



Failure to carry out an effective investigation into Aleksey Navalnyy's alleged poisoning with a chemical nerve agent violated the Convention

In today's **Chamber** judgment¹ in the case of [Navalnyy v. Russia \(no. 3\)](#) (application no. 36418/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life/investigation) – procedural aspect – of the European Convention on Human Rights.

The case concerned the refusal of the Russian authorities to open criminal proceedings into Aleksey Navalnyy's alleged poisoning in August 2020 which led to his falling into a coma and being put on life support. Forensic examinations carried out in Russia concluded that no potent, poisonous, narcotic or psychotropic substances had been found on samples taken from him or on other items submitted for analysis. After he was flown to Germany for medical treatment, the German Government announced that the results of tests they had carried out revealed definite proof of the presence of a chemical nerve agent from the Novichok group of substances prohibited under the Chemical Weapons Convention.

The Court found in particular that the inquiry conducted by the Russian authorities had not been open to scrutiny and had made no allowance for the victim's right to participate in the proceedings. Furthermore, it had failed to explore the allegations of a possible political motive for the attempted murder, as well as possible involvement of State agents, and had not followed up on the reported use of a substance identified as a chemical weapon prohibited by international and domestic law. As such, the inquiry had not been capable of leading to the establishment of the relevant facts and the identification and, if appropriate, punishment of those responsible. It therefore could not be considered adequate.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Aleksey Anatolyevich Navalnyy, is a Russian national who was born in 1976 and is currently detained in high-security correctional facility IK-6 in Melekhovo, Vladimir Region (Russia). He is an opposition activist.

While flying back to Moscow on 20 August 2020 with one of his associates after a work trip to Tomsk, Mr Navalnyy suddenly fell ill and lost consciousness. The flight crew had to make an emergency landing in Omsk, from where he was transported, in a coma, to a local hospital and put on life support.

His work associate and his representative immediately reported the incident to the authorities – to the Investigative Committee of the Russian Federation and to the Sovetskiy District Department of the Interior of Tomsk – and requested a criminal investigation into what they considered to be an assassination attempt through poisoning because of his well-known political activity. The following day, the Forensic Centre of the Omsk Regional Department of the Interior concluded that no potent,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

poisonous, narcotic or psychotropic substances had been found on the cotton swab used to take samples from Mr Navalnyy's palms or nail clippings.

On 21 August 2020, the Court granted a request for an urgent [interim measure](#) lodged under [Rule 39](#) by Mr Navalnyy's wife, indicating to the Government that his family and doctors should be ensured access to him and that his condition be assessed with a view to transferring him to Germany for treatment. The following day, he was flown to Germany in a private medical plane and taken to the Charité Hospital in Berlin and the interim measure was lifted. He remained in intensive care for several weeks, initially in a medically induced coma, followed by several months of rehabilitation.

According to the Russian Government, further physical and toxicology examinations detected no poisonous substances in or on items that had been submitted for analysis, including the clothes he had been wearing. However, on 2 September 2020, the German Government announced that the results of the toxicology tests they had carried out when he arrived in Berlin had revealed unequivocal proof of the presence of a chemical nerve agent from the Novichok group of substances prohibited under the Chemical Weapons Convention. Those results were later confirmed independently by three specialist laboratories in France and Sweden and also by the Organisation for the Prohibition of Chemical Weapons (OPCW).

Referring to the OPCW's findings, Mr Navalnyy's representative asked the Federal Security Service (FSS) of the Russian Federation to institute criminal proceedings under an article of the Criminal Code applicable to the development, production, stockpiling, acquisition or sale of weapons of mass destruction. That request was eventually dismissed: the reason given was that another law-enforcement agency was already checking the allegations.

In the meantime, Mr Navalnyy's associate and representative challenged the lack of action of the authorities, specifying that Article 144 § 1 of the Code of Criminal Procedure required the investigating authorities to take one of three decisions in response to their criminal complaints, namely to: (i) open a criminal investigation, (ii) refuse to open a criminal investigation or (iii) transfer the request to another investigating or judicial body with jurisdiction within three days of receipt. One of the claims was dismissed on the grounds that the request for a criminal investigation had been forwarded to the West Siberian Transport Investigation Department of the Investigative Committee. Others were dismissed on the basis that no evidence had been found that the investigating bodies had been inactive or had breached the statutory time-limits.

