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The arrest and detention of Alexei Navalny in January 2021

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Jacques MAIRE, France, Alliance of Liberals and Democrats for Europe

Summary

Alexei Navalny was arrested and detained in January 2021 for having breached the terms of a suspended sentence passed in the so-called Yves Rocher case. In February 2021, he was sentenced to two years and eight months in prison.

The European Court of Human Rights (the Court) has ruled that Mr Navalny's conviction in the Yves Rocher case violated his right to a fair trial and the prohibition on punishment without law, and called for the domestic courts to remedy these violations. The Russian Supreme Court reopened the case but maintained the verdict and sentence. The Committee of Ministers has called for Mr Navalny's conviction to be quashed and for him to be released without delay. The European Court of Human Rights has also granted an interim measure requiring the Russian authorities to release Mr Navalny.

The committee notes with concern that Mr Navalny's health has deteriorated significantly in detention, in possible violation of the prohibition on inhuman treatment or punishment; that other aspects of his detention conditions raise further issues under the European Convention on Human Rights; and that his complaints about these issues have gone largely unanswered.

The committee therefore proposes that the Assembly express its support for the position of the Committee of Ministers; call on the Russian Federation to co-operate towards full execution of the Court's judgment, to release Mr Navalny, and pending that to provide him with all necessary medical care and ensure full respect for his rights; invite the Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT) to visit Mr Navalny's place of detention; and call on the Russian delegation to co-operate with follow-up to the Assembly's resolution. It also proposes that the Assembly invite the Committee of Ministers to use all tools at its disposal to ensure implementation of the Court's judgment.

1. Reference to committee: Bureau decision of 19 March 2021, Reference 4575 of 19 April 2021.



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A. Draft resolution²

1. Alexei Navalny is a Russian opposition politician and anti-corruption campaigner. On 17 January 2021, he returned to Russia from Germany following treatment for alleged poisoning. He was 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. On 2 February 2021, the Simonovskiy District Court of Moscow converted the suspended sentence into a sentence of two years and eight months in prison. Since 12 March 2021, Mr Navalny has been held at Penal Colony no. 2 in Pokrov, east of Moscow.
2. The Parliamentary Assembly recalls that in its 2017 judgment in the case of *Navalnyye v. Russia*, the European Court of Human Rights held that the conviction of Mr Navalny (and that of his brother) in the Yves Rocher case had violated the prohibition on punishment without law (article 7 of the European Convention on Human Rights, ETS No. 5), as the relevant offences had been “extensively and arbitrarily construed”, inconsistent with the essence of the offence; and violated his right to a fair trial (article 6), since the domestic courts had acted so arbitrarily as to fundamentally undermine the fairness of the trial. The Court called for the criminal proceedings to be reopened, and for the domestic courts to be obliged to remedy the aforementioned violations.
3. The Assembly notes that in April 2018, the Russian Supreme Court reopened the criminal proceedings but found no grounds to quash or change Mr Navalny’s conviction, asserting that the relevant offences had been fully established and all procedural requirements had been met. It further notes that the Russian Government has claimed that the *Navalnyye* judgment has been fully executed, referring to the Supreme Court’s decision and its own payment to Mr Navalny of the just satisfaction and legal costs and expenses awarded by the European Court of Human Rights.
4. It recalls that the European Court of Human Rights has ultimate jurisdiction over all questions of interpretation and application of the European Convention on Human Rights. It further recalls that States parties to the Convention are obliged to execute in full the judgments of the Court.
5. The Assembly notes that, in March 2021, the Committee of Ministers adopted a decision on the implementation by the Russian Federation of the *Navalnyye* judgment of the European Court of Human Rights. The Committee of Ministers expressed “grave concern” that the reopening of the proceedings had not remedied the violations and “profound concern” that Mr Navalny’s suspended sentence had been converted into a prison sentence. It urged the authorities to take “all possible measures to quash” Mr Navalny’s conviction and to release him without delay. It further decided to return to the case at its next meeting in June 2021, when it would consider adopting an interim resolution should Mr Navalny not by then have been released.
6. It recalls that the Committee of Ministers is competent under the European Convention on Human Rights to supervise the execution of the judgments of the European Court of Human Rights, including by determining when a respondent State has implemented all the necessary measures. It further recalls the procedural tools available to the Committee of Ministers under article 46 of the Convention, should there be a problem of interpretation of a judgment or should a respondent State refuse to execute it.
7. The Assembly notes that in February 2021, the European Court of Human Rights granted an interim measure requiring the Russian Government to release Mr Navalny with immediate effect, “having regard to the nature and extent of the risk to [Mr Navalny’s] life ... and seen in the light of the overall circumstances of [his] current detention”. The Assembly, recalling its [Resolution 1991 \(2014\)](#) “Urgent need to deal with new failures to co-operate with the European Court of Human Rights” reaffirms that interim measures are legally binding.
8. The Assembly notes with grave concern that Mr Navalny’s medical condition is said to have deteriorated significantly since he was detained. It notes that the prison medical service has diagnosed Mr Navalny as suffering from multiple herniated spinal discs, and that an independent medical specialist has stated that Mr Navalny’s current treatment by the prison medical service – which Mr Navalny has largely declined to accept – is “contraindicated, undesirable and ineffective” and could cause further serious health problems. Mr Navalny’s requests to be examined by a specialist of his choice have not been granted. Mr Navalny has been on hunger strike since 31 March 2021. The Assembly considers that despite the Russian authorities’ claim that Mr Navalny’s current health condition is “satisfactory”, the apparent failure to provide Mr Navalny with adequate medical care in prison may raise issues under article 3 of the European Convention on Human Rights (prohibition on inhuman treatment or punishment).

