the above regimes, the open regime penal colony is the most relaxed in terms of detention conditions. Convicts are free to move around the territory of the penal colony during the daytime, may wear civilian clothes and carry money. The number of visits, parcels and deliveries they may receive under this regime is not limited.

Convicts held under general and strict regimes, as well as convicts held under a special regime (except those sentenced to life imprisonment) are kept in barracks. The main difference between these regimes is the number of visits, parcels and deliveries allowed and the limit of money that a convict can spend from his personal

account every month. Life prisoners are held in cells for no more than two people. In prisons, people are held in locked shared cells, with the severest restrictions on the number of visits, parcels and money.

As of 1 October 2019 there were no political prisoners on *Memorial*'s list held in open prison colonies. On 2 October 2019, ***Nariman Memedeminov*** was sentenced to two and a half years in an open penal colony; on 4 December 2019 a suspended sentence handed down to ***Mark Galperin*** was changed to a sentence of one and a half years in an open penal colony. As of 1 October 2019, 10 people from the *Memorial*'s general list of political prisoners had been sentenced to terms in general regime penal colonies (six of them were awaiting appeal) and 41 individuals from the list of those convicted for their religious beliefs (seven of whom were awaiting appeal). As of 1 October 2019, nine individuals from the general list and 97 from the "religious" list had been sentenced to terms in strict regime prison colonies (37 of whom were awaiting appeal).

Rasul Kudayev and ***Aleksei Pichugin***, both sentenced to life imprisonment, are being held in special regime penal colonies. ***Zikrullokhon Rakhmonkhodzhayev*** was also sentenced to serve his term in a special regime penal colony under his second conviction for participation in *Hizb ut-Tahrir*.

4.2.2 The law on serving part of a sentence in a prison rather than a penal colony

In December 2018 **Federal Law No. 569** was adopted, under which men sentenced to prison for the majority of terrorist crimes (terrorist act, aiding and training for terrorist activities, organisation of and participation in a terrorist organisation, organisation of a terrorist group), as well as for participation in an illegal armed group, preparation for the violent seizure of power, armed insurrection and certain other crimes, must be sentenced to at least one year in prison.

The law will apply to those detained since the beginning of 2019, including, for example, 24 defendants in the Simferopol *Hizb ut-Tahrir* case, if they are convicted. This new regulation will affect a large number of people charged with terrorism, including fabricated cases.

In cases where men have been convicted of advocacy of terrorism, participation in a terrorist group or certain other crimes, a court may also impose a portion of the prison sentence at its discretion.

4.2.3 Selection of a penal colony

Under **Article 73 of the Russian Penal Enforcement Code**, persons sentenced to a term of deprivation of liberty must serve their sentence in the region where they lived or were convicted. However, there are several exceptions that make this provision non-binding in practice. First, if there is no penitentiary facility of the required type in the region where the convict lives, or there are no vacant places in such an institution, the convict can be sent to another region, and the law does not oblige the authorities to choose the nearest regions. In Moscow, for example, until 2020 there were no penal colonies (on 1 January 2020 a penal colony in Zelenograd was transferred to the Moscow branch of the Federal Penitentiary Service) and there are no female penal colonies in many Russian regions. Secondly, the norm does not apply to convicts sentenced under a number of articles of the Criminal Code, including those often used for politically motivated prosecutions (articles concerning terrorism, extremist organisations and communities, treason, mutiny, violent seizure of power, etc.). Moreover, the amendments adopted in December 2018 provide that even if individuals have not been charged with terrorist crimes, but "there is information" that they profess or advocate a terrorist ideology, they may also be sent to any region to serve their sentences.

Sending a convicted person to a remote region, if that person is taken several thousand kilometres away from their family, can be used as an additional punishment. In addition, some prison colonies are located in the far north of Russia, which has a harsh, cold climate. For example, ***Oleg Sentsov*** spent about 18 months in a penal colony in Yakutsk and the same length of time in another in the Yamalo-Nenets Autonomous District. Both regions are located in the permafrost zone where winter temperatures can drop to -60°C.

4.2.4 Disciplinary measures in a penal colony

The authorities at a penal colony may abuse the use of punitive measures against those they consider unfavourably, and that includes political prisoners. The most frequently abused measure is that of incarceration in an isolation punishment cell. A convicted person can be put in a punishment cell for up to 15 days, but the number of times this may be done is unlimited.

Article 118, Part 1, of the Russian Penal Enforcement Code states:

> *Convicted persons sentenced to deprivation of liberty who are placed in a punishment cell may not receive visits or have telephone conversations, acquire foodstuffs, receive parcels, packages or deliveries. They have the right to take a daily walk lasting one hour.*

In some cases, convicts are committed to a punishment cell on false pretences just before they are to receive a visit.

According to many convicts, the single bunk in punishment cells is fastened up against the wall in the day time, and it is forbidden to lie down. For example, in the spring of 2018, a Ukrainian convicted in connection with the Maidan events, ***Andriy Kolomiets***, serving his sentence in Penal Colony No. 14 in Krasnodar region, was given an additional term in a punishment cell for sleeping on the floor in a punishment cell. His wife, *Galina Kolomiets*, wrote on *Facebook* on 9 March 2018:

> *On 26 February he was put in a punishment cell for ten days for not obeying the regulations on uniform. The day before he was to be released, they took another picture of him sleeping in violation of the rules (on the floor). He was let out of the punishment cell on 8 March, and then an official report about a violation was written because of how he had slept. Today he has again been put in the punishment cell for 10 days.*

Isolation in a punishment cell can be accompanied by cold if the room is poorly heated, or hunger if the penal colony authorities deliberately manipulate the ideas current among prisoners to force them to give up food other than bread and tea (by serving them food on plates considered "unacceptable" in the criminal world because they have been used by prisoners who belong to the lowest status group ["outcasts"]).

Strict conditions of detention (SUS), detention in cells (PKT) and detention in solitary cells (EPKT) are variants of punishments for convicts. Under "strict conditions of detention" (SUS) additional restrictions are placed on the movement of prisoners within the penal colony and the number of visits, parcels and deliveries they can receive. Reinstatement to normal conditions is not permitted sooner than within a six-month term, and then only if the prisoner has not incurred any other penalties.

Short-term visits and receipt of parcels are strictly limited where a prisoner is held in a cell (PKT) or in a solitary cell (EPKT), and long-term visits are prohibited. Prisoners are not allowed to leave their cells on their own. They are supposed to be taken for a walk only for an hour and a half each day.

Volodymyr Balukh, a resident of Crimea, was placed in a punishment cell five times after he began serving his sentence in Penal Colony No. 4 in Tver region at the end of March 2019. Subsequently, he was transferred to be detained in cells (PKT) where he remained until the beginning of the exchange procedure. Ukrainian military serviceperson ***Oleksandr Shumkov*** was sent to serve his sentence in the same penal colony as ***Volodymyr Balukh*** in April 2019 and was placed in a punishment cell twice; from 14 May he was transferred to be detained in cells (PKT) for six months.

4.2.5 Toughening the regime of the penitentiary facility

In accordance with **Article 78 of the Russian Penal Enforcement Code**, during the course of a sentence, a court may change the type (regime) of the penitentiary facility, either mitigating conditions for prisoners characterised as behaving well, or toughening conditions for those who are considered to maliciously violate the rules of a penal colony.

On 18 January 2018, *Kurgan city court* decided to transfer journalist and blogger ***Aleksei Kungurov*** from an open penal colony to a general regime penal colony. He had previously been placed several times in succession in a punishment cell. Another journalist and blogger, ***Boris Stomakhin***, served part of his term in the toughest type of imprisonment, although he was initially sentenced to a strict regime penal colony. He was put in a cell-type prison as early as 2017 after numerous far-fetched penalties had been imposed on him in the penal colony where he was serving his sentence.

We did not observe any mitigation of conditions in which political prisoners were held in the period under review.

4.3. Non-custodial sentences and additional punishments

The priority for the Programme to Support Political Prisoners are instances of politically motivated prosecution that involve deprivation of liberty. However, we also monitor the use of alternative, non-custodial penalties for politically motivated reasons.

4.3.1 Suspended sentences

Suspended sentences are the most popular form of alternative punishment. In 2018, according to the Judicial Department of the *Supreme Court of the Russian Federation*, about 26% of all convicts in Russia were given suspended sentences while about 29% of those sentenced were given a real term of imprisonment. During the court-appointed probation period, which may coincide with or differ from the period of the suspended imprisonment, convicts are under the supervision of the inspectorate of the Penitentiary Service.

In 2018 two opposition activists were given two-year suspended sentences: ***Mark Galperin*** (whose sentence, as mentioned above, was later changed to a term of real imprisonment) and ***Vladimir Yegorov***. In 2019 the blogger ***Dmitry Tretyakov*** received a two-year suspended sentence, while an opposition activist from Stavropol, ***Mikhail Savostin***, was given a suspended sentence of three and a half years. In September 2019 ***Pavel Ustinov***, sentenced at first instance to three and a half years in a general regime penal colony for violence against a police officer, had his sentence changed on appeal to a one-year suspended sentence.

4.3.2 Compulsory work, fines

Convicted persons may be assigned compulsory work without payment. They undergo the punishment in their spare time when not engaged in their main employment. In 2018, about 17% of convicted persons received such punishment. In 2018, a poet from Orel region, ***Aleksandr Byvshev***, was sentenced to 400 hours of compulsory work. In September 2019, environmental activist ***Andrei Borovikov*** from Pskov was sentenced to 400 hours of compulsory work.

Fines are another common form of punishment (in 2018, 13% of those convicted were sentenced to such penalties). In March 2019 ***Vyacheslav Lukichyov***, an anarchist from Kaliningrad, was sentenced to a fine of 300,000 roubles.

Fines are also often used as an additional type of punishment. For example, those convicted in the Ufa prosecution of 20 members of *Hizb ut-Tahrir*, in addition to the extremely long prison sentences, were sentenced to fines ranging from 100,000 roubles to 700,000 roubles.

4.3.3 Prohibition of certain activities

For some crimes an additional form of punishment is provided in terms of a prohibition on holding certain jobs or engaging in certain activities for a specific period of time. As a rule, this applies to extremist offences (incitement of extremism, participation in extremist groups), as well as the offence of advocacy of terrorism online.

Such punishments were handed down to three persons convicted in 2018-2019 for incitement of extremism. ***Mark Galperin*** and ***Dmitry Tretyakov*** were banned from participating in civil society associations, while ***Vladimir Yegorov*** was banned from moderating websites.

4.3.4 Restriction of liberty

In accordance with **Article 53 of the Russian Criminal Code**, a restriction of liberty may be both the principal penalty and an additional punishment. People who are subject to this kind of punishment are prohibited from changing their place of residence or leaving a local government district without the consent of a specialised official body. It should be noted that in small towns a single local government district may include the town itself and its suburbs, but in Moscow and St. Petersburg the municipal entity is a district within the city, which makes the implementation of such punishment extremely difficult.

The court also imposes an obligation on the convicted person to report, from one to four times a month, to a specialised state body that supervises the restriction of liberty. Convicted persons may be prohibited from leaving their homes at certain times of the day, from visiting certain places, or from attending and participating in public or other events.

Restriction of liberty is imposed only on Russian citizens.

In 2018, about 23,000 people were sentenced to restrictions of liberty as the main punishment, while just under 9,000 people were sentenced to restrictions of liberty as an additional punishment.

Restriction of liberty is imposed as the main punishment for crimes of small and medium gravity. In 2019 ***Vladislav Kuleshov***, convicted of incitement to riot using the Internet, was sentenced to restriction of liberty for 18 months.

Restriction of liberty as an additional punishment is most often applied to those convicted of particularly serious crimes. Among political prisoners, it is most often applied to the organisers of cells of *Hizb ut-Tahrir* who have been convicted under **Article 205.5, Part 1, of the Russian Criminal Code**. Restriction of liberty as an additional punishment is also mandatory for certain other crimes related to terrorist activity, forcible seizure of power, creation of an extremist group or a cell of an extremist organisation and participation in it.

4.4. Punishment after punishment: administrative supervision

Administrative supervision is the monitoring by agencies of the Ministry of Internal Affairs of a person released from imprisonment. It is regulated by **Federal Law No. 64** of 6 April 2011.

Administrative supervision is ordered by a court at the request of a penitentiary institution. A general requirement for all those placed under supervision is that they report to the internal affairs agencies from one to four times a month (the exact number of times is established by the court). In addition, the court may impose the following bans on those subject to supervision:

- visiting specified places;
- attendance at large scale public and other events;
- staying away from home at a certain time (usually night);
- departure from a specified territory.

Administrative supervision is ordered with regard to those who have served their sentence for a grave or especially grave crime, in the event of a recurrence of a crime or in some other cases if they have been found to be malicious offenders of the rules governing the penitentiary institution where they served their sentence. Another reason for imposition of administrative supervision is when, after leaving a penal colony, a person with an outstanding criminal record commits two or more administrative offences in one year.

Finally, there is a list of crimes for which administrative supervision is imposed after a sentence has been served regardless of whether they were malicious offenders of the rules governing the penitentiary institution where they served their sentence or not. These crimes include sexual violence, grievous bodily harm and murder. In 2017, amendments were made to this list to add crimes related to extremism and terrorism, which are often used in politically motivated prosecutions.

The term of supervision may coincide with the term after which the criminal record is expunged or be shorter (the term for expunging a criminal record is three years for crimes of small or medium gravity, eight years for serious crimes and ten years for especially serious crimes). Those sentenced to undergo a restriction of liberty after serving a prison term serve the restriction of liberty first, and only subsequently are subject to administrative supervision.

On 21 December 2018, *Antonina Svirina, a judge at the Pervomaisky district court in Novosibirsk*, issued a judgment ordering administrative supervision for a period of eight years against ***Komil Odilov***, a Muslim convicted for reading books by *Said Nursi*. For eight years after his release, ***Odilov*** was ordered to report to the internal affairs authorities weekly, not to leave Novosibirsk and to remain at his place of residence from 10 p.m. to 6 a.m.

In the case of the Bashkir blogger and journalist ***Robert Zagreyev***, administrative supervision was ordered for three years. He was also obliged to stay at home at night, not to leave Ufa, and furthermore was prohibited from attending large scale public events.

In February 2018 Tatar activist and former political prisoner ***Rafis Kashapov*** wrote that he had left Russia because of another lawsuit concerning administrative supervision. In 2017 the authorities at Penal Colony No. 19 in the Komi Republic, where ***Kashapov*** was serving his sentence for anti-war posts on the *VKontakte* social network site, had already requested that administrative supervision be imposed on him. However, on appeal the court dismissed the suit. On 31 January 2019, following his release, ***Kashapov*** was summoned to the Department of Internal Affairs in the city of Naberezhnye Chelny. There he was given a copy of a new administrative complaint demanding that administrative supervision be imposed on him.

4.5. Inclusion in the Rosfinmonitoring list - A form of extrajudicial penalty

Those suspected and charged with terrorist or extremist crimes, as well as those convicted of such crimes, are included in the List of Organisations and Persons About Which There is Information to Show Involvement in Extremist Activities or Terrorism that is maintained by the *Federal Financial Monitoring Service [Rosfinmonitoring]*. Being listed means their bank accounts are blocked and it is impossible for them to open new ones; and they are forbidden to exchange large sums of currency.

A person on the *Rosfinmonitoring* list, in accordance with **Article 6 of the Federal Law "On Combatting Money Laundering**," has the right to withdraw only 10,000 roubles per month from his or her salary for themselves and for each family member who has no other income. They are also permitted to receive social benefits. In practice, for each sum of money withdrawn from the bank, a package of documents

has to be submitted. Here's how *OVD-Info* describes how ***Yury Mukhin***, convicted under **Article 282.2 of the Russian Criminal Code** of participation in the organisation *People's Will Army* received his pension:

> *"Now he's retired and has to go and ask Sberbank employees every time he wants to collect his pension. The staff try not to detain* ***Mukhin*** *any longer than necessary. As a rule, they take the documents and let him go. Then they call him and say that they have received permission to give him his pension, but he will have to come at a strictly agreed time when the staff will open the pension account. "The rest of the time, my pension account is blocked for bank staff as well,"* ***Mukhin*** *explains. "The senior shift at the bank spends an hour making calls, then they hand over the application, making sure that everything is correct. Then, the operator and cashier have the usual job of manually withdrawing my pension, which I used to take out using my own card"."*

Moreover, being on the list makes it extremely difficult to find a job because of the impossibility of obtaining a bank card, which in turn makes it hard to perform actions that are required by the court, such as paying a fine or doing compulsory work.

Removal from the list is possible if the sentence is overturned, the charges dropped or the criminal record expunged.

The blocking of financial transactions is an extrajudicial penalty, which is also applied against people who have not been convicted.

5. Motives for prosecution

5.1. The notion of a motive for prosecution

Politically motivated criminal cases are fundamentally different from all other instances of unlawful and unjustified criminal prosecution. This is because the presence of a political motive in such cases on the part of the authorities gives the violations a purposeful character and inflicts damage to the rule of law in a particularly obvious manner, even in comparison with other fabricated cases. Violations of the law in such cases further systemically worsen the human rights situation, destroying political competition and pluralism and imposing serious limitations on fundamental constitutional rights.

PACE Resolution №1900 (2012) which, based on the work of experts in assessing the situation in Namibia, Armenia and Azerbaijan, formulated criteria to identify political prisoners, repeatedly used the notion of "political motives." However, no definition of such motives was given. In 2013, a group of human rights defenders from several Eastern European countries, which also included representatives of *Memorial Human Rights Centre*, produced Guidelines on Defining the Term "Political Prisoner" which builds on the *PACE Resolution*, developing it for practical application. These *Guidelines* are currently used by *Memorial Human Rights Centre*. In particular, based on the letter and spirit of the *Resolution* and the practice of the *Council of Europe*, the *European Court of Human Rights* and other international organisations, the *Guidelines* define what constitutes political motivation on the part of the authorities.

The *Guidelines* state:

> *"Political motives are understood as the real reasons, unacceptable in a democratic society, for action or inaction by law enforcement and judicial bodies and other official bodies aimed at achieving at least one of the following goals:*
>
> *a) consolidation or retention of power by those in positions of authority;*
>
> *(b) Involuntary cessation, or alteration of the nature, of the public activities of any persons."*
>
> *In the criteria previously used by Memorial to recognise political prisoners, the notion of political motivation was understood as follows:*

"proven or evidentially based influence on the actions and decisions of law enforcement bodies and the courts by any officials or bodies of state power and local self-government for the purpose of:

– consolidation or preservation of political or economic power of these persons, specific groups of individuals or state structures;

– cessation, or alteration of the nature of, lawful official, social, political or other activities of the prosecuted person or other persons;

– seizure or redistribution of private or corporate property in favour of the state or third party legal entities and individuals:

– the carrying out by state or local authorities of campaigns to combat certain types of offences committed by certain categories or groups of citizens.

As can be seen, the notion of what is a political motive has here been fundamentally simplified in order to eliminate any possible confusion between purely political cases and cases concerning corporate disputes and campaigns that, even when human rights are violated in the course of their conduct, cannot automatically be recognised as measures of political repression.

5.2. Description of the main types of political motivation.

Political motives, as our experience shows, can be distinguished in terms of the most common types.

5.2.1 Enforced cessation of civil society and political activity

The first and chief motive for political repression in Russia at present is to stop the legitimate civil society and political activities of activists, journalists, members of religious faiths and many other groups that are not acceptable to the authorities.

Enforced cessation of activities aimed at protecting human rights and freedoms

In the first place, the prosecution of human rights defenders, lawyers and other persons engaged in activities aimed at protecting fundamental human rights and freedoms should be highlighted. This is because repressive measures against human rights defenders pose a particular danger for other groups that are deprived of legal support and information, and this makes the motive for preventing human rights activities particularly consequential.

In regions remote from Moscow or difficult from the point of view of the work of human rights organisations, the arrest of even one human rights defender can drastically reduce the volume and quality of information received from that area and the level of assistance to persons whose rights are violated by the authorities. In this sense, the most important prosecution for *Memorial* in 2018 was that of ***Oyub Titiev***, the head of our organisation's office in the Chechen Republic, which resulted in practice in the cessation of the human rights centre's activities in the republic.

Enforced cessation of oppositional political activity

One of the most common motives for political repression in 2018-2019 was that of enforcing the cessation of oppositional political activity. As a result of numerous different interpretations of such notions as "politics" and "opposition," we consider it necessary to distinguish which particular authorities are the objects of opposition: the national authorities – generally speaking "the Kremlin"; or local authorities – regional, city or district.

Enforced cessation of general oppositional activities

The desire to suppress general opposition or, as opposition activists themselves sometimes call it, "anti-Putin" political activity has been one of the main drivers of political repression since the early 2000s. It remained important in 2018, and with the start of the "*Moscow case*" in the summer of 2019 for a time it became a determining factor in the brutal suppression of opposition activities by the Russian government.

This motive was, in our opinion, one of the determining factors in a majority of the prosecutions of participants in mass protests in Moscow and the regions, in the suppression of organised structures of an alternative political orientation and varying degrees of influence, and in the initiation of criminal proceedings against persons who were publicly critical of the Russian authorities' domestic and foreign policy, including on the Internet. In fact, this motive is in one way or another applicable to the prosecution of almost all the public critics of the authorities, political oppositionists

and human rights defenders, except in those cases where activists have been prosecuted who have not directly expressed opposition views or opposed the political system as a whole.

