ПЕРВЫМ РЕЙСОМ

The Concept of Liberation and Rehabilitation of Political Prisoners

Sergei Davidis, Oleg Kozlovsky, Alexander Cherkasov, Maria Chashchilova, Denis Shedov and other authors, who wished to remain anonymous

with participation of Andrei Pivovarov, Sergei Lukashevsky, Olga Romanova, Vera Chelishcheva and Boris Grozovsky

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Introduction

This project aims at the liberation of people who have traditionally been termed 'political prisoners'. We acknowledge that the term 'political prisoner' can be interpreted in different ways. However it is inarguable that in Russia there are a lot of people whose criminal prosecutions and imprisonment were politically motivated and not based on human rights standards recognized in democratic countries.

Further on we will refrain from using the term 'political prisoner' to describe the entire group of individuals eligible for release. Instead, we rely on the classification of acts, committed by them or imputed to them, according to the existing legislation. Also, we proceed from the fact that liberation should be carried out in accordance with the order settled by the law and based on the legal acts adopted by the designated authorities.

We cannot predict under what political circumstances future Russian authorities might implement this project, either partially or in full. We assume that its fulfilment will become affordable if the war with Ukraine stops and the existing Russian political authorities change, at least partially. It will give the opportunity to recognise their deeds if not as criminal, then at least as erroneous and, therefore, a subject to correction.

Regime change and the post-war situation, no matter how uncertain this future may now seem, will involve steps to restore civil society activity and towards civil reconciliation. In particular, they will include a wide range of solutions to exempt from accountability for various actions, both those currently criminalised and, perhaps, those that will be criminalised in the future. Thanks to these measures, in certain cases, those persons will be released who will be condemned by their compatriots ethically and politically or even consider them unworthy to be released.

In particular, some persons who have actually committed crimes punishable in democratic states will be released. Although we consider that the proposed measures will facilitate urgent release of those, or at least the majority of those, whose imprisonment is unacceptable. Also we believe that this relatively broad plan correlates with the principle of humanity and is necessary to receive civil reconciliation. In other words, it is preferable to release a guilty individual rather than risk unjustly imprisoning an innocent one.

We are aware that the liberation of individuals subjected to political persecution is only one in the process of reformation of the Russian political and legal

systems. We deliberately limit ourselves only to one task and touch only slightly the related ones. In particular we consider only those cases of imprisonment that took place after the year 2000, when Vladimir Putin factually came into power, and only those cases of persecution that were politically motivated — and not other, evidently very actual problems of nowadays Russia, such as the biased prosecution by the judiciary, excessively harsh sanctions for "ordinary" crimes, harsh and even torturous conditions of detention, etc.

The authoritarian regime uses a large set of instruments in order to persecute its political opponents and repress other people for political reasons. Our task is limited to the the most urgent need: to release those who have become victims of persecution and should not be imprisoned. Further on, to the extent possible and at the request of persecution victims, all files with possible political motivation must be reviewed. Meanwhile, the majority of files will need no consideration because the very legislation norms that served as a basis for political and civil prosecution will be repealed.

Putin's political regime began its activity with the words about "dictatorship of law", and the next few years it was true, that the political repressions have been carried out according to the letter of the law. But as time went on, the common norms accepted in the democratic countries went down and began to be interpreted more illegitimately. At the time new "legal" norms were introduced that contradicted the Constitution of Russia as well as the international human rights law.

The measures that we offer in order to release the persons who have been indicted on political reasons are based on usage of legal mechanisms, not revolutionary methods. The concept we are presenting here emanates from the suggestion that at the time of its realisation the institutions of criminal and criminal procedure law will function. We can plan no actions when these institutions are being destroyed, but we hope that even in such a situation ideas and logic of this concept will be used for liberation and rehabilitation of the victims of political repressions.

We have to refer to the institutions and norms existing in the Russian Federation in 2024. These norms consider the general procedure of releasing people from the places of imprisonment under amnesty, decriminalisation of criminal articles and annulment of sentences. For example, annulment of an extremist status of an organisation leads to annulment of sentences for those involved in its activity in accordance with the already established procedure.

The implementation of the below-proposed measures will require a revision of the amended regulations, and it will affect not only the Criminal Code of the Russian Federation (hereinafter referred to as RF CC). For example, it will be necessary to provide for the possibility of filing appeals by those convicted for po-

litical reasons, for whom the established procedural period has expired.

Thus, the task of releasing the persons, who are under investigation or imprisoned without sufficient legal grounds by a court sentence, may be solved in different ways, applicable to different groups:

Cancellation of unacceptable articles of RF CC. Many persons may be released through cancellation of those RF CC articles that are unacceptable in a rule-of-law state.

Amending and liberalisation of the RF CC articles. In order to quickly release a considerable number of people, it is enough either to amend a number of other RF CC articles, aimed to narrow their composition or commutate sanctions in accordance with a more sound understanding of the objectives of criminal legislation, or to adopt obligatory for the courts decisions on the interpretation and application of the RF CC norms.

Release of those who were convicted for participation in illegally banned organisations. Some individuals are deprived of their liberty for their involvement in the activities of organisations or communities that have been recognized as criminal without due grounds. The lifting of the ban on these groups will result in the cancellation of sentences for participation in them.

Release of Ukrainian citizens and prisoners of war. Ukrainian citizens held imprisoned without charge or conviction, detained in or in connection with military actions, must be immediately released. Prisoners of war from both sides must be released in accordance with the norms of international humanitarian law. Ukrainian citizens convicted of war crimes must be exchanged for Russian citizens convicted of the same crimes in Ukraine, on the principle of «all for all»[1], with a subsequent review of their cases and, if necessary, service of punishment in their homeland. For information on these and other categories of Ukrainian citizens, see the section Special Issues Concerning Citizens of Ukraine and the Occupied Territories.

Release of those who were convicted for public utterances. We believe that the people who had been convicted for public utterances may be released, no matter how aggressive and radical their utterances were. It will cause no essential public danger: only a few of these people were systematically engaged in dangerous, seditious activity, and these few are apparently well known to the law-enforcement.