2. Draft resolution adopted by the committee on 19 April 2021.

9. The Assembly considers that further issues under the European Convention on Human Rights may be raised by other aspects of Mr Navalny's detention conditions, including that he is reportedly disturbed by prison guards repeatedly during the night, causing cumulative sleep deprivation; he is reportedly strip-searched prior to meeting his lawyers; and his lawyers have complained of extensive limitations on their access to their client. The Assembly considers that the broadcasting of videos of Mr Navalny in detention, including one made by a prison monitor accompanied by a film crew from a State-funded media outlet and others apparently recorded by prison guards and prison surveillance cameras, may raise issues under article 8 of the European Convention on Human Rights (respect for private life).

10. The Assembly notes that Mr Navalny has been categorised as an escape risk, despite having returned to Russia voluntarily; and has been cited for numerous disciplinary infractions in prison but has reportedly been denied access to his personal file, despite having a right to contest these citations. The Assembly notes with concern that these two considerations may result in Mr Navalny being denied early release, for which he may become eligible in the near future.

11. The Assembly notes that Mr Navalny and his lawyers have repeatedly written to the relevant authorities, including the prison administration, the federal service for the execution of sentences, the prosecutor general, and the human rights ombudsman. It notes that only the ombudsman has replied to any of these letters, refuting all complaints about Mr Navalny's medical and detention conditions on the basis of information from the prison service, a prison monitor who had accused Mr Navalny of faking his symptoms, and a prison monitor whose confrontational meeting with Mr Navalny was broadcast on State-funded media. The Assembly considers that these circumstances raise questions about the effectiveness of the domestic mechanisms for addressing complaints concerning Mr Navalny's medical condition and conditions of detention.

12. The Assembly therefore:

12.1. expresses its full support for the position of the Committee of Ministers as set out in its March 2021 decision;

12.2. calls on the Russian Federation:

12.2.1. to intensify its co-operation with the Committee of Ministers in order to achieve full implementation of the *Navalnyy* judgment;

12.2.2. further to the Committee of Ministers' decision and the interim measure granted by the European Court of Human Rights, to release Mr Navalny immediately and in any event before the next 'human rights' meeting of the Committee of Ministers in June 2021;

12.2.3. pending his release, to provide Mr Navalny with all necessary medical care, including examination and treatment by a doctor of his choice, and to ensure that his rights under the European Convention on Human Rights and domestic law are fully respected;

12.2.4. to ensure an honest and impartial investigation into the possible poisoning of Mr Navalny by a Novichok-type chemical weapon and the involvement of the Russian authorities in this crime;

12.3. invites the Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT) to conduct a monitoring visit to the detention facility where Mr Navalny is being held; calls on the Russian Federation to authorise promptly the publication of any report resulting from such a visit;

12.4. calls on the Russian delegation to the Assembly to co-operate fully with the rapporteur in the exercise of his mandate to ensure follow-up to the present resolution, in accordance with the Assembly's Rules of Procedure;

12.5. resolves to continue to follow closely the situation of Mr Navalny.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2021) "The arrest and detention of Alexei Navalny in January 2021".
2. The Assembly welcomes the prioritisation by the Committee of Ministers of its supervision of the execution of the judgment of the European Court of Human Rights in the case of *Navalnyy v. Russia*. It invites the Committee of Ministers to use all the tools at its disposal, including those under article 46 of the European Convention on Human Rights (ETS No. 5), to ensure full and prompt execution and in particular the immediate release of Mr Navalny.

3. Draft recommendation adopted by the committee on 19 April 2021.

C. Explanatory memorandum by Mr Jacques Maire, Rapporteur

1. Introduction

1. The present report is based on a reference by the Bureau as follow-up to the current affairs debate that took place during the Parliamentary Assembly's January 2021 part-session.⁴ On 19 April 2021, the Assembly decided to hold an urgent debate on this issue during its April 2021 part-session. This report was therefore presented for adoption with a view to this urgent debate.