Enforced cessation of oppositional activities that threaten regional and local authorities, government agencies and non-governmental actors

Public activities that are the reason for criminal prosecution are far from always aimed at changing the political course of the state or its ruling elite. Often extremely tough measures by law enforcement agencies and local authorities gives rise to local activism which in no way shows disloyalty to the ruling regime as a whole. Sometimes activists who make local demands hold opposition views and are even members of national opposition parties and movements, but this side of their activity is secondary to the one that causes the greatest discontent among local authorities. Such forms of local civil society and political activities can be related to the environment (the cases of ***Andrei Borovikov*** and ***Vyacheslav Yegorov***) or urban conservation (the case of ***Valentin Sokolov***) or the struggle against corruption in housing and communal services (the cases of ***Ivan Barylyak*** and ***Yevgeny Kurakin***).

In some instances, the motive for prosecution is not conflict with local authorities, but opposition to violations of citizens' rights by the state, including but not limited to violations by law enforcement agencies, as well as by large private and public corporations. This type of motive is not to protect the interests of local authorities but to advance the actual "seizure of the state" by internal or external actors using it for their own benefit.

In earlier years, the most prominent cases of this kind were those of the trade union leaders ***Valentin Urusov*** from Yakutia and ***Leonid Tikhonov*** from Nakhodka. In 2018-2019, the prosecution of ***Pavel Zlomnov***, a resident of St. Petersburg, became an example of the motive of enforced cessation of public activity threatening departmental interests and the extraction of revenge for it. ***Zlomnov*** was remanded in custody and, according to him and as confirmed by members of the Public Monitoring Commission, tortured by the FSB in a case of arms trafficking. However, he received an additional and clearly politicised charge of justifying terrorism after he reported that he had been tortured to human rights defenders and journalists. The same accusation of justifying terrorism was laid against ***Lyubov Kudryashova***, a supporter of the movement of "USSR Citizens" from Kurgan, who is also an activist of the movement against the working of uranium ore and considers the real reason for her prosecution to have been her environmental activism that brought her into conflict with *Rosatom*.

Enforced cessation of journalism and blogging

The motive of stopping independent journalistic or blogging activities is almost always present in politically motivated prosecutions of journalists and bloggers (although other motives are possible, see below). It is also often significant in the prosecution of civil society and political activists, and sometimes even of Muslim activists. For example, one of the reasons for the criminal prosecution of the *Anti-Corruption Foundation* and of Navalny's supporters, who constitute an organised structure of political opposition, is the obvious desire to prevent them publishing their investigations into corruption. Similarly, the prosecutions of the Crimean Tatar journalist ***Nariman Memedeminov*** and ***the Case of the Twenty-four in Simferopol***, accused of participation in the banned *Hizb ut-Tahrir*, are obviously connected with media coverage of the repressive measures against Crimean Tatars.

5.2.2 Enforced cessation of lawful religious activity

The motive of terminating lawful religious activity is most common and obvious in prosecutions of individuals for their religious affiliation. However, not all "religious" political prisoners have been prosecuted solely because of their faith, and some political prisoners in the general list of political prisoners have been victims of religious persecution as well.

Instances of prosecution because of religious belief, including even the prosecution of *Jehovah's Witnesses* after the de facto ban on their religion in 2017, tend as a rule to be camouflaged in terms of the fight against terrorism and extremism, which suggests there may be other motives, including a departmental interest on the part of law enforcement in uncovering ever more new cells of the banned organisations *Hizb ut-Tahrir*, *Nurjalar* and *Tablighi Jamaat*, as well as alleged preparation of terrorist acts, as in the trumped-up case of preparing a terrorist attack on the *Kirghizia* cinema in Moscow in 2013 in which 15 innocent Muslims were convicted. In Crimea, where the majority of Muslims are historically the least loyal to the Russian authorities, and the majority of Crimean Tatars are Muslims, it can be said in principle that the motive of religious persecution is secondary to the suppression of undesirable social and political activities and national self-organisation. Among the most striking examples of such cases in Crimea are the Yalta case, concerning membership in the banned *Hizb ut-Tahrir* organisation in which the well-known human rights activist ***Emir-Usein Kuku*** was convicted, and the ***Case of the Twenty-four in Simferopol***, concerning membership in the same organisation and in which nearly all the accused were members of the *Crimean Solidarity* organisation which supports political prisoners who are Crimean Tatars.

In the case of political prisoners prosecuted primarily for reasons other than religious, the following should be mentioned: ***Aleksandr Mamayev*** (Father Nikolai), one of the defendants in the *B.A.R.S.* case and a priest of the *Russian Orthodox Church Abroad* (an alternative to the *Moscow Patriarchate of the Russian Orthodox Church*), ***Abdulmumin Gadzhiev***, editor of the section on religion of the Dagestani newspaper *Chernovik* and ***Rasul Kudayev***, a former Guantanamo prisoner sentenced to life imprisonment for allegedly participating in the attack on Nalchik in 2005. These individuals have been prosecuted primarily on other grounds (for example, in order to enforce cessation of their public or journalistic activities), but there are serious reasons to believe that their religious affiliation was an important factor in attracting the interest of the security services.

5.2.3 Repeated prosecution of former political prisoners

In some cases, the security forces continue to prosecute former political prisoners after their release, especially in situations where the original prosecution fell apart. This is obviously not only because of a desire for "revenge" on the victims of the failed prosecution, but also because such individuals in practice become permanent targets for unlawful formal or informal oversight (in terms of the monitoring of social networks or manifestation of a special "interest") by the Interior Ministry and other law enforcement agencies. This practice, most actively and clearly used in the North Caucasus, exists according to our information in other regions as well. There is every reason to believe that people who have been placed on lists for special oversight, or who simply at some point attracted the attention of law enforcement agencies, become the priority targets for selective repression (for example, in cases of publications on the Internet), are often chosen as suspects or are charged in high-profile cases, and become victims of targeted provocations and fabrication of criminal cases.

Prominent examples have been the convictions of the anarchists ***Aleksei Gaskarov***, in the 2014 *Bolotnaya Square case* after he had been acquitted on charges of attacking the city government building in Khimki in 2010, and ***Aleksei Sutuga***, on trumped-up charges of hooliganism with the use of weapons the same year he was amnestied in a previous prosecution for a fight in the *Vozdukh* nightclub and an attempt to charge him with causing serious bodily harm failed. The nationalist ***Rikhard Sobolev***, after being fully acquitted by a jury in the case of the *White Wolves* gang in 2010, was charged with involvement in the events on *Bolotnaya Square* in 2012 despite the fact he had participated in a rally on *Manezhnaya Square* that day (he was amnestied in 2013), and in 2016 he was detained for alleged involvement in another murder; in 2018, ***Sobolev*** was again acquitted by a jury, a unique case of three unsuccessful prosecutions for grave and especially grave offences under the **Russian Criminal Code**. Less fortunate was ***Rasul Kudayev***, who, despite an alibi, was sentenced to

life imprisonment for his alleged involvement in the 2005 attack on Nalchik. We believe this was solely because of his previous detention in the US prison at Guantanamo Bay, from which he was released without charge.

Already in 2019, after a conflict between representatives of the Chechen and Azerbaijani diasporas outside the *Neolit* café, ***Lors Khamiev***, previously recognised by Memorial as a political prisoner in the case of an alleged preparation of an attempted assassination of *Ramzan Kadyrov* in 2007, was among those arrested. There is every reason to believe that at least some of the defendants in this case had nothing to do with the conflict and were prosecuted solely because they were on the authorities' records and were already known to law enforcement agencies.

5.2.4 Political prosecutions related to departmental and corporate interests of law enforcement agencies

As a result of the pressures of the system of performance indicators, law enforcement officers making decisions to initiate criminal proceedings with regard to "political" charges often proceed not on their understanding of the usefulness of such a prosecution for the preservation and strengthening of the current system of government, but, above all, on the basis of departmental or corporate interests, both general and private in nature. These interests are manifest in the need to ensure a constant volume of work for law enforcement agencies, demonstrating their necessity and usefulness. They are also evident in the desire to achieve the highest possible performance indicators, which in turn will bring rewards and promotions through prosecutions that are clearly fabricated or the result of provocations, and sometimes even directly instigated.

There is every reason to believe that this kind of motivation plays a key role in prosecutions for participation in extremist and terrorist organisations and prosecutions for statements published on the Internet by individuals without a high public profile, and so on. A vivid example of how the uncovering of invented terrorist plots can have a positive impact on an individual officer's career is the transfer of the head of the FSB in Penza region to a similar position in the more important Chelyabinsk region. There is every reason to believe the key reason for this promotion was the "successful" resolution of the case of the banned *Network* group and the "unmasking" of a group of anarchists allegedly constituting an inter-regional terrorist community.

"Political" prosecutions that have their origins in the "departmental" interests of law enforcement agencies are conducted in the context of numerous campaigns against various types of crimes. These campaigns generate competition in terms of performance indicators and often acquire to a significant degree a non-legal nature, entailing major violations of citizens' rights. Such campaigns include the fight against drugs, some elements of which have been exclusively repressive and unjust (involving

for example harassment of veterinarians in the early 2000s and harassment of traders in food-quality poppy seeds that has continued into 2018); a campaign to expose sexual crimes against children which, while ostensibly pursuing the important and socially useful goal of eliminating the criminal activities of paedophiles, has been used to justify gross violations of the rule of law in the detection – or fabrication – of such cases; and also a campaign, initiated by the *Investigative Committee of the Russian Federation* in 2018, to prosecute doctors for violating the rights of patients that has drawn protests from the medical community.

While there is no obvious distinction between political repression deriving from the departmental interests of the perpetrators and those conducted in terms of campaigns that have no explicit political content, a distinction can and should be made between them. Until 2014, the criteria *Memorial* used to classify prisoners as political prisoners included, in particular, the following definition of political motives, as mentioned earlier: *"the carrying out by state or local authorities of campaigns to combat certain types of offences committed by certain categories or groups of citizens."*

This definition of political motives was very broad and was used by *Memorial* only to a limited extent in its daily work. This was because a literal reading of the definition could be interpreted as requiring recognition as political prisoners, for example, of all those unlawfully convicted in a whole range of categories of cases not directly related to politics, in particular persons initially detained because of their ethnicity or race, those arrested in the course of *Operation Poppy* or *Operation Roma Camp*, veterinarians convicted of ketamine trafficking, and many others convicted if their cases met the following conditions:

- "the length and/or conditions of enforced detention were clearly disproportionate to existing standards regarding prosecution for the offence of which the person has been convicted or is a suspect;
- the prosecution was clearly exceptional in comparison with other prosecutions for similar offences;
- the prosecution was carried out with obvious violations of procedural guarantees enshrined in the Constitution and current Russian legislation, the European Convention on Human Rights and its Protocols, and the case law of the European Court of Human Rights."

Obviously, such human rights violations, especially those related to the length of detention and violations of procedural guarantees, occur in a huge number of cases that have nothing to do with politics or political repression. Moreover, such a broad interpretation of political motives would seriously expand the lists of political prisoners and reduce their informative value, significantly diluting the support for political prisoners and diminishing its effectiveness. In addition, many campaigns are so broad and large-scale that including all their victims on the lists of victims of political

repression would require such great resources that it would become almost unrealistic. In the first place, this concerns Russia's punitive drug policy, which creates huge opportunities for abuse by law enforcement agencies, in particular for supplying drugs and artificially increasing the amount of drugs seized in order to make the charges more serious.

Now that the new criteria have been adopted, *Memorial Human Rights Centre* restricts itself to the analysis of law enforcement practices in campaigns that are clearly political in nature and therefore fall under the criteria of *Memorial Human Rights Centre*.

5.2.5 Propaganda as a motive

It is impossible not to mention the role played in political prosecutions by the desire of law enforcement and propaganda structures to build a "correct" narrative explaining the events taking place in the country and the world. The uncovering of real and imaginary crimes to create the image of a besieged fortress or of an enemy in order to justify the authorities' actions or, on the contrary, to demonstrate the high quality of government administration, continues to be as relevant a practice today as during the show trials of Soviet times.

We believe that the motive of propaganda also plays a significant role in politically motivated prosecutions brought on purely criminal charges against members of the political opposition and civil society despite the absence of any evidence for the alleged offence. In these cases, the propaganda motive has the goal of compromising victims and the groups to which they belong in the eyes of society. Of particular interest in this respect, are charges for offences that are unequivocally condemned by society. These include, of course, above all terrorism and paedophilia. To a lesser extent, such propaganda uses criminal prosecutions of members of the opposition on charges of economic crimes and drug trafficking.

Accusations of "political" activities proper (for example, those related to participation in major public protests, including those that resulted in clashes with the police) often appear in articles and stories in government-controlled media side by side with information, as a rule false, about the alleged receipt of money by the opposition from foreign intelligence services or representatives of large businesses who have left Russia. This is done because "political" charges by themselves have a much more limited capacity to discredit the targeted individuals in the eyes of public opinion in general and, conversely, only increase their credibility among critical sectors of society.

The prosecutions of religious Muslims and citizens of Ukraine are vivid examples of cases that have a predominantly propaganda motive. To a large extent, this is because prosecutions of these groups serve the purposes of the foreign policy agenda that

has played a key role in government propaganda in recent years. Furthermore, both groups, despite their large number, have been more or less successfully presented by propaganda as an element "alien" and "hostile" to the majority of the Russian population, and one that threatens its security.

Not all politically motivated criminal prosecutions are used equally for propaganda purposes, and propaganda efforts in prosecutions where there is a clear propaganda motive are not always successful. In some cases, the target of a criminal prosecution cannot be effectively used to create an enemy image because of the possible sympathy the public will feel for them, as in the cases of the banned *Network* and, especially, *New Greatness* organisations, which caused significant public discontent.

At the same time, we believe it wrong to oversimply assessment of a propagandistic motive in a particular case on the basis of whether the propaganda efforts were successful or not, or whether they were even undertaken at all. For example, in the case of Ukrainian citizens ***Mykola Karpyuk*** and ***Stanyslav Klykh***, who were accused of allegedly participating in hostilities on the side of Chechen separatists in the 1990s, the authorities initially did not say anything about them at all and did not subsequently succeed in using the case for the purposes of propaganda. Yet the motive for their prosecution, in our view, was precisely this.

In most cases, however, the use of propaganda to influence society was not, in principle, the immediate priority of those who initiated criminal prosecutions. There was undoubtedly a significant propaganda component among their motives, as they were primarily seeking to solve departmental issues and did not see any sense in drawing attention to them. However, the prosecution itself fit into the context of broader propaganda campaigns and met the propaganda requirements of the top authorities. An example is the criminal prosecution of the relatively little-known Ukrainian political prisoners ***Oleksandr Shumkov*** and ***Roman Ternovsky***, both accused of participation in the banned *Right Sector* organisation, which was the result of routine work by Russian law enforcement agencies. This was because the actions of law enforcement agencies on the ground can be described using the model of relations between principal and agent. Representatives of these structures take into account often implicit signals received from the country's political leadership but act in accordance with their own interests. Repressive measures in this situation are based on the expectation that the next unmasking of "spies", "saboteurs" or "terrorists," implicitly targeted by the propaganda machine, will be positively perceived by their immediate bosses.

This explains the fact that, in some cases, political prosecutions lost their relevance from the point of view of propaganda after they were initiated, but they were not stopped and ended up in court. Thus, because of the total defeat of *Vyacheslav Maltsev's* banned *Artpodgotovka*, the criminal trials of many of its supporters in 2018

and 2019 went almost unnoticed by media propaganda outlets, even though in October and November 2017 the searches and detentions of the participants in the "Revolution of 5 November 2017" were widely covered by pro-government media.

5.2.6 Intimidation or "educating society" as motives

Undoubtedly, one of the reasons for the prosecutions initiated using articles of the **Criminal Code** that are "popular" for their repressive potential is the desire of the authorities to create an atmosphere of fear, intimidate potentially disloyal sections of the population and generate loyalist patterns of behaviour.

This applies primarily to those categories of cases where prosecutions tend to be selective and the victims often arbitrarily chosen in connection with actions which the authorities consider potentially dangerous for themselves. Such actions include the exercise of the rights of assembly, association and freedom of expression, especially on the Internet. In fact, exercise of these rights is in one way or another related to citizens' attempts to use the remaining relatively available channels of feedback with the authorities to convey their opinions and requests to them in the absence of the communication channel that is most obvious in a democratic society – elections – or to attempts to create horizontal associations that are independent of the authorities.

The aim of the authorities in such cases seems to be to demonstrate to millions of Russians, by using the example of prosecutions of dozens and hundreds, the risks and dangers that await them if they participate in forms of activity not approved by the authorities.

The means to act on this motive are, in the first place, **Articles 212**, **212.1** and **318 of the Russian Criminal Code** as applied to participants of public protests, **Articles 280**, **282**, **280.1**, **205.2** and **148 of the Russian Criminal Code** as applied to public critics of the authorities, and **Articles 282.1**, **282.2**, **205.4**, **205.5** and **284.1 of the Russian Criminal Code** as applied to participants in independent NGOs.

Official propaganda does not hide the fact that the purpose of these kinds of repressive measures is to "educate" society or its active part. This was especially frankly discussed after the summer protests of 2019 in Moscow. Propagandists began to write openly, for example, that

> *"The arguments constantly repeated by the defenders of the attackers (that a plastic bottle can do nothing against an officer wearing a helmet and a bulletproof vest) are not just an attempt to justify the lawbreakers, but also to create a new attitude in the minds of protesters: it is possible to attack a police officer or a member of the*

National Guard. This is the proven practice of the Overton Window when an idea is introduced in people's minds through a gradual, often inconspicuous, substitution of concepts."

Vladimir Putin also spoke in the same vein in December 2019, explaining why he considered it right to prosecute peaceful protesters:

"Yes, all over the world this [unrest] is happening, what makes us different here? Look at what is happening in France, what is happening in the United States all the time. Our colleague [Genri] Reznik said [a protester] threw some plastic cup or other at a public official. He threw it, nothing happened. Then he threw a plastic bottle – again nothing happened. So next he will throw a glass bottle and then a stone. And then they'll shoot and smash up the shops. We must not let this happen."

5.2.7 Pacification of society as a motive

In some cases, the motive for political repression in 2018-2019 was the desire of the authorities to demonstrate their effectiveness and ability to protect society from criminal attacks, thereby calming the public. This desire is, in itself, perfectly normal and is one of the motives for combatting crime and, in particular, terrorism in any country. However, evident fabrication of criminal cases or very poor quality of investigation which make it possible to doubt the guilt of the alleged perpetrators are not legitimate.

This is particularly true in prosecutions for terrorism, especially those involving radical Islamist groups, among which *Islamic State*, an organisation banned in Russia, is undoubtedly prominent.

However, even when intelligence agencies and investigative bodies are reacting to actual terrorist acts the degree of guilt of the accused in legal proceedings in many cases remains unclear. For example, analysts at *Memorial Human Rights Centre*, during the monitoring of the trial of those accused of organising the terrorist act in the St. Petersburg underground train system on 3 April 2017, recorded numerous violations of the rights of the accused, including torture and the fabrication of evidence against them. These violations are so systemic that at least half of the defendants are likely to be innocent.

In previous years, there were similar trials of Chechens, often falsely accused of supporting terrorists. *Memorial* is aware of numerous cases of the fabrication of criminal cases against Chechens, including the prosecutions of ***Zara Murtazalieva***, ***Zaurbek Talkhigov*** and the case of the alleged assassination attempt against *Ramzan Kadyrov*.

At the same time, reports in Russian media noted in 2018-2019, and previous years, a tendency not to actually describe terrorist acts that occurred as terrorist acts. This topic goes beyond the scope of the present report, but nevertheless, we cannot fail to mention the fact that, after the explosion of a Russian plane in Egypt in 2015, the Russian authorities long denied the possibility of a terrorist attack. Again, an attack on passers-by by a supporter of the banned organisation *Islamic State* in Surgut was not in fact recognised as a terrorist act. An explosion that took place just before New Year 2019 in an apartment building in Magnitogorsk that was declared to be an explosion of household gas, was, according to a version set out in a number of media outlets, actually an act of terrorism and as a result caused panic among residents of the Southern Ural district and a wave of conspiracy theories among a large number of Internet users.

5.3. Issues regarding analysis of politically motivated prosecutions in terms of type of motive

Determining the true motive for a politically motivated prosecution is not always an easy task. Thus can be illustrated by the well-known case of the assassination attempt on the prominent journalist, *Oleg Kashin*, in 2010, showing that even the victim of a politically motivated assault can wrongly determine its motive. While *Kashin* himself had long been convinced the attempt was committed by forces linked to the leadership of Rosmolodyozh, in 2015 the investigation of another criminal case revealed facts which led to public accusations that it was Pskov Governor *Andrei Turchak* who had organised the crime. It is, moreover, an undeniable fact that the criminals wanted to stop *Kashin*'s activities as a journalist and blogger and his activity on social networks.

In cases of unlawful politically motivated criminal prosecution, however, the true motives of organisers can be precisely established with full confidence only after the political situation has changed and the documents of intelligence services and political structures related to the repression become available, as happened in the countries of the former USSR after 1991 when it became possible to study in full the course and causes of political repression in general and individual acts in particular.

These circumstances, however, do not, in most cases, prevent the most likely political motive from being established with certainty. In general, this motive is often obvious. In situations where there is a multiple motive for a prosecution, each of the motives is usually political. This introduces some uncertainty into the precise causes of the prosecution, but does not prevent describing it as clearly unlawful.

In the most controversial cases, where it is unclear to human rights defenders and society at large whether the prosecution is incidental or deliberate, there is often indirect evidence that may clarify the political nature of the prosecution. Such evidence may include, in particular, participation in the operational and investigative actions by the FSB or the Centre for Combatting Extremism, the unusual speed of preliminary and judicial investigation, the level of law and human rights violations ("exceeding" the usual level), evident obstruction of the work of legal counsel for the defence, as well as an unusual level of involvement of the leadership of certain security agencies in minor cases (see the comments by the chair of the *Investigative Committee of the Russian Federation A. Bastrykin* concerning the Kirovles case), and the manner in which official media actively support the prosecution.