Amnesty for those convicted for war-related actions. A full-scale war against Ukraine has prompted a number of Russian citizens to commit actions that were either falsely qualified as acts of terrorism, sabotage or treason, or could be qualified as such as well in a democratic

1. *Despite the massive violation of justice standards in the investigation and consideration of war crimes cases against Ukrainian servicemen, reviewing such cases would take a long time. We consider it a priority to provide these people with the opportunity for release as soon as possible, so we propose to resort to an exchange, which does not exclude the possibility of individual review of cases based on appeals from those released*

state in the state of war. With an eye on the assumption that the proposed project will be implemented when the peace is settled down and the process of civil reconciliation is on, the persons who were prosecuted for the war-related actions may be released, if those actions were related to the war against Ukraine and with one notion: provided those actions did not involve intentional violence against another person, established by a court sentence.

Not all the people convicted for political reasons and unjustly, may be referred to the above categories. In particular, these measures will not be applied to the persons unjustly convicted, for example, for violation against police in a manner dangerous for life and health, storage of drugs etc. Such cases may be revised only individually. The amnesty may also be granted to these people after revising the circumstances of the case.

Constitution and Organization of the Process

To implement the aforementioned measures aimed at the release of individuals subjected to unlawful deprivation of liberty as a result of politically motivated persecution, it is essential to promptly and cohesively engage several mechanisms, including but not limited to the following:

1. Introduction of amendments aimed at the repeal or reduction of certain criminal and administrative offenses in legislative acts, including the Criminal Code of the Russian Federation, the Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the Code of Administrative Offenses of the Russian Federation), Federal Law No. 255-FZ of July 14, 2022, "On the Control of Persons Under Foreign Influence," Federal Law No. 272-FZ of December 28, 2012, "On Measures Against Persons Involved in Violations of Fundamental Human Rights and Freedoms, and the Rights and Freedoms of Citizens of the Russian Federation," and others.
2. Adoption of an amnesty decree.
3. Appeal to the Supreme Court of the Russian Federation for the expedited review, reconsideration, and annulment of judicial decisions, as well as the issuance of binding recommendations for the courts on the interpretation and application of the law.
4. Appeal to other courts for the expedited review and annulment of individual verdicts on a case-by-case basis.
5. Accelerated consideration of clemency petitions.
6. Oversight of the implementation of these measures by government bodies.

To ensure that the task of liberating victims of political persecution is prioritized by the executive and judicial authorities and society, it is crucial that a comprehensive action plan in this direction be publicly declared by the head of state or the executive branch.

Initial Steps

To initiate the reform, several legal acts must be issued. These acts may be divided or consolidated into a single framework document or package. Among these acts, there should be at least:

1. Clear amendments to the legislation in force at the time of the reform's announcement, including the changes proposed in the section "Necessary Amendments to the Legislation."

2. An act of amnesty for certain categories of individuals subject to criminal prosecution at the time of the reform's announcement. See the section "Amnesty."

3. The regulatory framework for subsequent steps of the reform.

In order to organize and promptly carry out the further work without internal contradictions, it is necessary to establish a special temporary Commission. The procedure for forming and the powers of such a Commission must be determined by the relevant law, which will require amendments to the current procedural legislation. The Commission must be transparent, accountable, and operate in cooperation with civil society: publishing reports on its activities, consulting with public groups and organizations, holding open sessions, etc.

The Commission should be endowed with the following minimum powers:

1. Drafting legislative bills to amend the legislation.

2. Drafting acts of amnesty.

3. Temporary right of legislative initiative.

4. Developing proposals on the grounds for government bodies to appeal to the courts for the revision of judicial decisions on key issues and individual cases, as well as proposals on determining the priority of such appeals.

5. The right to independently appeal to courts on behalf of the state, particularly with motions for the review of decisions recognizing organizations as extremist and for the annulment of decisions establishing legal facts.

6. Participation in judicial cases, other than those initiated by the Commission, as a third party, providing expert opinions, assessments, and determining the presence of political motivation when cases are reviewed.

7. Preparation of lists of individuals whom the Commission proposes for pardon due to the likely political motivation behind their prosecution and in cases of law violations.

8. Compilation of a registry of individuals who were presumably subjected to compulsory medical measures for political reasons, to conduct a repeat psychiatric examination and review of these cases in court.

9. Monitoring the implementation of the reform, including access to closed institutions.

10. Research and publication of information on political repressions, declassification of materials.

Specifically, the Commission shall establish a monitoring group to gather information on the release of prisoners. The monitoring tasks will include verifying the quality and pace of implementation of decisions on release and subsequent rehabilitation of prisoners, as well as overseeing preventive measures applied to those released under amnesty.

An additional responsibility of the Commission, potentially necessitating the formation of a separate specialized group, is to collect and verify data on cases of individuals claiming to have been politically persecuted under general criminal articles. This applies to cases that do not fall under the purview of termination or comprehensive review within the proposed reform (for instance, cases involving alleged planting of drugs for political motives). For such cases, a review, pardon, or denial of these measures may be considered.

The Commission's work must be conducted in continual collaboration with civil society. The Commission will not only review appeals from civil organizations but will also proactively engage them, inviting them to gather information on situations within the Commission's mandate.

The composition of the Commission should be formed with consideration to the following recommended criteria:

Transparency. The process of forming the Commission must be open and transparent to ensure public oversight.

Representativeness. The composition of the Commission should reflect the diversity of societal forces committed to the values of democracy and human rights.

Expertise. The Commission should include members with the necessary expertise in the areas of human rights, politically motivated persecution, and other relevant fields aligned with the Commission's objectives.

Pluralism and Personal Responsibility. No single political or corporate interest should dominate the Commission. The members' work must reflect a balance of democratic diversity. Commission members must act in a personal capacity, using their connections with various communities to enhance the Commission's work rather than ad-

vancing the interests of their respective groups.

Reputation. Individuals with confirmed criminal or unethical behavior incompatible with the duties of a Commission member cannot serve. In disputed cases, a specially established ethics body within the Commission should make the final decision.

Flexibility. The process for forming the Commission should be adaptable, allowing for adjustments in response to changing circumstances and needs.

Stability. At the same time, the Commission should have sufficient stability and continuity to ensure the effectiveness and independence of its work.