2. During the preparation of this report, I requested meetings with the Russian Deputy Minister of Justice, senior officials of the Federal Service for the Execution of Sentences (FSIN), and senior officials of the Prosecutor General's Office, as well as with the Russian delegation to the Assembly. None of these requests were granted. The delegation secretariat did, however, send me a document containing relevant information from the Ministry of Justice. I have also received information on Mr Navalny's medical condition and conditions of detention from his lawyers.

2. Alexei Navalny's political activities and his treatment by the Russian authorities

3. Alexei Navalny is a Russian opposition politician and anti-corruption campaigner. He has been active in Russian politics since 2000. His public profile increased significantly after 2008, when he started reporting on corruption. In 2011, he founded the Anti-Corruption Foundation (FBK), which has developed a nation-wide network of supporters. Mr Navalny has published detailed investigations into allegations of unexplained wealth of senior public officials, including then-Prime Minister Dmitry Medvedev in 2017 and, on 19 January 2021, President Vladimir Putin. Mr Navalny played a leading role in the 2011-12 demonstrations alleging fraud in the 2011 presidential election, won by Mr Putin. In 2013, he was a candidate in the Moscow mayoral elections, receiving 27% of the votes in an election won by Sergei Sobyenin.

4. In December 2016, Mr Navalny announced his intention to run in the 2018 presidential elections. The Central Electoral Commission rejected his candidacy due to a previous conviction (see below). Being banned from running for election himself, Mr Navalny has instead pursued a so-called "smart voting" strategy. This involves supporting whichever candidate had the best chance of beating the candidate of United Russia party. The strategy has had some success in local elections, with United Russia losing one-third of its seats on Moscow city council in 2019 and its majorities in Tambov, Tomsk and Novosibirsk, Russia's third-largest city, in 2020. Russia will hold national parliamentary elections in September 2021.

5. Mr Navalny had already been the frequent subject of arrest, detention and criminal proceedings in the Russian Federation prior to the recent incidents.

- In July 2013, he was sentenced to five years' imprisonment for embezzlement from Kirovles, a state-owned timber company in the region of Kirov, to whose opposition-party governor Mr Navalny was an adviser. In October 2013, the sentence was suspended. In February 2016, the European Court of Human Rights (the Court) found that the conviction had resulted from an unfair trial (see below). In November 2016, the Russian Supreme Court overturned the conviction and ordered a retrial. In February 2017, the regional court again found Mr Navalny guilty and passed exactly the same sentence as in 2013. The transcript of the verdict in the second trial was said to be identical to that in the first trial.⁵ In June 2018, a Moscow court extended his suspended sentence by one year.
- In December 2014, Mr Navalny and his brother Oleg were convicted of having committed commercial fraud against the Russian branch of the Yves Rocher cosmetics company and a Russian company, and of having laundered the proceeds. During the criminal proceedings, Alexei was subjected to home arrest on extremely restrictive conditions that prevented almost all communication with the outside world. Alexei was given a 3,5 years suspended sentence, with five years' probation (extended by a further year in August 2017), and Oleg was sentenced to 3,5 years in prison. (See further on the "Yves Rocher case" below).
- Mr Navalny has been repeatedly detained for shorter periods over the past ten years, usually on charges of organising and/or participating in unauthorised public assemblies. He reportedly spent a total of 60 days in detention in 2017, 78 days in 2018, and 55 days in 2019.⁶

4. AS/Bur/CB (2021) 02.

5. "Russian Activist Navalny Given 5-Year Suspended Sentence in Kirovles Retrial", *Moscow Times*, 8 February 2017.

6. "In And Out: All The Times Aleksei Navalny Has Been In Jail", *RFE/RL*, 25 July 2019.

6. Mr Navalny's legal troubles have continued to mount even after his recent arrest. On 20 February 2021, following his return to Russia, Mr Navalny was convicted of defamation of a Russian Second World War veteran and fined 850 000 roubles (around €9 500). The veteran had appeared alongside various celebrities in a Russia Today video encouraging participation in the July 2020 plebiscite on constitutional reform. In June 2020, on social media, Mr Navalny had described those who appeared in the video collectively as "traitors" and "corrupt stooges". In addition, on 29 December 2020, the Russian Federal Investigative Committee announced that it would charge Mr Navalny and others with having embezzled over 356 million roubles (around € 4 million) from public donations made to the FBK. It remains to be seen how and when those charges are pursued against Mr Navalny, following his return and imprisonment.