6. Violations of human rights in politically motivated prosecutions

This chapter reviews the most typical human rights violations seen in political prosecutions in Russia. We consider articles of the **Convention for the Protection of Human Rights and Fundamental Freedoms** violated by the Russian state in the years 2018 and 2019 and the examples of such violations. This is not an exhaustive analysis, but a description of the most egregious cases.

6.1. Prohibition on torture

Article 3.

> *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

According to a sociological survey by the *Levada Centre* in 2019, one in ten Russians (356 out of 3,400 respondents) suffered torture at the hands of law enforcement agencies. This clearly indicates that torture is widely used by Russian law enforcement officers both to obtain statements during investigations and for other purposes (additional extra-legal punishment, extortion, control, etc.).

In political prosecutions, while on the one hand those with high social capital can be protected from the use of violence against them, on the other hand officers in charge of the case may be more interested in obtaining the confessions or testimony of such individuals and therefore be motivated to use unauthorised methods.

In 2018, the torture of defendants in the *Network* case was widely publicised. First of all, it became known that the St. Petersburg suspects ***Viktor Filinkov*** and ***Igor Shishkin*** had been tortured.

According to ***Filinkov***, on the night of 23 to 24 January 2018, FSB operatives put him in a minibus, took him to a forest outside the city, and for several hours kept him in a car while they beat him and tortured him with a taser, insisting he learn the words of a confession by heart. On 25 January the medical examination upon his admission to the pre-trial detention centre established he had the following injuries:

> *"…damage to the skin (shocker?) in the area of the right thigh and chest. In the area of the right wrist joint, abrasion from handcuffs, on the front surface of the right shin a hematoma 2-3 days old, on the chin a scratch approximately 5 cm long."*

The next day, members of the Public Monitoring Commission *Yana Teplitskaya* and *Katerina Kosarevskaya* recorded on ***Filinkov***'s body numerous traces of burns from an electroshocker on the entire surface of the right thigh, a hematoma on the right ankle, and burns from an electroshocker in the chest area. On 2 February they counted the marks on ***Filinkov***'s right thigh and noted the following in the official record:

> *"…some of the marks on Viktor Filinkov's right thigh have already disappeared, but about 33 marks are still visible. Some of the marks are paired, in each pair the distance between injuries is exactly 4 cm. In each pair, one injury is seen better than the other. There are six clearly visible pairs."*

In April, the Investigative Committee refused to initiate criminal proceedings regarding the torture of ***Filinkov***. Investigator *Sergei Valentov* argued that FSB operatives only once used force against ***Filinkov***, and that was when he tried to escape, and they therefore had grounds for doing so. On 21 June the St. Petersburg Military Garrison Court dismissed a complaint by the lawyer *Vitaly Cherkasov* against this ruling, and the court of second instance later upheld this decision. In the autumn of 2018, lawyers acting for ***Filinkov*** made an application to the *European Court of Human Rights*.

Igor Shishkin did not allege torture. However, based on the known circumstances, the probability that he was tortured is very high. On 27 January 2018, two days after his detention, the following injuries were recorded on his body by members of the Public Monitoring Commission:

- A large hematoma around his left eye;
- blood in the corner of his left eye;
- a scratch in the middle of his left cheek;
- handcuff marks on both hands;
- bruising around his right eye;
- a burn in the middle of the back of the left hand.

At the time, ***Shishkin*** was wearing a long-sleeved sweater and trousers, and members of the Public Monitoring Commission did not see the condition of his body because of the clothing. Subsequently, on 2 February, ***Shishkin*** showed them his back and the rear surface of his hip, and therefore they made the following record of this visual examination:

"…on I.D. Shishkin's entire back, as well as on the rear of his right thigh (from above), there are numerous skin injuries (burns, presumably from electrical wires), above the right knee and above the rear surface of the thigh (crossing towards the front), there is a large hematoma occupying approximately one third of the thigh. Around his left eye, there is a hematoma, and under both eyes there are yellow circles."

Shishkin stated that he received the hematoma during fitness training and does not remember the origin of the burns. Subsequently, the Penza suspects in the *Network* case – ***Ilya Shakursky***, ***Dmitry Pchelintsev*** and ***Arman Sagynbayev*** – declared they had been brutally tortured using electric shocks. ***Pchelintsev*** for example said that after the first report about his torture became public he had been tortured again to force him to renounce his testimony.

Another St. Petersburg defendant in the *Network* case ***Yuly Boyarshinov*** said he was held from March to July 2018 in torturous conditions in the *Gorelovo pre-trial detention centre* near St. Petersburg. Other detainees, according to ***Boyarshinov***, were ordered by the management of the pre-trial detention facility to beat him and forced him continuously to wash the floors and did not allow him to take exercise. In addition, he was kept in an overcrowded cell in which up to 150 detainees were held, although there were beds for only 116. ***Boyarshinov*** had to sleep on the floor for some of the time. He also contracted scabies since the disease spread intensively in the overcrowded cell. The management of the detention centre took no medical or sanitary measures to treat scabies or prevent its spread.

6.2. Right to liberty and security

6.2.1 Reasonable grounds for remanding in custody

Article 5.

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

…

c) the lawful 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 his committing an offence or fleeing after having done so…

As we have already said in Chapter 4, the accused may be subject to a form of pre-trial restriction, including detention or house arrest, if there are reasonable grounds to believe the accused or suspect will abscond, continue to engage in criminal activity, threaten witnesses or destroy evidence. The court must consider whether such grounds exist and whether they are sufficient. However, as a rule, such consideration is a formality: the investigator bases his petition on generalised non-specific statements, and the courts almost always agree with the investigator.

For example, when applying for the extension of the house arrest of ***Yegor Zhukov***, a defendant in the *Moscow case*, the investigator claimed ***Zhukov*** could hide from the investigation merely on the grounds that he has a foreign passport and had previously travelled outside Russia.

6.2.2 Trial within a reasonable time or release pending trial

Article 5.

> *3. Everyone arrested or detained in accordance with the provisions of part 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

Article 109, Part 1, of the Russian Code of Criminal Procedure states: *"Remanding in custody during the investigation of crimes may not exceed two months."* However, the subsequent parts of this article contain so many reservations that, in practice, this requirement is rendered ineffective. *"In case it is impossible to complete the preliminary investigation within the period of up to two months and in the absence of grounds for changing or cancelling the pre-trial restriction,"* the court may extend it up to six months, and for grave charges (if the maximum possible penalty is more than five years' imprisonment) and especially grave charges (where the maximum penalty exceeds 10 years) *"only in instances of special complexity of the criminal case"* — up to one year (**Article 109, Part 2, of the Russian Code of Criminal Procedure**).

But this is not the limit for accused persons in especially grave crimes. In these, the period of detention may be extended to 18 months, though *"only in exceptional cases"* (**Article 109, Part 3, of the Russian Code of Criminal Procedure**).

In fact, these periods of detention (six months for crimes of medium gravity, 12 months for serious crimes, and 18 months for especially serious crimes) are standard and are used not in exceptional cases but relatively frequently, including in cases where the investigation has been inactive for a long time. A trial one month or six weeks after arrest, as in the Moscow case, is rather exceptional.

Investigative bodies are obliged to provide the accused with the materials of the investigation one month before the end of the detention period, but if 30 days are not enough for the accused and their lawyers to familiarise themselves with the case materials, the pre-trial restrictive measures are extended. Furthermore, the time required for the public prosecutor's office to approve the case, refer it to the court and for the court to schedule a trial is not included in the deadline. Usually this takes about two more months.

For example, the trial in one of the Moscow *Artpodgotovka* cases (in which the defendants were ***Sergei Ozerov***, ***Oleg Dmitriev*** and ***Oleg Ivanov***) began more than a year after the arrest of the defendants. Another *Artpodgotovka* case (in which the defendants were ***Yury Korny***, ***Andrei Keptya***, and ***Andrei Tolkachyov***) as of 1 October 2019 has not yet been brought to court and the defendants have been in custody for just under two years. Four defendants in the New Greatness case were in custody for about 14 months before the trial, while defendants in the St. Petersburg and Penza *Network* cases were in custody for between 10 and 19 months before trial.

After the case has been received by the court, the pre-trial restriction can be extended for another six months (**Article 255, Part 2, of the Russia Code of Criminal Procedure**) and, after the expiry of this period, for those accused of grave and especially grave crimes, extended again for not more than three months but with no limitation on the number of times (**Article 255, Part 3, of the Russian Code of Criminal Procedure**).

Russian laws do not regulate the total maximum period for which an accused person can be held in custody before being sentenced. If the preliminary investigation is resumed, the period for which a suspect can be remanded in custody begins to be counted afresh. ***Denis Bakholdin***, accused of cooperation with the *Right Sector*, spent more than 21 months in custody before his conviction. His case was first assigned for consideration to the *Suzemsky district court in Bryansk region*, then transferred to the *Nagatinsky district court in Moscow* before being returned to the prosecutor's office. From there it was again transferred to the *Suzemsky district court* and subsequently again sent back to the *Nagatinsky district court*.

The law on the preferential calculation of time spent in pre-trial detention, adopted in the summer of 2018, only partly compensates for the duration of the period in detention. According to this law, one day spent in detention before a sentence enters into legal force counts as two days in an open penal colony and one and a half days in a general regime colony. There is no preferential calculation for those sentenced to terms in strict and special regime penal colonies. There are also exceptions for those convicted of offences under certain articles of the **Russian Criminal Code**, including those concerning terrorism. For example, no preferential calculation for

time spent in pre-trial detention was applied to ***Oyub Titiev*** who was sentenced to imprisonment in an open penal colony under **Article 228, Part 2, of the Russian Criminal Code**.

6.3. Right to a fair trial

6.3.1 Public nature of the trial

Article 6.

> *1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security 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.*

In annexed Crimea, Russian courts systematically hold hearings behind closed-doors to consider the pre-trial detention or extension of such detention for defendants in cases concerning involvement in *Hizb ut-Tahrir* and other cases. The justification for holding a court session behind closed doors is usually highly formal and does not stand up to criticism, or the court does not articulate any justification at all.

For example, on 10 April 2019, when hearing an appeal against the extension of pre-trial custody for the blogger ***Nariman Memedeminov***, the *Supreme Court of Crimea* ruled that the hearing should be closed to the public.

> *"The court refused to grant Nariman Memedeminov's request for an open trial, citing "danger to participants in the trial." At that time, Memedeminov filed a petition to request improved security measures, but the Russian prosecutor said the security measures taken were sufficient and the court agreed with him. Nariman Memedeminov again petitioned for an open court hearing, as the parties said the security measures taken were sufficient, but the court did not consider that request," Memedeminov's lawyer Edem Semedlyaev told the Krym.Realii website.*

This practice enables charges to be hidden from the public for a long time, especially if the lawyers have signed a non-disclosure agreement, prevents the accused from making statements to the media and is an element of psychological pressure on the detained person since it does not allow them to know the level of public support.

In some cases, all or part of the proceedings and the conduct of the criminal trial are conducted in camera. Thus, in 2018, some witnesses for the prosecution in the trial of ***Oyub Titiev*** were interrogated in camera at the request of the prosecutor, *Dzhabrail Akhmadov*. The prosecutor justified the motion on the grounds that the witnesses worked in the police force and could expose certain methods of their work, although the trial did not investigate circumstances related to state secrets. In particular, *Denis Dzhabrailov*, the head of the criminal investigation department, who according to ***Titiev*** threatened him and demanded that he "confess," testified behind closed doors.

6.3.2 Presumption of innocence

Article 6.

> *2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

The most striking example of the violation of presumption of innocence, in our opinion, is the pre-trial inclusion of those suspected and accused of extremist and terrorist crimes in the "List of terrorists and extremists" maintained by Rosfinmonitoring. In addition to the fact that inclusion in this list means that one's bank accounts are blocked and financial transactions are banned (see "Inclusion in the Rosfinmonitoring list" in Chapter 4), which itself is an extra-judicial punishment, in this practice the state is naming people as "terrorists and extremists" before any relevant court judgments have been handed down.

6.3.3 Time to prepare a defence

Article 6.

> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> …
>
> *b) to have adequate time and facilities for the preparation of his defence…*

The investigation and trial of ***Konstantin Kotov***, accused of repeated violations of the rules for conducting demonstrations, were conducted in record time. The authorities systematically created conditions that prevented legal counsel for the defence from preparing for the trial. ***Kotov*** was taken into custody on 14 August 2019, the investigation was completed on 15 August 2019, and on 16 August 2019 Judge *Yelena Abramova sitting in the Presnensky district court*, at the request of

investigator *Yury Vitkovsky*, limited the time ***Kotov*** and his lawyer had to familiarise themselves with the materials of the criminal case to 72 hours, 48 of which fell on weekends.

The trial itself lasted two days and the hearings went on until late at night. On the second day, 4 September 2019, the court scheduled oral hearings to be held after the end of working hours and refused the defence's request to postpone the trial at least to the next day. The defence and the defendant thus did not have an opportunity to present their considered position that took into account the witness testimonies and the prosecutor's statement.

6.3.4 Right to question witnesses

Article 6.

> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *…*
>
> *d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him…*

Russian courts, according to our observations, are inclined to observe formal norms and usually interrogate defence witnesses who appear. However, during the trial of ***Konstantin Kotov***, Judge *Stanislav Minin* refused to interrogate more than half of the defence witnesses, despite the fact that their appearance in court had been secured.

It is important to note the practice of proving crimes on the basis of the testimony of secret witnesses, which is widespread in Russian courts, occurs in trials of political prisoners. **Article 278, Part 5, of the Russian Code of Criminal Procedure** states:

> *"Where it is necessary to ensure the safety of a witness, his or her close relatives or other closely connected persons, the court may, by issuing the relevant order, conduct the questioning of the witness without disclosing the true identity of the witness and in conditions that exclude the view of the witness from other participants in the proceedings."*

In practice, decisions to keep the identities of certain witnesses secret are made during the investigation into the case. The courts, in all cases known to us, agree to requests to question witnesses classified in that manner without disclosing their identities, keeping them out of view and modifying their voice. Defendants and their

counsel do not have access to information about who exactly is testifying in favour of the prosecution, and therefore cannot refute the words of a witness whose identity is secret or prove that there is a motive to give false testimony.

For example, at the trial of ***Sergei Ozerov***, ***Oleg Dmitriev*** and ***Oleg Ivanov***, charged with preparing a terrorist attack on 5 November 2017, a secret witness under the pseudonym *"Maksim Maksimov"* gave testimony. He confidently stated that the defendants made "Molotov cocktails," planned arson attacks, discussed all this in *Telegram* chats and even informed him personally. At the same time, the presiding judge did not allow the defence to find out when this conversation took place and whether *"Maksimov"* had visited the defendants' apartment, because "the answer may entail the identity of the witness becoming known."

6.4. Freedom of thought, conscience and religion.

Article 9.

> *1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
>
> *2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

There are two large-scale campaigns of persecution against religious groups in Russia. One is against *Jehovah's Witnesses* and the other against *Hizb ut-Tahrir al-Islami*. We have already described these campaigns in detail in previous chaptes.

The European Court of Human Rights has previously ruled that members of *Hizb ut-Tahrir* may not invoke **Article 9 of the European Convention** to challenge the State's repressive measures against them, based on their participation in the organisation. However, we believe that, firstly, all cases should be dealt with in an individual manner. In our view, in almost all of the *Hizb ut-Tahrir* cases we have examined there are no grounds for prosecution. Secondly, Russia clearly imposes disproportionate punishments - terms of imprisonment up to 24 years - on the basis of a purely hypothetical danger to the public represented by the defendants.

Moreover, Russia systematically prosecutes, albeit on a smaller scale, members of *Tablighi Jamaat*, readers of the works of *Said Nursi* and *Scientologists*.

6.5. Freedom of expression and dissemination of information

Article 10.

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

The practice of prosecution for public statements remains widespread even after the partial decriminalisation of **Article 282 of the Russian Criminal Code** (*"Incitement to hatred or enmity as well as abasement of dignity"*). The Russian authorities systematically prosecute individuals for incitement of extremism (**Article 280 of the Russian Criminal Code**) and justifying terrorism (**Article 205.2 of the Russian Criminal Code**).

In some cases, these articles of the **Criminal Code** are used to obstruct journalistic activities. For example, Omsk human rights activist ***Viktor Korb*** was charged with justifying terrorism for nothing more than chronicling the trial of *Boris Stomakhin* and publishing the latter's final statement to the court. He has now left Russia. Pskov journalist ***Svetlana Prokopyeva*** is being prosecuted for analysing on air the reasons that prompted *Mikhail Zhlobitsky* to blow himself up in the FSB building. ***Prokopyeva*** is currently under travel restrictions. However, she faces up to seven years in a penal colony is convicted.

6.6. Rights of assembly and association

Article 11.

> *1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
>
> *2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

An extremely grave violation of the right to freedom of assembly is represented by **Article 212.1 of the Russian Criminal Code** (*"Repeated violation of the established procedure for organising or holding an assembly, rally, demonstration, march or picket"*) which penalises the peaceful exercise of this right. In 2019, two people were convicted under this article, one of whom – ***Konstantin Kotov*** – was sentenced to four years' imprisonment. One other defendant – ***Vyacheslav Yegorov*** – is awaiting trial.

An example of violation of the right of association is the prosecution of members of *Open Russia* members for participation in an "undesirable" organisation.

We consider that in neither instance there are any grounds necessitating a restriction of citizens' rights of assembly and association.

7. Reaction of Russian society and authorities to political repression

Political repression inevitably has an impact not only on its immediate victims and perpetrators, but on society in general. It also influences the political situation in the country and the statements and actions of those in positions of authority who must react to the repressive measures, justify them, or, on the contrary, criticise them. For these reasons we believe it important to identify how Russian society and the authorities react to political repression and the issue of political prisoners.

7.1. Media

It is logical to begin a description of the way society and its institutions react to political repression with the way the media, which provide society with information, react. The importance of media coverage of developments in this area by those media that take a position in support of human rights cannot be overestimated. Not only do these media shape public attitudes and turn events into newsworthy occasions to which the authorities must respond, but they also help human rights organisations and initiatives to monitor human rights violations and identify cases that require their intervention.

There is an opposite phenomenon in the media world - publications in pro-government media that reflect the position of law enforcement agencies and the *Presidential Administration*, in some cases containing unjustified criticism of human rights organisations and information that compromises the victims of political repression. Very often such materials can in no way be justified by the need to publish alternative political views or by an editorial position because they directly violate minimum ethical norms and the legislation of the Russian Federation. In the first place, *NTV* and *REN TV* channels can be mentioned since they regularly not only publish slanderous materials but also directly participate in repressive campaigns. Examples of such activities include the coverage of the detention and torture of ***Azat Miftakhov*** and participation in the conviction of ***Roman Udot***, one of the leaders of the *Golos movement*. While we respect the principles of freedom of speech, we cannot consider such actions by media to be a manifestation or simple reflection of an alternative

point of view about unlawful political repression. These publications have proved to be tools of the repressive apparatus, used jointly and in concert with the punitive methods themselves.

Returning to the activities of those media that appear to be truly independent, providing objective and important information about the activities of Russian law enforcement agencies, it is above all important to highlight those media outlets which are most important for covering the issues of political repression. It should be noted that not all of them have a clear human rights specialisation. Moreover, only the project *OVD-Info*, which largely inherits the tradition of the *Chronicle of Current Events* and acts both as media outlet and human rights organisation, can be considered as such. All other media provide a more traditional coverage of social and political affairs, also publishing materials on other topics not directly related to human rights and political repression.

This applies even to such important media reporting on political repression as *Mediazona*, *Novaya gazeta*, *Dozhd TV* and *MBKh-media*. These media outlets, as well as *Meduza*, which is published in Latvia, and the Russian-language edition of *Radio Svoboda*, together with its subsidiary projects, are the main ‘national" sources of information about ongoing repression in Russia. They are also the main sources of information about the situation in the Federal Penitentiary Service, high-profile trials unrelated to politics, human rights violations by law enforcement officials, and the status of criminal proceedings that are related to various government departments.

Regional media that cover political repression and related issues should be considered separately. For example, *Caucasian Knot* provides the most detailed coverage of repression in the North Caucasus Federal District and the Southern Federal District, while the *Radio Svoboda* project *Krym.Realii* covers repression in Crimea. Other *Radio Liberty* projects often touch upon the issue of repression in the Volga regions, Siberia, the Russian North and the already mentioned *North Caucasus*, while *Fontanka* is an important source of information about trials and arrests in St. Petersburg, as is *Taiga.Info* for Siberia. The online publication *"7x7"* focuses on information about events taking place outside Moscow and St. Petersburg in the Russian regions, especially in the North-West. Regional media, covering political repressions and related problems, should be singled out separately. In addition, *Novaya gazeta*'s regional editions, as well as journalists and freelancers of the federal media who live outside Moscow, enable the Moscow-centric media environment to be partly overcome, creating an information space that includes coverage of repression even in small towns and villages.

Our failure to mention some publications should not be interpreted as diminishing their role. On the contrary, between 2018 and 2019, there was an increase in both the audience that consumed human rights information and the number of

non-thematic media that posted such materials. A series of reports by *Kommersant* from the trials of participants in the banned *Artpodgotovka* grouping and ***Yeva Merkacheva***'s articles about the situation in Moscow remand centres and temporary detention facilities, based on her experience working on Moscow's *Public Monitoring Commission* published in *Moskovsky komsomolets*, are good examples of high-quality journalism published by media that have a wider spectrum of interests than *Novaya gazeta* or *Mediazona*.