Taking into account the principles outlined above, different methods may be used to form the Commission. The final selection will depend on the specific context in which the Commission is established. However, in implementing any of the possible options, the following principles should be considered:

Inclusion of Professional Expertise.To implement this principle, it is essential to ensure the inclusion of experts with legal experience on the Commission. Given the ongoing pressure on the legal community in Russia, the restrictions on the independence of legal education domestically, the increased governmental control and limitations on the autonomy of legal associations, as well as the forced emigration of many experts, it is important to establish a flexible mechanism for verifying professional legal expertise.

Human rights organizations and independent media communities have accumulated significant expertise in the fields of human rights and politically motivated persecutions. The participation of individuals with this expertise in the work of the Commission is essential. This involvement can be structured either through the representation of organizations and groups or on an individual basis.

Administrative responsibilities within the Commission may be assigned to representatives from civil society and academia who possess the necessary management and professional experience.

Diversity of Experience. Due to the high social importance of the Commission's work, it is essential to strive for the broadest possible representation of relevant experiences. This includes gender balance and representation of both large organizations and local initiatives, including those from regions outside Moscow and St. Petersburg.

The participation of former political prisoners and representatives of persecuted groups (religious, national, etc.) is crucial to balance the Commission's priorities.

The Commission should engage both those who have emigrated and those who have continued their work within the country.

Connection with Government Bodies and Political Leaders. While the Commission should operate independently and consist largely of civil society representatives, close cooperation with government authorities and political leaders is necessary for effective work. This balance can be achieved, for example, by including representatives of relevant government agencies and key political forces, either as regular Commission members or with special status—such as non-voting or observer roles.

Moreover, the independence and effectiveness of the Commission will depend on guarantees of the safety and independence of its members. Transparency and public accountability are equally important in the Commission's operations.

Participation of International and Foreign Experts. Due to forced emigration, some Russian experts may not hold Russian citizenship by the time the Commission starts its work. It is essential to allow for the participation of international and foreign experts in the Commission. Their involvement can range from full membership to various special statuses, such as rapporteurs, consultants, or observers.

An important principle of the Commission's work should be its interaction with relevant intergovernmental and international bodies, such as committees, commissions, and special procedures of the United Nations, the Council of Europe, etc. This will help ensure compliance with international law, provide professional independent opinions, and bring in the best international practices.

Restrictions on Participation in the Commission. The following persons cannot serve on the Commission:

- Individuals involved in carrying out political repressions.

- Employees of bodies most actively engaged in such persecutions, such as the Federal Security Service of the Russian Federation (FSB), the Center for Combating Extremism of the Ministry of Internal Affairs of the Russian Federation, and the Presidential Administration's Internal Policy Directorate.

Exceptions to these restrictions may be made in extraordinary cases for individuals who have demonstrated a strong commitment to human rights. Such cases should be approved by a special body established within the Commission.

The number of former law enforcement officers in the Commission should be minimal. A maximum quota should be established for such members, along with a mandatory waiting period (a "cooling-off period") from the end of their service to the start of their work in the Commission.

Preventing Corruption in the Commission's Work. Members of the Commission should be subject to the same anti-corruption requirements as civil servants. All major decisions must be made collectively—either by the full Commission or

by the working groups it establishes. Decisions made by working groups can be challenged by any Commission member before the full Commission. If necessary, additional internal anti-corruption regulations can be adopted.

Internal Structure of the Commission. The internal structure of the Commission should be determined by its founders and participants. However, it is already clear that the Commission will need divisions or working groups responsible for specific tasks:

1. Monitoring Groups for Unusual Release Cases. The proposed concept for the release of political repression victims does not exclude the possibility of unusual situations arising due to systemic failures during its transformation. Therefore, proactive monitoring by the Commission members of such situations, such as cases of political persecution under criminal statutes, is crucial.

2. Ethics Department. A body should be established within or affiliated with the Commission to investigate ethical issues related to the Commission's work, its members, and candidates for membership, and to issue rulings on these matters.

Necessary Legislative Changes

The present project primarily concerns individuals prosecuted under articles of the Criminal Code of the Russian Federation (RF Criminal Code), as these articles often result in long-term imprisonment, and it does not aim to undertake a complete legislative reform. This document outlines the minimum changes necessary to release those who have been wrongfully convicted or have received excessively harsh sentences due to political motivations. The broader task of aligning the current legislation with the principles of constitutional and international human rights law extends beyond the Commission's mandate and should be addressed separately.

The proposed changes may include the repeal of not only specific articles of the RF Criminal Code but also relevant provisions of other laws associated with these articles or that give rise to them—such as laws related to "foreign agents." Such cases will be highlighted below.

Repeal of Articles of the Criminal Code of the Russian Federation

We find it necessary to repeal amendments made to the Criminal Code of the Russian Federation (RF Criminal Code) that are clearly politically motivated and result in the infringement of fundamental rights and freedoms of citizens to a greater extent than permitted by the Constitution and international human rights law. The repeal of such amendments is required to bring the legislation in line with the principles of the Constitution and international law. References to other laws beyond the RF Criminal Code are made only in cases where the repeal of a Criminal Code article is connected to the amendment or repeal of other legislative acts. The list of RF Criminal Code and RF Code of Administrative Offenses (RF CoAO) articles proposed for repeal includes the following:

1. **Article 280.3** of the RF Criminal Code and Article 20.3.3 of the RF CoAO ("discrediting the armed forces").

2. **Article 207.3** of the RF Criminal Code ("dissemination of false information about the armed forces").

3. **Article 330.1** of the RF Criminal Code (within the framework of repealing all legislation related to "foreign agents," including Article 19.34 of the RF CoAO).

4. **Article 284.1** of the RF Criminal Code (within the framework of repealing all legislation on "undesirable organizations," including Article 20.33 of the RF CoAO).

5. **Article 330.3** of the RF Criminal Code (within the framework of repealing all legislation on the inadmissibility of cooperation with foreign non-governmental organizations, including Article 19.34.2 of the RF CoAO).

6. **Articles 275.1, 284.2, and 284.3** of the RF Criminal Code (various forms of cooperation with foreign entities, as well as Article 20.3.4 of the RF CoAO).

7. **Article 212.1** of the RF Criminal Code (repeated violation of laws regarding public assemblies).