7. Mr Navalny has in the past espoused nationalist politics and employed anti-immigrant rhetoric. In 2007, he left the liberal Yabloko party to found the political movement "Narod" (an acronym for 'National Russian Liberation Movement' and a Russian word meaning 'people'). During this period, Mr Navalny called for an end to government subsidies to Russia's North Caucasian regions and the deportation of migrants, and participated in the annual Russian March in Moscow that was also attended by ultra-nationalists. In 2013, "illegal immigration" from Central Asian countries was a central theme of his Moscow mayoral election campaign. Mr Navalny's allies claim that his involvement in nationalist politics was an attempt to build a wider anti-government coalition following his disillusion with the electoral prospects of Yabloko, and that his political views have evolved significantly.⁷ On 25 February 2021, Amnesty International announced that it had revoked its decision to declare Mr Navalny a 'prisoner of conscience', having reviewed his case and concluded that "some of his previous comments which, as far as Amnesty is aware, have not been publicly renounced ... reached the threshold of advocacy of hatred, at odds with our definition" of 'prisoner of conscience'. Amnesty nevertheless continues to campaign for Mr Navalny's release (see further below).⁸ The Russian NGO, Memorial Human Rights Centre – whose definition of 'political prisoner', based on Assembly [Resolution 1900 \(2012\)](#), also includes exclusion clauses relating to commission of violent or hate crimes and calls for use of violence – continues to include Mr Navalny on its list of political prisoners.⁹

3. Mr Navalny's arrest on 17 January 2021 and his subsequent detention and imprisonment

3.1. Judicial proceedings

8. On 20 August 2020, Mr Navalny fell ill on a domestic flight from Tomsk to Moscow. The plane on which he was travelling made an emergency landing at Omsk. He was taken to the local emergency hospital. At the request of his family, he was transferred to the Charité hospital in Berlin on 22 August. On 23 September, the Charité hospital announced that Mr Navalny had recovered sufficiently to be discharged from acute inpatient care, and that "complete recovery was possible, although it remained too early to gauge potential long-term effects of his severe poisoning".¹⁰

9. On 28 December 2020, the Moscow branch of the Russian Federal Service for the Execution of Sentences (FSIN) ordered Mr Navalny to report to its premises the following morning, under the terms of a suspended sentence to which he was subject following a criminal conviction in 2014 (see below). The FSIN, referring to a recent article about Mr Navalny's case in the medical journal *The Lancet*, claimed that all consequences of his "alleged poisoning" had passed by 12 October; as a result, "the person under suspended sentence is not fulfilling the duties assigned to him by the court and is evading control of the prison inspectorate". The FSIN further threatened to apply to the court to have his suspended sentence transformed into a prison sentence.¹¹ The suspended sentence had been due to expire on 30 December 2020.¹²

7. See for example "How a Russian nationalist Named Alexei Navalny Became a Liberal Hero", *Jacobin*, 31 January 2021; "The Evolution of Alexey Navalny's Nationalism", *The New Yorker*, 15 February 2021.

8. "Amnesty International statement on Aleksei Navalny", Amnesty International, 25 February 2021.

9. See <https://memohrc.org/ru/defendants/navalnyy-aleksey-anatolevich>. Memorial has received numerous domestic and international awards for its human rights work in the Russia Federation, including the Assembly's 2018 Václav Havel Human Rights Prize.

10. The rapporteur is also responsible for preparing a separate report entitled "Poisoning of Alexei Navalny", which relates to the incident in August 2020. The present report will not address the disputed questions of when, where and by whom Mr Navalny was poisoned, as they have not yet been fully examined and are not immediately relevant.

11. "Russian prison authority threatens to revoke Navalny's suspended sentence", *TASS*, 28 December 2020.

12. "Russia gives Kremlin critic Navalny an ultimatum: Return immediately or face jail", *Reuters*, 28 December 2020.

10. On 17 January 2021, Mr Navalny returned to Russia from Berlin. On arriving at passport control at Sheremetyevo airport, he was arrested and taken into detention at a nearby police station. The following morning, a judge was sent to the police station, where a makeshift courtroom was set up. The judge ordered that Mr Navalny be detained for 30 days, until 15 February. Mr Navalny's appeal against the pre-trial detention order was rejected by the Moscow Regional Court on 28 January.

