



Provisional version

## Committee on Legal Affairs and Human Rights

# Reported cases of political prisoners in the Russian Federation

### Report\*

Rapporteur: Ms Þórhildur Sunna ÆVARSDÓTTIR, Iceland, Socialists, Democrats and Greens Group

#### A. Draft resolution

1. The Assembly is appalled by the large and growing number of political prisoners in the Russian Federation and the pattern of systematic repression against any and all opponents of the current authorities which they follow.
2. It recalls that the European Court of Human Rights (the Court) has delivered multiple judgments in which it has found violations of the European Convention on Human Rights (the Convention) against the Russian Federation arising from the arbitrary arrest and detention of opposition politicians, civil society activists, and ordinary citizens peacefully demonstrating.
3. These violations of the right to liberty and security are often combined with violations of the applicants' rights to freedom of assembly and to a fair trial.
4. In some of these cases, the Court noted that the arbitrary arrest and detention of the applicants "had an effect of preventing or discouraging them and others from participating in protest rallies and engaging actively in opposition politics".
5. The Assembly notes that in several judgments concerning Alexei Navalny, a prominent opposition politician and anti-corruption campaigner, the Court also found violations of Article 18 in conjunction with other Articles of the Convention, based on the authorities' misuse of domestic law for the ulterior purpose of suppressing political pluralism. The object of Article 18, which prohibits States from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, is to prevent the misuse of power ("*detournement de pouvoir*").
6. It is evident from the Court's evaluation of converging contextual evidence that the Russian authorities have become increasingly severe in their response to the activities of Mr Navalny and other political activists and, more generally, in their approach to public assemblies of a political nature. These developments must also be seen in the context of the increasing repression of political opponents over the past several years, or as the Court said in its Article 18 judgments, in "the broader context of the Russian authorities' attempts (...) to bring the opposition's political activity under control".
7. Furthermore, the judgments of the Court finding a violation of Article 18, and many others finding violations of the right to liberty and security, the right to a fair trial, freedom of expression or freedom of assembly, establish facts that clearly satisfy the Assembly's definition of 'political prisoner', as set out in its Resolution 1900 (2012).
8. The Assembly further recalls that many other cases addressed in the past years by the Assembly and its rapporteurs or by the Council of Europe Commissioner for Human Rights can also be inferred to fulfil one or more of the criteria set out in the Assembly's definition of 'political prisoner'.

---

\* Draft resolution and draft recommendation adopted unanimously by the committee on 23 May 2022.

9. The Assembly condemns the introduction of a number of restrictive laws, including the “foreign agents” law, the law on “undesirable organisations” and the law on “extremism” which has contributed to the growing and systematic repression of political opponents, journalists, human rights defenders and civil society activists in the Russian Federation. These repressive laws have all been criticised by different Council of Europe bodies, including the European Commission for Democracy through Law (Venice Commission). Consequently, it should be noted that the increasing scourge of political prisoners is due to structural and systemic causes that have only been exacerbated by the recent actions of the Russian authorities.

10. The Parliamentary Assembly recalls that lists of political prisoners have long been maintained by Memorial Human Rights Centre, one of Russia’s most respected non-governmental organisations. According to the latest information from Memorial there are 447 political prisoners in Russia, including 87 strictly political prisoners and 360 persons imprisoned on religious grounds. Having regard to the strict criteria applied by Memorial, which are based on, but not identical to, the definition in Resolution 1900 (2012), the Assembly considers these lists to be credible and reliable and concludes that the persons featuring on them can be presumed to be political prisoners who should therefore be released.

11. The Assembly notes that among the 360 persons imprisoned on religious grounds according to Memorial, many are Jehovah’s Witnesses who have been regarded as “extremists” following the Supreme Court’s judgment of 2017 ordering the liquidation of the central body and 395 local religious organisations of Jehovah’s Witnesses. As a consequence of this liquidation and the application of the law on “extremism”, members of Jehovah’s Witnesses have been criminally prosecuted and continue to be imprisoned in breach of their freedom of thought, conscience and religion.

12. The Assembly reiterates its deep concern over the specific situation of Crimean Tatars addressed in Resolution 2387 (2021), in which, *inter alia*, it called on the Russian authorities to release any person unlawfully detained or imprisoned due to the abusive application of Russian law in Crimea, including for political reasons, and to put an immediate end to any administrative or judicial harassment of Crimean Tatars. It also recalls its Resolution 2231 (2018), in which it called on the Russian Federation to release without further delay all Ukrainians detained in the Russian Federation and in Crimea on politically motivated or fabricated charges. The repression of Crimean Tatars and Ukrainian citizens following the Russian Federation’s illegal annexation of Crimea and its intervention in eastern Ukraine serves as a stark warning of the horrors that await the Ukrainian population.

13. The Assembly confirms its condemnation in the strongest terms of the Russian Federation’s war of aggression against Ukraine. In this context, it is gravely concerned by the reports of Ukrainian mayors, local representatives, activists, volunteers, journalists and other civilians who have been abducted or detained by Russian forces during the ongoing war, in areas temporarily under their control. It reiterates its call on the Russian Federation to immediately release all kidnapped mayors and local representatives, activists, volunteers, journalists and other abducted civilians, and comply strictly with its obligations under international law, including international human rights and international humanitarian law.

14. The Assembly reiterates its condemnation of the measures taken by the Russian authorities since the beginning of the war of aggression against Ukraine to further curtail freedom of expression, freedom of assembly, and freedom of association, through the intensifying crackdown on civil society and independent media, the liquidation of non-governmental organisations and the mass arrests of thousands of peaceful anti-war demonstrators. In this respect, it deplores the adoption of new legislation criminalising the spread of ‘fake information’ about the Russian military with penalties of up to 15 years in prison. This has given rise to numerous new cases of political prisoners, including that of Vladimir Kara-Murza, an opposition politician and historian detained and prosecuted under the new law. It is of particular concern to the Assembly that Mr. Kara-Murza was arrested within weeks of testifying before the Committee on Legal Affairs and Human Rights regarding the situation of political prisoners in the Russian Federation. It should also be noted that such legislation only further reinforces the criminal policies of the current Russian leadership against the sovereignty and territorial integrity of Ukraine.

15. The Assembly stresses that the continuing detention of political prisoners gives rise to violations of the European Convention of Human Rights, to which the Russian Federation is still bound until 16 September 2022, but also to breaches of other international human rights treaties to which Russia is a party, such as the International Covenant on Civil and Political Rights.

16. Despite the expulsion of the Russian Federation from the Council of Europe, the Assembly should continue to follow the situation of political prisoners in Russia and remind the Russian authorities of their continuing international human rights obligations, including the obligation to implement existing and future judgments of the Court in respect of applicants who satisfy the Assembly’s definition of ‘political prisoner’.

17. The Assembly therefore calls on the Russian Federation to:
- 17.1. implement all judgments of the European Court concerning applicants who meet the definition of political prisoner set out in Resolution 1900 (2012), including by taking individual measures to ensure that the violations of the Convention have ceased and that all negative consequences have been erased, in cooperation with the Committee of Ministers;
  - 17.2. further to the Committee of Ministers' decisions and the interim measure granted by the European Court on 16 February 2021, and in accordance with Resolutions 2375 (2021) and 2423 (2022), release Mr Navalny immediately;
  - 17.3. further to the Committee of Ministers' decisions, ensure the release without further delay of Aleksey Pichugin, who has served more than 18 years' imprisonment following unfair proceedings, and who has been waiting for redress since 2013;
  - 17.4. adopt without delay effective general measures to address the structural and systemic problems identified by the European Court and the Committee of Ministers with regard to freedom of assembly, freedom of expression, and the right to liberty, to prevent new violations of the Convention, including by repealing or amending laws that have only exacerbated such problems, including the laws on "foreign agents", "undesirable organisations", "extremism" and "fake information on the Russian military";
  - 17.5. re-examine the cases of all persons appearing on the regularly updated lists of political prisoners, including those imprisoned on religious grounds, maintained by Memorial Human Rights Centre, and release those found to be political prisoners in accordance with the definition set out in Resolution 1900 (2012) ;
  - 17.6. pending their release or re-examination of their cases, ensure full respect of their rights, including by respecting the prohibition on torture and inhuman or degrading treatment or punishment and ensuring the right of access to requisite medical assistance in order that their health and well-being are adequately secured:
  - 17.7. co-operate with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as long as Russia remains a Party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), and allow the monitoring of the reported political prisoners' state of health and conditions of detention, pending their release or re-examination of their cases;
  - 17.8. implement relevant recommendations and decisions issued by other international organisations of which the Russian Federation is a member State, such as the United Nations and the Organisation for Security and Co-operation in Europe, as well as by human rights treaty-based bodies which are competent to deal with individual communications against the Russian Federation.
18. The Assembly encourages the High Commissioner for Human Rights in the Russian Federation to follow closely the situation of political prisoners and take action in accordance with her mandate;
19. The Assembly furthermore calls on all member and observer States of the Council of Europe to:
- 19.1. facilitate the grant of visas and give careful consideration to requests for asylum from former political prisoners and Russian opposition politicians, civil society activists, journalists and human rights defenders who need to leave Russia in order to avoid persecution and/or arrest;
  - 19.2. refuse extradition requests for Russian nationals for offences which could be considered politically motivated;
  - 19.3. use their "Magnitsky laws" or other legal instruments to impose targeted sanctions against all those who, as police officers, prosecutors, judges, prison officials or other officials, have contributed to the unlawful and arbitrary deprivation of liberty of political prisoners and their ill-treatment in detention;
  - 19.4. consider enacting such legislation, if they have not yet done so, in accordance with Resolution 2252 (2019) "Sergei Magnitsky and beyond – fighting impunity by targeted sanctions".
20. The Assembly invites the European Court of Human Rights to continue examining pending and future cases against the Russian Federation in respect of alleged violations of the Convention committed until 16

September 2022, in particular and as a matter of priority those brought by applicants who are detained or convicted as a direct consequence of a breach of their Convention rights, those raising structural or systemic problems in the Russian legislation and practice with regard to freedom of religion, freedom of expression, freedom of assembly and freedom of association, as well as those lodged by applicants from the illegally occupied territories of Ukraine, Georgia and the Republic of Moldova;

21. The Assembly invites the European Union to further strengthen economic sanctions against the Russian Federation, its leaders and officials, on account of their involvement and responsibility in the persecution of political opponents and the continuing detention of political prisoners, particularly that of Alexei Navalny and Aleksey Pichugin;

22. It calls on Interpol to be particularly vigilant when dealing with requests for Red Notices from the Russian National Central Bureau that may be politically motivated, taking into account Resolution 2315 (2019) "Interpol reform and extradition proceedings: building trust by fighting abuse".