Several articles of the RF Criminal Code are duplicative, create ambiguous and unconstitutional grounds for prosecution, or criminalize conduct that should not be subject to criminal liability, and therefore should also be repealed:

1. **Article 280.4** of the RF Criminal Code (calls for activities against state security: this provision is redundant, as genuinely harmful calls are adequately addressed by other provisions of the RF Criminal Code).

2. **Article 282.4** of the RF Criminal Code (repeated display of prohibited symbols: the offense is insufficiently serious to warrant criminal liability, even if repeated).

3. Parts 1 and 2 of **Article 148** of the RF Criminal Code (insulting the religious feelings of believers: the vagueness of this concept in a secular state makes consistent application impossible, and offenses against sacred objects, among other things, are already covered by other provisions in both the RF Criminal Code and the RF CoAO).

4. ***Article 280.1*** of the RF Criminal Code, and **Article 20.3.2** of the RF CoAO (calls for separatism: these are already encompassed by Article 280 of the RF Criminal Code under the definition of "extremist activity." The issue of criminalizing separatism depends on whether violence is involved, which should be addressed within the framework of Article 280 of the RF Criminal Code as a whole).
5. **Article 243.4** of the RF Criminal Code (damage to memorials related to military history: these acts are already sufficiently covered by Articles 214 and 244 of the RF Criminal Code).

6. **Article 205.6** of the RF Criminal Code (failure to report terrorism:

this should not be considered a crime unless there is a clearly defined legal obligation on the part of the citizen to report such information. Moreover, in the case of terrorism, failure to report implies that a citizen must independently classify certain actions or plans as terrorist activities).

7. **Article 352.1** of the RF Criminal Code (surrender in captivity: should not be criminalized).

8. Parts 2 and 3 of **Article 208** of the RF Criminal Code (participation in illegal armed formations outside the territory of Russia: this offense should be punishable regardless of its geographic context. Moreover, the RF Criminal Code already contains provisions on mercenarism).

9. **Articles 207.1** and **207.2** of the RF Criminal Code (dissemination of "false information," aside from Article 207.3: these provisions introduce legal uncertainty and are difficult to apply without arbitrary enforcement, thereby creating the potential for political abuse).

10. **Article 283.1** of the RF Criminal Code (receipt of information constituting a state secret: this provision is redundant in light of the existing article addressing the disclosure of state secrets).

Amendments to Articles of the Criminal Code of the Russian Federation

Two proposed amendments address incorrectly defined aggravating factors found in several articles of the RF Criminal Code. We propose the following changes:

1. **Remove the use of media and the internet as aggravating factors** in all instances where they appear (except in the articles proposed for repeal above), specifically in Articles 205.2, 280, and 354.1 of the RF Criminal Code. In today's world, internet use in cases involving public statements should not be considered an aggravating factor. Registered media outlets can have both large and small audiences.

2. **Remove the motive of political and ideological hostility as an aggravating factor** in remaining articles of the RF Criminal Code that do not pertain to violence against individuals: Articles 214 and 244 (ordinary and cemetery vandalism). Acts of vandalism may constitute a form of public expression, but existing laws on public statements do not criminalize the expression of political and ideological hostility.

For the purposes of reform, the following amendments to specific articles of the RF Criminal Code are necessary:

1. **Amend Articles 275 and 276 of the RF Criminal Code** (treason and espionage). These provisions should be reverted to their state in the early 2000s: espionage, disclosure of state secrets, or other assistance to foreign powers in hostile activities against the country's external security and the collection of classified information for such purposes.

2. **Limit the scope of Article 280 of the RF Criminal Code** (calls for extremist activity) to cover only calls for violent actions. This can either be added to the wording of Article 280 of the RF Criminal Code or, preferably, clarified in the definition of extremist activity in the relevant law. The question of whether this law is necessary, and the potential legislative changes if its existence is deemed inappropriate, fall outside the scope of this project.

3. **Narrow the scope of Article 282 of the RF Criminal Code** (incitement of hatred, etc.). The element of "degradation of dignity" based on group characteristics should be removed, as it is more appropriate for civil suits and does not belong in the Criminal Code. Furthermore, the concept of a "social group" should be excluded due to its extreme vagueness. "Social group" should also be removed from Article 20.3.1 of the RF CoAO, which mirrors Article 282 of the RF Criminal Code. Further discussion is required on whether to also remove "degradation of dignity" and other elements from the RF CoAO.

4. **Amend Article 213 of the RF Criminal Code** (hooliganism). The current wording of the article is flawed, as it criminalizes even minor public order violations when committed out of hatred. The basic composition of the article should necessarily include an element of violence or threats of violence, with hatred as one of the aggravating factors.

5. **Amend Article 354.1 of the RF Criminal Code** (Rehabilitation of Nazism). The current scope of the article has significantly deviated from its original intent and is filled with provisions that excessively restrict freedom of expression. The criminalization of historical debate, in general, is a contentious issue, though there is extensive precedent for it in democratic countries. Therefore, it is proposed only to remove clearly excessive elements from the article (while leaving other aspects open for future discussion):

    a. In Part 1, the defamation of the USSR's actions during World War II, which constitutes an unacceptable restriction on freedom of speech, and veterans, which

could be subject to civil claims or administrative penalties if defamation is decriminalized, should be removed.

b. In Part 2, subparagraph "g" ("fabrication of evidence for accusations") should be removed, as it is unclear in this context and unnecessary.

c. Parts 3 and 4 of Article 354.1 should be repealed. These parts concern the desecration of symbols and dates of military glory. Russia lacks an official list of symbols of military glory, and though a list of dates exists, it is not widely known. These parts address the "insult to the memory of defenders of the Fatherland or the degradation of veterans' honor and dignity," and such actions should be the subject of civil claims. The broader question of what sanctions are appropriate in a democratic society for the desecration of significant public symbols—where no serious damage to property, such as vandalism, occurs—should be resolved in the course of further legislative reform. On the other hand, the repeal of Parts 3 and 4 of Article 354.1 of the RF Criminal Code may hypothetically result in the release of individuals responsible for damaging real memorials, graves, etc.—though such cases are likely rare.