11. On 2 February 2021, the Simonovskiy District Court of Moscow granted the FSIN's application and sentenced Mr Navalny to two years and eight months imprisonment in a penal colony (the original three-and-a-half year sentence minus the period spent under house arrest). This District Court found that the "systematic avoidance by A.A. Navalny of fulfilment of the obligations imposed on him by the court sentence" meant that, "in the light of A.A. Navalny's attitude towards the obligations imposed on him for the duration of his probation period, the aims of punishment provided for in [the Federal Criminal Code] cannot be achieved by maintaining his suspended sentence, and the court therefore considers it necessary to revoke it". Furthermore, the District Court found that the judgment of the European Court "cannot be taken into account as [the European Court] did not state its opinion on the unlawfulness of the sentence, while the [Russian Supreme Court] saw no grounds to conclude that the court had incorrectly applied the law establishing the criminal nature of the acts, the liability to punishment and other criminal law consequences, and left the sentence of Zamoskvoretskiy District Court of the city of Moscow and the decision on appeal of the criminal affairs bench of Moscow Municipal Court unchanged."¹³

12. On 16 February 2021, the European Court granted an interim measure requiring the Russian government to release Mr Navalny with immediate effect. The Court explained that it "had regard to the nature and extent of risk to the applicant's life, demonstrated *prima facie* for the purposes of applying the interim measure, and seen in the light of the overall circumstances of the applicant's current detention."¹⁴ The Russian Ministry of Justice has not released Mr Navalny, arguing that the interim measure represented "blatant interference in the operation of a sovereign State's judicial system", that the principle of subsidiarity meant that the Court "cannot replace a national court of amend its ruling", and that "interim measures are not mentioned at all in the Convention on Human Rights and States comply with them on their own goodwill".¹⁵ On 20 February, the Russian Ministry of Justice reportedly wrote to the Court asking it to reconsider the interim measure.¹⁶ On 1 April, Mr Navalny's lawyers again wrote to the Court with further information on Mr Navalny's state of health (see further below), requesting that the Court ask the Russian authorities to provide him with adequate medical treatment, to ensure that he is examined in accordance with the recommendations of an independent neurologist, and to establish a medical panel composed of medical experts "from both sides (the applicant and the Government)".

13. Mr Navalny's appeal against the decision of the Simonovskiy District Court was rejected on 20 February 2021 by the Moscow City Court, which nevertheless reduced his prison sentence by a further 45 days. The City Court is reported to have declined to take into account the judgment of the European Court, on the basis that the latter has no authority to give Russian judges "any categorical instructions and interfere in the activities of national courts related to the execution of sentences that have entered into legal force."¹⁷

3.2. Conditions of detention

14. After his initial stay at Khimki police station, near to Sheremetyevo airport, Mr Navalny was detained at Matrosskaya Tishina remand prison in Moscow. On 25 February 2021, he was transferred to SIZO-3 (pre-trial detention centre 3) in Kolchugino, although his lawyers were unable to locate him until a week later, on 3 March. On 12 March, Mr Navalny's lawyers discovered that he was no longer at SIZO-3 and were again unable to locate him. Later that day, the Russian state news agency TASS reported that he had been transferred to Penal Colony no. 2 in Pokrov, roughly 100km to the east of Moscow.¹⁸ He was initially held in quarantine with five other prisoners, before being transferred to a common unit housing 18 prisoners. Between 5 and 12 April 2021, he was transferred to the medical unit (see further below).

13. Translation prepared by the Council of Europe Secretariat, doc. DH-DD(2021)208.

14. "The Court grants an interim measure in favour of Aleksei Navalny and asks the Government of Russia to release him", Press Release, European Court of Human Rights, 17 February 2021.

15. "ECHR demands immediate release of Alexey Navalny as interim measure, says lawyer", TASS, 17 February 2021.

16. "ECHR Decision On Navalny Case Not Based On Facts – Russian Justice Ministry Source", *UrduPoint News/Sputnik*, 20 February 2021.

17. "Moscow City Court publishes full text of appellate ruling upholding Navalny's prison sentence", *Meduza*, 1 March 2021.

18. "Alexey Navalny transferred to Pokrov penal colony after quarantine period – source", TASS, 12 March 2021.

15. Mr Navalny's treatment and conditions of detention in Penal Colony no. 2 give rise to various concerns. As he has been categorised as a potential escape risk, prison guards film him every hour during the night and speak the time out loud, which he says wakes him up and has caused cumulative sleep deprivation. These checks reportedly continued after his transfer to the medical unit, although now only every two hours. The Ministry of Justice claims that "no violations of continuous sleep of A.A. Navalny by the [Penal Colony no. 2] employees was established". Maria Butina, a Russia Today journalist and member of the Russian Civic Chamber (an official body whose responsibilities include prison monitoring), led a camera team into Prison Colony no. 2 where they filmed her dismissing Mr Navalny's criticisms of his detention conditions. The resulting video was broadcast on the Russia Today YouTube channel.¹⁹ Another video, including footage apparently filmed by a prison guard of Mr Navalny sleeping and footage from the prison's own surveillance cameras, was broadcast by Channel 5.²⁰

16. There has reportedly been extensive interference in Mr Navalny's access to his lawyers, whom he has the right to consult for four hours at a time. His lawyers insist they are often kept waiting for hours on end until little time is left before visiting hours are over, although the Ministry of Justice claims that "cases of unlawful restrictions of the duration of A.A. Navalny and his lawyers' meetings by the institution employees were not established". They are also separated from Mr Navalny by a glass partition during consultations, which take place in a room equipped with a video-camera and microphone, despite lawyer-client communications being confidential.