7.2. Traditional (institutionalised) human rights organisations

"Traditional," institutionalised human rights organisations, which we distinguish from less formal and more spontaneous initiatives, play an important role providing assistance to political prisoners and other victims of politically motivated prosecution. It is quite natural that organisations professionally engaged in the protection of human rights actively oppose such grossly targeted violations as politically motivated criminal prosecution and, all the more, deprivation of liberty as a result of such prosecution. These organisations both directly provide support in specific cases and initiate and promote assistance from the general public, creating a kind of organisational and informational "infrastructure" for public solidarity with victims of repression.

To list all organisations that contribute to the support of victims of political repression is too extensive a task, so we shall limit ourselves to a partial list of the most visible organisations working in this area.

Memorial Human Rights Centre links its human rights work most explicitly with the problems of political prisoners and, more broadly, with the problems faced by victims of unlawful politically motivated prosecution. In addition to the work carried out since the early 2010s on compiling lists of political prisoners and recording victims of political repression in general, described in the Introduction to this report, *Memorial Human Rights Centre*, through its Programme for Support of Political Prisoners, provides a range of support to victims of political repression: legal assistance, paying for the work of lawyers at national level and when applying to the *ECtHR* and for legal experts, when necessary, to prepare opinions and reviews that require special knowledge; preparation of information and analytical reports on the problems of political prisoners and victims of illegal politically motivated prosecution, such as the current report; advocacy in the interests of political prisoners both within Russia and beyond its borders, taking part in press conferences, round tables and various

other kinds of public activities; distribution of information about the victims of repression through the media, social networks and other accessible means; and provision of humanitarian aid, often in association with other organisations, to those political prisoners and their families who are most in need. Other programmes run by *Memorial Human Rights Centre* and the organisation as a whole engage in various aspects of support for victims of politically motivated unlawful prosecution (including support for victims from among Muslims, refugees and migrants in the North Caucasus through the preparation of applications to the *ECtHR*).

One of the most notable human rights projects in recent years has been *OVD-Info*, a partner organisation of *Memorial Human Rights Centre*. It is difficult to overestimate the role of *OVD-Info* in publicising the plight of victims of politically motivated persecution, not only of criminal prosecutions but also of various other kinds, as well as the preparation of surveys and analytical work to better understand the overall picture and the ways in which repression is carried out. However, in addition, *OVD-Info* is actively involved in both in the coordination and the provision of legal assistance to victims of unlawful politically motivated prosecutions. In this work *OVD-Info* places emphasis on helping activists and others prosecuted for their civic activities. The project's main efforts in the realm of legal assistance are aimed at supporting those who are prosecuted under administrative law, but assistance is also provided to many victims of criminal prosecution such as the defendants in the *New Greatness case*, the *Moscow case*, and other prosecutions related to public statements and exercise of the rights of assembly and association.

For many years, assistance and support for victims of political prosecutions has been provided in a whole range of ways by *For Human Rights*, a human rights group headed by *L. A. Ponomarev*, which previously existed as a movement of the same name. The movement was liquidated in 2019 by court decision on utterly far-fetched pretexts. *L. A. Ponomarev* himself has been repeatedly subjected to sanctions under administrative law for his human rights activities. *For Human Rights* engages actively in advocacy, primarily at the national level, acts as a lobbyist for human rights and persecuted groups with, in particular, the *Presidential Human Rights Council* and the *Federal Human Rights Ombudsman*, and initiates regular protest and advocacy campaigns both in connection with individual criminal prosecutions and with regard to specific trends in political repression or legislative innovations restricting human rights. For example, *For Human Rights* contributed greatly to supporting the defendants in the *New Greatness* and *Network* cases and has been a key participant in the campaign to support those prosecuted on charges of participation in *Hizb ut-Tahrir* and other religious organisations. *For Human Rights* has played a major role in supporting prisoners, including political prisoners.

The *Moscow Helsinki Group*, one of the oldest human rights organisations in Russia, regularly makes public statements condemning political repression, speaks out in connection with attempts to introduce or tighten repressive legislation, participates in advocacy for political prisoners, especially human rights defenders, and provides other forms of support for them. The role of the *Moscow Helsinki Group* is important in fostering various grassroots initiatives of support for political prisoners and coordinating the efforts of human rights defenders in joint projects to support political prisoners.

The *Sova Centre for News and Analysis* monitors and analyses persecution on the grounds of religion and the application of anti-extremist legislation, providing expert opinions on legislation and law enforcement practice in these areas. The *Sova Centre* plays an important role in supporting political prisoners since in most cases their prosecution is related to the suppression of freedom of conscience and expression on the pretext of countering extremism and terrorism.

The *International Agora Group* conducts a large number of legal cases in national courts and at the *ECtHR*, representing many political prisoners and other victims of unlawful politically motivated prosecution. The group's analytical reports on various topics related to the application of repressive legislation contribute to a better understanding by experts, the media, and the public of the general nature of repression, in particular, the processes that lead to the creation of political prisoners, their structure and mechanisms.

Russia Behind Bars is a project of the *Charitable Foundation for Assistance to Convicts and their Families* that actively provides legal and humanitarian assistance to political prisoners among others.

One of the most outstanding and important activities of *Team 29* from St. Petersburg is the defence, both during the investigatory stages and in court, of those unfairly accused of treason, disclosure of state secrets and espionage. Among those assisted by the lawyers of *Team 29* are many whose names have figured in the lists of political prisoners of *Memorial Human Rights Centre*.

The activities of *Public Verdict Foundation*, which protects the rights of those subjected to unlawful or excessive violence by law enforcement officials, and of *Committee Against Torture*, which combats torture and inhuman or degrading treatment, although not directly aimed at supporting victims of politically motivated prosecutions objectively contribute to protecting their rights from the most outrageous violations.

Amnesty International's Russia office actively supports those political prisoners whom this organisation considers prisoners of conscience. The public attention attracted by this support to such cases and the strengthening of pressure on the Russian authorities, thanks to the world standing of this international organisation, plays an important role in supporting political prisoners.

The NGO *Roskomsvoboda* works to protect digital rights and promotes the ideas of freedom of information, the inadmissibility of state censorship and interference in private life. The organisation monitors the legislative activities of government agencies in the realm of Internet regulation, as well as law enforcement. Its activities are important and useful for victims of political prosecutions related to statements on the Internet, which are numerous.

The *Human Rights Postcard* project declares its goal is to help "people whose rights are violated by the state." This assistance is provided both through various advocacy activities and campaigns, and direct assistance in political criminal prosecutions. The project's lawyers have participated in the defence of many political prisoners and victims of politically motivated criminal proceedings.

Although the Moscow-based *Sakharov Centre* does not provide direct assistance, its role as a unique venue for a wide range of activities in support of political prisoners and, more broadly, victims of political repression extends far beyond Moscow. Publicity, crowdfunding, educational work, advocacy, and events, including the hosting experts of various kinds, organised with the support of the *Sakharov Centre* have an important place in the overall public support for political prisoners.

A prominent role in building public support for political prisoners and other victims of political repression is played by the *St. Petersburg Human Rights Council*, especially in St. Petersburg but also more widely. The *St. Petersburg Human Rights Council* regularly issues statements condemning unlawful prosecutions.

7.3. Grassroots informal initiatives

In addition to traditional human rights organisations, many unregistered groups and grassroots informal initiatives provide assistance to victims of political prosecutions. They play an important role in the human rights ecosystem, complementing, and in some cases replacing, more institutionalised structures. This is because these groups are often more flexible since they have a narrower focus (especially in terms of support

for individual criminal defendants) and because of the smaller amount of organisational work required. They are often project-based and are also less restricted regarding the requirements of Russian law on taxation and spending of funds raised.

The work of informal structures organised on a project basis to assist defendants in a single criminal case is discussed below (see "Integrated campaigns"). Here we also give examples of initiatives that are not time-bound and seek to help a wider range of political prisoners and those who are victims of politically motivated prosecutions. The following projects may be cited as such examples:

Rosuznik helps organise correspondence with political prisoners.

Mothers against Political Repression is an association of relatives of defendants in extremist and terrorist cases established in 2019 by relatives of defendants in politically motivated cases on the basis of *Parents' Network,* a previously established association of relatives of defendants in the cases of *New Greatness* and the banned group *Network*.

The *Union of Solidarity with Political Prisoners* has provided assistance to victims of political prosecution since 2008 and maintains a list of political prisoners which is generally based on *Memorial Human Rights Centre*'s list, though it is somewhat broader.

A group established by the journalist *Yelizaveta Nesterova* coordinates deliveries and other assistance to detained demonstrators, the numbers of which reached several hundred during the major protests in 2017-2019.

The *Anarchist Black Cross* is an organisation assisting imprisoned anarchists and anti-authoritarian activists.

A group of activists united in the initiative Fairy Tales for Political Prisoners has been corresponding with those held in detention on political grounds since 2015.

Individual civil society activists who help political prisoners include former political prisoner *Vladimir Akimenkov*, jailed in connection with the events of 6 May 2012 on Bolotnaya Square, who every year raises several million roubles to help victims of political prosecution.

This list is obviously incomplete and does not pretend to name all the initiatives of this kind. Its value lies in the fact that it allows us to imagine the approximate scale of assistance to political prisoners, the variety of its forms and the degree of engagement by Russian citizens.

7.4. Crowdfunding

Fundraising for victims of political repression is an important part of campaigns for their release and the activities of formal and informal human rights organisations and groups. It can be broken down in terms of collection methods, the degree of formalisation, and the destination of payments.

The main methods of crowdfunding in support of political prisoners are online fundraising and donations in cash or non-cash forms during public events in support of political prisoners. Other forms of collection, for example, by means of text messages, are hardly used by Russian human rights and other NGOs. Among these, the sale of books, clothing, and accessories with logos and designs related to certain public campaigns attract relatively little money but have an important independent value in terms of raising public awareness.

Crowdfunding has its own peculiarities depending on the degree of formalisation of ways used to attract funds from supporters. In the simplest cases we are talking about collecting donations via bank cards and electronic wallets, including the use of cryptocurrencies that are popular among anarchist and libertarian associations and were used to collect funds in support of ***Azat Miftakhov*** and other political prisoners. Some human rights organisations (*OVD-Info*) and human rights-oriented media (*Mediazona*, *Novaya gazeta*), however, have tested and successfully implemented a more complex system of monthly payments, comparable to those used by charitable foundations. The advantages of this type of monthly donations, as activists and journalists themselves point out, are the comparative regularity of this type of payment, which allows for work to be planned in the medium term, and the increased loyalty of donors, who regularly receive reports on the spending of funds and email subscriptions listing the most important prosecutions and strategic cases. Cash and non-cash collections during public events in support of political prisoners can also be of various kinds, from simple collections using a donation box to making the collection thematically an integral part of the event, particularly during charity auctions in support of political prisoners and their family members.

As for the purpose of payments, they can be conventionally divided into collections directly for political prisoners and those prosecuted for political reasons (including for payment of fines for participation in protests in support of political prisoners, for example, after the protest of 12 June 2019 in support of ***Ivan Golunov***) and general crowdfunding on behalf of specialised NGOs and media. The difference between these two types of crowdfunding is that in the second case some of the funds received are inevitably spent on supporting the work of the organised human rights structure that is collecting the funds. This, however, cannot be considered a disadvantage

since these are costs associated with the professionalisation of activities for the defence of political prisoners that allow for more funds to be raised and more publicity and legal and other assistance to be provided.

Amounts collected by human rights organisations and groups are not yet comparable to those collected by socially-oriented non-profit organisations, but have a clear upward trend. This trend was especially evident against the background of the political crisis during the Moscow City Duma elections and the ***Golunov*** scandal. For example, during this period monthly donations received by *OVD-Info*, a group which actively helped participants in the protests who were subjected to administrative and criminal repressive measures, increased from less than 700,000 roubles in the spring to more than 3m roubles in the autumn, and remained at that level even after the relative normalisation of the situation. By the end of 2018, *Mediazona*'s successful crowdfunding campaign had succeeded in securing monthly donations totalling 1m roubles through regular contributions from readers and continued to increase the level of donations. *Memorial*'s fundraising to compensate for unjustified fines enabled the collection of 4.7m roubles within a relatively short period.

7.5. Public protests

Public events and activities in support of political prisoners are a common way to show solidarity. They are popular among activists and initiative groups both because they are relatively simple to organise and because they enable information about political prisoners to be conveyed to the general public, create talking points for the media. Such events also effectively mobilise supporters, engaging them in raising funds for political prisoners. Events of this kind in some cases also provide opportunities for fundraising in support of victims of criminal and administrative proceedings.

From January 2018 to September 2019, inclusive, public events in support of political prisoners took place regularly. In fact, during this period they were one of the most important manifestations of protest activity. In practice, these activities took a great variety of forms. Without minimising their significance, public events of this kind can be divided into several basic kinds.

Public events during this period were largely of two kinds: narrowly focused, demanding the release of political prisoners as the main and sole demand; and presenting a broader set of political and socio-economic demands. In fact, no major public event organised by the Moscow opposition was without large groups of protesters demanding the release of political prisoners. Their release was one of the main demands of the opposition during the summer rallies of 2019. This allows us

to speak of general opposition protests as an integral part of the movement for the release of political prisoners, even when the main slogans were demands to cancel pension reform or to register opposition candidates for the Moscow City Duma elections.

At the same time, there were public protests that had official permission, in the form of marches, rallies and group pickets, as well as those that do not require official permission such as single-person pickets. And again, there were marches and gatherings that were held without official permission. One of the forms of public events in support of political prisoners and other victims of political repression were indoor events which do not require official permission and which took the form of charity concerts and evening events of various kinds, round table and panel discussions, charity parties, presentations of human rights reports and mixed events that combined various formats.

Finally, all the above public events can be divided between those that took place regularly and one-off events. The first type of event was mostly organised by NGOs supporting political prisoners on a permanent basis. For example, charity evenings in support of political prisoners at the *Sakharov Centre* were held 11 times in the period under review. The second type of event was most often the result of public reaction to some of the most egregious cases of politically motivated prosecution, such as the *Moscow Case*, and the cases of ***Golunov***, ***Azat Miftakhov***, *New Greatness* and the banned organisation Network.

7.6. Public campaigning

In practice, all these kinds of activity aimed at informing the public about political repression, helping political prisoners, and raising funds to support them are closely related to, and complement, each other. Often, for example, a series of pickets are complemented by collection of signatures for online petitions, donations are collected at events specially organised for this purpose, with information distributed via social networks. In many cases, when a particular politically motivated prosecution or political prisoner attracts a considerable degree of public attention, what we see is no longer a set of separate if complementary actions, but a kind of integrated campaign. Such campaigns are characterised by their scale, duration and the variety of organisational methods used. Quite often initiative groups come into being that consist of relatives and friends of victims of repression, their colleagues, associates and like-minded people, seeking to draw public attention to specific cases and create a level of public pressure on the authorities that they would have to reckon with. However, the efforts of such groups are far from always successful in the above sense

of galvanising public opinion in society and giving rise to an integrated public campaign. A detailed analysis of the factors influencing the potential for a politically motivated criminal prosecution to become the basis for a mass public campaign requires sociological study. Nevertheless, some factors appear self-evident. An important indicator is the ability of a significant and active part of society to put themselves in the place of the victim, to see in a criminal prosecution a potential threat to themselves. This, it seems, was one of the important explanatory factors for the widespread support for the defendants in the *Bolotnaya Square case* and in the 2019 *Moscow case*. Tens of thousands of people participated in mass street protests, and even more people supported their demands without daring to go out on the streets themselves. Both groups perceived the prosecution on false charges of randomly chosen participants in public rallies as a threat to themselves and understood that they might well be in the shoes of the victims. The nature of the alleged crime is also an important factor; the more absurd and ridiculous it is, the easier it is to perceive the unreasonable nature of the prosecution without special research, the greater the chances for the victim of such prosecution will gain support. Both the evident large number of brazen lies in the case of ***Ivan Golunov***, and the obvious innocence of ***Pavel Ustinov*** and ***Konstantin Kotov*** were important factors in public support for them. Undoubtedly, the professional and group affiliation of the victim plays a major role. In general, the prosecution of a journalist or human rights defender, for example, directly or indirectly as a result of their activities, can generate much more solidarity than the prosecution of a businessperson. This is not only a matter of the greater public utility of the work of a journalist or human rights defender, but also of the greater organisation, activity and independence from the authorities of the professional groups to which they belong, and the access these groups have to information and opportunities for advocacy. Outstanding examples here are the cases of ***Yury Dmitriev***, ***Oyub Titiev*** and the already mentioned ***Ivan Golunov***. Finally, one cannot dismiss factors related to the identity of the victim of unlawful prosecution. As experience shows, very young or, on the contrary, very old people, those who are outwardly attractive, seriously ill, or female generate more sympathy and solidarity than those who do not possess or are not perceived to have such properties by society. Such "prejudice" on the part of the public was clearly manifested, for example, in connection with the prosecutions of ***Yegor Zhukov***, ***Amir Gilyazov***, ***Zarifa Sautieva***, ***Anna Pavlikova*** and ***Maria Dubovik***.

Of course, these are only the most obvious, eye-catching properties of the cases that evoke the most active public support. In reality, the biggest and most successful campaigns of public solidarity for political prisoners occur when a number of the above factors are combined.

An integrated public campaign needs an organisational core, a group that performs a role of overall coordination, or at least claims to perform such coordination. But to be successful and engage large numbers of people any campaign also needs a

significant online component. Responding to existing public support and expressing significant public sentiments, such a campaign must necessarily bring together many different initiatives and responses.

Such campaigns are of great value, allowing society and the media to clearly see concrete examples of politically motivated prosecutions, mobilising society beyond the relatively narrow circle of civic, political and human rights activists, and strengthening solidarity with Russian political prisoners outside the country. The most significant media campaigns in support of political prisoners during the period under review include those in support of those charged in the cases of the banned *Network* group and *New Greatness*, those of the alleged riots in central Moscow on 27 July 2019 and the campaigns in support of our colleague from Chechnya, ***Oyub Titiev***, and of the captured Ukrainian sailors.

All of the above campaigns used standard human rights tools: work with the media, human rights organisations and activist groups, crowdfunding, public events both with and without official permission, collection of signatures demanding the release of political prisoners and, to varying degrees, international advocacy. Some campaigns also used less usual methods, such as the sale of merchandise (T-shirts, etc) in support of defendants in the case of the banned *Network* group, or the signing of dozens of open letters in support of protesters charged with various violations in Moscow by representatives of a number of professional communities.

7.7. Public Monitoring Commissions.

Public Monitoring Commissions for the protection of human rights in places of enforced detention have been operating in the Russian Federation since 2008 on the basis of the **Federal Law** "**On public monitoring of human rights in places of enforced detention and on assistance to persons in enforced detention**." The key task of the Public Monitoring Commissions specified in the law is *"to exercise public oversight of the safeguarding of human rights in places of enforced detention."* Their very establishment was, to a large extent, a response to civil society's request for systematic monitoring of the closed system of detention facilities, where, by its very nature, human rights violations tend to be more widespread than is unavoidable, necessary or permitted by law for the purposes of detention.

The membership procedures and activities of the Public Monitoring Commissions have, from the outset, included restrictions aimed at making it difficult to identify human rights violations. The selection of commission members is through rather complicated bureaucratic procedures that are wholly opaque and lack formal criteria

determining the selection of some candidates and the rejection of others. The very number of the members of the commissions (currently 40 people in every constituent entity of the Federation) is utterly insufficient to ensure timely and qualitative monitoring of human rights. The prohibition on members of the commissions receiving any material remuneration for their monitoring activities does not allow them, in most cases, to fully focus on these activities during their term of office. These and other obstacles imposed by the legislation to full public monitoring of places of detention were reinforced by amendments to the relevant law introduced in 2018, in particular, which banned *"NGOs included in the register of non-profit organisations acting as foreign agents,"* i.e., most of the strongest and most effective human rights NGOs, from putting forward candidates for membership of the commissions.

Moreover, in practice, each cycle of formation of new Public Monitoring Commissions was accompanied by scandals related to the fact that many of the candidates who had been most active in the preceding commissions and who were most knowledgeable and had the greatest practical experience of human rights work, were not included in the new membership. Instead, the commissions were often filled by representatives of quasi-independent organisations affiliated with the Federal Penitentiary Service and other law enforcement agencies.

In fact, Public Monitoring Commissions have no powers to combat the violations they identify, so the main opportunity they have to influence the situation is to make the violations they identify when visiting detention facilities public.

While the task of Public Monitoring Commissions is to identify violations of the rights of all persons in all the various places of detention, in the first instance violations related to conditions of detention of the victims of unlawful politically motivated criminal prosecutions have often received special attention from many commission members. This is because, on the one hand, in addition to violations related to conditions of detention, medical care, food, etc., that are common to all, the very fact of criminal prosecution and enforced detention of these individuals in temporary detention facilities, pre-trial detention facilities and penal correction institutions is an obvious violation of human rights. This situation naturally attracts particular attention to the situation of political prisoners by those members of the Public Monitoring Commissions whose primary motivation is the protection of human rights. On the other hand, criminal cases against political prisoners often have a great public resonance, receive media coverage and become matters of public interest not only at national level, but also internationally. Not only does this generate interest among journalists serving on the commissions, but it often forces even the less committed members of Public Monitoring Commissions to respond to public inquiries and monitor compliance with political prisoners' rights.

The role of St. Petersburg public monitors *Y. Teplitskaya*, *Y. Kosarevskaya* and *R. Shirshov* became widely known when they made public incidents of torture of the defendants in the so-called *Network* case and other violations of their rights during detention. Thanks to these same members of the Public Monitoring Commission, the torture of political prisoner ***P. Zlomnov*** became known.

Human rights activists *E. Yenikeev* and *A. Garina* and journalists *E. Merkacheva* and *K. Sagieva*, all members of the Moscow city Public Monitoring Commission, repeatedly visited the defendants in the so-called *Moscow* case and the *New Greatness* case, ***I. Golunov***, ***A. Miftakhov***, the Ukrainian sailors accused of violating Russian state borders and other political prisoners, recording violations of their rights.