The criminalization of involvement in communities deemed extremist or terrorist under Russian law requires careful discussion. This issue is complex and affects a significant number of people convicted under the relevant articles of the RF Criminal Code. Therefore, we propose the following approach:

1. **Amend Articles 282.1 and 205.4** of the RF Criminal Code (participation in extremist or terrorist communities). These articles address participation in groups formed to commit extremist or terrorist crimes, presuming complicity or the willingness to participate in at least one such crime. Although these charges are sometimes the sole accusation in practice, complicity or willingness to participate are essentially secondary to the primary offense. Consequently, the penalties for these articles should be significantly reduced, reclassifying them as lesser offenses.
2. **Amend Articles 282.2 and 205.5** of the RF Criminal Code (participation in prohibited extremist or terrorist organizations). These articles criminalize the mere fact of participation in banned extremist or terrorist organizations, regardless of the nature of the involvement. Additionally, these articles criminalize non-compliance with court rulings, which should not be considered a serious crime. Therefore, these provisions should either be reclassified as lesser offenses or, preferably, become aggravating factors for

Articles 282.1 and 205.4 of the RF Criminal Code, respectively.

In relation to individuals already convicted under Articles 282.2 and 205.5 of the RF Criminal Code, such reform should reduce penalties under these articles to 1 and 2 years of imprisonment, respectively, if the original sentence was harsher. This does not apply to participants in organizations wrongfully banned—prosecution of such individuals will be terminated upon the repeal of decisions banning those organizations, as outlined in the section "Key Legal Decisions on Significant Legal Facts."

The proposed measures do not pertain to additional charges against these individuals under other articles not subject to decriminalization, such as aiding terrorism, violent crimes, etc. These charges may only be reviewed by the courts on a case-by-case basis.

Other Amendments

It appears necessary to introduce an amendment to the legislation not directly related to the RF Criminal Code, specifically the complete removal of the concept of "extremist material" from the legislation. This is required for at least two key reasons:

1. The size and low quality of the list of such materials inevitably lead to legal uncertainty and make it difficult for citizens to discern what may subject them to liability.

2. The existence of such a prohibition has proven ineffective in preventing the widespread uploading of such materials to the internet, which undermines the credibility of enforcement.

In this regard, Article 20.29 of the RF Code of Administrative Offenses (Production and Distribution of Extremist Materials) should be repealed, as well as the relevant provisions in the Federal Law "On Countering Extremist Activity" (Federal Law No. 114-FZ of July 25, 2002) and other regulatory acts.

The proposed legislative changes will have significant practical implications for the implementation of this project. Already issued decisions banning "extremist materials" will become invalid, leading to the reversal of court rulings based on these decisions, including bans on various organizations.

Key Legal Decisions Regarding Significant Legal Facts

A substantial number of politically motivated convictions are based on earlier erroneous court rulings. These decisions established certain incorrect facts as legal truths, relying on false information or prior judicial rulings, including those from criminal cases.

Such decisions must be reviewed as quickly as possible by the Supreme Court of the Russian Federation, following an appeal by an authorized body such as the Commission, the Prosecutor General, or another competent authority, depending on the established procedure for implementing the proposed project. The priority for review should be determined so that the "legal facts" resulting in the largest number of prison sentences are addressed first.

This will lead to the prompt annulment of many unjust convictions under articles that may remain in the Criminal Code even after the aforementioned reforms are implemented.

Some examples include:

1. **Unlawful rulings recognizing organizations as extremist or terrorist**, such as the ban on the "International LGBT Movement." Once the concept of "extremist materials" is removed from the legislation, the Supreme Court will also find it straightforward to overturn all decisions banning Jehovah's Witnesses organizations, as those decisions were primarily based on accusations related to the use of such materials. This will result in the release of many individuals.

2. **The case under Article 282.1 of the RF Criminal Code**, regarding the "extremist community" of Alexei Navalny's supporters, for which several convictions have already been handed down. The evidence presented to the court to support the existence of such an "extremist community" was clearly unconvincing. The Supreme Court could overturn the rulings that established the existence of such an "extremist

community," which would lead to the cessation of prosecutions of all its "members."

3. **Convictions of members of the party "Hizb ut-Tahrir al-Islami" under Article 278 of the RF Criminal Code** (attempted state coup). The frequent claim used in the convictions of individuals accused of participating in this party—that they were preparing a coup d'état—is based solely on the party's desire to establish a form of government radically different from Russia's constitutional order. If the Supreme Court of the Russian Federation were to rule that such justifications are inadmissible, it would open the door for the review of all cases under Article 278 of the RF Criminal Code concerning these individuals.

This list of necessary Supreme Court decisions can be expanded. Its compilation will be one of the stages of implementing the proposed project.

Amnesty

The complete or partial decriminalization of certain offenses will not solve all issues. Some articles in the Criminal Code of the Russian Federation (CC RF) remain that, while generally meeting European legislative standards, have resulted in convictions based on insufficient grounds. For instance, Article 205.2 of the CC RF, which addresses calls for and justifications of terrorism, falls into this category.

Since 2022, this article has been the most frequently used basis for prosecuting public statements. In most cases, these statements, if not entirely harmless, do not pose a sufficient danger to warrant criminal proceedings. A comprehensive review of all such cases is advisable, applying criteria for evaluating the societal danger of statements, as adopted in democratic countries and approved by the Supreme Court of the Russian Federation—the so-called "six-part test." However, such a process would be protracted, during which those convicted would remain imprisoned.

Accordingly, it is proposed to grant amnesty for certain non-decriminalized offenses under the CC RF in cases where, in our assessment, the majority of acts resulting in convictions were initially not of substantial societal danger or have lost any such danger due to changes in the political situation, namely the end of the war and a transformation in the political regime. This condition is essential to the implementation of our entire initiative. The proposed amnesty does not preclude the possibility of later case reviews.

As this amnesty represents a humanitarian act restoring full civil legal capacity, it is important that it includes the expungement of convictions and the repeal or prohibition of administrative oversight.

The amnesty is proposed to cover several categories applicable to the convicted, the accused, and acts committed before a specified point in time: the end of the war or a specific stage in the transformation of the political regime.

Categories of Acts Subject to Amnesty:

1. **Acts qualifying under CC RF articles relating to public statements**, except in cases where punishment has been waived, and convictions expunged due to the decriminalization of certain offenses, specifically under Articles 205.2, 280, 282, 354.1, and part 3 of Article 212 of the CC RF.