23. The Assembly calls on member States to commemorate the "International Day of Political Prisoners" for all persons imprisoned for political reasons every year on 30 October.

**B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution (2021) “Reported cases of political prisoners in the Russian Federation”
2. The Assembly encourages the Committee of Ministers to continue to supervise the execution of judgments against the Russian Federation concerning persons who are still detained as a consequence of violations of their right to freedom of expression, freedom of association or freedom of assembly, or who otherwise fall under the definition of ‘political prisoner’ set out in Resolution 1900 (2012);
3. The Assembly invites the Committee of Ministers to use all the tools at its disposal, including those under Article 46 of the Convention, to ensure full and prompt execution of the cases *Navalnyy and Ofitserov v. Russia*, *Navalnyye v. Russia* and *Pichugin v. Russia*, in particular the immediate release of the applicants concerned.

## C. Explanatory memorandum by Ms Þórhildur Sunna Ævarsdóttir, rapporteur

### 1. Introduction

1. The present report is based on a motion for a resolution that was tabled on 28 January 2020 and referred to the Committee on Legal Affairs and Human Rights for report on 6 March 2020.<sup>1</sup> The Committee appointed me as rapporteur at its meeting on 29 June 2020. The motion for a resolution recalled that the Memorial Human Rights Centre, one of the Russian Federation's most respected non-governmental organisations, had estimated that there were more than 300 political prisoners in the Russian Federation – a six-fold increase since 2015, including journalists, civil society activists, human rights advocates, participants in peaceful demonstrations, adherents of prohibited religious groups and members of “undesirable” organisations”.

2. During the preparation of the report, the Committee held three hearings with experts. On 8 December 2020, the hearing involved Mr Sergey Davidis, head of the “Support of Political Prisoners” programme of Memorial Human Rights Centre, Moscow, Mr Tony Brace, of the European Association of Jehovah's Witnesses, and Ms Karinna Moskalenko, Director of the International Protection Centre, Moscow. Another hearing on 22 March 2021 involved Mr Mikhail Khodorkovsky, leader of the NGO Open Russia Foundation and former ‘prisoner of conscience’ according to Amnesty International, and Professor Bill Bowring, Professor of Law at Birkbeck College, University of London. Finally, on 4 April 2022, the Committee heard Mr Vladimir Kara-Murza, a Russian politician and historian, founding chairman of the Boris Nemtsov Foundation for Freedom, Mr Vladimir Milov, former deputy minister of energy and long-time advisor to Mr Alexei Navalny, and Ms Vera Chelishcheva, journalist and head of the judicial department of *Novaya Gazeta*. Although the Committee had authorised me to carry out a fact-finding visit to the Russian Federation, the lack of cooperation on behalf of the Russian authorities rendered the visit impossible.<sup>2</sup> In fact, the Russian delegation at the time repeatedly declared that they had no intention on cooperating with me during the preparation of my report in direct contradiction to their statutory obligations. The chair of the delegation at the time, Mr. Tolstoy refused my invitation to send a representative of the Russian authorities to present their viewpoint for both hearings, choosing instead to attack my credibility as rapporteur with unfounded claims of violations of the code of conduct for Rapporteurs in letters addressed to the Chair of the Committee. Notwithstanding their lack of cooperation, the findings of this report are based on a thorough review of the information provided by the experts and of the cases examined by various Council of Europe bodies.

3. Despite the expulsion of the Russian Federation from the Council of Europe in accordance with Article 8 of the Statute of the Council of Europe on 16 March 2022 (CM/Res(2022)2), the Parliamentary Assembly can – and should – continue its work related to the human rights situation in the Russian Federation. In its Opinion 300 (2022) “Consequences of the Russian Federation's aggression against Ukraine”, the Assembly considered that in the event that the Russian Federation ceased to be a member of the Organisation, the Council of Europe should envisage initiatives to be able to continue to support and engage with human rights defenders, democratic forces, free media and independent civil society in the Russian Federation.<sup>3</sup> This was reiterated in Resolution 2433 (2022), in which the Assembly resolved to intensify its engagement with Russian civil society, human rights defenders, independent journalists, academia, and democratic forces respecting the values and principles of the Organisation, including the territorial integrity of sovereign member States. While the monitoring procedure is strictly reserved for member States and has therefore been formally terminated in respect of the Russian Federation (As/Mon (2022)09), the Committee on Legal Affairs and Human Rights has the competence to consider issues concerning the state of human rights and the rule of law in Europe, including in European non-member States. In addition, it is also important to recall that the European Convention on Human Rights is still applicable in the Russian Federation until 16 September 2022, and many of the situations covered in this report may give rise to continuing violations of some of its provisions (notably the right to liberty and security provided by Article 5 of the Convention). Some also result from the persistent failure by the Russian authorities to execute specific judgments of the European Court of Human Rights, which are and will remain binding beyond that date on the Russian Federation, in accordance with Articles 46.1 and 58.2 of the Convention.

<sup>1</sup> Assembly [doc. 15049](#); reference no. 4488. The Bureau extended this reference by six months on 7 May 2020.

<sup>2</sup> Lack of co-operation highlighted in Resolution 2422 (2022) “Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation”.

<sup>3</sup> See also [Resolution CM/Res\(2022\)3](#) on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe.

## 2. Cases and situations already examined within the Parliamentary Assembly

4. The Assembly, its committees and its rapporteurs have in recent years examined numerous issues of relevance to the present report, including the following, presented in chronological order.

5. In February 2014, the Monitoring Committee's co-rapporteurs on Russia, Mr Gross (Switzerland, SOC) and Ms Bakoyannis (Greece, EPP/CD), expressed their deep concern at prison sentences announced by the Moscow Court for demonstrators involved in the Bolotnaya Square events of 6 May 2012. About 650 demonstrators had been detained following protests in Moscow's Bolotnaya Square a day before Mr Putin was due to be sworn in as President. Criminal proceedings were subsequently initiated against 28 persons. Seven activists from the Bolotnaya Square events received prison terms of between 2.5 and 4 years and had remained in custody since the events. The co-rapporteurs noted that the sentences were "very high and disproportionate," adding that "procedural shortcomings, as well as long pre-trial detention, may raise justified suspicions about politically motivated justice."<sup>4</sup> (The Court has since issued a series of judgments finding violations in relation to these events – see further below.)

6. In his 2014 report for the Monitoring Committee on 'reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation', Mr Schennach (Austria, SOC) noted that "The detention of hundreds of anti-war protesters on 1 and 2 March 2014 was another manifestation of the increasing crackdown on the freedom of expression and assembly in Russia. On 3 March 2014, a Moscow court ordered the detention of two protesters for five days on administrative charges. Amnesty International considered them to be 'prisoners of conscience'."<sup>5</sup>

7. In his 2015 report on the 'challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation', Mr Schennach noted that "A number of measures have been taken to increase the Russian authorities' ability to control public discourse and freedom to demonstrate. Laws were passed to criminalise non-authorized street protests, setting high penalties including enormous fines, forced labour and prison sentences (up to five years). Opposition leaders, such as Alexei Navalny, were put under house arrest or sent to prison. Such measures are clear attempts to deter participation in demonstrations and open political debate."<sup>6</sup>

8. Later that year, in his report on 'consideration of the annulment of the previously ratified credentials of the Russian delegation (follow-up to paragraph 16 of Resolution 2034 (2015))', Mr Schennach noted that "The reported harassment of the opposition can also be seen as an effort to destabilise attempts to constitute a united political alternative in the run-up to the forthcoming 2015 and 2016 elections. On 17 February 2015, Russian opposition leader Alexei Navalny was sentenced to 15 days in prison for breaching a law that restricts demonstrations, barring him from attending a rally planned on 1 March 2015."<sup>7</sup> (The Court has since issued a judgment finding violations in relation to these events – see further below.)

9. In August 2015, Ms Bresseur (Luxembourg, ALDE), President of the Parliamentary Assembly, declared that "The sentencing of Oleg Sentsov<sup>8</sup> and Oleksandr Kolchenko<sup>9</sup> on charges of terrorism, respectively to 20 and 10 years in prison, appears to be manifestly excessive and raises concerns about respect for the standards of the European Convention on Human Rights in the legal proceedings against them, especially in the context of the deterioration of the human rights situation in Crimea since its illegal annexation by the Russian Federation".<sup>10</sup> She reiterated her call on the Russian authorities "to live up to their commitments as a member state of the Council of Europe and release all persons illegally detained following the annexation of Crimea."<sup>11</sup>

10. In Resolution 2112 (2016) on 'the humanitarian concerns with regard to people captured during the war in Ukraine', the Assembly expressed alarm at reports of "11 Ukrainian prisoners reportedly being detained by the Russian authorities in violation of international law on fabricated charges. In addition, at least 10 Ukrainian citizens are being held in Crimea on politically motivated charges." The Assembly considered that "The most flagrant example is the case of a member of the Parliamentary Assembly, Ms Nadiia Savchenko, who was

<sup>4</sup> "Russia monitors: sentences for Bolotnaya Square demonstrators disproportionate", 25 February 2014.

<sup>5</sup> Assembly [doc. 13483](#).

<sup>6</sup> Assembly [doc. 13685](#).