17. Mr Navalny has been cited by the prison authorities for numerous alleged disciplinary infractions, including leaving his bed during the night (in order to relieve the pain in his back, he claims), and failing to perform mandatory morning exercises (for the same reason, he says). He claims to have been told by the prison administration that there are around 20 disciplinary reports on his record but has been denied access to his personal file, despite having a right to see it. For its part, the Ministry of Justice states that there have been 10 disciplinary incidents, including six reprimands and four oral reprimands. Disciplinary reports may lead to his being placed in punitive solitary confinement under a severe regime, and could be relied upon to deny his conditional release, for which he may shortly become eligible.

18. The most serious concern is the significant deterioration in Mr Navalny's health since he was imprisoned. According to the Ministry of Justice, he first complained of back pain on 3 March 2021 (when he was in SIZO-3), was examined by a prison doctor, and was prescribed unspecified "drug therapy", which he declined. On 19 March, he was examined by a local neurologist and prescribed medication, which his lawyers say consisted of Ibuprofen. On 24 March, he was given an MRI scan, the results of which were reviewed by a neurologist, who gave a diagnosis. On 25 March, the FSIN stated that following medical examinations, Mr Navalny's "state of health is assessed as stable and satisfactory". The same day, however, his lawyer reported that his right leg "is incapacitated, it practically isn't working, he can't put weight on it". On 29 March, the deputy head of the Vladimir region Public Monitoring Commission (a detention monitoring body) asserted that Mr Navalny was feigning his symptoms.²¹ According to the Ministry of Justice, Mr Navalny was informed of the results of his MRI scan on 30 March, and the following day he was given an injection of "Analgin" (metamizole, an analgesic and antispasmodic). On 7 April, Mr Navalny's lawyers reported that he had been told that his MRI scan results revealed two herniated discs. The only treatment he was being given was non-steroidal anti-inflammatory drugs, a muscle relaxant, and vitamins. An independent neurologist had told the lawyers that one of the hernias was "difficult to treat" and considered that the treatment being given was "ineffective and could lead to a worsening of his condition." Furthermore, this treatment "will lead to erosive and ulcerative lesions of the stomach and aggravation of gastritis (the applicant previously suffered from gastritis), will intensify cardiovascular risk and increase blood pressure (at the moment of the applicant's medical examination by a doctor appointed by the authorities, his blood pressure was 142/94) ... [There] is no proof that some of the prescribed medications are effective for treatment of back pains."

19. On 31 March 2021, Mr Navalny announced that he was on hunger strike in protest at being denied appropriate medical treatment and "tortured by sleep deprivation". On 1 April, Mr Navalny announced that he had lost 8 kg since his arrival at Penal Colony no. 2, which he blamed on sleep deprivation. On 5 April, he stated that he was suffering from a "bad cough" and a fever of over 38°C. According to the Ministry of Justice, Mr Navalny was tested and found negative for coronavirus, was diagnosed with "acute respiratory disease" and was transferred to the medical unit. Mr Navalny claimed that three of the inmates in his unit had been hospitalised with tuberculosis. According to the Ministry of Justice, on 7 April, the prison medics assessed Mr Navalny's "general health condition" as "satisfactory", he had access to the necessary medicines and there

19. See <https://www.youtube.com/watch?v=gBYSq-KYs5I>.

20. See <https://www.5-tv.ru/news/337977/krepkij-son-izdorovye-nogi-video-snavalnym-izkolonii-vovladimire/>.

21. "Representative of prison watchdog group accuses Navalny of feigning health problems", *Meduza*, 29 March 2021.

were “no indications for receiving medicines from relatives”. On 12 April, Mr Navalny announced that he had been transferred back to the common unit from the medical unit, even though he was still on hunger strike and had lost a further seven kilograms (information from the Ministry of Justice indicates that he lost five kilograms between 1 and 6 April), and the prison administration was considering force-feeding him.