From autumn 2020 to January 2021, the Transport Division of the Tomsk Department of the Interior ("the Tomsk transport police") took at least four decisions not to open a criminal investigation due to lack of objective information suggesting that any intentional criminal acts had been committed, but each time the deputy chief investigator reversed the decision and extended the pre-investigation inquiry by a further 30 days. Mr Navalnyy's associate complained that the practice of terminating the inquiry and immediately reopening it amounted to extending it indefinitely. He also pointed out that the inquiry was not an appropriate procedure as it did not afford Mr Navalnyy the same procedural guarantees as a criminal investigation, in which he would have victim status and would be able to participate in the criminal prosecution, give statements, gather and submit evidence, request procedural steps or decisions, make use of procedural rights related to the carrying out of forensic examinations and receive copies of procedural documents affecting his interests. That appeal was dismissed on the grounds that the inquiry was not over.

There then followed a pattern of repeated complaints of inaction regarding the Tomsk transport police and the West Siberian Transport Investigation Department of the Investigative Committee and their failure to open a criminal investigation, interspersed with dismissals, appeals and renewed complaints. Systematic reasons for dismissal included finding that the inquiry was still ongoing and there was no obligation to give access to the inquiry file or return seized belongings before the final decision in the inquiry.

In the midst of that, journalists from an investigative journalism collective, Bellingcat, and from an online newspaper *The Insider*, who were investigating the alleged poisoning, revealed in December 2020, that Mr Navalnyy had been under FSS surveillance since 2017, and that they had identified the agents involved who happened to be specialists in toxic chemical substances. Mr Navalnyy's representative subsequently lodged requests with the Military Investigation Department of the Investigation Committee, requesting a criminal investigation into the applicant's alleged poisoning by security agents. The reply came that the requests contained no specific facts that would warrant investigation. Several challenges to that decision were dismissed, as were subsequent appeals. A request for the Tomsk transport police to transfer the inquiry file to the Main Military Investigation Department of the Interior, which had jurisdiction as the case reportedly involved FSS agents, was refused on 20 January 2021 as unsubstantiated.

On 10 February 2021 the investigator of the Tomsk transport police issued a decision not to open a criminal investigation. A subsequent challenge by Mr Navalnyy's associate was dismissed in April 2021, finding that the diagnosis of poisoning had not been confirmed by the forensic medical experts and that the presence of a toxic substance had not been confirmed by the inquiry. Material from the German, Swedish and French laboratory tests had not been made available to the inquiry bodies following the request for legal assistance and it had not been possible to question the German doctors who had treated the applicant or to obtain his medical records from the hospital in Berlin. Having come to the conclusion that the applicant had objected to making that information available for the inquiry, the Russian court found that the closure of the inquiry was lawful. At the same time, it still dismissed a request to retrieve Mr Navalnyy's belongings because the decision not to institute criminal proceedings was not final. The court acting in the final instance upheld the refusal to return the belongings.

A further appeal reiterating the obligation to investigate the poisoning once it had been established that chemical substances prohibited under the Chemical Weapons Convention (CWC) had been used and repeating that criminal proceedings were necessary to set the framework for an effective investigation was dismissed, as was an appeal against that decision.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy) of the European Convention, the applicant complained about the Russian authorities' refusal to institute criminal proceedings in respect of his attempted murder and their failure to conduct an effective investigation. He alleged that he had been poisoned with a chemical agent to which only the State secret services had had access.

The application was lodged with the European Court of Human Rights on 21 August 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

Jolien **Schukking** (the Netherlands), *President*,
Pere **Pastor Vilanova** (Andorra),
Yonko **Grozev** (Bulgaria),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 2

The Court found that there had indeed been a serious and imminent risk to Mr Navalnyy's life in suspicious circumstances, thereby triggering the State's obligation under Article 2 to carry out an effective investigation.

The Russian Government argued that there had been an effective investigation in the case in the form of a pre-investigation inquiry, which they considered to have been thorough and comprehensive, since a considerable number of steps had been taken to verify the origin of the incident, such as the questioning of numerous witnesses and multiple forensic tests. The Court reiterated from the outset that in the context of the Russian legal system, a "pre-investigation inquiry" alone could not lead to the punishment of those responsible, since the opening of a criminal case and a criminal investigation were prerequisites for bringing charges. The Court regarded such a legal framework as inadequate. In particular, it deemed it unsuitable for establishing facts, for verifying conflicting versions of events, and for gathering evidence admissible in criminal proceedings, and it did not ensure the applicant's right to effective participation in proceedings as they could not be granted "victim" status. Also, as no documentation relating to the investigative steps had been submitted to the Court, it was not able to check the content or validity of them, or to ascertain whether the authorities had drawn reasonable conclusions. Moreover, there was nothing to show that those steps had been scrutinised by the national courts.