<sup>7</sup> Assembly [doc. 13800](#).

<sup>8</sup> A Ukrainian film-maker, writer and activist from Crimea. See also below.

<sup>9</sup> A Ukrainian political and civil activist from Crimea.

<sup>10</sup> Mr Sentsov has lodged an application with the Court alleging that his detention was unlawful (app. no. 48881/14) and, with Mr Kolchenko, an application alleging that Mr Sentsov was tortured in detention and that both applicants' right to a fair trial was violated (app. no. 29627/16). The Court communicated these applications to the Government on 20 September and 19 November 2018, respectively.

<sup>11</sup> "PACE President deplores sentencing in Russia of Sentsov and Kolchenko", 25 August 2015.

forcibly taken to the Russian Federation and has been illegally held in custody since June 2014 despite, *inter alia*, her enjoying immunity under Article 40.a of the Statute of the Council of Europe and the General Agreement on Privileges and Immunities of the Council of Europe and its Additional Protocol, to which the Russian Federation is a party. Following an unfair trial, the Russian court sentenced Ms Savchenko to 22 years in prison accusing her of the murder of two Russian journalists.” Ms Savchenko was released in May 2016 as part of a prisoner exchange.

11. In Resolution 2116 (2016) on ‘the urgent need to prevent human rights violations during peaceful protests’, the Assembly noted “with concern the recent legal restrictions placed on the right to freedom of assembly [...] in the Russian Federation, with an amendment to the law on public gatherings which permits the detention of any person participating in an unauthorised public assembly.” In the accompanying report of our committee, the rapporteur, Ms Devaja (North Macedonia, SOC), noted that “A peaceful activist, Ildar Dadin, was sentenced in December 2015 to three years in prison for breaking [the amended law on public gatherings]. In 2015, ‘more than 640 people were detained and accused of participation in unauthorized gatherings ... for peacefully protesting outside the court building where the verdicts of Bolotnaya case defendants were being heard’.”<sup>12</sup>

12. In a 2016 ‘information note on the functioning of democratic institutions in the Russian Federation’ presented to the Monitoring Committee, the co-rapporteurs, Ms Bakoyannis and Ms Maury Pasquier (Switzerland, SOC), reported on politically related detentions when examining the democratic environment. In particular, they noted that “On 7 May 2015, the Moscow court sentenced to administrative detention three opposition activists (Aleksandr Ryklin, Sergei Sharov-Delaunay and Irina Kalmykova) who had participated in a peaceful protest in Bolotnaya Square on 6 May 2015 to mark the third anniversary of a violent police crackdown on opposition protesters there in 2012. Amnesty International considers that they were imprisoned solely for peacefully exercising their right to freedom of expression and are prisoners of conscience. Amnesty also denounced violations of the right to fair trial in all three hearings.”<sup>13</sup> (The Court has since issued a judgment finding violations in relation to these events – see further below.) As regards politically related detentions and freedom of assembly, the co-rapporteurs noted that “Permission to hold street rallies has often been denied or only granted in non-central locations, and violation of the bans have resulted into steep fines and detention. These developments have been a deterrent to the exercise of the right to assembly.” They also noted that the legal framework had “deteriorated with the adoption of recently signed package of anti-extremism amendments (known as the *Yarovaya* Law) based on which encouraging people to take part in ‘mass disturbances’ became a crime punishable by five to ten years in prison. The *Yarovaya* Law also gives Russian law enforcement agencies additional powers and places further limits on the rights to freedom of expression, association and assembly. It also contains restrictions on religious practices and bans most ‘missionary activities’ including proselytising, preaching, praying, or disseminating religious materials outside of ‘specially designated places’. In this respect they were informed about Jehovah’s Witnesses being prosecuted for extremist activity for what seems to be merely attending religious services and practising their faith.”

13. In Resolution 2141 (2017) on “attacks against journalists and media freedom in Europe’, the Assembly called on the Russian authorities to drop criminal charges for ‘separatism’ and related offences against the Ukrainian journalists Anna Andrievska, Natalya Kokorina and Mykola Semena for their reports about the illegal occupation and annexation of the Crimean Peninsula by the Russian Federation; and to release Roman Sushchenko, a correspondent for the Ukrainian national information agency Ukrinform in France since 2010, who had been detained in Moscow on charges of ‘espionage’ since 30 September 2016.

14. In March 2017, the Monitoring Committee’s co-rapporteurs on Russia, Ms Bakoyannis and Ms Maury Pasquier expressed their deep concern at the arrest and detention of hundreds of protesters across the Russian Federation following country-wide anti-corruption protests. They expressed particular concern at the detention and conviction of Alexei Navalny. In that context they recalled that according to the European Court of Human Rights itself, there was reason for concern that previous legal action against Mr Navalny was politically motivated.<sup>14</sup>

15. On 11 January 2018, Mr Vareikis (Lithuania, EPP/CD), rapporteur on human rights defenders in Council of Europe member States, and Mr Schwabe (Germany, SOC), rapporteur on ‘the continuing need to restore human rights and the rule of law in the North Caucasus region’, expressed serious concern at the arrest by the Chechen authorities of Oyub Titiev, a prominent human rights defender and head of the Memorial Human

<sup>12</sup> Assembly [doc. 14060](#). In this connection, Mr Dadin, along with three other protesters, have lodged applications with the Court alleging violations of their freedom of assembly and right to a fair trial (app. no. 43113/15 et al). The Court communicated these applications to the Government on 11 September 2017.

<sup>13</sup> Doc. [AS/Mon\(2016\) 29](#), 11 October 2016.

<sup>14</sup> “Co-rapporteurs express concern at detention and conviction of protesters including Alexei Navalny”, 27 March 2017.



Rights Centre in the Chechen Republic (see also below). They added that “His arrest might have a chilling effect on the work of Memorial, a leading human rights organisation in Russia”.

16. In Resolution 2230 (2018) on ‘persecution of LGBTI people in the Chechen Republic’, the Assembly noted reports of “cases of abduction, arbitrary detention and torture of men presumed to be gay, with the direct involvement of Chechen law-enforcement officials on the orders of top-level Chechen authorities. This campaign of persecution unfolded against the backdrop of serious, systematic and widespread discrimination and harassment against LGBTI people in the Chechen Republic.”

17. In Resolution 2231 (2018) on ‘Ukrainian citizens detained as political prisoners by the Russian Federation’, the Assembly noted that 70 or more Ukrainian citizens, “widely considered to be political prisoners”, were detained in Crimea or the Russian Federation “on politically motivated or fabricated charges. As examples, [the Assembly considered] that the cases of Mr Oleh [Oleg] Sentsov, Mr Volodymyr Balukh and Mr Pavlo Hryb in particular meet the Assembly’s definition of political prisoners, as set out in its Resolution 1900 (2012) on the definition of political prisoner.” On that basis, the Assembly called on the Russian Federation to “release without further delay all Ukrainians detained in the Russian Federation and in Crimea on politically motivated or fabricated charges”. Our committee’s rapporteur, Mr Zingeris (Lithuania, EPP/CD), provided extensive detail on the cases of Mr Sentsov, Mr Balukh and Mr Hryb in his report.<sup>15</sup>

18. In February 2019, the Monitoring Committee’s co-rapporteurs on Russia, Mr Correia (Portugal, EPP/CD) and Ms Smith (United Kingdom, SOC), expressed serious concern at the conviction and sentencing to six years imprisonment, by the Zheleznodorozhnyi District Court, of Dennis Christensen for “organising the activity of an extremist organisation” on the grounds that he is a practising Jehovah’s Witness. Recalling that the European Court of Human Rights had previously ruled in favour of Jehovah’s Witnesses’ right to worship without interference from the Russian authorities and reiterating the Assembly’s concerns about the abuse and arbitrary application of the so-called “extremism law” by the Russian authorities, they hoped that Mr Christensen’s conviction would be overturned without delay by the appeals court and called on the Russian authorities to release him pending an appeal.<sup>16</sup>

19. In February 2019, the General Rapporteur on media freedom and the safety of journalists, Lord George Foulkes (United Kingdom, SOC) expressed concern over police actions against Russian journalist Svetlana Prokopyeva (see also below). Police had detained and interrogated the journalist over comments regarding a suicide bombing broadcast in 2018, which – according to the Russian authorities – had amounted to “publicly justifying terrorism”. He called on the Russian authorities to drop the charges brought against the journalist.<sup>17</sup> Later that year, he called on the Russian authorities to immediately release investigative journalist Ivan Golunov (well known for his work on corruption), who had been arrested on “drug-dealing” charges that he claimed were fabricated.<sup>18</sup>

20. In March 2019, Frank Schwabe (Germany, SOC), rapporteur on the continuing need to restore human rights and the rule of law in the North Caucasus region, and Raphaël Comte (Switzerland, ALDE), General Rapporteur on the situation of human rights defenders, reacted to the sentencing by a court in the Chechen Republic of Oyub Titiev, human rights activist and head of the regional branch of the NGO Memorial (2018 Václav Havel Human Rights Prize), to four years’ imprisonment in a penal colony. According to Mr Schwabe, “the case against him gave every impression of having been fabricated in retaliation for his exposure of appalling human rights violations, his trial was blatantly unfair and the sentence is absurdly disproportionate to the alleged offence.”<sup>19</sup>

21. In Resolution 2375 (2021) on “The arrest and detention of Alexei Navalny in January 2021”, the Assembly examined the situation of the Russian opposition politician after his return to Russia from Germany following treatment for poisoning. He had been arrested on arrival under a warrant issued for having breached the terms of a suspended sentence passed in 2014 in the so-called Yves Rocher case, including failure to

<sup>15</sup> Assembly [doc. 14591](#). Mr Sentsov was later released as part of a swap of prisoners between Ukrainian authorities and pro-Russian rebel forces before the summit of the so-called Normandy group of December 2019 (Assembly doc. 15050). Mr Baluh and Mr Hryb were also released.