2. **Acts involving terrorist activities** (Articles 205–205.5 CC RF) **or sabotage** (Articles 281–282.3 CC RF),

treason (Article 275 CC RF), **and espionage** (Article 276 CC RF), in cases where these acts, per convictions, directly related to the war with Ukraine and did not involve episodes of violence against individuals, except for lawful combatant actions or intentions to commit such violence. This will apply, for example, to most "anti-war arsonists" and those who planned to fight on the opposing side.

3. **Participation or intent to participate in combat operations on any side** will not be criminalized. This also applies to Russian citizens who fought on the Ukrainian side. Such individuals, as well as those who prepared for or attempted to join combat operations on the Ukrainian side, are subject to amnesty. However, war crimes and crimes against humanity must be investigated and prosecuted in all cases. The amnesty does not extend to individuals accused of such crimes. The fate of this category of individuals is addressed in the section "Special Issues Concerning Ukrainian Citizens and Occupied Territories."

4. **Amnesty is possible for other offenses under the CC RF used for political persecution** if the societal danger of the offense is minimal. This category may include part 1 of Article 318 of the CC RF (use of violence against government representatives that does not endanger life or health).

It is anticipated that some individuals who may continue to pose a societal risk under new conditions may be released as a result of this amnesty. Nevertheless, the public benefit derived from the release of victims of political repression far outweighs the potential risks associated with the release of a small number of justifiably convicted individuals. These risks should be minimized by law enforcement agencies.

Individual Case Review

Even after the application of decriminalization, amnesty, and the mass review of criminal cases based on erroneous decisions—primarily involving the banning of organizations—there will still remain individuals in custody whose cases were fully or partially fabricated for political reasons. These individuals were convicted under a wide range of articles of the RF Criminal Code, such as fraud, drug or weapons possession, and so on.[2]

Convicted individuals should have the opportunity to quickly petition for clemency or appeal their convictions, regardless of missed procedural deadlines. Clemency does not imply an admission of guilt and allows for the possibility of appealing the conviction.

The Commission is tasked with facilitating the prompt consideration of such petitions and appeals, as well as preventing abuses of this procedure by those who were not politically persecuted. To this end, anyone wishing to petition for clemency or appeal a conviction should submit an informal application to the Commission, stating the grounds for believing that their persecution was politically motivated and attaching any necessary materials.

In certain cases, the Commission may itself suggest that convicted individuals file such petitions. Furthermore, to expedite and increase the efficiency of the process, civil society organizations and other institutions may be involved in disseminating information, assisting with the preparation of petitions, and gathering information on the political motivations behind individual criminal prosecutions. The Commission may establish special working groups, hold informational seminars, and organize roundtables to identify victims of political persecution among those convicted under common criminal charges.

In each case, the Commission must issue a conclusion on whether political motivation was present in the prosecution and whether it had a decisive or significant influence on the conviction. For each case in which the Commission recognizes political motivation, a curator from among the Commission members will be appointed to monitor and oversee the timely handling of the case and facilitate necessary communication.

When a petition for clemency is submitted, the Commission's conclusion will be forwarded to the decision-making authority, which must take it into account.

2. *Examples of such convictions can be found in the open database of politically motivated criminal prosecutions OVD-info, viewing it by articles of the Criminal Code: https://airtable.com/appM0RUv3AZgjWJXX/shrPMRq1M0KFe5MNS/tbldEW4S6zyMPb8MZ*

To resolve disagreements between the Commission and the clemency authority, dialogue groups may be formed to mediate specific cases or groups of cases where disputes have arisen.

In cases where a petition for case review is filed, the Commission will send its conclusion to the relevant court regarding the sufficiency or insufficiency of grounds for reconsidering the case. A positive conclusion from the Commission will constitute sufficient grounds for a review, regardless of expired procedural deadlines. Following this, the Commission may, at its discretion, act on the defense side with the convicted individual or as an expert, depending on the circumstances of the case.

Special Issues Concerning Ukrainian Citizens and Occupied Territories

The annexation of Crimea in 2014, Russia's hybrid war in eastern Ukraine from 2014 to 2022, the full-scale invasion in 2022, and the subsequent annexation of four regions of Ukraine have had severe consequences for the rights and freedoms of Ukrainian citizens living in the occupied territories and under Russia's effective jurisdiction.

Occupation measures, filtration policies, and mass persecution of Ukrainian citizens suspected of pro-Ukrainian sympathies or activities have led to the detention of thousands of Ukrainian civilians in Russian prisons. As of June 2024, conservative estimates indicate that over 7,000 civilian non-combatants are detained. No more than 10% of this number are involved in formal criminal proceedings, while the rest remain outside the legal framework, held in secret prisons without access to the outside world or basic human rights protections. Those processed through official criminal mechanisms are sentenced to long prison terms.

Many captured combatants are also subject to criminal prosecution. Anti-terrorism and anti-extremism laws are used against members of certain volunteer battalions, criminalizing them for merely participating in armed conflict. Foreign nationals are prosecuted under Russian law for mercenarism.

In other cases, although combatants are prosecuted under substantive and event-specific charges, the trials are largely show trials and have little to do with real justice. Those prosecuted are held in horrific conditions, subjected to severe torture, and denied effective legal defense. The courts, completely controlled by the executive branch, fail to meet the requirements of a fair trial and often conduct proceedings in closed sessions without public participation.

Criminal prosecution also extends to categories such as saboteurs, spies, and "volunteers." Saboteurs and spies, though not regular military personnel, carry out special missions on behalf of

Ukraine's military. "Volunteers" refers to civilians who, of their own initiative, undertook active measures to assist Ukraine, such as passing on information or organizing direct actions.

The investigation and trial processes for these categories suffer from the same deficiencies as those for combatants. Additionally, it should be considered that although the actions attributed to these individuals may have violated Russian law at the time, they did not breach Ukrainian law and were directly related to Russia's criminal act of aggression against Ukraine.

Ukrainian citizens are also subject to criminal prosecution for exercising their fundamental rights and freedoms, particularly the rights to assembly and free expression. Furthermore, a significant number of Ukrainian citizens who were already in detention at the time of occupation—either in pre-trial detention or serving criminal sentences—have faced continued prosecution.