Members of the Kirov region Public Monitoring Commission, *A. Abashev* and *D. Shadrin*, monitored the observance of the rights of political prisoners detained in the region's penal colonies.

Unfortunately, the restrictions on the system of public monitoring, the efforts to prevent human rights defenders becoming members of the commissions and the moves during the time of their existence to reduce the commissions' effectiveness have borne fruit. In many regions, Public Monitoring Commissions are either unwilling or unable to effectively monitor and detect human rights violations in places of detention. This concerns the rights of all persons held in such places, including political prisoners. Even in regions where commissions have some members who are willing to conduct effective human rights monitoring, they are a minority on the commissions, face numerous obstacles and are unable to ensure systematic monitoring of the rights of those detained in general and of political prisoners in particular.

The attention paid by members of Public Monitoring Commissions to political prisoners and other victims of criminal proceedings which have clear signs of unlawfulness and political motivation has repeatedly drawn negative reactions from the Federal Penitentiary Service and other state bodies. It would seem that the desire to limit the capacity of public monitors to detect violations related to politically motivated criminal prosecutions played not the smallest role in bringing about the 2018 amendments to the law "**On Public Monitoring** …". These amendments further restricted the capacity of commission members to discuss with persons held in detention issues "*that do not relate to ensuring the rights of suspects and accused in detention facilities*." We believe that the same desire has also been at work in bringing about a situation where, inter alia, most of the abovementioned members of Public Monitoring Commissions were not included as members of the commissions in 2019.

7.8. Federal Human Rights Ombudsman and Presidential Human Rights Council.

In their response to the issue of political prisoners and politically motivated criminal prosecutions in general, official human rights bodies such as the Federal Human Rights Ombudsman and the Presidential Council for the Development of Civil Society and Human Rights, demonstrate a duality that results from their very nature. On the one hand, the stated goal of creating these institutions is to promote respect for human rights and freedoms. According to **Article 1 of the Federal Constitutional Law "On the Human Rights Ombudsman in the Russian Federation"**, this position is established

> *"for the purpose of guaranteeing state protection of citizens' rights and freedoms, their observance and respect by state agencies, local self-government bodies, and officials." According to the Regulation establishing the Presidential Human Rights Council, its purpose is, inter alia, "to assist the head of state in exercising their constitutional powers in the realm of ensuring and protecting human and civil rights and freedoms," and "to promote the development of the institutions of civil society in the Russian Federation."*

On the other hand, both institutions are built into and formed by a de facto unitary system of power, are dependent upon it and are significantly limited by these circumstances in terms of the realisation of their human rights-related purposes.

At the same time, the office of the Human Rights Ombudsman and its staff, despite its formal status enshrined in the Federal Constitutional Law, its nominal independence and lack of subordination and the existence of certain, albeit very limited, powers, are actually part of the bureaucratic state machine. As an institution, the Human Rights Ombudsman has proved to be far more cautious and inconsistent in protecting human rights and freedoms than the Presidential Human Rights Council, which, despite its purely advisory status, is to a significant degree an organisation independent of government.

The federal Human Rights Ombudsman, who during this period has been *T. N. Moskalkova*, published reports on her work in 2018 and in 2019.

Her official reports and media reports state that she visited Ukrainian political prisoners in institutions of the Federal Penitentiary Service. These were sailors accused of violating the Russian border and ***O. Sentsov***, ***M. Karpyuk***, ***D. Shtyblikov*** and ***V. Balukh***.

The visits to the Ukrainian prisoners, as far as can be seen, were largely due to foreign policy considerations and the great attention paid to these cases by foreign countries and international organisations. To what extent, and in which instances, these visits contributed to an improvement in the observance of the rights of political prisoners is difficult to judge. However, for example, the lawyer of the convicted and imprisoned ***Balukh*** reported that his client's conditions of detention deteriorated after the visit by *Moskalkova*. In her Ombudsman's report for 2019, *Moskalkova* stated that she had made a great contribution to the preparation and implementation of the Russian-Ukrainian exchange of prisoners in the format "35 for 35."

The attention the Ombudsman paid to political prisoners who were citizens of Russia has been significantly less.

It was reported that *T. Moskalkova* visited ***I. Shishkin***, a defendant in the *Network* case. *Moskalkova* also spoke out publicly in connection with some political prosecutions which caused a particularly great public outcry and mass protest, namely those of ***I. Golunov***, ***P. Ustinov***, ***K. Kotov***, and *New Greatness*. Such public statements are useful, as they give additional weight to the ongoing public campaigns. At the same time, in the cases of ***Golunov*** and ***Ustinov***, the Ombudsman expressed doubts about the validity of the charges, the pre-trial restrictions, and the sentencing at a time when these public campaigns had reached such a scale, and the innocence of the defendants was so obvious, that representatives of official media and the authorities, for whom human rights protection is usually not at all characteristic, had already expressed a similar position.

Rare cases not only of statements, but also actions by the Human Rights Ombudsman to protect the rights of political prisoners and victims of politically motivated imprisonment, which we were able to identify, include *T. Moskalkova*'s appeal to the Federal Penitentiary Service in connection with complaints about the beating of ***S. Mokhnatkin*** and the refusal to provide medical assistance to him, her request to the *Constitutional Court* to clarify the provisions of the ruling on *I. Dadin*'s complaint in connection with the sentence imposed on ***K. Kotov***, her request to the authorities of the Chechen Republic to establish the location of ***O. Titiev*** after his detention, and later to the leadership of the Ministry of Internal Affairs for the investigation in the case to be undertaken by authorities outside the Chechen Republic, her appeal to the Prosecutor's Office concerning the validity of the criminal charges for justifying terrorism laid against the journalist ***S. Prokopyeva***, and her requests to regional prosecutors concerning criminal cases brought against *Jehovah's Witnesses*, as a result of which *"six citizens on remand were released from custody and placed under house arrest and travel restrictions; one individual was found to have been a victim of violations committed by the investigatory authorities."*

In the *New Greatness* case, the Ombudsman gave public support to the demand for the women only – ***A. Pavlikova*** and ***M. Dubovik*** (two out of ten defendants, the other eight being men) - to be transferred from custody to house arrest. We could not find any reaction by the Ombudsman to the appeal by another defendant in this case***, V. Kryukov***, who had gone on hunger strike. Similarly, we could not find information about a reaction by *T. Moskalkova* to an appeal by a community of women in the North Caucasus regarding the detention of political prisoner ***Z. Sautieva***, who was accused without any evidence of organising violence against government officials during a rally in Magas in March 2019, or to the repeated appeals by relatives of defendants in the *Network* case, who asked that the torture of their loved ones be investigated, and its recurrence prevented. No reports of torture against defendants in this case or in the case of the political prisoner from *St. Petersburg*, ***P. Zlomnov***, were found in the alternative report drawn up by the Human Rights Ombudsman in a response to the official report of the Russian Federation on the implementation of its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for submission to the UN Committee against Torture.

In the absence of a response even to complaints directly addressed to the Ombudsman regarding violations of the rights of political prisoners, one should not be surprised that in connection with such violations she did not make use of her right granted under **Article 21 of the Federal Law "On the Ombudsman…**" to "*take appropriate measures within the scope of her competence in the event of information on mass or gross violations of the rights and freedoms of citizens or in cases of special public importance… on her own initiative.*"

However, despite the importance of reacting to specific cases of politically motivated imprisonment and violations of the rights of its victims, the systemic and rather widespread nature of political repression in the Russian Federation requires, first and foremost, a systemic response.

As stated in the report of the Ombudsman for 2018, *Moskalkova* advocated the abolition of "*criminal liability for "reposting"*" established by **Article 282, Part 1, of the Russian Criminal Code**. This position, which coincided with the position of many bodies and individuals not inclined to express human rights views, including the President of the Russian Federation, led to a partial decriminalisation of **Article 282, Part 1, of the Russian Criminal Code** in late 2018. We believe that the position of the Human Rights Ombudsman, as well as the general position of state authorities which led to this outcome, was a reaction to the growing public outrage at arbitrary criminal prosecutions for publications on the Internet that presented no danger to society.

With regard to another campaign of illegal politically motivated prosecutions, the Ombudsman's report for 2018 said:

> *"events taking place concerning the followers of Jehovah's Witnesses … make one think about the need to clarify the definition of extremist activity specified in* ***Article 282.2 of the Russian Criminal Code.*** *Of course, any extremist activity is unacceptable, but vague criteria for classifying religious materials as extremist are also unacceptable, when in fact any federal judge, at his discretion, may prohibit any book, image, video or audio recording." The Ombudsman expresses the just view that "in order to strengthen guarantees of citizens' rights, clear legislative criteria are required, rather than evaluative criteria that expand administrative and judicial discretion and allow certain materials and beliefs to be designated as extremist."*

However, in the section on "Recommendations and Suggestions" that concludes the report, there are no suggestions related to these just considerations. Moreover, the 2019 report, despite increased repression against *Jehovah's Witnesses*, does not mention this topic at all.

Finally, it should be noted that in February 2019 the Ombudsman met with relatives of Muslims charged and sentenced for involvement in the *Hizb ut-Tahrir* terrorist organisation, which is banned in Russia. As a result, a working group was established, one of the stated tasks of which is to study the grounds for criminal prosecutions on the basis of these charges, and in particular, the 2003 decision of the Supreme Court of the Russian Federation, which recognised *Hizb ut-Tahrir* as a terrorist organisation. Despite the lack of practical results so far, these actions appear to be an important step towards recognising the existence of an exceptionally important problem, which is necessary to finally find a solution. It is this group that figures largest in the lists of political prisoners of the *Memorial Human Rights Centre*.

The position of the Presidential Council for Development of Civil Society and Human Rights on issues related to political prisoners and politically motivated criminal prosecutions in general was much clearer, despite all the limitations deriving from the status of this body as an advisory body to the President that lacks authority.

It was reported that the Council drew up advisory opinions on the high-profile politically motivated prosecutions of ***O. Titiev*** and ***K. Kotov.***

At a session of the Council, *V. Putin*'s attention was publicly drawn to the cases of political prisoners prosecuted in the Network and New Greatness cases and violations of their rights.

The Council publicly expressed the view that the sentences handed down to ***K. Kotov*** and ***P. Ustinov*** were unlawful and appealed to the prosecutor's office regarding them; chair of the Council, *M. Fedotov*, repeatedly condemned the criminal prosecution

of ***O. Titiev***, and took up the case with the investigative bodies, the prosecutor's office and the courts; *M. Fedotov* spoke out publicly and made appeals to the Interior Ministry and the prosecutor's office regarding the prosecutions of ***I. Golunov***, ***A. Gadzhiev*** and ***Y. Dmitriev*** and other victims of politically motivated unlawful prosecutions; and he appealed to the law enforcement agencies to review the lawfulness of the use of force against participants in the summer protests in Moscow and the criminal cases for alleged riot brought against protesters. *M. Fedotov* also, at the request of the Human Rights Ombudsman of the Verkhovna Rada of Ukraine, repeatedly appealed to the Federal Penitentiary Service regarding the situation of Ukrainian political prisoners detained in the Russian Federation.

The Human Rights Council issued a statement on the first criminal prosecution in Russia for an offence under **Article 284.1 of the Russian Criminal Code** against ***A. Shevchenko***. Individual members of the Council spoke out frequently in public on specific cases of political prisoners, attended trials and even vouched in court for defendants, and given their reputations, this significantly contributed to public support for the victims of repression. Commentators and the media link this circumstance to the expulsion from the Council of members such as *Y. Shulman*, *I. Shablinsky*, *P. Chikov* and the replacement of *M. Fedotov* by *V. Fadeyev* as the chair of the Council.

Although members of the Council work on a voluntary basis, the Council also prepared reports on the legislative framework and law enforcement practice that give rise to politically motivated criminal prosecutions.

Thus, back in the summer of 2018, the Council adopted Recommendations to improve legislation on countering extremism and its implementation. They proposed, inter alia, to narrow the legal definition of extremism; to use violence as the defining indication of extremist activity; to decriminalise **Article 282, Part 1, of the Russian Criminal Code** (*"Incitement of hatred or enmity as well as abasement of dignity"*); to narrow the force of this article by removing the mention of "abasement of dignity" and "social group" from it; to decriminalise **Article 148, Part 1, of the Russian Criminal Code** (*"Violation of freedom of conscience and religion"*); to establish a statute of limitations for articles of the **Russian Criminal Code** dealing with public statements that would apply from the moment of the publication of a statement on the Internet or from the moment of the accused's last actions to draw attention to the statement (*"self-repost", "pinning a post,"* etc.); to change the jurisdiction of cases under **Articles 280** and **280.1 of the Russian Criminal Code**, transferring them to the *Investigative Committee of the Russian Federation*; to introduce amendments to legislation to make it impossible for organisations to be designated as extremist in closed hearings, as well as in the absence of a representative of the organisation or

its appropriate notification; and to abolish the Federal List of Extremist Materials. The document also contains recommendations to remove the obvious flaws in law enforcement practice in such cases.

In 2019, the Council prepared a Briefing on Certain Aspects of Law Enforcement Practice Regarding **Articles 205.5 and 282 of the Russian Criminal Code** which it sent to the *Supreme Court of the Russian Federation*. The Short Report argues for a more developed interpretation by the *Supreme Court* of the objective and subjective elements of the offences set out in **Article 205.5, Parts 1 and 2,** and **Article 282.2, Parts 1 and 2**, **of the Russian Criminal Code** such as continuation or resumption of efforts to organise or "participate" in the activities of a prohibited terrorist or extremist organisation. The Council proposed removing the existing legal uncertainty that leads to a formal approach by the courts and violation of the presumption of innocence.

The conclusions and recommendations of both Council documents aim to limit and reduce the most common forms of politically motivated criminal prosecutions.

The very heterogeneous composition of the Council and the ambiguity of its position, representing as it does civil society and the interests of human rights under a President responsible for the mass violation of these rights, inevitably limited its capacity and willingness to respond to politically motivated criminal prosecutions and the phenomenon in general. This inconsistency and ambiguity have repeatedly led to criticism from society and the media.

7.9. Public interventions and initiatives by public officials

Widespread public outrage over the most obvious and gross cases of politically motivated unlawful prosecutions and imprisonment has on occasion led not only to official human rights institutions condemning these developments and putting forward remedial measures, but also to similar interventions by the authorities themselves.

For example, the increase in the number of cases of clearly arbitrary, unjustified prosecution under **Article 282 of the Russian Criminal Code** ("*Incitement to hatred or enmity, as well as abasement of dignity*") and the associated public outrage brought a series of public statements and initiatives, which resulted at the end of 2018 in the partial decriminalisation of **Part 1** of this Article.

In 2018 alone, three bills on full or partial decriminalisation of this article were submitted to the *State Duma*.

In January a group of *LDPR* deputies (*V. V. Zhirinovsky*, *V. E. Dengin*, *Y. E. Nilov*, *A. N. Didenko*, *M. V. Degtyaryov*, *E. V. Strokova* , *A.B. Kurdyumov*, *A. N. Sherin*, *V. M. Vlasov*) submitted a proposal to completely repeal **Article 282 of the Russian Criminal Code**.

In the explanatory note, the deputies rightly pointed out:

> *"The definition of the offence under **Article 282 of the Russian Criminal Code** is extremely inappropriate. … It considerably exceeds the limits of the prohibition established by **Article 29 of the Constitution of the Russian Federation…"**.*

In addition, the group of deputies reasonably argued that the main feature of the definition of the offence that describes the public danger of actions set out in **Article 282 of the Russian Criminal Code** *"is their orientation towards "incitement of hatred or enmity as well as abasement of dignity of a person or a group of persons", i.e. the offender is defined in terms of the mental element of the offence"* and such a construction of the criminal norm *"… opens up a space for arbitrary interpretation by law enforcement agencies, since the presence of such a mental element is difficult to prove but easy to ascribe."* Finally, the argument in favour of abolishing the article was that:

> *"the offence under **Article 282** … opens up opportunities for a personal interest in the initiation and conduct of criminal proceedings. The vague and broad wording may be used against a citizen for political purposes. To some extent, **Article 282** is a potential tool to be used against persons who disagree with the current political direction of the authorities, and thus legalises political censorship."*

The draft received negative feedback from the Russian Government and an ambivalent, but on the whole critical, review by the *Supreme Court*.

It should be noted that although the *LDPR*, and personally *V. V. Zhirinovsky*, have repeatedly advocated the repeal of **Article 282 of the Criminal Code**, appealing primarily to the fact that, according to their claims, it is an "anti-Russian" article, this stance, by virtue of the established image of the party and its leader, was usually not taken seriously and was considered as populist rhetoric within the role assigned to the *LDPR* by the current political regime. This perception was reinforced by the inconsistent statements made by party representatives. For example, during the debates among presidential candidates in March 2018, answering *K. Sobchak*, who called for the abolition of Article 282 of the Russian Criminal Code, *V. Zhirinovsky*

said that this article should not be completely abolished, because *"if the article is abolished, the whole country will be consumed by the fires of inter-ethnic and inter-religious clashes."*

The position of ***S. Shargunov***, a deputy of the *State Duma* from the *CPRF*, seemed to be more consistent and aimed at achieving results. He repeatedly voiced his stance in the media, and on the "Direct Line" with V. Putin on 7 June 2018 he drew the latter's attention to the fact that "*if you take* ***Article 282 of the Criminal Code*** *literally, you should posthumously condemn Pushkin, Dostoevsky, Mayakovsky, and remove their works from circulation,"* pointing out that the article is often unreasonably applied to users of social networks. *V. Putin* replied: *"There is no need to reduce everything to a mess and an absurdity. Within the framework of the National People's Front, let's analyse what is happening together. We need to involve the Supreme Court in defining the concepts."*

On 25 June 2018, deputies *S. A. Shargunov (CPRF)* and *A. A. Zhuravlyov* (who later withdrew his signature), later joined by the deputy from the *CPRF O. N. Smolin*, initiated a proposal for the partial decriminalisation of **Article 282 of the Criminal Code**. According to their draft bill, references to evidence of "publicity" and *"use of mass media or information and telecommunication networks"* should be removed from the article, and the remaining element of the offences provided for by **Article 282, Part 1**, should be prosecuted under the **Russian Code of Administrative Offences**, while criminal responsibility should be reserved only for actions that fall under **Part 2** of the article. The authors of the draft bill made a number of points, including: the uncertainty of the criminal prohibition established by the article; the fact that the mere existence of publicity or the use of mass media and the Internet in carrying out the actions provided for in the article was inadequate to establish criminal responsibility; the inevitable subjectivity in assessment of the nature of the actions or information disseminated in connection with which criminal proceedings were to be conducted; the ambiguity of the notions of "social group" and "race"; and the lack of consistency in the application of the article.

Probably because of the influence of the Russian President's public statement, the draft bill was supported by the *Ministry of Digital Development, Communications and Mass Media*, while *Yelena Afanasyeva*, deputy chairman of the *Federation Council*'s Committee on Constitutional Legislation, proposed to abolish penalties for reposting altogether, saying: *"We are moving progressively towards humanisation of criminal legislation, and it is not very just to still keep a legal norm of this kind."*

The press secretary of the Russian president, *Dmitry Peskov*, commenting on the deputies' initiative, declared:

> *"An excessively formal approach is inappropriate when it takes hypertrophic forms. It needs to be regulated. This does not mean that dissemination of such information should be promoted, but citizens should be protected from cases that, if not curiosities, have a high profile."*

Even *Vladimir Makarov*, deputy head of the Interior Ministry's department for combatting extremism (Centre "E"), said that reposting and liking on social networks should not become the basis for initiating criminal prosecutions for extremism.

However, the draft bill had not even reached the relevant Duma committee by the time the *President of the Russian Federation* submitted his bill for partial decriminalisation of **Article 282 of the Criminal Code** to the State Duma on 3 October 2018. The reason for the bill as set out in the explanatory note was very brief and boiled down to the fact that not all cases of criminal liability under **Article 282, Part 1, of the Russian Criminal Code** were "justified." It may be assumed that the President's decision to launch this, albeit very modest but nevertheless useful, initiative was influenced, inter alia, by the public outrage at the series of prosecutions under **Article 282 of the Criminal Code** initiated in the summer of 2018 in the Altai region (see section 3.2 of the present report).

The Presidential bill was promptly considered and adopted by the *State Duma*, while all other competing bills were rejected.

The speeches of officials calling for systemic legislative changes in connection with the struggle against prosecution for reposting were, in general, a rare phenomenon. More often than not, officials of all kinds, who usually justified and supported any repressive actions, spoke out in the opposite spirit in specific criminal cases. When such statements did occur, they were a reaction to strong public outrage and often gave the impression the authorities were trying to "save face." They were usually made in the short period of time between when a decision to correct an outrageous event had already been made and its implementation. Public statements by officials condemning violations in a particular criminal case would seem to be aimed at making this change of course appear less of a forced concession to public opinion and more of a voluntary act of justice.

One typical example of this was the speech by the chair of the *Federation Council*, *V. Matvienko*, on 11 June 2019. She stated:

> *"The situation surrounding the detention of journalist **Ivan Golunov** has caused a great public outcry, and there were strong reactions from fellow journalists. Mistakes and violations have already been publicly pointed out. Of course, they cause distrust in the investigative bodies."*

A few hours after her statement, the criminal charges against ***I. Golunov*** were dropped because his involvement in the crime had not been proven, and he was released from house arrest.