<sup>16</sup> “Russia monitors express concern at sentencing of Jehovah’s Witness for ‘extremism’”, 7 February 2019. During the hearing with experts held on 8 December 2020, Mr Brace referred to the case of Dennis Christensen, as well as to the cases of Feliks Makhhammadiev (arrested on 12 June 2018), Ivan Chaikovskiy (arrested on 24 November 2020), Sergey and Anastasia Polyakov (convicted on 1 December 2020). As of 1 December 2020, according to Mr Brace, there had been 10 Jehovah’s Witnesses serving sentences of imprisonment, 35 in pre-trial detention, 50 convictions and 214 arrests.

<sup>17</sup> “Rapporteur calls on Russian authorities to drop charges against journalist Svetlana Prokopyeva”, 21 February 2019.

<sup>18</sup> “Rapporteur calls on Russian authorities to immediately release investigative journalist Iva Golunov”, 11 June 2019.

<sup>19</sup> “Rapporteurs react to sentencing of Memorial’s Oyub Titiev in Chechnya, Russian Federation”, 19 March 2019.

report to the police while he was in intensive treatment and rehabilitation in Germany. The Russian courts had then converted the suspended sentence into a sentence of two years and eight months in prison. Taking into consideration the 2017 judgment of the European Court of Human Rights (see below), the Court's interim measure of February 2021 requiring his release, and the continuing discriminatory and health-threatening conditions of his detention, the Assembly called on the Russian Federation to release Mr Navalny immediately.<sup>20</sup> Later in 2021, Lilia Chanyshева, former head of a regional branch of Navalny' organisation, was also detained and is now prosecuted for the creation of an "extremist" organisation.<sup>21</sup>

22. In Resolution 2387 (2021) on "Human rights violations committed against Crimean Tatars in Crimea", the Assembly condemned the high number of arbitrary arrests and unfounded prosecutions and convictions of Crimean Tatars for political reasons, on the basis of false accusations related to extremism or terrorism, including allegations of membership of Muslim groups and opposition to the current regime in Crimea. It also expressed its concern about the restrictions faced by the Crimean Tatars with regard to freedom of expression and peaceful assembly, and freedom of thought, conscience and religion, including the prosecution of individual peaceful protesters. The Assembly urged the Russian authorities to release any person unlawfully detained or imprisoned due to the abusive application of Russian law in Crimea, including for political reasons, as well as to ensure dignified conditions of detention. For more detailed information concerning arbitrary arrests and prosecutions against Crimean Tatars, please refer to Doc. 15305.

23. In July 2021, in the exercise of my mandate as rapporteur, I expressed concern at news reports that Alexey Pichugin, 10ecognized by human rights groups as a political prisoner under the criteria set out in Resolution 1900 (2012), was being held incommunicado in Moscow's main FSB prison at Lefortovo. Mr Pichugin has been imprisoned since 2003 despite two judgments of the European Court of Human Rights finding violations of his right to a fair trial under Article 6 of the Convention (see paragraphs 31-32 below); and despite repeated calls by the Committee of Ministers of the Council of Europe to the Russian authorities to take 'measures as soon as possible to ensure his release'.<sup>22</sup>

24. In an 'Information note on the situation of human rights defenders in Council of Europe member States' published in February 2022 (AS/Jur(2022) 01 Rev), the then General Rapporteur on the situation of human rights defenders, Ms Alexandra Louis (France, ALDE), referred to the following detentions, prosecutions and/or convictions: the arrest of over 3,650 pro-Navalny protesters in January 2021; the convictions of Anastasia Shevchenko<sup>23</sup> (former regional co-ordinator of Open Russia), Iana Antonova (former member of Open Russia) and Igor Kalyapin (human rights defender) and the pre-trial detention of Andrei Pivovarov<sup>24</sup> (former Executive Director of Open Russia) under the legislation on "undesirable organisations"; the sentencing of Yuri Dmitriev<sup>25</sup> (regional head of Memorial in Karelia) to 15 years' imprisonment on trumped-up charges, after having been acquitted of similar charges earlier; the administrative detention of Sergei Davidis, member of Memorial Human Rights Centre; the convictions under terrorist-related charges of Crimean Tatar defenders such as Server Mustafayev and Emir Usein Kuku and the detention of five Crimean Tatar leaders, including Nariman Dzhelyal, the first deputy head of the Mejlis of the Crimean Tatar People.<sup>26</sup>

25. Since the start of the unlawful and unprovoked military aggression against Ukraine on 24 February 2022, the Assembly, its committees and its rapporteurs have continued to react to the increasing repression of political opponents and civil society activists in the Russian Federation, in particular persons opposing the war.

26. On 10 March 2022, in my capacity as General Rapporteur on the situation of human rights defenders, I expressed deep concern at the ongoing crackdown on Russian civil society amid Russia's ongoing aggression against Ukraine. I strongly condemned the recent reprisals against two prominent human rights defenders –

<sup>20</sup> See "PACE rapporteurs react to imprisonment of Alexei Navalny", 3 February 2021, where I stated that I considered Mr Navalny to be a political prisoner. See also "Assembly Rapporteurs react to the arrests of supporters of Alexei Navalny", 24 January 2021: I said that "most, if not all of those arrested on Saturday could be considered *prima facie* political prisoners".

<sup>21</sup> This was case mentioned by two experts during the committee hearing of 4 April 2022.

<sup>22</sup> The case of Mr Pichugin was presented in detail during committee hearings by Mr Khodorkovsky (who stated that the only motive for his arrest and further imprisonment was to obtain false testimony against him), Mr Kara-Murza and Ms Chelisheva.

<sup>23</sup> During the hearing held on 22 March 2021, Mr Khodorkovsky explained that Ms Shevchenko had just received a 4-year suspended sentence after 2 years of house arrest for lecturing and holding public discussions.

<sup>24</sup> His case was presented during the committee hearing of 4 April 2022 by Mr Kara-Murza, who explained that the criminal charges against Mr Pivovarov were related to 34 Facebook posts.

<sup>25</sup> His case was outlined during the committee hearing of 4 April 2022 by Mr Kara-Murza, who said that he was currently serving a 15 years prison sentence on charges widely seen as politically motivated. Mr Dmitriev had dedicated his life to documenting crimes committed during the Soviet era.

<sup>26</sup> Condemned by the Assembly's President Mr Rik Daems on 4 October 2021.

Oleg Orlov, a member of the Executive Board of the Human Rights Centre Memorial, and Svetlana Gannushkina, chairperson of the Civic Assistance Committee, an organisation providing legal assistance to refugees and migrants. The two human rights defenders had been arrested on 6 March for more than ten hours, after attending a protest against the war in Ukraine, and they are now subject to criminal prosecution. Since the beginning of the war, more than 13, 000 peaceful anti-war protesters have been arrested in 147 cities across Russia, some of them were beaten or even tortured by the police according to independent media reports.

27. In Opinion 300 (2022) of 15 March 2022, the Assembly unanimously condemned the intensifying crackdown on civil society and the harsh repression of peaceful anti-war protests in Russia.

28. On 22 March 2022, Mr Maire (France, ALDE) reacted to an additional nine-year prison sentence for Alexei Navalny for 'fraud' and 'offending a court', that he may have to serve in a harsh prison colony. Mr Maire called on the Russian authorities to release Mr Navalny in accordance with the decisions of the European Court of Human Rights and meanwhile to respect his right to conditions of detention respecting his human dignity.

29. On 27 April 2022, the Chairperson of our Committee, Mr Cottier (Switzerland, ALDE) condemned the arbitrary arrest of Vladimir Kara-Murza, and called for his immediate release. Mr Kara-Murza had addressed our committee as an expert some weeks before, in the context of the preparation of the present report. He is now imprisoned and prosecuted for allegedly spreading 'deliberate false information' about the Russian army, under a recently promulgated law that imposes a penalty of up to 15 years in prison for such crime.<sup>27</sup> These proceedings were preceded by his arrest and sentence to 15 days of administrative detention, that I had denounced on 14 April 2022.<sup>28</sup>

### 3. Judgments of the European Court of Human Rights and their implementation<sup>29</sup>

30. There have been a number of judgments of the European Court of Human Rights (the Court) involving arbitrary detention and/ or violation of the right to a fair trial of critics and opponents of the government and persons associated with them. In some of these judgments the Court has also found violations of Article 18 of the Convention, which is a complementary clause which prohibits Contracting States from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself. The object and purpose of Article 18 are to prohibit the misuse of power.<sup>30</sup>

31. In *Pichugin v. Russia*,<sup>31</sup> the applicant had been the head of security of the Yukos oil company.<sup>32</sup> In June 2003, he was arrested on suspicion of murder and detained under a series of court orders until his conviction in March 2005, when he was sentenced to 20 years' imprisonment. He complained to the Court of numerous

<sup>27</sup> "Committee Chair calls for immediate release of Russian opposition politician Vladimir Kara-Murza", 27 April 2022.. Motion on ***Arbitrary arrest of Russian human rights defender and freedom fighter Vladimir Kara-Murza***, tabled on 28 April 2022: <https://pace.coe.int/en/files/30011>. See also: [Statement on the persecution of Vladimir Kara-Murza - Russian Anti-War Committee \(antiwarcommittee.info\)](#)

<sup>28</sup> See my statement of 14 April 2022 on his arrest and sentence to 15 days of administrative detention: "General Rapporteur on the situation of human rights defenders reacts to the sentence of Vladimir Kara-Murza"

<sup>29</sup> This section will deal with the supervision of the execution of judgments only with regard to those cases in which the applicants are still detained. The general measures required for the execution of some of these judgments (for instance, reforms on the legislation and practice on public assemblies as required by the Court in its 2018 *Navalnyy* judgment under Article 46) are not covered in the present report.

<sup>30</sup> Case-Law Guide on Article 18 of the European Convention on Human Rights, 2021. Article 18 is rarely invoked and there have been few cases where the Court has found a violation. It can only be applied in conjunction with another article of the Convention or its Protocols. A violation of Article 18 can only arise where the right or freedom which has been interfered with is subject to restrictions permitted under the Convention (e.g. freedom of expression under Article 10 or freedom of assembly under Article 11).