To address these serious issues and their consequences, the following measures are necessary:

1. **Release and repatriation of civilians.** All unlawfully detained Ukrainian civilians without a legally established status must be released and repatriated.

2. **Dismantling of filtration camps and secret prisons.** The system of filtration camps and secret prisons for Ukrainian citizens within the Russian penal system must be dismantled.

3. **Amnesty and repatriation.** All Ukrainian civilians convicted of non-violent offenses or offenses without victims should be released through an amnesty decree and repatriated to their home country.

4. **Transfer of individuals accused of violent crimes.** It is essential to reach an agreement with Ukraine to resolve the issue of transferring Ukrainian citizens and stateless persons who lived in Ukraine within its 1991 borders and were prosecuted for violent crimes or other offenses with victims, or those whose actions were directed against Russian interests, according to court rulings or investigative documents. This provision should also apply to third-country nationals captured in Ukraine, as well as to individuals who were serving sentences at the time they came under Russian jurisdiction.

5. **Cessation of criminal cases against volunteers.** Criminal cases against Ukrainian citizens and third-country nationals prosecuted solely for participating in volunteer or other armed or unarmed formations in Ukraine should be terminated through an amnesty.

6. **Exchange of military and civilian detainees.** It is proposed to con-

duct an exchange on an "all for all" basis, involving military personnel accused of committing war crimes and civilians whose actions could be classified as war crimes if they were military personnel. Each side should determine the further criminal prosecution of these individuals based on the materials gathered in the criminal investigations.

Special Issues Concerning the Application of Psychiatric Treatment

Individuals with a history of psychiatric disorders may be subjected to compulsory medical measures (hereinafter referred to as CMMs) in politically motivated cases. The cases of individuals subjected to CMMs as part of politically motivated persecution must be reviewed. The rehabilitation process for these individuals will differ from the process applicable to other political prisoners.

CMMs are ordered by a court in the context of a criminal case, but this does not result in a conviction or criminal record. When ordering CMMs, the court relies on the findings of a forensic psychiatric examination. Accordingly, the modification or termination of CMMs is also conducted by a court based on the conclusions of psychiatrists.

Given that CMMs are rarely applied to individuals who are entirely mentally healthy and pose no danger to themselves or others, the following procedure is proposed for the review of CMMs imposed in politically motivated cases and for the rehabilitation of the affected individuals:

1. **Creation of a registry** of individuals subjected to CMMs in politically motivated cases.

2. **Urgent unscheduled examinations.** HInitiation of urgent, unscheduled examinations of the relevant patients, carried out at the request of special regional rehabilitation commissions or criminal-executive inspections.

3. **Independent psychiatric evaluations.** Provision of legal representation for such individuals by attorneys specializing in CMMs to represent them in the relevant court proceedings.

4. **Legal assistance.** Provision of legal representation for such individuals by attorneys specializing in CMMs to represent them in the relevant court proceedings.

5. **Judicial review of CMMs.** Immediate judicial review of CMMs upon receipt of the medical examination findings.

6. **Termination or modification of CMMs** based on an objective assessment of the patient's condition.

7. **Compensation for unlawful application of CMMs.** The court should consider awarding financial compensation for lost income and compensation for moral damage to individuals who were unjustifiably subjected to CMMs.

In addition to CMMs, there are cases of "involuntary psychiatric measures," meaning treatment administered without the individual's consent and without a court order. The rights of individuals who suffered such actions due to political motives must be restored, these actions should be declared unlawful, and the victims should receive compensation. This rehabilitation may be initiated by the victim's request.

Restoration of Rights

The set of rights of individuals subjected to politically motivated imprisonment, whose rights were violated by such persecution, is extensive. The restoration of all rights for those eligible for release is only possible through the application of both general and individualized measures. This will require efforts from law enforcement authorities as well as active participation by the individuals whose rights were violated.

The restoration of rights violated by politically motivated imprisonment involves the use of restitution, compensation, and rehabilitation mechanisms. The balance of general and individual measures, actions taken by the state, and actions undertaken by the individual whose rights were violated, as well as the specific mechanisms used to restore violated rights, will significantly depend on the category to which the specific case belongs and the process of release that will be applied to it.

Individuals eligible for unconditional rehabilitation are those whose release is carried out in connection with:

- The repeal of legal provisions under which they were deprived of their liberty;
- The annulment of court decisions recognizing organizations and associations as extremist or terrorist;
- The establishment of a new mandatory interpretation of the law for courts;
- The annulment of the sentence imposed on them.

It is necessary to legislatively establish the removal of all restrictions imposed on these individuals by court sentences, as well as the elimination of all legal consequences arising from their criminal prosecution, conviction, and imprisonment.

3. *Restitution is the restoration of a violated right or the restoration of the situation that existed before the violation. This mode of restoration is usually used in cases where it is possible to return to the parties everything that they had before their rights were violated.*
4. *Compensation is a form of reparation for the harm caused as a result of the violation of a right. Compensation may include the payment of a sum of money, damages, or other forms of compensation for harm.*
5. *Rehabilitation is the restoration of a right or position of the injured party in society after its violation. This mode of restoration of violated rights aims to restore reputation, dignity, or other social aspects that were damaged as a result of the violation. Rehabilitation may include public acknowledgement of the wrongfulness of the persecution, an apology, and other actions aimed at restoring the social status of the injured party.*

Measures for Restoring Rights Violated by Legal Restrictions Imposed on Individuals Subject to Criminal Prosecution

Current legislation imposes several restrictions on individuals convicted of serious and particularly serious crimes, as well as offenses related to terrorism and extremism. These restrictions apply even before a trial and are not fully lifted upon the expiration of the conviction. While certain restrictions may be appropriate if ordered by a court, the majority of the current restrictions are clearly excessive and should be repealed:

1. **Repeal of restrictions related to inclusion in the Rosfinmonitoring registry.** All restrictions associated with the inclusion of individuals in the "terrorist and extremist registry" of Rosfinmonitoring, as specified in the laws "On the National Payment System" and "On Combating the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism," should be repealed. Specifically:
   a. Restriction of access to bank accounts, limiting withdrawals to 10,000 rubles/month (except pensions and scholarships) per family member, with additional amounts only accessible with special permission from Rosfinmonitoring;
   b. Prohibition on being a founder or member/participant of any public or religious organizations, even unregistered ones;
   c. Prohibition on establishing media outlets;
   d. Professional bans in certain fields: aviation, nuclear energy, as train operators, or in the maritime industry, due to the prohibition on obtaining a seafarer's identity document; prohibition on engaging in crowdfunding.