20. On 22 March, Mr Navalny’s lawyer wrote two letters to the head of Penal Colony no. 2 with a series of queries concerning the legality of Mr Navalny’s transfer to and detention in a prison colony, confirmation of his certification as an escape risk, aspects of his treatment (shaved head, strip searches prior to meetings with his lawyers, his food), his access to his lawyers (see above), his state of health and lack of appropriate medical treatment (see above), and his disciplinary record. On 25 March, his lawyer wrote to the penitentiary service, the prosecutor general and the ombudsman about the Court’s interim measure requiring Mr Navalny’s release, his access to his lawyers, his detention conditions and his medical condition, including denial of access to a particular specialist. The same day, Mr Navalny wrote to the head of Penal Colony no. 2, complaining of sleep deprivation, describing his medical condition and asking to see a particular specialist doctor. On 2 April, his lawyer wrote to the prison authorities, the prosecutor general and the commissioner for human rights about Mr Navalny’s deteriorating medical condition, requesting that a particular neurologist be admitted to the penal colony to examine him, and that he be provided with medication as prescribed by that neurologist. A further letter dated 6 April, to the same recipients, also mentioned Mr Navalny’s fever and respiratory illness, stating that Mr Navalny’s health was now “close to critical”. Only the federal ombudsman’s office has replied to any of these letters, to rebut any criticism of Mr Navalny’s condition on the basis of information from the prison service, the regional prison monitor who had (falsely) accused Mr Navalny of feigning his symptoms, and the prison monitor/ Russia Today journalist who had brought a film crew into the prison to record her dismissal of Mr Navalny’s complaints. I have seen copies of all this correspondence. The Ministry of Justice claims that there have been no complaints about Mr Navalny’s access to his lawyers, or about material conditions in detention.

21. During an online meeting with President Putin on 30 March 2021, French President Macron and German Chancellor Merkel underlined the need to respect Mr Navalny’s rights and preserve his health.²² On 5 April, the Secretary General of Amnesty International, Agnes Callamard, announced that she had written to President Putin about Mr Navalny’s “arbitrary arrest and deteriorating health condition”. In a series of tweets, she argued that “There is a real prospect that Russia is subjecting him to a slow death” and that Mr Navalny’s previous Novichok poisoning “requires specialised care. Instead he is subjected to prison conditions, such as sleep deprivation amounting to torture.” Asserting that Mr Navalny “has committed no recognisable criminal offence and has been deprived of his liberty because he is an outspoken critic of the Russian authorities”, Ms Callamard called for Mr Navalny’s immediate release and for him to be “granted immediate access to a medical doctor he trusts”. Hundreds of Russian doctors have signed an appeal in which they argue that “leaving the patient in this case without help, perhaps even surgical, can lead to the development of severe consequences, including irreversible, complete or partial, loss of functions of the lower limbs...[To] leave a person with acute pain, who is in prison, without adequate measures of anaesthesia, can be considered not only a violation of his rights, but also direct torture”; postulate a connection between Mr Navalny’s poisoning and his current medical condition; note that a professor of neurology had been denied access to Mr Navalny; and call for him to be provided with medical treatment by doctors whom he trusts.²³ On 6 April, Dr Anastasia Vasilyeva, Mr Navalny’s personal physician, demonstrated outside Penal Colony no. 2 with a number of supporters, asking for Dr Vasilyeva to be given access to her patient. The police arrested nine people, including Dr Vasilyeva herself.²⁴ On 10 April, a group of German parliamentarians, including Mr Andreas Nick, the Chairperson of the German delegation to the Assembly, wrote an open letter to Mr Navalny describing his treatment in prison as “targeted torture” and calling on the Council of Europe’s Committee for the Prevention of Torture to monitor the conditions of detention in Penal Colony no. 2.

22. “Entretien avec la Chancelière allemande, Angela Merkel, et le Président de la Fédération de Russie, Vladimir Poutine”, Service de Communication du Président de la République française, 30 March 2021 (French only).

23. “Open appeal by doctors about the situation of Alexey Navalny” – see

https://docs.google.com/forms/d/e/1FAIpQLSc8a2KFqeR4z1gVQfACMtwc9dyHRRLLddRNYDjTmbfGnsuA_Tg/viewform.

24. “Nine people were detained near Navalny’s colony. Among them – the head of ‘Alliance of Doctors’ and a correspondent for CNN”, *Meduza*, 7 April 2021.

4. The Yves Rocher case and the Navalnyye v. Russia judgment of the European Court of Human Rights

22. In its 2017 *Navalnyye v. Russia* judgment,²⁵ concerning the 2014 so-called “Yves Rocher case”, the Court found a violation of the prohibition on punishment without law (article 7 of the Convention) and a violation of the right to a fair trial (article 6). The Court noted that the domestic courts had “extensively and unforeseeably construed” the relevant offences to the detriment of Mr Navalny and his brother Oleg, the second applicant, in a way that was not consistent with the essence of the offence. It would thus not have been possible to foresee that their conduct would constitute fraud, or that the profits would constitute proceeds of crime whose use could amount to money laundering. Furthermore, “the [domestic courts’] examination of this case was flawed with arbitrariness” that “undermined the fairness of the criminal proceedings in such a fundamental way that it rendered other criminal procedure guarantees irrelevant.” The Court considered that “the most appropriate form of redress would, in principle, be the reopening of proceedings”, and that “the courts acting in the new proceedings should be under an obligation to remedy the violations of the Convention found by the Court in its judgment”.