<sup>31</sup> App. no. 38623/03, judgment of 23 October 2012.

<sup>32</sup> The Yukos oil company was partly owned by Mikhail Khodorkovskiy. In the same year that Mr Pichugin was arrested and charged, Mr Khodorkovskiy and his business partner, Platon Lebedev, were charged with fraud and tax evasion after becoming active in opposition politics. They were convicted and sentenced to imprisonment. Whilst in prison, additional similar charges were brought against them, resulting in further periods of imprisonment. A series of tax demands led to Yukos being declared insolvent and liquidated in 2007. In a succession of judgments, the Court found numerous violations of Mr Khodorkovskiy and Mr Lebedev's rights, including the prohibition on degrading treatment, the right to liberty and security, the right to a fair trial, the right to family life (article 8, due to the applicants' transfer to an establishment with a more restrictive regime), and the right to peaceful enjoyment of possessions (article 1 of Protocol 1) (app. no. 5829/04, judgment of 31 May 2011; app. no. 11082/06, judgment of 25 July 2013; and app. no. 51111/07, judgment of 14 January 2020). The Court also found violations of the Yukos company's rights to a fair trial and to peaceful enjoyment of its possessions (app. no. 14902/04, judgment of 20 September 2011).

violations of his rights. The Court found that his right to trial within a reasonable time or to release pending trial (article 5(3) of the Convention) had been violated, since the decisions to extend his pre-trial detention relied essentially on the gravity of the charges, using stereotypical formulae without addressing specific facts or considering alternative preventive measures: they were thus not based on 'sufficient' grounds. The Court also found violations of the applicant's right to a fair trial, since both the trial and appeal were held in secret, and the trial judge refused to allow the defence to challenge the credibility of the crucial prosecution witness and allowed that witness to refuse to answer certain questions from the defence (articles 6(1) and 6(3)(d)). The Court concluded that "the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings", noting that "Article 413 of the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention".

32. In a second case,<sup>33</sup> Mr Pichugin, whilst in prison, was charged with further counts of murder, for which he was ultimately convicted and sentenced to life imprisonment. The Court found violations of the applicant's right to a fair trial on account of the trial judge's refusal to allow the defence to present certain expert evidence, and media reporting of statements by the Deputy Prosecutor General and lead investigator that breached the presumption of innocence. The Court again stated that "the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings".

33. Given the unfairness of all of the trials in which he was convicted, Mr Pichugin is widely considered to be a political prisoner due to his close association with Mr Khodorkovsky.<sup>34</sup> It should be noted that despite the Court's statements on appropriate redress, Mr Pichugin is still serving his life sentence in a high-security prison. The Russian Supreme Court has examined both cases and concluded that the violations found by the Strasbourg Court did not affect the outcome of the criminal proceedings or the lawfulness, reasonableness and fairness of the sentences, and did not warrant their quashing or the opening of new proceedings. Mr Pichugin's requests for a presidential pardon were rejected on three occasions, for the last time on 4 June 2020. At the DH meeting on 9 March 2022, the Committee of Ministers (supervising the execution of these judgments under Article 46.2 of the Convention) recalled that the judicial reopening of the domestic criminal proceedings had not ensured redress for the applicant, since his convictions had been upheld without providing a full analysis of the evidence against him and the safety of the conviction in the light of the findings of the Court. It exhorted again the Russian authorities to find, as a matter of urgency, alternative venues to secure redress to the applicant, including by considering the adoption of any other measures to ensure his release.<sup>35</sup>

34. In *Nemtsov v. Russia*,<sup>36</sup> the applicant, a leading opposition politician who was shot dead in front of the Kremlin in 2015,<sup>37</sup> had been arrested following a demonstration on 31 December 2010, then detained in police custody until 2 January 2011, when he was taken to court and sentenced to 15 days' administrative detention. The Court found violations of his freedom of assembly, right to a fair trial, right to liberty and security, the prohibition on inhuman and degrading treatment in relation to the police custody. Having "found above that the applicant had been arrested, detained and convicted of an administrative offence arbitrarily and unlawfully and that this had had an effect of preventing or discouraging him and others from participating in protest rallies and engaging actively in opposition politics", the Court considered that no separate issue arose under article 18 and did not examine the issue further.

35. The Court has issued a number of judgments and decisions in cases involving detention brought by Aleksey Navalny, a lawyer, anti-corruption activist and political opposition leader:

- In *Navalnyy & Yashin v. Russia*,<sup>38</sup> the applicants had been arrested, detained in police custody, and sentenced to 15 days' administrative detention for participating in a "spontaneous march" following an authorised demonstration in 2011. The Court found a violation of article 11 (freedom of assembly), noting that the authorities had expressly acknowledged that the applicants had been punished for holding a spontaneous peaceful demonstration and chanting anti-government slogans. The Court also found violations of the right to a fair trial in relation to the administrative proceedings, and the right to liberty and security and the prohibition on inhuman and degrading

<sup>33</sup> App. no. 38958/07, committee judgment of 6 June 2017.

<sup>34</sup> Assembly Resolution 1418 (2005) on 'the circumstances surrounding the arrest and prosecution of leading Yukos executives' had concluded that "the circumstances surrounding the arrest and prosecution of the leading Yukos executives strongly suggest that they are a clear case of non-conformity with the rule of law", suggesting that "the interest of the state's action in these cases goes beyond the mere pursuit of criminal justice, and includes elements such as the weakening of an outspoken political opponent".

<sup>35</sup> Interim Resolution CM/ResDH(2022)50. See also *Information Note. Implementation of the judgments of the European Court of Human Rights, 10<sup>th</sup> report: Russian Federation, AS/Jur (2020) 05*.

<sup>36</sup> App. no. 1774/11, judgment of 31 July 2014.

<sup>37</sup> See Assembly Resolution 2297 (2019), 'shedding light on the murder of Boris Nemtsov'.

<sup>38</sup> App. no. 76204/11, judgment of 4 December 2014.

treatment in relation to the police custody. In view of its finding that the applicants' arbitrary arrest, detention and conviction "had the effect of preventing and discouraging them and others from participating in protest rallies and engaging actively in opposition politics", the Court declined to examine the applicants' complaints under article 18.

- *Navalnyy v. Russia*<sup>39</sup> covered a total of seven incidents in 2012 and 2014 when, in connection with public gatherings of opposition activists, the applicant was arrested, detained in police custody and sentenced to either administrative fines or administrative detention. The Court found violations of the applicant's right to liberty and security on all seven occasions, of his right to a fair trial on six of them, and of his right to freedom of assembly on all seven. The Court found it "established beyond reasonable doubt that the restrictions imposed on the applicant in the fifth and the sixth episodes pursued an ulterior purpose within the meaning of Article 18 of the Convention, namely to suppress that political pluralism which forms part of "effective political democracy" governed by "the rule of law", both being concepts to which the Preamble to the Convention refers". The Court therefore found a violation of Article 18 in connection with Articles 5 and 11. It relied on the converging contextual evidence that at the material time the authorities were becoming increasingly severe in their response to the conduct of the applicant, in the light of his position as opposition leader, and vis-à-vis other political activists, and on the broader context of the Russian authorities' attempts to bring the opposition's political activity under control.
- In *Navalnyy & Ofitserov v. Russia*,<sup>40</sup> the applicants had been convicted of fraud related offences and sentenced to five and four years imprisonment respectively, terms that were suspended on an undertaking not to change their place of residence. The Court found that "the acts described as criminal fell entirely outside the scope of the provision under which the applicants were convicted... In other words, the criminal law was arbitrarily and unforeseeably construed to the detriment of the applicants, leading to a manifestly unreasonable outcome of the trial." The domestic courts had "failed, by a long margin, to ensure a fair hearing in the applicants' criminal case, ... suggesting that they did not even care about appearances. It is noteworthy that the courts dismissed without examination the applicants' allegations of political persecution which were at least arguable". "It is obvious for the Court, as it must also have been for the domestic courts, that there had been a link between the first applicant's public activities and the Investigative Committee's decision to press charges against him. ... Having omitted to address these allegations the courts have themselves heightened the concerns that the real reason for the applicants' prosecution and conviction was a political one." The criminal proceedings against the applicants were found by the Court to have breached their right to a fair hearing under Article 6 of the Convention.<sup>41</sup>
- In *Navalnyy v. Russia*,<sup>42</sup> the applicant and his brother had been convicted of money laundering and fraud (Yves Rocher case), and sentenced to three and a half years imprisonment. Mr Navalny's sentence was suspended. The Court found in particular that the Russian courts had extensively and unforeseeably construed to their detriment the offence of commercial fraud, and that the decisions had been arbitrary and manifestly unreasonable. The Court found violations of Articles 7 (no punishment without law) and 6.1 (right to a fair trial).<sup>43</sup>
- In *Navalnyy v. Russia (No. 2)*,<sup>44</sup> the applicant had been placed under house arrest for over ten months with restrictions on communication, correspondence and use of internet, for reasons unrelated to the requirements of the criminal investigation. The Court found violations of the applicant's right to liberty and security and of his right to freedom of expression. It also found a violation of Article 18 in conjunction with Article 5, on the grounds that the restrictions on his right to liberty had pursued the same aim as in the previous *Navalnyy* case (Grand Chamber judgment), namely to suppress political pluralism.
- In *Navalnyy and Gunko v. Russia*,<sup>45</sup> the applicants had been arrested, detained in police custody and convicted for an administrative offence in relation to their participation in an authorised demonstration at the Bolotnaya Square on 6 May 2012. The Court found a violation of Article 3 (prohibition of inhuman and degrading treatment), noting that the recourse to physical force during the arrest of the first applicant had diminished his human dignity. It also found a violation of the

<sup>39</sup> App. nos. 29580/12 et al., Grand Chamber judgment of 15 November 2018.