In particular, the Government had relied essentially on three forensic reports which stated that no traces of poisonous and other substances had been found in the swabs from Mr Navalnyy's palms and nail clippings or on his clothes and other items submitted for analysis. Without access to those reports, it was impossible for the Court to identify the scope of the forensic examinations or to determine whether any findings had been omitted from the Government's submissions. However, the Court noted that the authorities had held on to Mr Navalnyy's clothes without a proper procedural decision to that effect and without an explanation of why they would not release them.

Moreover, Mr Navalnyy had been unable to obtain the procedural status of a victim, which had deprived him of virtually any opportunity to participate in the proceedings, to appoint experts, ask questions or be kept informed of progress. It followed that the inquiry had not been open to public scrutiny and had made no allowance for the victim's right to participate in the proceedings.

The Court observed that Mr Navalnyy was a prominent opposition figure whose activism, particularly in the fight against corruption, had resulted in his multiple arrests, detentions, criminal convictions and ill-treatment, and that in several of his cases before the Court he had made a well-founded claim of persecution for political reasons. It also noted that there had already been reports of repeated threats and attacks against him. Therefore, the Court considered that the political motive should have been an essential element of the investigation. However, not only had the inquiry failed to address the possible link between the incident and Mr Navalnyy's public activities, but it had not seriously pursued the version of premeditated assault, even though no natural causes had been identified by any of the medical or forensic examinations.

As evidence obtained with the assistance of the Organisation for the Prohibition of Chemical Weapons (OPCW) indicated that Mr Navalnyy had been poisoned with a chemical nerve agent from the Novichok group, Russia, as a party to the Chemical Weapons Convention (CWC), had been under an obligation to open a criminal investigation into any activities breaching the prohibition of chemical weapons. That obligation even figured as a specific provision in the Criminal Code. Under international and domestic law, it had been required to investigate the origin of the prohibited substance and find out who was responsible for poisoning the applicant with it.

The Court noted that Russia's international obligations in relation to an investigation in this case had been brought to its attention in the special reports of the PACE and UN *rappoteurs* drawn up to "contribute to shedding light on the circumstances of Mr Navalny's poisoning" but the Russian authorities did not appear to have paid heed to those statements.

The Court was unable to check the validity of the Russian Government's argument that the investigation could not be opened because of a lack of cooperation on the part of the German authorities, as no relevant material had been disclosed to the Court. In any event, that was no reason not to open a criminal investigation. Also the OPCW's summary report of 6 October 2020 confirming the use of chemical weapons had been shared with Russia and made public at Germany's request. Coming as it did from an independent body with a mandate recognised by Russia, the report should have been sufficient to initiate a domestic investigation.

The Court felt that the fact that the Russian authorities had not been able to question Mr Navalny, his wife and other people abroad was no reason for not opening a criminal investigation. Mr Navalny, his family, his associates and his representatives had given numerous statements and had regularly made detailed submissions to the investigating bodies and judicial authorities, setting out their allegations of attempted murder and referring to possible proof. The authorities had therefore been sufficiently informed of their position on the matter. The fact that they had not been questioned had no bearing on the State's obligation under Article 2 to conduct an effective investigation and, in any case, a person could only be questioned as a victim or witness in the framework of criminal proceedings.

Lastly, with regard to the complaint about the alleged failure to investigate the possible involvement or collusion of State agents in the applicant's poisoning, the Court had already previously established that the applicant was under intensive surveillance by the secret services in [Navalny v. Russia \(no. 2\)](#). Therefore, the need to investigate the possible involvement of State agents had been clear from the outset and that line of investigation should have become a priority once the OPCW had confirmed that substances classified as chemical weapons had been used. The development and use of such chemicals required time, skill and a level of organisation that could hardly be achieved by individuals unconnected to State agencies. Moreover, Bellingcat and *The Insider* had even named specific State agents involved in the poisoning. To comply with the requirements of the procedural aspect of Article 2, the authorities should have explored those allegations. However, they had either not been verified or the findings had not been disclosed.

The Court concluded that the inquiry conducted by the domestic authorities had not been open to scrutiny and had made no allowance for the victim's right to participate in the proceedings. Furthermore, it had failed to explore the allegations of a possible political motive behind the attempted murder, as well as possible involvement or collusion by State agents, and had not followed up on the reported use of a substance identified as a chemical weapon prohibited by international and domestic law. As such, the inquiry had not been capable of leading to the establishment of the relevant facts and the identification and, if appropriate, punishment of those responsible. It therefore could not be considered adequate.

There had accordingly been a procedural violation of Article 2 of the Convention.

Other articles

Due to its finding under Article 2 concerning the lack of an effective investigation, the Court did not find it necessary to examine the issues separately under Article 13.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 40,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.