Another, no less typical example is the statement made by *Andrei Turchak*, secretary of the General Council of the *United Russia* party and deputy speaker of the *Federation Council* on his *Instagram* account on 18 September 2019:

> *"The situation that the actor Pavel Ustinov found himself in is a flagrant injustice. It's impossible to ignore this or keep silent… The guy was just standing near the metro station. He did not touch anyone, did not disturb the public order and, of course, did not expect to be arrested … At the moment he was detained, he, of course, tried to move away. Yes, a National Guard officer tripped and fell. But the video clearly shows that Pavel did not attack anyone, did not push or even touch anyone. …It is unfair and unjust that the court did not take into account these videos and passed a guilty verdict, without giving the defence an opportunity to present all the arguments."*

On 20 September the *General Prosecutor's Office* submitted a practically unprecedented motion to the court to change the restrictions imposed on ***P. Ustinov***, who had been sentenced to three and a half years' imprisonment, releasing him from detention and imposing travel restrictions on him.

It is more difficult to assess the meaning and significance of *V. Putin*'s few statements on human rights.

Above we mentioned his response to *S. Shargunov* on the "Direct Line" in 2018. Although his answer did not contain a clear promise to correct the situation, it testified to at least a partial recognition of the existence of the problem and, apparently, in combination with subsequent developments (a noticeable increase in public dissatisfaction with law enforcement practice in relation to **Article 282 of the Russian Criminal Code**) was the precursor of the decision to partially decriminalise this article five months later.

V. Putin spoke publicly about the high-profile case of ***I. Golunov*** on 20 June 2019, after the criminal proceedings against the journalist had been dropped.

> *"We need to establish oversight of the activities of law enforcement agencies so that there are no offences on their part, so people are not imprisoned because officers need to meet their performance criteria, so that there would be no more cases as we saw with the journalist who almost went to jail,"*

he said.

In fact, he acknowledged the systemic nature of the problem, but rejected the idea that ***Golunov***'s prosecution had been ordered from above because of his professional activities, saying that those responsible for the fabrication of the case had been its immediate executors.

At a meeting with the Human Rights Council in December 2018, V. Putin said in response to the information about the prosecutions of *Jehovah's Witnesses*:

> *"We must treat representatives of all religions equally - this is true, but still we must take into account the country and society in which we live. True, it does not at all mean we should consider the representatives of religious communities as in some sense destructive – even if not terrorist – organisations. Of course, this is total nonsense, we must consider this carefully. Jehovah's Witnesses are also Christians, I don't really understand why they should be prosecuted either."*

He even promised to analyse the situation and talk about it with *V. Lebedev*, chair of the *Supreme Court*. Nevertheless, the situation regarding the prosecution of *Jehovah's Witnesses*, rather than improving since that statement, has become worse. Since it is difficult to imagine any objective obstacles to change the situation, if it were the will of the President of Russia, it is likely that he does not wish to do this, and the above cited words merely allowed him to "distance himself" from the repressive campaign, which is condemned both in Russia and in the rest of the world.

7.10. Amendments to the Russian Criminal Code and the Russian Code of Criminal Procedure that indirectly affect the situation of political prisoners

One of the features of law-making in Russia in the 2010s has been the constant, often chaotic, changes in criminal legislation. Thus, in 2018 alone, the **Russian Criminal Code** was amended by 19 federal laws and the **Russian Code of Criminal Procedure** by 20 federal laws. Trends in legislative norms that are instruments of politically motivated repression and their application for purposes of repression, in the years 2018-2019, are described in particular in Chapter 3 of this report. Most of the changes in Russian criminal and criminal procedure legislation during this period were not the result of targeted efforts to strengthen or mitigate political repression, but rather the result of complex interagency interrelations, lobbying efforts by individual security agencies, populist statements and proposals by senior officials, and so forth. These changes can be objectively divided into three groups:

1. Proposals that do not affect the situation of political prisoners and other victims of political repression. For example, changes to the **Russian Criminal Code** as a result of the adoption of legislation that does not affect criminal policy but regulates other spheres of public life. In such cases, changes to the **Criminal Code** and the **Code of Criminal Procedure** of the Russian Federation are almost exclusively technical in nature.

2. Amendments that indirectly worsen the situation of potential political prisoners but were adopted for "non-political" purposes. These include the toughening of the general articles of the **Russian Criminal Code**, for example, the introduction on 2 October 2018 of criminal liability for failure to remove defamatory material posted on the Internet (**Article 315, Part 1, of the Russian Criminal Code**), the toughening of the rules governing the application of parole and the more active application of probation following the release of political prisoners, in particular religious Muslims.

3. Finally, it is worth mentioning the relatively rare changes to the **Russian Criminal Code** and the repressive nature of legislation, including with regard to victims of political repression, that have not been directly politically motivated. This makes it possible to separate such initiatives from, for example, the decriminalisation of **Article 282, Part 1, of the Russian Criminal Code,** which was directly related to public dissatisfaction over widespread politically motivated prosecutions.

The most important examples of the legislative changes mentioned in point 3 above in the last two years are the amendments to **Article 72 of the Russian Criminal Code** (*"Calculation of Terms of Punishments and Offset of Punishments"*) in the summer of 2018 and **Article 30 of the Russian Code of Criminal Procedure** (*"Composition of the Court"*) adopted on 29 December 2017 but in force from 1 June 2018, as well as the amendments to Chapter 47.1 of the **Russian Code of Criminal Procedure**, which expanded the possibilities for cassation appeal regarding court rulings that have entered into force, and the introduction of new courts of appeal and cassation of general jurisdiction.

After many years of consideration in the *State Duma*, a law was adopted according to which one day of detention in a pre-trial detention facility was to be considered equivalent to one and a half days in a general regime penal colony and two days in a settlement penal colony, except for sentences, in the main, for terrorist and drug-related offences. This measure reduced the sentences of a significant number of Russian political prisoners, although it was not concerned directly with them.

The amendment to **Article 30 of the Russian Code of Criminal Procedure** provided for the expansion of jury trials, granting the right to choose to be tried by a court consisting of a professional judge and six jurors to those accused of premeditated murder without aggravating circumstances (**Article 105, Part 1, of the Russian Criminal Code**) or of inflicting grievous bodily harm resulting in the death of the victim (**Article 111, Part 4, of the Russian Criminal Code**). These articles are rarely used in political repression, but we are aware of such cases, in particular, the case of opposition nationalist *Daniil Konstantinov*, prosecuted in 2011-2013 on a clearly fabricated charge of domestic murder, and the case of ***Aleksei Pichugin***, a former *Yukos* oil company employee sentenced to life imprisonment.

Finally, **Chapter 47.1 of the Russian Code of Criminal Procedure** ("*Proceedings in the Court of Cassation*") was amended during this period to introduce the principle of non-selective cassation (i.e. without preliminary selection of complaints) in newly established special cassation courts from 1 October 2019. These courts were created under the **Federal Constitutional Law of 29 July 2018 N 1-FKZ "On Amendments to the Federal Constitutional Law "On the Judicial System of the Russian Federation" and individual federal constitutional laws in connection with the creation of cassation courts of general jurisdiction and courts of appeal of general jurisdiction."**

These changes, in theory, are undoubtedly useful in terms of broadening opportunities for the quashing of convictions, including in politically motivated cases, and, as far as we can judge, have been moderately positively received by the legal and human rights communities. As yet, *Memorial Human Rights Centre* knows of only one application of the principle of non-selective cassation in respect of political prisoners - the quashing on 2 March 2020 by the Second Court of Cassation of the decision of the appeal court that had upheld the legality of the sentence handed down to ***Konstantin Kotov***, returning the case to the Moscow City Court where the term of imprisonment was subsequently reduced from four years to 18 months in a general regime penal colony on 20 April 2020.

While assessing these changes positively, we cannot fail to notice their selectivity and fragmentary nature, typical of any relatively "liberal" measures that have been implemented in Russia in recent years. Thus, the recalculation of the terms of imprisonment turned out to be inapplicable to a considerable proportion of Russian prisoners, including many political prisoners, because the law unreasonably banned its application to convictions for a large number of criminal offences. The expansion of jury trials in Russia is proceeding extremely slowly, which means most defendants are still deprived of their right to jury trial even for especially grave offences, primarily in cases of obvious "state" importance (all charges of extremist and terrorist crimes). It should also be noted that some important legislative amendments, which may lead to the release of a number of political prisoners, have not been adopted after

long discussion. The most notorious in this respect has been the long discussion of amendments to mitigate **Article 228, Parts 2 and 3, of the Russian Criminal Code**, which penalises possession of narcotic substances without the intention of sale, which were rejected by *V. Putin* personally.

7.11. Official attitudes to the issue of political prisoners and their defence

Russian authorities traditionally deny the presence of political prisoners in the country. *Vladimir Putin* personally spoke about this a long time ago. In February 2012, when he was still prime minister, he said, *"I don't think we have political prisoners, and thank God. Although they talk about it without naming names. Let them point to at least one person who has been imprisoned for political reasons."*

He repeated this view in 2013.

In 2013, then prime minister of Russia *Dmitry Medvedev* expressed a similar opinion in an interview with Russian TV channels. "If you think we have political prisoners, I don't think we have any," he said.

Following the country's political leaders, the same position was taken by *State Duma deputy Natalia Poklonskaya*. Commenting on a statement by human rights defenders about Ukrainian political prisoners in Crimea, she said: *"I will dispel the haze deriving from the imagination of various kinds of human rights defenders. There are no political prisoners in Crimea, which is something you can't say about Ukraine itself."*

Russian political leaders and their spokespeople deny any political motive behind the prosecution of political prisoners in specific cases. *Vladimir Putin* has repeatedly explained the prosecution of ***Oleg Sentsov***, ***Mikhail Khodorkovsky*** and others in terms of the crimes they allegedly committed. Even in those cases where the authorities considered it necessary to retreat because of public outrage, they almost never admitted to a political motivation for the unlawful prosecution. For example, the need for officers to meet performance indicators was given as the explanation for the fabrication of the prosecution of ***Ivan Golunov***, while although ***Oyub Titiev*** and ***Pavel Ustinov*** were released, they were also convicted.

The situation was more difficult for those officials authorised by the state to protect human rights. As representatives and employees of the state, they cannot acknowledge the existence of political prisoners, but they cannot deny their existence too forcefully if they wish to maintain their human rights role.

For example, *Mikhail Fedotov*, chair of the Presidential Human Rights Council, answered the question, "Are there any political prisoners in Russia?", in the following manner:

> *"We deal with all prisoners who are behind bars on questionable charges. There are people who have been imprisoned on a very wide range of different charges, both those related to politics and those unrelated. So far as our Council is concerned, they are all political prisoners in the sense they are all victims of shortcomings in our law enforcement and judicial systems. If the investigation, the prosecutor's office and the courts worked more efficiently and carefully, we would have no people behind bars whose guilt is doubted, not only by their lawyers but also by society."*

When in September 2018 the Federal Human Rights Ombudsman, *Tatyana Moskalkova*, was asked about the number of Russian political prisoners in connection with a statement she had made that at least 30 Russian citizens were imprisoned for political reasons in Ukraine, she actually evaded the answer by saying:

> *"I am not ready to answer the question. In any case, when I studied the cases of "political prisoners," they were all charged with acts that fell within the scope of the* ***Criminal Code****. In my opinion, in a number of cases these charges should be checked with the help of the prosecutor's office to see if this hadn't been used as a formality because some people were dissatisfied with criticism of the work of the authorities."*

To all appearances, the stance of denying there are any political prisoners or evading recognition of this problem is becoming less and less credible in Russian society. According to the Levada Centre, the number of Russians who answer the question, *"Do you think there are political prisoners in Russia now (people convicted for their political views or for their desire to participate in political life)?"* those answering *"Definitely yes" or "Most likely yes"* at the end of 2019 amounted to 63% of respondents, while those answering *"Definitely no" or "Most likely no"* constituted only 22%.

8. The institutional framework of political repression and necessary amendments to legislation and law enforcement practice

As shown in the previous sections, political repression, in particular politically motivated deprivation of liberty, is a complex phenomenon. It is made possible and takes place thanks to many general and particular legislative norms, secondary legislation, judicial interpretation and the established practices of courts and other law enforcement bodies in applying these norms. It is clear that political repression is immanent in the existing political regime; on the one hand, this is an essential tool to ensure the powerholders remain in power, and on the other hand, they are an essential instrument to suppress the remaining channels of feedback from society to the state once elections are neither free nor fair: freedom of assembly, expression, and association.

In order to fundamentally resolve the problem of political repression and put an end to this vicious practice, fundamental changes in the political regime are needed: a real separation of powers, in particular, ensuring real independence of the judiciary, and the changeability of governmental office holders through free and fair elections. Nevertheless, it is possible and necessary to highlight specific changes in the normative acts and law enforcement practice necessary to minimise the use of the criminal and criminal procedure law for purposes contrary to the public interest.

8.1. Articles of the Criminal Code that must be repealed

The simplest approach is to indicate those norms of the criminal law that should be repealed since they inherently contradict legal principles formulated in the **Constitution of the Russian Federation** and the ensemble of international legal acts protecting human rights.

8.1.1 Article 212.1 of the Russian Criminal Code

Article 212.1 of the Russian Criminal Code defines the offence of "*violation of the established procedure for organising or holding an assembly, rally, demonstration, march or picket, if this act is committed repeatedly.*" Such a violation is considered to be a violation of the established procedure for organising or holding a public event by a person who has been previously held administratively liable for committing violations under **Article 20.2 of the Russian Code of Administrative Offences** more than twice within one hundred and eighty days.

Since the adoption of **Article 212.1** into law, *Memorial Human Rights Centre* has pointed to its anti-constitutional nature. Since the criminalisation of one more (a fourth) violation of the procedure for organising or holding a public event is related exclusively to the existence of previous cases of administrative responsibility for similar offences, the said article of the **Criminal Code** actually proposes repeated punishment for acts for which the person in question has already been punished.

Since **Article 212.1 of the Criminal Code** makes the existence of an offence dependent on the existence of convictions under administrative law, prosecution and judgment in criminal proceedings are based on court decisions taken with regard to administrative offences, decisions based on a significantly lower level of guarantee of individual rights and freedoms than those provided for under criminal proceedings.

More importantly, however, criminal liability for repeated violations of the procedure for organising or holding a public event clearly does not correspond to the degree of alleged public danger of such violations. This discrepancy is especially obvious if we consider the sanction provided under **Article 212.1 of the Criminal Code**, namely *imprisonment for up to five years or a fine of up to 1m roubles, or a sum equivalent to salary or other income for a period of up to three years*. The contradiction between the degree of public danger and the criminal punishment is exacerbated by the well-known law enforcement practice in cases of administrative offences, which presupposes prosecution irrespective of the real public danger of the actions in question and the actual circumstances, solely on the basis of the testimony of police officers.

The **Ruling of 10 February 2017** of the *Constitutional Court of the Russian Federation* on the complaint by ***I. Dadin*** stated that criminal liability under **Article 212.1 of the Russian Criminal Code** is only possible where a violation of

> *"the established procedure for organising or holding an assembly, rally, demonstration, march or picket has resulted in the infliction or real threat of harm to citizens' health, property of individuals or legal entities, environment, public order, public security or other constitutionally protected values."*

However, none of the actions that have been the subject of criminal prosecution under this article have had such consequences. We are not aware of a single case concerning an alleged offence under **Article 212.1 of the Russian Criminal Code** that meets the terms of the above ruling of the *Constitutional Court of the Russian Federation*. Moreover, it seems that there can only be the high degree of public danger resulting from a violation of the procedure for organising or holding a public event that merits criminal prosecution when the violation resulted in real harm to the health of citizens, the property of individuals or legal entities and the environment or a real threat of such harm. It seems to us impossible to consider damage or threats to public order, public security or other constitutionally protected values as grounds for criminal liability for the specified kinds of actions since these categories are too broad and such an approach would not comply with the principle of legal certainty. At the same time, harm or the real threat of harm to the health of citizens, the property of individuals or legal entities and the environment, if they were intended by the organiser of the public event, fall within the scope of other offences provided for by the criminal law, and the introduction of a separate offence under **Article 212.1 of the Russian Criminal Code** is, in this regard, clearly redundant.

In view of the above, the restriction on freedom of peaceful assembly established by **Article 212.1 of the Russian Criminal Code** is not necessary in a democratic society, since it is not established on grounds provided by **Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms**, i.e. is not on grounds of national security or public order, not for the prevention of disorder and crime, or the protection of health and morals or the rights and freedoms of others, and should be unquestionably repealed.

8.1.2 Article 280.1 of the Russian Criminal Code

Article 280.1 of the Russian Criminal Code provides for punishment of up to five years' imprisonment for incitement of actions aimed at violating the territorial integrity of the Russian Federation.

It should be noted that the practice of application of this article, in particular in the cases of persons recognised by *Memorial Human Rights Centre* as political prisoners, demonstrates that those prosecuted under this article include those who either called for non-violent actions aimed at the violation of the territorial integrity of the Russian Federation or did not call for such actions at all. In the latter case, those prosecuted merely publicly questioned the value of territorial integrity, sometimes in an obviously joking manner, or publicly discussed issues related to the territorial integrity of the Russian Federation. We are not aware of any criminal prosecution under **Article 280.1 of the Russian Criminal Code** for actions that posed a real threat to the territorial integrity of the Russian Federation and, therefore, had a real public danger.

This provision of the **Criminal Code**, insofar as it criminalises calls for non-violent action, infringes the freedom of speech guaranteed by **Article 29 of the Russian Constitution** and freedom of expression guaranteed by **Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.** While **Part 2** of this Article of the Convention allows for *"restrictions or penalties as are prescribed by law and are necessary in a democratic society,"* including *"in the interests of … territorial integrity,"* it cannot be accepted that, given the existing conflict between the principles of the territorial integrity of States and the right of peoples to self-determination, such restrictions and sanctions are applicable to non-violent public debate about territorial integrity.

The criminalisation of such discussion appears to be particularly unjust and socially harmful in the context of the annexation of Crimea and the actions of the Russian authorities towards certain districts of the Donetsk and Lugansk regions in Ukraine, as well as parts of Georgia such as Abkhazia and South Ossetia.

Calls for violent action aimed at violating the territorial integrity of the Russian Federation are subject to criminal law prohibitions established under **Article 278** and **Article 279 and other articles of the Russian Criminal Code**. It therefore would seem redundant and inappropriate to single out calls even to acts of violence on the basis of their goal or their stance on social relations that ensure the territorial integrity of the Russian Federation.

It should be noted that the concept of the "territorial integrity of the Russian Federation," violations of such "territorial integrity" or actions or appeals intended to bring about such violations, are nowhere clearly defined in Russian law.

In view of the above, the fact that there is currently no real problem concerning appeals for violation of the territorial integrity of the Russian Federation that are a danger to society, and the main way that **Article 280.1 of the Russian Criminal Code** is being used is for the purposes of political repression infringing human rights and freedoms, it seems necessary to repeal this article.

8.1.3 Article 148 of the Russian Criminal Code

Article 148, Part 1, of the Russian Criminal Code prescribes a penalty of up to one year's imprisonment for *public acts expressing clear disrespect for society and committed with a view to offending the religious feelings of believers;* **Part 2** of this article prescribes a penalty of up to three years' imprisonment for *the same acts committed in places specially designated for the holding of religious services, other religious rites and ceremonies.*

Although there have been very few cases of deprivation of liberty as a result of a court sentence or as a measure of pre-trial restriction in connection with criminal proceedings under **Article 148 of the Russian Criminal Code** during its existence in its latest version (we are aware of two) and there are currently no such persons on the lists of political prisoners compiled by *Memorial Human Rights Centre*, the presence of such a provision in the **Russian Criminal Code** poses a threat to human rights and freedoms.

We agree with the assessment by experts of the project *Sanation of Law* who point out that this legal norm does not meet the requirements of certainty, clarity and unambiguousness. Both the explicit disrespect for society and the purpose of offending religious feelings, which in practice is attributed to public actions simply because post factum there are individuals who claim that their religious feelings have been offended, are evidently vague and evaluative in nature. On that basis, it is impossible to understand what kind of behaviour would subsequently prove to be illegal or, indeed, criminal.

This article of the **Criminal Code** contradicts the norms of **Article 14** which affirms the secular nature of the Russian State, and **Articles 28** and **29 of the Russian Constitution** which enshrine the freedoms of conscience and speech. The broad and undefined restrictions laid down in **Article 148 of the Russian Criminal Code** go far beyond the constitutional prohibitions on advocacy or agitation that incite religious hatred and enmity and advocacy of religious superiority. Nor do they serve those purposes for the sake of which, according to **Article 10, Part 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms**, restrictions and sanctions may be imposed. Moreover, there is no reason to believe that such restrictions are necessary in a democratic society.

Verdicts in these prosecutions and the expert opinions on which they are based (according to a report by *Agora International Human Rights Group*) contain, for example, arguments such as this: the publications *"demonstrate a disparaging, disrespectful, and mocking attitude to religious objects (of Christianity)"; "the image means a "symbolic victory of paganism over the Orthodox religion""*; the convicted person posted images *"during the Christian feast of the Pskovo-Pechersk Icon of the Mother of God, the Compassion"* or posted a link to the dogma of icon worship established in 787 at the Second Council of Nicaea. This practice of applying **Article 148 of the Criminal Code** means that it in fact establishes criminal liability for blasphemy, which, as already mentioned, is contrary to the **Russian Constitution**.

However, there is no reason to believe that the purpose of the act related to the attitude towards religion, or the fact that it occurred in a location especially designed for the conduct of divine services, is more dangerous to society and requires greater accountability before the law than other breaches of public order.

Given the existence of criminal and administrative liability for hooliganism, the offences provided for in **Article 148, Part 1** and **Part 2, of the Russian Criminal Code** are all the more redundant.

Based on the above, we consider it necessary that **Article 148, Part 1** and **Part 2, of the Russian Criminal Code** be repealed.