<sup>40</sup> App. no. 46632/13, judgment of 23 February 2016.

<sup>41</sup> The Court nevertheless found the applicants' complaints under article 18 to be incompatible *ratione materiae* with the provisions of the Convention, since Articles 6 and 7 did not contain any relevant restrictions that might form the subject of the Court's examination under Article 18.

<sup>42</sup> App. 101/15, judgment of 17 October 2017. Mr Milov provided information on this case and other cases related to Mr Navalny during the committee hearing of 4 April 2022.

<sup>43</sup> As in the previous case, the Court rejected as inadmissible the applicants' complaint under Article 18 for being incompatible *ratione materiae*.

<sup>44</sup> App. 43734/14, judgment of 9 April 2019.

<sup>45</sup> App. 75186/12, judgment of 10 November 2020.

right to liberty, considering that the applicants' administrative detention for nearly twenty and eighteen hours respectively had been unjustified and arbitrary. The Court further found a violation of the right to a fair trial and of the right to freedom of peaceful assembly. It also noted that the first applicants' arrest, detention and administrative conviction "had a chilling effect, discouraging [them] and others from participating in protest rallies or from engaging actively in opposition politics". In view of these findings, the Court considered it unnecessary to examine whether Article 18 had been infringed.

- In the context of a new application *Navalnyy v. Russia*,<sup>46</sup> concerning Mr Navalny's detention upon his return from Germany in January 2021, the Court granted on 16 February 2021 an interim measure under Rule 39 of the Rules of the Court and asked the Russian Government to release him immediately. It had regard to the nature and extent of risk to the applicant's life, seen in the light of the overall circumstances of the applicant's detention.

36. At the DH meeting of 7-9 June 2021, the Committee of Ministers recalled the Court's findings under Article 18 in some of the *Navalnyy* cases and called on the authorities to take action as a matter of urgency with a view to ensuring that the applicant is able without hindrance to exercise his rights to freedom of peaceful assembly and freedom of expression and to end the "sequence and pattern" of restrictions imposed on him with the ulterior purpose of suppressing political pluralism. At the DH meeting of 9 March 2022, the Committee of Ministers deeply deplored that despite its numerous calls, Mr Navalny remained in detention and exhorted again the authorities to take all possible steps to assure his immediate release and to quash the convictions impugned by the relevant judgments of the Court.<sup>47</sup>

37. In a series of judgments concerning *Garri Kasparov*, former World Chess Champion and political activist, the Court found violations of the right to liberty and security, the right to a fair trial, and freedom of assembly. The first case concerned the applicant's arrest for participating in an unauthorised yet peaceful demonstration. The second case concerned the applicant's five hours' detention by airport police when travelling to Samara (Russia) to take part in an opposition rally. The third case involved his arrest (and that of another activist) during a protest rally and their ensuing administrative detention. Although the Court did not find a violation of Article 18 in any of these judgments, it stated in the last one that "the measures also had the serious potential to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate. The chilling effect of the sanctions was further amplified by the fact that they targeted the first applicant, a well-known public figure, whose deprivation of liberty was bound to attract wide media coverage".<sup>48</sup>

38. In *Frumkin v. Russia*,<sup>49</sup> the applicant had been arrested in 2012 during dispersal of a rally at Bolotnaya Square in Moscow, detained for at least thirty-six hours in a police station, then sentenced to fifteen days' administrative detention. The Court found that his freedom of association and assembly under article 11 of the Convention had been violated on account of his arrest and detention. It found that his right to liberty and security under article 5 had been violated on account of the lack of reasons and legal grounds for remanding him in custody prior to the administrative hearing. It also found that his right to a fair trial under article 6 had been violated since the administrative court based its decision on untested prosecution evidence, refusing to call police officers for cross-examination or accept additional evidence put forward by the applicant. As to the applicant's complaint of a violation of article 18, the Court noted that his arrest, detention and conviction "had the effect of preventing and discouraging him and others from participating in protest rallies and engaging actively in opposition politics". On this basis, it considered it unnecessary to examine whether article 18 had been violated.

39. In *Yaroslav Belousov v. Russia*,<sup>50</sup> the applicant had been arrested, held in lengthy pre-trial detention, tried, convicted and sentenced to a total of two years and three months' imprisonment in connection with his participation in the 2012 Bolotnaya Square demonstrations (see further above). The Court found violations of the prohibition on inhuman and degrading treatment, the right to liberty and security, the right to a fair trial and freedom of assembly. Noting that "the applicant's criminal conviction was not necessary in a democratic society and that this had had an effect of preventing or discouraging him and others from participating in protest rallies and engaging actively in opposition politics", the Court considered that no separate issue was raised under article 18 and so it was not necessary to examine whether it had been violated. The Court issued similar

<sup>46</sup> App. 4743/21. On 2 February 2021, the Simonovskiy District Court of Moscow converted Mr Navalny's suspended sentence into three and a half years imprisonment in a correctional colony (the final term amounting to two years and eight months after taking into account the ten months spent under house arrest during the original trial).

<sup>47</sup> Interim Resolution CM/ResDH(2022)53, concerning applications nos. 46632/13 and 101/15.

<sup>48</sup> *Kasparov and Others v. Russia*, App. 21613/07, judgment of 3 October 2013; *Kasparov v. Russia*, App. 53659/07, judgment of 11 October 2016; *Kasparov and Others (no. 2) v. Russia*, App. no. 51988/07, judgment of 13 December 2016.

<sup>49</sup> App. no. 74568/12, judgment of 5 January 2016.

<sup>50</sup> App. no. 2653/13, judgment of 4 October 2016.

judgments also in the cases of *Barabanov v. Russia*,<sup>51</sup> *Polikhovich v. Russia*,<sup>52</sup> *Stepan Zimin v. Russia*,<sup>53</sup> *Lutskevich v. Russia*,<sup>54</sup> *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*,<sup>55</sup> *Gushchin and Gaskarov v. Russia*,<sup>56</sup> and *Nepomnyashchikh v. Russia*.<sup>57</sup>

40. In *Mariya Alekhina and Others v. Russia*, the applicants, members of the Russian feminist punk band Pussy Riot, had been convicted of hooliganism motivated by religious hatred and sentenced to two years imprisonment, for performing a political song in Moscow's Christ the Saviour Cathedral in 2012. The Court found violations of the prohibition of inhuman and degrading treatment (conditions of the applicants' transport to and from the trial hearings and in the courtroom), the right to liberty and security, the right to a fair trial, and freedom of expression. As regards freedom of expression, the Court considered that the criminal prosecution and conviction for their performance had not been necessary in a democratic society.<sup>58</sup>

41. In *Ryklin & Sharov v. Russia*,<sup>59</sup> the applicants had been arrested and sentenced to ten days' administrative detention in 2015, following public protests to mark the third anniversary of the 2012 Bolotnaya Square demonstration. The Court found violations of their freedom of expression and right to a fair trial.<sup>60</sup> The Court recalled that it had "consistently found a violation of Article 11 of the Convention in a situation in which the organisers of or participants in a public gathering are arrested and convicted of administrative offences for the sole reason that the Russian State authorities perceive their assembly to be unauthorised". It also recalled that it had "previously found that the lack of a prosecuting party in the context of oral hearings resulting in the determination of administrative charges constitutes a serious shortcoming in breach of the objective impartiality requirement of Article 6 § 1 of the Convention".

42. In *Udaltsov v. Russia*,<sup>61</sup> the applicant, a well-known political and civic activist, coordinator of the Moscow Council of the Left Front movement, had been placed in pre-trial and post-trial administrative detentions, for disobeying a lawful order by public officials and leaving a detention facility without authorisation. The Court found violations of the right to liberty and security on account of several arbitrary administrative detentions and his arbitrary retention in a hospital. It also found a violation of the right to a fair trial in respect of one set of administrative proceedings. With regard to the applicant's complaint that the relevant sentences of detention had been imposed with the purpose of preventing him from participating in protest rallies, the Court considered that it was not necessary to examine this grievance from the perspective of Articles 10 and 11. As to the applicant's complaint of a violation of Article 18, it considered that this did not represent a fundamental aspect of the case.

43. In *Karuyev v. Russia*,<sup>62</sup> the applicant had been arrested and sentenced to a 15 days' administrative detention for spitting on a portrait of President Putin (breach of public order). The Court considered that the act of spitting on a photograph of a politician in the wake of his re-election should be considered an expression of political opinion, and that the applicant's conviction had not had a clear and foreseeable basis in domestic law. It therefore found a violation of the applicant's right to freedom of expression.

44. Although the Court has found violations of Article 3 (prohibition of torture and inhuman or degrading treatment) in only some of the above-mentioned cases (for instance, *Nemtsov*), the Court has examined the conditions of detention in prisons and other detention facilities in many other cases against Russia and found them to be in breach of Article 3. In one of the pending *Navalny* cases, the applicant complains under Article 3 about his conditions of detention, including sleep deprivation, inadequate nutrition, verbal abuse and denial of medical assistance. Therefore, arbitrary and unlawful detention of political prisoners does not only imply an unjustified loss of liberty and breaches of fundamental rights such as freedom of expression or freedom of

<sup>51</sup> App. no. 4966/12, judgment of 30 January 2018. In this case the Court found no violation of article 3 on account of the applicant's failure to supply sufficient detail of the alleged violation.

<sup>52</sup> App. no. 62630/13, judgment of 30 January 2018.

<sup>53</sup> App. no. 63686/13, judgment of 30 January 2018.

<sup>54</sup> App. no. 6312/13, judgment of 15 May 2018.

<sup>55</sup> App. no. 75734/12 and others, judgment of 19 November 2019.

<sup>56</sup> App. no. 22581/15 et al., judgment of 25 February 2020.

<sup>57</sup> App. no. 51118/16, judgment of 8 June 2021. According to the information available, the applicants in most of these cases served their sentences or were released, but the Committee of Ministers may still examine whether other negative consequences resulting from their criminal convictions (criminal record, other restrictions) have been erased: <https://hudoc.exec.coe.int/eng?i=CM/Notes/1406/H46-29E>.