   The Rosfinmonitoring list should remain as a necessary and widely accepted mechanism for monitoring financial activity. However, restrictions on account usage and other limitations should be imposed by a court in individual cases, where necessary.

2. **Unblocking of accounts.** The Interdepartmental Commission for Combating Terrorism Financing should unblock the accounts of individuals released on rehabilitating grounds. For those released under amnesty, the unblocking of accounts should be included in the amnesty act.

3. **Restoration of passive voting rights.** The restriction on passive voting rights, currently imposed by law, should be lifted for all individuals convicted of extremist offenses for a five-year period from the day their conviction is cleared or extinguished. Currently, those convicted

of serious and particularly serious crimes are deprived of this right for 10 and 15 years, respectively, after their conviction is cleared.

If the release occurs on rehabilitating grounds, including decriminalization and revision of the RF Criminal Code article, the restriction is automatically lifted. For those released under amnesty, the amnesty act should include the removal of all listed restrictions.

Future discussion of excess restrictions: The abolition of passive voting rights as an excessive measure should be considered, along with the removal of other restrictions for individuals convicted under extremist and terrorist articles.

4. **Lifting of administrative supervision.** Administrative supervision should be lifted for those convicted of serious and particularly serious crimes who are released under the proposed project.

5. **Restoration of titles and honors.** Special, military, or honorary titles, class ranks, and state awards should be reinstated for individuals convicted of serious or particularly serious crimes, as well as certain articles of the RF Criminal Code, who are rehabilitated under this project. Those released under amnesty may apply for a review of the decision to strip them of titles and awards.

6. **Compensation for confiscated property.** Individuals released on rehabilitating grounds should be compensated for confiscated property, including evidence, with consideration for moral damage caused. Those released under amnesty may apply individually for a review of confiscation decisions.

7. **Restoration of citizenship.** Individuals released under the proposed reforms who were stripped of their citizenship should have their status as citizens restored. In the future, the complete abolition of this form of additional punishment should be discussed.

8. **Unblocking of online content.** Following the annulment of convictions for certain statements and the lifting of bans on organizations, the Prosecutor General's Office should instruct Roskomnadzor to unblock the corresponding online content. This will help restore the rights of the convicted authors of such materials.

9. **Repeal of excessive restrictions.** Any future excessive restrictions of this kind should be repealed. For example, the restriction on distributing books and "extremist materials" included in the relevant list, as proposed in the amendments to the law "On Librarianship," adopted in the first reading in June 2024.

Property Compensation

The decision regarding the amount of property compensation for individuals who have been rehabilitated or whose actions have been decriminalized is made by the court. Compensation consists of two parts:

1. **Compensation for Damages, which includes:**

    a. **Lost income**, such as earnings the individual would have otherwise received (e.g., average income over the three years preceding detention) over the three years preceding detention or the loss of the opportunity to earn income for other reasons related to the persecution. If income for the past three years cannot be confirmed, compensation may be calculated based on the minimum wage as of the date the compensation is paid. Compensation may also be claimed by individuals not held in custody but who suffered losses due to the persecution, such as being included in the Rosfinmonitoring list of extremists and terrorists.

    b. **Actual damages**, i.e., expenses incurred in connection with the persecution, such as legal fees, medical expenses, and other costs supported by relevant documentation.

2. **Compensation for moral harm.** When determining the amount of compensation, the court must consider all circumstances of the persecution and its impact on the individual subjected to politically motivated persecution, including but not limited to:

    a. The degree of emotional and physical suffering of the individual;

    b. Illnesses developed or worsened during the period of imprisonment;

    c. The death of close relatives during the imprisonment;

    d. Disciplinary measures applied during detention;

    e. Types of correctional facilities where the individual was held;

    f. Conditions of detention and the pressure exerted on the prisoner;

    g. Reputational damage due to persecution and media coverage;

    h. Loss of social status (employment, education, business, property, etc.) due to the persecution;

    i. Loss of skills and abilities due to imprisonment.

Compensation, particularly for moral harm, requires gathering evidence, involving witnesses, requesting documents, and potentially lengthy consideration of this evidence by the court. Therefore, the decision on compensation should be made separately, after the political prisoner's release.

The Commission may propose a legislative initiative to establish a minimum amount of compensation for moral harm for political prisoners. The determination of such a minimum compensation amount is a political decision.

Measures to Restore Justice for Ukrainian Citizens

Guarantee of the right to compensation. Ukrainian citizens, as well as other individuals residing in Ukraine, must be guaranteed an unconditional right to compensation for abduction, unlawful detention, torture, the deliberate killing of non-combatants, and other crimes committed against them in the context of Russia's aggression against Ukraine.

Investigation of crimes. All instances of crimes committed against Ukrainian citizens by representatives of Russia after February 20, 2014, must be thoroughly investigated. The perpetrators, regardless of their rank or social status, must be held accountable to ensure justice is served.

International cooperation. During these investigations, various forms of active cooperation with competent authorities in Ukraine, international organizations, and civil society organizations in Ukraine and Russia must be ensured.

Public access to information. Russian, Ukrainian, and international publics must have broad access to the results of these investigations and other information regarding crimes committed by the Russian state against the Ukrainian civilian population since February 20, 2014.

Extradition of Russian citizens. National legislation should provide for the possibility of extraditing Russian citizens for criminal prosecution, subject to the existence of a relevant treaty between the countries or the participation in a tribunal empowered to administer criminal justice.

ПЕРВЫМ РЕЙСОМ

“By the First Flight” is a community of Russians who left the country because of their anti-war stance and political persecution and are ready to return home after the fall of the Putin’s regime to build democratic Russia.

The project is being created by the Ark, which has already united thousands of Russians all around the world, with the support of the Anti-War Committee and the participation of partners’ initiatives.