8.1.4 Article 284.1 of the Russian Criminal Code

Article 284.1 of the Russian Criminal Code prescribes a penalty of up to six years' deprivation of liberty for

> *"directing the activities on the territory of the Russian Federation of a foreign or international non-governmental organisation in respect of which a decision has been taken to declare its activities in accordance with Russian law undesirable on the territory of the Russian Federation, or participation in such activities by a person who has previously been held administratively liable for a similar act twice within one year."*

The administrative liability mentioned in this article of the **Criminal Code** is provided for by **Article 20.33 of the Russian Code of Administrative Offences**. We are aware of four criminal prosecutions under this article. All of them have been initiated against activists of the *Open Russia movement* in various Russian regions. One of the defendants, ***Anastasia Shevchenko*** from Rostov, has been under house arrest for over a year and has been included in Memorial Human Rights Centre's list of political prisoners.

The concept of an "undesirable organisation" is regulated by **Article 3.1 of the Federal Law "On measures to influence persons involved in violations of fundamental human rights and freedoms and the rights and freedoms of citizens of the Russian Federation**." The article defines the term in the following way:

> *"the activities of a foreign or international non-governmental organisation that pose a threat to the foundations of the constitutional order of the Russian Federation, to the defence capability of the country or to the security of the State, including contributing to or preventing the nomination of candidates, of lists of candidates, or the election of registered candidates, the nomination of a referendum initiative and the holding of a referendum, the achievement of a certain result at elections and referendums (including participation in other forms of election campaigns, referendums, and other campaigns)."*

The decision to designate an organisation undesirable is taken by the Prosecutor General of the Russian Federation or his deputies.

The designation of organisations as "undesirable" has been repeatedly criticised, both during the consideration of the relevant bill and after the law came into force. In particular, the European Commission for Democracy through Law (Venice Commission), the Federal Human Rights Ombudsman of the Russian Federation and the Presidential Council for the Development of Civil Society and Human Rights made negative comments about the bill and the law. We agree with the criticism made that the notion of "undesirable organisations" introduces excessively broad and indiscriminate restrictions on human rights and freedoms, the grounds for including organisations on the list of "undesirable organisations" are extremely broad and vague, and the extrajudicial procedure for including organisations on the list is non-transparent and arbitrary. Moreover, the very institution of "undesirable" organisations is redundant. Prohibitions on the activities of a foreign or international NGO that pose a threat to the foundations of the constitutional order of the Russian Federation, the defence capability of the country or the security of the state, and the measures to enforce these prohibitions, already exist in Russian legislation.

As the report of the *Presidential Human Rights Council* rightly states, *"all these measures can be taken and implemented within the framework of existing international norms and Russian federal laws."* The intrinsic shortcomings of the legislation on "undesirable organisations" are confirmed by law enforcement practice. Many well-respected and prominent NGOs have been arbitrarily and unreasonably included in the list of undesirable organisations.

However, the norms of **Article 284.1 of the Russian Criminal Code**, instituting excessive prohibitions with regard to "undesirable" organisations, in themselves contain a series of additional critical shortcomings. In particular, the law does not precisely define the notion of participation in the activities of an undesirable organisation. In practice, law enforcement agencies and courts declare instances of such participation to be participation in public debates or protest rallies, as in the case of the political prisoner ***Anastasia Shevchenko***, or even the publication on the Internet of a video about the lack of schools that allegedly contained the logo of an "undesirable" organisation, as in the case of ***Yana Antonova*** (we leave aside here the important fact that activists of the Russian *Open Russia movement* prosecuted under **Article 284.1 of the Russian Criminal Code** had nothing to do with the British organisations listed as undesirable with a similar name). In addition, the legal force of the said article is based, like that of **Article 212.1 of the Russian Criminal Code**, on "administrative prejudice" - the criminality of an act is determined by the existence of previous cases of administrative liability for similar offences. In this connection, all criticisms concerning "administrative prejudice" of this kind set out above in relation to **Article 284.1 of the Russian Criminal Code** apply to **Article 212.1**.

All these circumstances make the unconditional repeal of **Article 284.1 of the Russian Criminal Code** essential.

8.1.5 Article 330.1 of the Russian Criminal Code

Article 330.1 of the Russian Criminal Code penalises *"malicious evasion of the duty to submit documents required for inclusion in … the register of non-profit organisations acting as a foreign agent*." At present we are not aware of any criminal cases initiated under this article of the **Criminal Code**. The only such case investigated, which was against *V. Cherevatenko* who heads two organisations, *Women of the Don Union* and *Women of the Don Foundation*, was closed in 2017 "for lack of evidence of a crime." Nevertheless, the presence of this article in the **Criminal Code** maintains a constant threat of criminal prosecution against leaders of Russian NGOs.

The very existence of the category of "foreign agents" and the obligation for NGOs to provide documents necessary for their inclusion in the relevant register have been repeatedly criticised by Russian, foreign and international institutions.

The obvious unjustified restriction of the right of association by the legislation on "foreign agents," the discrimination it establishes against NGOs receiving foreign funding, the stigmatising nature of the term "foreign agent" itself and the direct contradiction of the principles of legality and legal certainty in use of the term "political activity" have been pointed out by the Venice Commission, the Council of Europe's Commissioner for Human Rights, the International Commission of Jurists, and many others. Cogent criticism of these norms is contained in the application by 11 Russian NGOs to the *ECtHR* and in the expert opinions appended to it.

These critical flaws in the "foreign agent" law are in themselves sufficient to require its repeal. However, **Article 330.1 of the Russian Criminal Code** also contains its own defects. For example, it contains a notion of "maliciousness" that has no legal definition. The criminal liability, which presupposes a penalty of up to two years' imprisonment merely for the offence of failing to comply with the obligation to provide the documents required for inclusion in the "foreign agent" register and, moreover, the fact that government bodies are authorised to include NGOs in this register without such documents, are clearly disproportionate to the perceived public danger. Finally, the penalty for failure to comply with the duty to provide documents, which results from a presumption that the NGO actually performs the function of a "foreign agent" and, in this connection, is to be included in the register, also fails to meet the principle of legal certainty. A substantial proportion, and probably the absolute majority, of NGOs included in the "foreign agent" register reasonably argue they do not perform the function of a "foreign agent," and in particular do not engage in

political activities. Furthermore, the broad description of "political activities" in the law does not make it possible to know in advance precisely which activities are prohibited under threat of criminal liability.

From the above, there follows a clear requirement to repeal **Article 330.1 of the Russian Criminal Code**.

8.1.6 Article 354.1 of the Russian Criminal Code

Article 354.1 of the Russian Criminal Code, "*Rehabilitation of Nazism,*" prescribes a punishment of up to three years' imprisonment for

> *"public denial of the facts established by a sentence of the International Military Tribunal for the trial and punishment of the principal war criminals of European Axis countries, approval of the crimes established by the said sentence, and dissemination of knowingly false information about the activities of the USSR during the Second World War," and up to five years' imprisonment for "the same acts committed by a person using his or her official position or using media, as well as artificial creation of the evidence of the charge,"*

as well as a fine, correctional or compulsory work for

> *"public dissemination of information expressing clear disrespect to society about the days of military glory and memorable dates of Russian history, related to the protection of the Fatherland, as well as desecration of symbols of Russian military glory."*

The article has generally limited scope for application but, nevertheless, during the second half of 2018 and in 2019, of 336 criminal cases related to statements on the Internet monitored by Memorial Human Rights Centre, 11 cases were investigated or have already resulted in convictions under this article.

We believe that this article of the **Criminal Code** is inconsistent with the principle of legal certainty. Both

> *"denial of the facts established by the verdict of the International Tribunal," and "approval of crimes," and "deliberately false information about the activity of the USSR," and "information about the days of military glory that is clearly disrespectful to society"*

are formulations that do not allow it to be determined unambiguously in advance which actions and statements are lawful and which are prohibited. This ambiguity is further reinforced by law enforcement practice in relation to this article which launches prosecutions, for example, for reposting a text containing the allegation that World War II was caused jointly by Nazi Germany and the USSR, as well as a

reference to "cooperation between communism and Nazism" and the publication on social media of a photo collage depicting the Volgograd monument of the Motherland with its face covered in green antiseptic.

We agree with the *Sova Centre*'s assessment, issued immediately after the adoption of the law introducing **Article 354.1** into the **Criminal Code**, that this law "is in fact aimed at prohibiting discussion of history, and its adoption means a significant restriction on freedom of speech." **Article 354.1 of the Russian Criminal Code** criminalises not only statements about an uncertain and unlimited range of facts, but also the expression of opinion about ambiguous events of the past, about which there is no agreement among the international academic community. This article introduces criminal responsibility, i.e. the practice of punishing the most socially dangerous acts, for statements that do not call for or incite violence, and which clearly is not proportionate to any actual public danger. At the same time, calls for violent actions expressed in connection with the discussion of past events are already subject to liability under other articles of the **Criminal Code**, which makes this article redundant. We believe that this provision of the criminal law contradicts both the **Constitution of the Russian Federation** and the **European Convention for the Protection of Human Rights and Fundamental Freedoms**. We call for the swift repeal of **Article 354.1 of the Russian Criminal Code**.

8.2. Legal norms that have excessively broad definitions

In addition to criminal norms that directly contradict the **Russian Constitution** and Russia's international obligations, and therefore require unconditional repeal, Russian criminal law has a large body of norms that establish liability for acts that represent a real public danger and do require criminal prosecution. However, these norms can be formulated so broadly and vaguely that they make possible prosecution for actions that are lawful or manifestly present no significant public danger. This problem proves to be particularly significant because of the accusatory bias characteristic of Russian law enforcement.

The lack of care with which legislation is drafted, and often, probably, the deliberate use of ambiguous wording intended to make possible broad and arbitrary application, are, to a large extent, general problems with criminal legislation in the Russian Federation. Only those manifestations of this trend which most frequently give rise to unlawful politically motivated prosecution and, especially, imprisonment, are considered here.

Ending the practice of using excessively broad formulations in articles of the **Russian Criminal Code** to carry out political repression undoubtedly requires a change in the attitudes of the political authorities and the whole complex of institutions related to criminal prosecution. However, the most necessary changes involve clarification and more precise definition of the offences for which such articles provide and changing the established practices of their application.

8.2.1 Anti-extremist legislation

The problems mentioned above are most obvious in connection with anti-extremism legislation. In addition to those articles of the **Criminal Code**, mentioned above, which we believe should be abolished as a whole, this legislation includes **Article 280** (*"Incitement of extremist activities"*), **Article 282.1** (*"Organisation of an extremist group"*), **Article 282.2** (*"Organisation of the activities of an extremist organisation"*) and **Article 282** (*"Incitement to hatred or enmity and also abasement of dignity"*).

These articles are actively used to prosecute persons listed as political prisoners by *Memorial Human Rights Centre*. For example, under **Article 280 of the Russian Criminal Code** ***Mark Galperin*** was convicted and **Airat Dilmukhametov** is being prosecuted; under **Article 282** ***Vladislav Sinitsa*** was convicted while those being prosecuted under **Article 282.1** include the leaders of the Ingush protest movement over the rally held on 27 March 2019, the Kaliningrad activists in the B.A.R.S case and the defendants in the New Greatness case; under **Article 282.2** individuals have been charged with participation in the following banned organisations: the Ukrainian *Right Sector*, *Tablighi Jamaat*, *Nurjalar* and the *Jehovah's Witnesses*.

The application of **Article 280** and, indirectly, of **Articles 282.1** and **282.2**, is based on the definition of "extremism" contained in the **Federal Law "On Combatting Extremist Activities**." This eclectic definition, which simply lists a wide range of activities, is overly broad and poorly defined and has been criticised as such by a wide range of bodies, organisations and specialists. It is worth noting, in particular, the recommendations of the Presidential Council for the Development of Civil Society and Human Rights to improve legislation on combatting extremism and its application, made in 2018, and Opinion No. 660 / 2011 of the European Commission for Democracy through Law (the Venice Commission) (translation).

We agree with the recommendations of the Presidential Human Rights Council that the legal definition of extremist activities should be narrowed and that *"violence (its use, threat, incitement or other explicit support for violence) should be used as a mandatory qualifying criterion for extremist activities."*

On the basis of such an approach, the definition of extremism should be reformulated to involve the following features only to the extent that they are related to the use, threat, incitement or other form of open support for violence: violation of the integrity of the Russian Federation, public justification of terrorism, incitement of racial, national or religious discord, the propagation of exceptionalism, superiority or inferiority of a person on the basis of their social, racial, national, religious or linguistic affiliation or attitude to religion, and the use of Nazi symbols or paraphernalia or of Nazi symbols and paraphernalia similar to those used by the Nazis. It may be necessary to specifically point out that these acts cannot be considered extremist if they show no signs of violence.

At the same time, we also take the view that the incitement of social discord should be excluded from the definition of extremist activities as too undefined a concept and one that gives grounds for abuse.

Moreover, as rightly pointed out by *Aleksandr Verkhovsky*, the concept of "discord" is much broader than that of "enmity." Indeed, **Article 29, Part 2, of the Russian Constitution** prohibits advocacy or agitation that incites social, racial, national or religious hatred or enmity, rather than discord. Similarly, **Article 20, Part 2, of the International Covenant on Civil and Political Rights** requires that the law prohibits *"any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."* We believe it would be appropriate in this part of the definition of extremist activities to replace the broader concept of "discord" with the more specific and precise concepts of "hostility" and "hatred," which encompass more dangerous phenomena than discord.

We also share the view of the Venice Commission that non-violent violations of the rights, freedoms and legitimate interests of individuals and citizens on the basis of their social, racial, national, religious or linguistic affiliation or attitude to religion are too broad a category and, as such, must be clarified and specified when considered as possible manifestations of extremism.

The Opinion of the Venice Commission takes the position that:

> *"to proclaim as extremist any religious teaching or proselytising activity aimed at proving that a certain worldview is a superior explanation of the universe, may affect the freedom of conscience or religion of many persons and could easily be abused in an effort to suppress a certain church thereby affecting not only the freedom of conscience or religion but also the freedom of association."*

Such actions, based on the designation of advocacy of "religious exclusiveness and superiority" as extremist activities, are encountered in the Russian Federation by *Jehovah's Witnesses*, for example. We agree with the position taken by the Venice Commission, as well as with its conclusion that:

"the authorities should review the definition under article 1.1 point 4 so as to ensure/ provide additional guarantees that peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife, are not seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures."

The Venice Commission also points out that including in the definition of extremism the making of a knowingly false public accusation against a person in public office that they committed extremist acts that constitute a crime while in office *"is contrary to the established practice of the ECtHR, according to which public officials, acting civil servants and other public officials are required to tolerate more criticism than ordinary people."* Contrary to this principle, the legal definition of extremism in this part provides officials with greater protection than "ordinary" citizens and is discriminatory. We believe this element should be removed from the already excessively broad definition of extremism.

Lastly, the definition of extremist activities includes public calls for the performance of acts defined as extremist activities, the organisation and preparation of such acts, as well as incitement to perform such acts, the financing of such acts or other assistance in their organisation, preparation and performance, including through the provision of training, printing and material and technical facilities, telephone and other types of communication or information services.

Such a construct, firstly, is largely incompatible with the other elements of the definition of extremism. Calls for, or instigation of, advocacy of a particular point of view are hardly practical notions. Second, it can be assumed that the auxiliary, secondary nature of the above mentioned actions reduces their public danger in comparison with the "primary" acts of extremism, as defined by their content. However, according to this legal norm, assistance in preparing the use of Nazi symbols by means of providing telephone communication is rendered a full-fledged extremist act, as is the appeal for such assistance, as well as the financing of such appeal. In fact, the legal construction chosen by the legislator creates a kind of "cyclical link," which makes it possible to endlessly expand the scope of extremism and increase the number of "extremists." The solution to this problem would seem to be to spell out in the law exactly which "secondary" types of actions are covered by the notion of extremism.

8.2.2 Article 282 of the Russian Criminal Code

What has been said above with regard to incitement to social, racial, national, ethnic or religious discord as a component of the legal definition of extremism also applies to **Article 282 of the Russian Criminal Code** which penalises "public commission of actions aimed at inciting hatred or enmity, as well as at disparagement of a person or group of persons on the grounds of sex, race, nationality, ethnicity, language, origin, attitude to religion, or membership of a social group."

We share the view of the *Sova Centre* and *Article 19*, a UK NGO, which in a joint report, "Anti-extremism: Russian law enforcement practice and European guarantees of freedom of speech," propose the following:

> *"The provisions of **Article 282 of the Criminal Code** on incitement should be amended. The advocacy of discriminatory hatred, which constitutes incitement to hostility, discrimination, or violence, should be prohibited in line with **Article 19, para 3 and Article 20, para 2** of the International Covenant on Civil and Political Rights, establishing a high threshold for limitations on free expression. The prohibitions of "abasement of dignity" should be removed from **Article 282;** [wording concerning] [p]rotection of "social group" should be removed from **Article 282 of the Criminal Code** […]."*

Article 20, Paragraph 2, of the International Covenant on Civil and Political Rights requires that *"any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence"* be prohibited by law. Since criminal liability is a form of prohibition only for acts with such a high degree of public danger that they cannot be otherwise prevented, we believe that the threshold for the criminalisation of such acts, i.e. for acts aimed at inciting hatred or enmity on the grounds of sex, race, nationality, language, origin or attitude towards religion, should be evidence of violence (use of violence, threat of use of violence, incitement to violence, or other open support for violence). The prohibition of incitement to discrimination or hostility on the grounds of nationality/ethnicity, race or religion that does not meet this criterion may be implemented by introducing a provision to this effect in the **Russian Code of Administrative Offences.**

Moreover, given that incitement to racial, national or religious hatred is covered by the notion of extremist activities, which are prosecuted under **Article 280 of the Russian Criminal Code,** it seems that there is no need for **Article 282 of the Russian Criminal Code** to prohibit impermissible statements and actions.

8.2.3 Articles of the Russian Criminal Code that provide for prosecution of groups

The majority of persons recognised as political prisoners have been prosecuted under articles of the **Criminal Code** that concern "groups": **Article 282.1** (*"Organisation of an extremist group"*), **Article 282.2** (*"Organisation of the activities of an extremist organisation"*), **Article 205.4** (*"Organisation of and participation in a terrorist group"*) and **Article 205.5** (*"Organisation of and participation in the activities of a terrorist organisation"*) (see section 3.3 of this Report).

Under **Article 282.2 of the Russian Criminal Code**, liability is incurred for the organisation of the activities of an organisation that, by court decision which has entered into force, has been liquidated or its activities prohibited on grounds of extremism, as well as for participation or involvement in the activities of such an organisation. A court decides on the prohibition or liquidation of an organisation in accordance with the law "**On combatting extremist activities**" in terms of the definition of extremism contained therein. Accordingly, all the shortcomings of this definition mentioned above are also manifest in decisions to declare organisations extremist and in any subsequent criminal prosecution under **Article 282.2 of the Russian Criminal Code**.

A terrorist organisation is recognised by a court as such in accordance with the **Federal Law** "**On combatting terrorism**,"

> *"if, on behalf of or in the interests of the organisation, the organising, preparation or commission of crimes under **articles 205-206, 208, 211, 220, 221, 277-280, 282.1-282.3, 360 and 361 of the Russian Criminal Code** are carried out, or if the said actions are carried out by a person who controls the realisation by the organisation of its rights and obligations."*

For an organisation as a whole to be considered terrorist and its members prosecuted under **Article 205.5 of the Russian Criminal Code**, it is therefore sufficient that at least one person on behalf of an organisation carries out at least one preparation, not only of a terrorist act itself (**Article 205 of the Russian Criminal Code**), but also, for example, of assistance to terrorist activities (which in itself is interpreted under **Article 206 of the Russian Criminal Code** very broadly), their justification (**Article 205.2 of the Russian Criminal Code**), failure to report that another person has prepared one of the crimes provided for under 16 articles of the Russian Criminal Code (**Article 205.6 of the Russian Criminal Code**), participation in an illegal armed group, including those abroad (**Article 208 of the Russian Criminal Code**), illegal storage of nuclear materials or radioactive substances (**Article 220 of the Russian Criminal Code**) or extremist crimes, including incitement of extremist activities and their financing (**Articles 280, 282.1 - 282.3 of the Russian Criminal Code**). Clearly,

this definition of terrorism is much broader than established world practice. Despite the absence of a universal and generally accepted definition of "terrorism," UN documents and international conventions permit the parameters of this concept to be defined to some extent. For example, **Security Council resolution 1566 (2004)** contains an indication of the scope of this concept:

> *"criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism."*

The **International Convention for the Suppression of the Financing of Terrorism** (adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999) defines terrorism as an act that constitutes a crime under a number of international treaties to which it refers or any other act intended:

> *"to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act."*

The broad definition of terrorism and terrorist organisations in Russian legislation, based on reference to a large number of articles in the **Criminal Code**, many of which go beyond the international definition of terrorism, is compounded by the fact that many of these articles, such as **Articles 205.2**, **205.3**, **205.6**, **206 of the Russian Criminal Code**, themselves refer to other articles of the Criminal Code. As in the case of extremism, this approach allows for a virtually limitless expansion of the definition of terrorism through a chain of references.

A narrowing of the normative definition of extremism and of the normative definitions of terrorist crimes and terrorist organisations by excluding references to crimes that are clearly not in line with the international definition of terrorism, as proposed above, might help to remedy this situation.

In addition to substantive defects related to the broad definitions of extremism and terrorism, in politically-motivated criminal prosecutions for offences involving "groups" (in the first place, in connection with participation in banned [extremist or terrorist] organisations [**Articles 282.2** and **205.5 of the Russian Criminal Code**], but also in connection with participation in the activities of terrorist or extremist groups [**Articles 282.1** and **205.4 of the Russian Criminal Code**]), a major role is played by the fact that these articles establish liability for participation in the activities of

organisations and groups irrespective of whether the defendant committed the crimes for the commission of which, it is assumed, the association was created or in connection with the commission of which the association was banned.