<sup>58</sup> App. no. 38004/12, judgment of 17 July 2018. The applicants were later amnestied.

<sup>59</sup> App. no. 37513/15, judgment of 12 February 2019.

<sup>60</sup> The applicants' complaint of unlawful detention was dismissed on procedural grounds.

<sup>61</sup> App. no. 76695/11, judgment of 6 October 2020.

<sup>62</sup> App. no. 4161/13, judgment of 18 January 2022.

assembly, it also involves a risk of inappropriate conditions of detention which may amount to inhuman or degrading treatment.

#### 4. Interventions by the Council of Europe Commissioner for Human Rights

45. The Commissioner for Human Rights (the Commissioner), Dunja Mijatović, has also raised issues of relevance to the present report. They illustrate the alleged misuse of criminal law against critics and opponents of the authorities and the resulting threat of lengthy imprisonment.

46. On 11 July 2018, the Commissioner wrote to the Prosecutor General of the Russian Federation about the case of Oyub Titiev. In her letter, the Commissioner noted that Mr Titiev, who was “known for his important work in defending human rights in the North Caucasus and, in particular, for his quest for accountability for serious human rights violations by officials”, had been “deprived of his liberty in January this year and subsequently remanded in custody and criminally prosecuted for alleged drug possession.” She noted the conclusion of the Russian Presidential Human Rights Council that the Chechen authorities had acted “with the aim of excluding information which would lead to the conclusion that the criminal case against Mr Titiev had been fabricated” and that “all the refusals to open a criminal investigation following Mr Titiev’s complaints have been unsubstantiated and unjustified”. She also noted that both the head of the Presidential Human Rights Council and the federal High Commissioner for Human Rights had called for Mr Titiev’s cases to be “transferred” out of the Chechen Republic, which demonstrated “doubts as to the likelihood that Mr Titiev’s rights will be safeguarded if the case remains in the Chechen Republic.”<sup>63</sup>

47. On 6 December 2018, the Commissioner called on the Russian authorities to release Lev Ponomarev, a “senior figure in the Russian human rights movement” and “long-standing partner” of the Commissioner’s Office, whose “work for the defence of human rights spans many decades”. Mr Ponomarev had been sentenced to 25 days’ administrative detention by a Moscow district court for a Facebook post publicising an unauthorised rally. The Commissioner stated that “Punishing someone for sharing information in social media about a public event intended to be of a peaceful nature can hardly be justifiable. My Office has repeatedly called for the revision of the legal framework in the Russian Federation governing public events. The 25-day detention sentence imposed on Mr Ponomarev is a stark example of the disproportionate nature of the sanctions foreseen in the legislation.” She then called for Mr Ponomarev’s release “as a matter of urgency”.

48. On 13 February 2019, the Commissioner wrote to the federal High Commissioner for Human Rights about the case of Svetlana Prokopyeva, a freelance journalist. Ms Prokopyeva was under investigation for alleged ‘justification of terrorism’, an offence punishable by up to seven years’ imprisonment, following publication of a critical article in which she reflected upon the possible motives of a teenaged suicide bomber. The Commission recalled that she had “observed a worrying phenomenon of misuse of anti-terrorism legislation to limit legitimate reporting or criticism of state authorities”. She stated that “imposing criminal liability upon a journalist for her expressions that do not contain elements of violence and do not incite others to terrorism is incompatible with human rights standards on freedom of expression.” Furthermore, “the criminal prosecution against [Ms Prokopyeva] has a broader chilling effect on all media and journalists in the Russian Federation, by preventing them from imparting information of public interest, and interfering with the right of people to receive it.”<sup>64</sup>

49. On 23 June 2020, the Commissioner called on the Russian authorities to “overhaul legislation and practice governing freedom of assembly and of expression”. Her statement noted that “The arrest of more than 100 people in Moscow and St Petersburg yesterday is yet another illustration of the intolerance of the Russian authorities towards people expressing their opinions peacefully.” She also referred to a conversation with the federal High Commission for Human Rights, in which she expressed her continuing concerns about the cases of Ms Prokopyeva and others. These included Abdulmumin Gadzhiyev, a Dagestani journalist in pre-trial detention, charged with extremism and terrorist offences for having written about an Islamic preacher accused of connections with Daesh; Yulia Tsvetkova, an artist and civic activist currently under house arrest, charged with pornography and ‘gay propaganda’ offences relating to statements made on her website; Anastasia

<sup>63</sup> Mr Titiev’s case remained under the jurisdiction of the Chechen courts. In March 2019, he was sentenced to four years in a labour colony. He was released on parole in June 2019, having been in detention since January 2018.

<sup>64</sup> On 12 July 2019, the Commissioner again wrote to the federal High Commissioner about the case of Ms Prokopyeva, after she had been added to an official, public list of persons considered as being involved in extremist activity or terrorism, resulting in her bank accounts being blocked. The Commissioner reiterated her position against the “misuse of ‘anti-terrorism’ and ‘anti-extremism’ legislation to limit legitimate reporting or criticism of state authorities”. On that basis, she considered “the recent restrictions on Ms Prokopyeva’s financial autonomy to be a severely disproportionate interference in her rights. Moreover, registering her in an official ‘list of terrorists and extremists’ is not in accordance with the presumption of innocence”. On 6 July 2020, Ms Prokopyeva was convicted of ‘inciting terrorism’ and fined 500,000 roubles; the prosecution had called for a sentence of six years’ imprisonment.



Shevchenko, who was under house arrest on charges of ‘organising activity of an undesirable organisation’ (namely the Open Russia opposition movement) under a widely-criticised 2015 law, punishable by up to six years in prison; and Yuri Dmitriev, a civil rights activist and historian of crimes committed by the Stalin regime, who was accused of pornography and sexual violence offences committed against his adopted daughter (see further below).

50. On 20 July 2020, the Commissioner called on the Russian authorities to drop charges against human rights defender Semyen Simonov. Mr Simonov faced charges under the ‘foreign agents’ law relating to the Southern Human Rights Centre in Sochi, which documented abuse of migrant workers involved in construction projects for the 2014 Winter Olympics and the 2018 football World Cup. The Commissioner noted that “Today’s indictment of Semyen Simonov [...] for not complying with the legislation on non-commercial organisations is alarming and will have a massive chilling effect on the entire human rights community in Russia”.

51. On 30 September 2020, the Commissioner returned to the case of Mr Dmitriev, after his sentence had been increased by the regional supreme to thirteen years’ imprisonment in a high-security penal colony, following an appeal by the prosecutor. The Commissioner declared that “Yesterday’s judgment against Yuri Dmitriev [...], having been acquitted earlier on the same charges,<sup>65</sup> raises serious doubts as to the credibility of his prosecution. [...] The harsh verdict delivered by the Karelian Supreme Court in the absence of the legal counsel chosen by Mr Dmitriev cannot be deemed to have complied with fair trial guarantees and is a further illustration of a broader pattern of judicial harassment against human rights defenders, journalists and other independent or critical voices, which has been growing in the Russian Federation in recent years.”

52. On 21 January 2021, the Commissioner called on the Russian authorities to release Alexey Navalny and stop any further judicial intimidation against him. The proceedings against him, according to her, appeared to “defy credibility and contradict Russia’s own law and judicial procedures, as well as international human rights obligations and standards.” She also criticised the arrests of dozens of persons for protesting peacefully against Mr Navalny’s arrest in many Russian cities. On 2 February 2021, after he was sentenced to three and a half years in prison, she stated that the new judgment contravened Russia’s international human rights obligations and sent a signal affecting the integrity of the European system of human rights protection.

53. On 25 November 2021, the Commissioner raised concerns about the arrest and detention of a large group of Crimean Tatars, including several journalists, who had assembled peacefully in Simferopol to witness the release from detention of human rights lawyer Edem Samedyaev. She further referred to a discernible pattern of persecution exemplified by criminal convictions imposed on Crimean Tatar activists and leaders, often based on abusive counterterrorism or extremism charges.

54. On 7 March 2022, following the Russian Federation’s military attack against Ukraine, the Commissioner noted that more than 13,000 people had been arrested in dozens of Russian cities for the exercise of their legitimate right to protest peacefully against the war. She mentioned the cases of human rights defenders Oleg Orlov and Svetlana Gannushkina. The Commissioner raised concerns about the new legislation criminalising the spread of “fake information” about the acts of the Russian army, its “discreditation”, and calls for public protests, with sanctions of up to 15 years in prison and heavy fines.

## **5. Lists of political prisoners compiled by Memorial Human Rights Centre**

55. According to latest information from the NGO “Memorial Human Rights Centre”, as of 8 April 2022, there were 87 political prisoners (not persecuted for religion) and 360 persons imprisoned on religious grounds in Russia.<sup>66</sup> The total number was of 447 political prisoners. The number of political prisoners has been on the rise since the beginning of the preparation of this report. At the time of my introductory memorandum (October 2020), Memorial’s website included 62 political prisoners (not persecuted for religion) and 266 political prisoners persecuted for their religion.

56. Memorial assesses individual cases on the basis of their own “Guidelines for the definition of ‘political prisoner’”. These are explicitly based on, but not identical to, the definition in Assembly Resolution 1900. If anything, they are more restrictive, since unlike Resolution 1900, Memorial’s criteria foresee ‘exclusion clauses’. Memorial uses an additional filter to exclude anyone who used violence against a person or called

<sup>65</sup> In 2018, Mr Dmitriev was acquitted at his first trial, but the regional supreme court overturned this verdict following an appeal by the prosecutor.

<sup>66</sup> Information in English received from our experts. See the website in Russian (accessed on 3 May 2022): [Список политзаключённых \(без преследуемых за религию\) | Правозащитный центр «Мемориал» \(memohrc.org\)](https://www.memoir.org/ru/politizaklyuchennyye-bez-presleduemyye-za-religiyu), where the number of prisoners persecuted for their religion is 355.

for violence based on nationality, race, religion, etc. It should be noted that Memorial's lists also include Crimean Tatars.

57. I should like to note that some of the persons mentioned above (either in the judgments of the Court, by the Commissioner or by the Assembly) appear on Memorial's lists: Mr Navalny, Mr Pichugin, Yuri Dmitriev, Abdulmumin Gadzhiyev, Dennis Christensen, Andrei Pivovarov, and Emir Usein Kuku. A number of cases flagged by the experts in our committee hearings (Lilia Chanysheva, former head of Mr Navalny's organisation in Ufa, and Andrei Borovikov, environmental activist and former coordinator of Mr Navalny's regional branch) also appear on Memorial's lists.

58. Although I have not been able to verify whether all the cases mentioned in Memorial's lists satisfy the Assembly's definition of "political prisoner", I find the lists compiled by Memorial to be credible and reliable. At our hearing on 8 December 2020, Mr Sergey Davidis, head of the "Support of Political Prisoners" programme of Memorial Human Rights Centre, explained to us the strict criteria and rigorous procedures followed by Memorial in establishing this list. Memorial Human Rights Centre is one of the Russian Federation's most respected non-governmental organisations and its recent closure (together with International Memorial) under the "foreign agents" legislation is just another example of the repression of political opponents and civil society by Russian authorities, which has dramatically increased since the beginning of the war of aggression against Ukraine. The closure of Memorial has given rise to strong criticism at the highest level in the Council of Europe and in many member States. It should be noted that the Russian Supreme Court has recently rejected an appeal to suspend the liquidation of Memorial, completely disregarding an interim measure granted by the European Court of Human Rights in December 2021.

## 6. The reported cases in the light of the Assembly's definition of 'political prisoner'

59. Assembly Resolution 1900 (2012) establishes the following definition of 'political prisoner':

*"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':*

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;*
- b. if the detention has been imposed for purely political reasons without connection to any offence;*
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."*

60. This definition originated in the work conducted in 2001 by the Secretary General's independent experts on cases of political prisoners in Armenia and Azerbaijan, following those countries' commitments upon accession to the Council of Europe to release all political prisoners.<sup>67</sup> It has consistently been used by the Assembly since adoption of Resolution 1900 (2012), including in Resolution 2231 (2018) on Ukrainian citizens detained as political prisoners by the Russian Federation and Resolution 2322 (2020) on reported cases of political prisoners in Azerbaijan. It has also been endorsed by the OSCE Parliamentary Assembly in the 2014 Baku Declaration and is a reference for the work of civil society in many countries.<sup>68</sup> It is important to recall that any form or duration of deprivation of liberty, be it imprisonment following conviction, pre-trial detention, administrative detention or even house arrest, may be covered by the definition of 'political prisoner'.

61. The Court's cases mentioned above do not explicitly state that any applicant was a political prisoner, since the Convention does not include such a concept and the Assembly's definition is not binding for the Court. However, it is clear in the Court's judgments finding violations of Article 18 that one or more of the grounds set out in Resolution 1900 is satisfied. In the two *Navalnyy* judgments in which a violation of Article 18 was found (delivered in 2018 and 2019), the Court concluded that the restrictions with Mr Navalny's rights to liberty or to freedom of assembly had pursued the ulterior purpose to suppress political pluralism. The Court had regard to "the broader context of the Russian authorities' attempts (...) to bring the opposition's political

<sup>67</sup> See "Addendum to the Report of the Independent Experts", SG/Inf (2001)34 Addendum I, 24 October 2001.

<sup>68</sup> See e.g. "Europe without political prisoners", non-paper for a conference in Berlin in 2014, Norwegian Helsinki Committee/ European Stability Initiative, 31 May 2014.

activity under control”, which implies the recognition of the existence of a wider problem going beyond the targeted repression of Mr Navalny. It also referred to a continuous trend of further restrictions of the legislative framework on freedom of assembly, including criminal liability for assembly-related offences, and called for legislative and/or other general measures to prevent similar violations in the future (under Article 46).<sup>69</sup>

62. This context should be borne in mind when considering the Court's numerous other judgments finding violations of the right to liberty, the right to a fair trial, freedom of expression, or freedom of assembly, but without examining or finding a violation of Article 18. In fact, Article 18 of the Convention sets a high threshold which does not necessarily need to be met in each case in order to satisfy the Assembly's definition of 'political prisoner'. Article 18 is not so often raised by applicants, and even if it is raised, the Court may consider it unnecessary to examine it after the main finding of a violation of the substantive right (*Navalnyy and Gunko* judgment). It is also important to note that in principle Article 18 cannot be examined together with Articles 6 (right to a fair trial) or 7 (principle of legality), according to the Court's case-law (*Navalnyye* judgment), but only with those rights which contain explicit restriction clauses. In any event, it is evident in many of these judgments that one or more of the grounds of the Resolution was met: detention in violation of freedom of expression or freedom of assembly (*Frumkin, Yaroslav Belousov*), and/or detention resulting from clearly unfair proceedings and this appeared connected with political motives of the authorities (*Navalnyy and Ofitserov*).

63. As to the cases mentioned above, which were examined by the Parliamentary Assembly and its rapporteurs or by the Commissioner, most of them are also likely to fulfil one or more of the criteria set out in Resolution 1900 (2012). For instance, those having been arrested for protesting against the current war in Ukraine (including Oleg Orlov, Svetlana Gannushkina and more than 13, 000 peaceful protesters), were detained in violation of their right to freedom of peaceful assembly. The same applies to Mr Kara-Murza, who is detained facing prosecution for spreading 'deliberate false information' about the Russian army, in breach of his right to freedom of expression. The new repressive measures to silence any opposition to the war have been preceded by the introduction, over the past several years, of a number of restrictive laws including the "foreign agents" law, the law on "undesirable organisations" and the law on "extremism", which have all contributed to the systematic persecution of political opponents, journalists, human rights defenders and civil society activists. It is clear that all this legislation, which is manifestly incompatible with the European Convention on Human Rights and other international human rights standards,<sup>70</sup> has been used to curtail basic fundamental rights for purely political reasons.

## 7. Conclusions and proposals

64. The cases mentioned above are only the most prominent ones that have been addressed by various Council of Europe bodies. They are nevertheless striking as regards their sheer number and the pattern of systematic repression against any and all opponents of the current authorities which they follow. They must therefore be seen in the context of the increasing repression of political opponents over the past years, or as the Court said in its Article 18 judgments, in "the broader context of the Russian authorities' attempts (...) to bring the opposition's political activity under control".

65. Although the Russian Federation was expelled from the Council of Europe on 16 March 2022, both the Assembly and the Committee of Ministers clearly stated that the Council of Europe should continue to support and engage with human rights defenders, democratic forces, free media and independent civil society in the Russian Federation. This support should be shown by firmly condemning the detention of hundreds of individuals who fall or are likely to fall under the Assembly's definition of 'political prisoner' and calling for their release or at least the reassessment of their cases. This should apply to all prisoners featuring on Memorial's lists, who must be presumed to be political prisoners according to our definition.

66. The Assembly should also recall that the Russian Federation is still bound by the European Convention on Human Rights until 16 September 2022 and that it should fully implement the judgments of the Court (those already delivered and those which will be delivered in the future) concerning individuals who are still detained on politically motivated charges, by adopting the necessary individual and general measures, particularly in the most egregious cases like those of Mr Navalny and Mr Pichugin. The Russian Federation should also cooperate with the European Committee for the Prevention of Torture (CPT), while it remains a Party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS

<sup>69</sup> In the 2018 judgment, paragraphs 182-186.

<sup>70</sup> See for instance CDL-AD(2021)027, Venice Commission Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting "foreign agents".

No. 126).<sup>71</sup> The CPT should be able to visit and monitor the conditions of detention of these prisoners, pending their release or re-examination of their cases.

67. The Assembly should also call on the Russian authorities to implement the recommendations issued by other international organisations of which the Russian Federation remains a member, such as the United Nations (and its treaty-based bodies such as the Human Rights Committee which are competent to deal with individual applications against the Russian Federation) and the OSCE. The Assembly must continue to remind the Russian authorities of their international human rights obligations.

68. The Assembly should also invite Council of Europe member and observer States to establish visa facilitation schemes and consider requests for asylum from former political prisoners or threatened Russian opposition leaders, civil society activists, journalists and human rights defenders who need to leave Russia. Member and observer States should also refuse any future extradition requests for Russian nationals for offences which could be considered politically motivated and Interpol should examine very carefully any Red Notice requests from the Russian National Central Bureau that may be politically motivated.

69. Finally, the Assembly should invite the European Union to further strengthen economic sanctions against the Russian Federation, its leaders and officials, on account of their involvement and responsibility in the persecution of political opponents and the continuing detention of political prisoners, particularly that of Mr Alexei Navalny.

70. Member states which have adopted “Magnitsky laws” allowing them to impose targeted sanctions against perpetrators of human rights violations who benefit from impunity should use these laws to impose targeted sanctions against all those who, as police officers, prosecutors, judges, prison officials or in any other function have contributed to the unlawful deprivation of liberty of political prisoners and any ill-treatment they suffer in detention. Member states which have not yet enacted such laws shall consider doing so, in line with the Assembly’s resolution in this respect<sup>72</sup>.

71. Last but not least, the Assembly should encourage member States to commemorate, on every 30 October, the International Day of Political Prisoners<sup>73</sup>, all those who are still imprisoned for political reasons. As Vladimir Kara-Murza said at our hearing on 4 April 2022, just before he was himself arrested: what political prisoners fear the most is to be forgotten. We must never forget them and continue pushing for their freedom.

72. In the light of the above, I propose a series of recommendations, as set out in the attached draft resolution and draft recommendation.

---

<sup>72</sup> Resolution 2252 (2019) “Sergei Magnitsky and beyond – fighting impunity by targeted sanctions.”

<sup>73</sup> See for example <https://humanrightshouse.org/articles/the-day-of-political-prisoners/>