We agree with the recommendations by members of the Presidential Human Rights Council contained in the "Briefing on Certain Aspects of Law Enforcement Practice Regarding **Articles 205.5** and **282.2 of the Russian Criminal Code**" addressed to the **Supreme Court of the Russian Federation**, aimed at ending the practice of criminal punishment for any connection what so ever with banned organisations or for the mere coincidence of views and beliefs with positions held by such organisations. However, we believe that in order to counter this law enforcement practice, which is particularly evident in prosecutions of members of organisations that are fully or largely religious in nature (*Hizb ut-Tahrir al-Islami*, *Tablighi Jamaat, Jehovah's Witnesses*), it is necessary to legislate to establish by law in the four above mentioned articles of the **Criminal Code**, that concern participation in the activities of terrorist or extremist groups, the grounds for liability in terms of the commission of the specific offences, or intent to commit them, which are the reason for a given organisation to be banned or for a given group to be designated as terrorist or extremist.

In addition, it is impossible not to agree with the following recommendation of the Presidential Human Rights Council:

> *"to amend the Federal Law "On Combatting Extremist Activities" and procedural legislation to exclude the possibility of organisations being considered extremist in closed court proceedings or in the absence of a representative or proper notification of the organisation."*

However, we believe that the same amendments are also necessary with regard to the procedure for designating organisations as terrorist. There is also a need to amend the procedural legislation to ensure the possibility of appealing against decisions banning organisations under existing procedures by persons prosecuted on charges of participation in the activities of those organisations.

8.2.4 Prosecution for statements

Since most criminal prosecutions with evident illegalities and political motivation are directly or indirectly related to statements and texts, it is impossible not to point out the flaws in legal regulation and law enforcement practice related to their prohibitions and criminalisation.

In particular, the practice of prosecution for statements published on the internet for an indefinite period of time after they have been posted, based on the categorisation of such offences as "continuing offences," seems obviously perverse.

Another bad practice is that in almost all cases of this kind the findings of courts are based on the opinions of experts which, firstly, are often of poor quality and, secondly, contrary to the explicit prohibition in the law, give a legal evaluation of the statements under analysis. At the same time, experts are also involved in cases, which probably constitute the majority of prosecutions regarding statements and texts, when the statement imputed to the accused is addressed to a wide audience and in no way requires special knowledge to understand and evaluate its content and focus. At the same time, on the other hand, experts who do not have the necessary competence are often called upon to examine complex texts, especially religious ones. In the great majority of cases, however, the courts are absolutely uncritical of experts' conclusions used to justify the prosecution's position and reject, without any reason, research provided by the defence.

Finally, in most cases the courts adopt an excessively formal approach to the assessment of statements, not taking into account either the context, the audience, the author's real intention or the actual danger to the public presented by the statement.

It should be noted that the Rabat Action Plan for the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (translation), which contains the conclusions and recommendations of experts following meetings organised by the Office of the United Nations High Commissioner for Human Rights, recommends that a test, including an assessment of six aspects of expression, be applied in each case to assess the need to restrict freedom of expression. These six aspects are: firstly, the context of the expression; secondly, the position and status of the speaker; thirdly, his or her intention; fourthly, the content and form of the expression; fifthly, the degree of publicity of the expression; and sixthly, the likelihood that the exhortation contained in the expression will be implemented.

It is difficult to formulate recommendations for overcoming most of these problems in terms of legislative proposals, but we fully agree with the *Sova Centre* and *Article 19* who indicate the following in their report with regard to prosecution for extremist statements:

> *"The Russian judiciary should apply domestic law in a manner that complies with Russia´s international human rights obligations. In particular, in incitement to hatred cases, they should apply the six-part test, set out in the Rabat Plan of Action, and the pertinent recommendation of the Supreme Court of the Russian Federation, thus only imposing sanctions that are in line with the gravity of the impugned offences; [courts should] make use of scientific experts only when their specialist knowledge is needed to interpret or assess particular evidence, as opposed to having this specialist knowledge substitute the court´s own assessment of the legality of the actions at issue."*

However, we believe these recommendations are, by their very nature, applicable not only to allegedly extremist speech, but also to any prohibition of speech, including allegedly pro-terrorist speech.

With regard to the possibility of indefinite criminal liability for a statement once posted on the Internet, we support the proposal of the Presidential Human Rights Council to establish for articles of the **Russian Criminal Code** dealing with public statements *"the rule of calculating the statute of limitations from the moment of publication of the relevant item on the Internet or from the moment of the defendant's most recent actions to draw attention to this publication ("self-repost", "pinning a post", etc.)."*

8.2.5 Other provisions of the criminal law that are insufficiently defined

Undoubtedly, in addition to those mentioned above, there are many more provisions of Russian criminal law that could potentially lead to unlawful politically motivated imprisonment as a result of unclear wording. However, we believe it is important to mention at least two of them, the use of which regularly leads to the addition of political prisoners to the list.

Article 213 of the Russian Criminal Code

Article 213 of the Russian Criminal Code prescribes a penalty of up to five years' imprisonment for hooliganism, defined in an exceptionally eclectic and broad manner as *a gross violation of public order, expressing clear disrespect for society, committed:*

> *а) with the use of a weapon or of objects, used as weapons;*
>
> *б) for motives that are political, ideological, racial, national or religious hatred or enmity or for motives of hatred or enmity against any kind social group;*
>
> *в) on means of transport including railways, sea, riverways, and air, as well as any other form of transport of general use.*

Legal experts have justifiably criticised the combination of such heterogeneous alternative characteristics in the definition of an offence as method, motive and location of the crime. They have also criticised the dubious nature of the definition of a crime based on two motives: hooliganism proper, which is understood as a motive for expressing apparent disrespect for society, and the extremist motive of hatred or hostility. However, the bigger problem in the practical sense is the complete lack of definition of the act itself – *"gross violation of public order"*. Even the notion of "public order" does not have a single, unambiguous legal definition, much less its violation or its gross violation. Obviously, any act regarded as an offence is a

violation of public order, while assessment of it as "gross" is a matter for the discretion of law enforcement and the courts. Similarly, any such act committed intentionally can be qualified as "expressing a clear disrespect for society."

It presents no difficulty to law enforcement agencies or the courts to substantiate one of three additional attributes: the use, if not of a weapon, then of an object used as a weapon; the motive of hatred or enmity towards any kind of group (including "social groups," not defined by law, but in law enforcement practice used to define an absolutely arbitrary selection of individuals); and transport as a place of commission of the offence. We believe **Article 213 of the Russian Criminal Code** in its current form blatantly contradicts the principle of legal certainty and does not make it possible to predict which acts would be punished on its basis.

As a result, **Article 213 of the Russian Criminal Code** turns out to be a "reserve" way of criminally prosecuting those it is deemed necessary to prosecute but whom it is difficult to prosecute under other articles of the **Criminal Code**. Currently, *Memorial Human Rights Centre* lists as a political prisoner one person indicted under **Article 213 of the Russian Criminal Code**, left-wing activist ***Azat Miftakhov***. ***Miftakhov*** was charged with hooliganism after an unprecedented double refusal by a court to remand him in custody on suspicion of the illegal manufacture of an explosive device (**Article 223.1 of the Russian Criminal Code**). Earlier, charges of hooliganism, for example, were brought against *Greenpeace* activists from the ship Arctic Sunrise in 2013 after the authorities realised the absurdity of charging them with piracy (**Article 227 of the Russian Criminal Code**) and against members of the *Pussy Riot* group in 2012, when the **Criminal Code** did not yet include **Article 148, Parts 1 and 2** that provides for criminal liability for public acts of clear disrespect for society committed in order to offend the religious sentiments of believers, provisions that were urgently introduced into the **Criminal Code** immediately after the earlier Pussy Riot prosecution.

It seems that **Article 213 of the Russian Criminal Code** needs substantial amendment. First, it is necessary to remove the reference to a social group from **Part 1, Point "b"**, which establishes the motive of hatred or hostility as evidence of hooliganism. Secondly, it is reasonable to distinguish between gross violations of public order committed on the grounds of hooliganism and such violations committed on the grounds of political, ideological, racial or national hatred or enmity, since it would seem impossible for a single act to have both kinds of motivation simultaneously. Thirdly, and much more importantly, an objective criterion for public danger of the act described in **Article 213 of the Russian Criminal Code** must be introduced. Constructing such a criterion would be very difficult, since the infliction of harm to health and material damage, as well as other specific socially dangerous acts, are covered by other offences. If, however, as is quite probable, it proves impossible to find an objective criterion for so gross a violation of public order that its prohibition

requires penalising under the criminal law, while at the same time it is not covered by other articles of the **Criminal Code**, then there are sufficient grounds to exclude this article from the criminal law and, if necessary, replace criminal liability for the relevant acts by administrative liability.

Article 275 of the Russian Criminal Code

Article 275 of the Russian Criminal Code provides for a penalty for treason, which the current version of the article, adopted in 2012, defines as follows:

> *"espionage committed by a citizen of the Russian Federation, the handing over to a foreign state, an international or foreign organisation or their representatives of information constituting a state secret, entrusted to them or become known to them through official service, work, study or in other ways provided for by the legislation of the Russian Federation, or the provision of financial, material, technical, consulting or other assistance to a foreign state, international or foreign organisation or their representatives for activities directed against the security of the Russian Federation."*

At present, three persons convicted under **Article 275 of the Russian Criminal Code** are included in our lists of political prisoners. However, it is extremely difficult to study the circumstances of the criminal cases under this article, that may have signs of unlawfulness and political motivation, because of their classified nature. In most such cases, both the charges and the evidence are kept secret. The numerous problems of legal regulation and law enforcement related to criminal prosecutions involving treason charges are highlighted in the report bu *Team 29*, "The History of Treason, Espionage and State Secrets in Modern Russia."

Even at the time the new version of the article was adopted, numerous criticisms were made of the major expansion of the concept of high treason, in particular the inclusion in **Article 275** of the offence of providing financial, logistical, advisory or other assistance to a foreign state, international or foreign organisation or their representatives in activities directed against the security of the Russian Federation. This language allows for virtually any cooperation with any foreign entities to be brought under charges of treason if desired. The definitions of the content and form of criminal activity are vague: the already wide list of ways to commit an offence (financial, material and technical, consulting assistance) has been supplemented by "other assistance"; international organisations have been added to the list of recipients of such assistance; hostile activity to the detriment of the external security of the Russian Federation has been replaced simply by activity directed against the security of the Russian Federation, which has no legal definition whatsoever and is open to the widest interpretation. In this instance, again, the text of the **Criminal Code** fails to enable a person to anticipate what kind of conduct might subsequently be considered criminal by those applying the law and does not meet the principle of legal certainty.

The most obvious solution to this problem would be to return to the version of **Article 275 of the Russian Criminal Code** that existed before 2012. In addition, we agree with the authors of *Team 29's* report who recommend, in particular, the removal from the list of information that is subject to classification of information the disclosure of which cannot now cause damage to the State; the lifting of restrictions on the defendant's legal representatives that prevent them working with unclassified materials in a criminal case that involves state secrets; and prohibiting the investigator imposing a non-disclosure agreement regarding the investigation, in an attempt to prevent defence counsel talking publicly about the trial.

8.3. Other necessary amendments

We do not refer here to the aspect of the criminal law that determines the severity of a sentence. In many cases, the term of imprisonment imposed by the courts on political prisoners is clearly inappropriate even for the crimes for which they have been unjustifiably convicted. But this issue is still secondary to the matter of the definition of offences in the **Criminal Code** and flawed law enforcement practices.

Similarly, we do not address the fundamental problem that is the basis of the entire structure of political repression - the lack of an independent judiciary. There are various very convincing strategies and projects for judicial reform that offer ways of resolving this problem but it seems that, unlike precisely targeted amendments to legislation, such systemic changes of a key state institution will be possible only after the political regime in our country has changed into a democratic one. Control over the judicial system is an absolutely necessary element of any authoritarian system that does not allow for a real separation of powers.

Nevertheless, practice shows that even under existing conditions jury trials are much more objective and independent than courts composed of professional judges. In this regard, it would be useful to maximise the use of jury trials. It would be especially important for prosecutions with a high probability of political motivation to be tried by juries. Despite the fact that almost any offence in the **Criminal Code** can be used for the purposes of politically motivated prosecution, at the very least jury trials should be used in prosecutions involving articles which give grounds to see in the prosecution a specific political interest on the part of the authorities, in particular all articles listed in this section, as well as, for example, prosecutions for rioting (**Article 212 of the Russian Criminal Code**) and espionage (**Article 276 of the Russian Criminal Code**). Currently, only those prosecutions involving charges under **Article**

354.1 of the Russian Criminal Code (*"Rehabilitation of Nazism"*) can be tried by a jury, and cases of terrorist crimes fall under the jurisdiction of military courts contrary, we believe, to the real interests of justice and fairness.

Any serious expansion of the use of jury trials requires organisational effort and time, but no doubt it should start with the most serious cases: those concerning terrorist crimes, violent seizure of power (**Article 278 of the Russian Criminal Code**), treason and espionage. Terrorist crimes, in our view, should be returned to the "ordinary" courts. There are currently, in our view, no real threats justifying their allocation to military courts.

As shown in Section 4 of our report, political repression is not confined to unwarranted and unlawful politically motivated prosecutions and convictions. Rather, these are only the first stage of politically motivated harassment. The rights of victims of politically motivated prosecutions are further violated during, after and even beyond the execution of the sentence imposed by the court. There is no doubt that the legislative changes necessary for the complete termination of the practice of political repression are many times greater than the legislative amendments, primarily to criminal law, mentioned in this section. One cannot but point out the need for a radical revision of the regulatory framework concerning the administrative supervision of persons released from detention facilities, or the "List of Organisations and Persons About Which There is Information to Show Involvement in Extremist Activities or Terrorism," which establishes serious limitations, not based on the public interest, on the rights and freedoms of persons who have been victims of politically motivated criminal prosecutions. However, these forms of harassment are still secondary to criminal prosecution itself, and therefore we do not consider specific proposals to change them in this report.

9. Conclusions

This report attempts to provide a comprehensive overview of trends in politically motivated repression using the criminal law in the Russian Federation, particularly those related to imprisonment in 2018 and the first three quarters of 2019, but also in the context of a longer period. The report builds on the long-term work of *Memorial Human Rights Centre's Programme to Support Political Prisoners.* In an attempt to describe in more or less detail the large and complex phenomenon that contemporary Russian criminal political repression represents, we have had to address related topics on the one hand, and, on the other hand, we have not been able to reflect the phenomenon comprehensively in this limited report. As a result, the report inevitably cannot claim to be exhaustive.

Concluding the report, we wish to briefly sum up our findings. At the same time, although Chapter 8 contains proposals for the most essential legislative changes, primarily to the criminal law, the conclusions of our work are more synoptic and analytical in nature. In particular, we consider it important to note that:

1. Since 2015, *Memorial Human Rights Centre*, the main organisation conducting analysis of political repression and politically motivated unlawful imprisonment, based on the methodology elaborated by the Parliamentary Assembly of the Council of Europe, has recorded a steady increase in the number of political prisoners. This allows us to say that what we essentially see in Russia is fully-fledged political repression which violates many fundamental human rights against a variety of groups for a variety of political motivations and by means of a wide range of both "political" and purely criminal articles of the **Criminal Code**.

2. Analysis of the repressive measures, from the perspective of those groups which can be considered their victims, shows that the vast majority of political prisoners have been deprived of their liberty because of their exercise of the freedom of religion and religious affiliation. As a result of the scale of the repression it is now possible to identify more narrowly defined groups among the victims. The largest of these are peaceful Muslims imprisoned because they belong to *Hizb ut-Tahrir*, designated a terrorist organisation in Russia, Crimean Tatars, *Jehovah's Witnesses*, supporters of the banned *Artpodgotovka*, and participants in public protests. Other persecuted groups include politicians and political activists, human rights activists, journalists, bloggers,

scholars, citizens of Ukraine, followers of *Said Nursi*, members of the Muslim organisation *Tablighi Jamaat*, the Church of Scientology and simply people picked at random.

3. A great variety of articles of the **Criminal Code** are used for political repression, including those that directly prosecute exercise of the rights of assembly and association (**Articles 284.1, 212.1**), those that prosecute public statements (**Articles 205.2, 280, 282, 280.1, 148, 354.1**), those concerning terrorist and extremist associations (**Articles 282.1, 282.2, 205.4, 205.5**), other "terrorist" articles (**Articles 205, 205.1**), articles concerning riot and violence against public officials (**Articles 212, 318**), treason, espionage, sabotage, illegal border crossing (**Articles 275, 276, 281 and 322**), as well as articles dealing with illegal trafficking in drugs, weapons, explosives and explosive devices, economic crimes and murder.

4. Violations of the rights of victims of politically motivated criminal prosecutions take various forms and occur at different stages of the prosecution. These forms include imposition of pre-trial restrictions, especially in the form of custody and house arrest, deprivation of liberty following conviction, the type of prison regime and the location of the penitentiary institution executing the punishments, disciplinary measures imposed on prisoners, and other penalties imposed by courts. Additional penalties that seriously violate the rights of victims of prosecutions include the establishment by the courts of long-term administrative oversight over convicted persons who have served their sentences and the inclusion, even without a court decision, of suspects and defendants with regard to extremist and terrorist offences on the list of terrorists and extremists maintained by Rosfinmonitoring.

5. The grounds for attributing cases of unlawful and unjustified criminal prosecution to political repression are the political motives for prosecution, which are the basis for the authorities' actions. Since criminal prosecution is the most important and familiar tool for authoritarian authorities to control society, it is used by powerholders at various levels to achieve a variety of goals. Accordingly, the political motives which are the basis for the authorities' repressive measures also take many different forms. These include the termination of lawful activities by civil society and political activists, journalists and those engaged in peaceful religious activities, the elimination of threats to the interests of authorities or specific powerholders, the corporate, departmental interests of law enforcement structures, support for the messages of state propaganda, intimidation of society by demonstrating the negative consequences of actions not approved by the authorities and,

conversely, "calming" society by means of demonstrating the authorities' effectiveness in fighting terrorism and other crimes. In prosecutions that are politically motivated, various motives are most often combined.

6. In the course of political repression in Russia, fundamental human rights are violated, in particular the right not to be tortured, the right to liberty and security of person, the right to trial within a reasonable time or release before trial, and the right to a fair trial. At the same time, in many instances politically motivated repressive measures also violate the rights to freedom of thought, conscience and religion, freedom of expression and dissemination of information, and the rights of assembly and association. The practice of politically motivated deprivation of liberty and, in general, criminal prosecution on political grounds, violates **the Russian Constitution** and the international obligations of the Russian Federation.

7. During the period covered by the report, there has been a growing trend of public attention to the issue of politically motivated criminal prosecutions and increased public solidarity with political prisoners. There has been a significant increase in media coverage of the issue. The continued activities of "traditional" institutionalised human rights organisations to support and protect political prisoners and other victims of political repression have been complemented by the increased activity of various informal and weakly formalised initiatives and groups, both in relation to specific criminal cases and on a broader scale. New forms of solidarity with political prisoners have emerged and there has been a qualitative and quantitative increase in crowdfunding to support victims of repression. The period has been marked by a large number of public protests in solidarity with political prisoners, protests that in many instances developed into lengthy mass campaigns in support of political prisoners using a wide range of methods.

   As a result of the targeted efforts of the authorities, the role of Public Monitoring Commissions in protecting the rights of political prisoners has significantly decreased, although there have been examples of important human rights activities by individual members of these commissions in various regions. Responding to public opinion, official human rights institutions also reacted in various ways to the issue of politically motivated criminal prosecutions: *the Presidential Council for Civil Society Development and Human Rights*, largely through the efforts of individual members of the Council, and, to a lesser extent, *the Federal Human Rights Ombudsman*.

The authorities could not avoid responding to public discontent over political repression, although the only practical measure resulting in this regard has been the decriminalisation of **Article 282, Part 1, of the Russian Criminal Code**.

8. Politically motivated criminal prosecutions as repressive measures are carried out on the institutional basis of a large body of legislation and law enforcement practices. Ending the vicious practice of political repression requires first and foremost a fundamental political change, but even now it is possible to demand the repeal of the most unlawful legal norms (**Article 212.1, Article 280.1 [Part 1** and **Part 2], Article 148, Article 284.1, Article 330.1, Article 354.1 of the Russian Criminal Code**); a serious review and clarification of the norms of anti-extremist and anti-terrorist legislation (**Articles 282, 213, 275 of the Russian Criminal Code**); changes in the interpretation and application of "group" articles of the **Criminal Code** (**Articles 282.1, 282.2, 205.4, 205.5**) and of articles facilitating prosecution for public statements; and the expansion of jury trials.

Trends from October 2019 to the present allow us to argue there is no sign of a reduction in political repression. On the contrary, we have seen a further attack on civil society institutions, the continuation of religious persecution, the constant emergence of new repressive initiatives, and a further expansion of the use of manifestly unlawful legislation.

Already during the editing of this report in March - April 2020, under the pretext of combatting the coronavirus epidemic, there was an unprecedented attack by federal and regional authorities on rights and freedoms enshrined in the Constitution of the Russian Federation, accompanied by the adoption of a whole series of repressive legal norms and the introduction of vague and potentially extremely dangerous elements in the **Russian Criminal Code**, the **Russian Code of Administrative Offences** and regional codes of administrative violations. All this allows us to say that the monitoring of political repression and the assistance provided to its victims by *Memorial Human Rights Centre* in the coming years will remain just as relevant.

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