23. The Committee of Ministers is now responsible for ensuring Russia’s implementation of this judgment. In an Action Report submitted to the Committee of Ministers, the Russian Federation has noted that the Court’s award of just satisfaction and repayment of legal costs and expenses to Mr Navalny and his brother have been paid in full. As to the Court’s decision on appropriate redress, the Russian Federation informed the Committee of Ministers that, “upon the submission of the Chairman of the Supreme Court of the Russian Federation, the Supreme Court resumed the proceedings in the applicants’ criminal case on 25 April 2018 due to new circumstances. However, based on the results of a detailed assessment of the case in the light of the [Strasbourg Court’s] findings, the Supreme Court found no grounds for quashing or changing the judgment of conviction delivered earlier. The Supreme Court confirmed that the proceedings at domestic level had been conducted in compliance with all procedural requirements; and the factual circumstances of the crimes, established by the national courts and confirmed by the totality of relevant and admissible evidence, contained all the mandatory indicators of the offences [of which Mr Navalny and his brother were convicted].” The Action Report goes on to assert that “The Convention does not contain requirements for automatic quashing of national courts’ decisions in connection with the [Court] judgments. The fact that the Supreme Court has reopened the proceedings in the applicants’ criminal case as well as an additional examination of all the circumstances of the case within these proceedings [...] are the adequate proof of the execution of the [Court] judgment by the Russian authorities. According to the principle of subsidiarity, which determines the interaction between the [Court] and the national judicial systems of the Council of Europe member States, the interpretation and application of domestic law lies within the exclusive competence of national courts.”²⁶

24. Mr Navalny’s lawyers have also made submissions to the Committee of Ministers. In a communication dated 22 January 2021, the lawyers described the circumstances leading up to Mr Navalny’s arrest on 17 January 2021, stating that “the non-execution of the case of *Navalnyye v. Russia* made it possible for the authorities to continue Mr Navalny’s persecution, pursuing a hidden agenda of removing him from political and public arena by isolating him”, and calling on the Committee of Ministers to “urge the [Russian] government to immediately release Mr Navalny”, to use all possible means to ensure quashing of the decisions that the Court had found to violate article 6 and 7 of the Convention, to examine the case at its next human rights (CM/DH) meeting and to adopt an interim resolution.²⁷ On 5 February 2021, the lawyers asked the Committee of Ministers to adopt an interim resolution for the “flagrant denial of Mr Navalny’s right to receive redress as well as for their constant refusal to abide by the Court’s judgment” and “to initiate an infringement proceeding against the Russian Federation as stipulated by Article 46(4) of the Convention”.²⁸ On 24 February, Mr Navalny’s lawyers again called on the Committee of Ministers to “urge the [Russian] government to immediately released Mr Navalny”, to use all possible means to ensure quashing of the decisions that the Court had found to violate article 6 and 7 of the Convention, to examine the case at its next CM/DH meeting and to adopt an interim resolution, followed by infringement proceedings.²⁹

25. Application no. 101/15, judgment of 17 October 2017.

26. “Action Report on the individual measures taken by the Russian authorities in connection with the execution of the judgment of the European Court of Human Rights in case no. 101/15 *Navalnyye v. Russia* (judgment of 17 October 2017, final on 5 March 2018)”, DH-DD(2021)198, 17 February 2021.

27. DH-DD(2021)103.

28. DH-DD(2021)151.

29. DH-DD(2021)221.

25. At its CM/DH meeting of 9-11 March 2021, the Committee of Ministers examined Russia's implementation of the *Navalnyy* judgment, in accordance with its competence under article 46(2) of the Convention. The Committee of Ministers "expressed grave concern that the reopening [of the domestic criminal proceedings in question] did not remedy the violations established [in the Court's judgment]. It also "expressed profound concern" that Mr Navalny's suspended sentence had been converted into a sentence of real imprisonment, noting that "enforcement of the sentence handed down in such fundamentally flawed proceedings goes entirely against the conclusions and spirit of the Court's judgment". The Committee of Ministers therefore "urged the authorities to take all possible measures to quash the convictions in respect of both applicants and to erase all negative consequences against them; awaiting that, to release Mr Alexey Navalny without delay". It also decided to return to the matter at its next meeting, in June 2021, and instructed the Secretariat to prepare a draft interim resolution for consideration at that meeting, should Mr Navalny have not been released by then.³⁰

5. Conclusions and recommendations

26. From the perspective of the European Convention on Human Rights, Mr Navalny's arrest and detention are unlawful. His conviction resulted from an unfair trial and his punishment was not properly based in law. The judgment of the European Court of Human Rights in the *Navalnyy* case, which is binding on the Russian Federation under article 46(1) of the Convention, requires that the domestic criminal proceedings be reopened and the violations be remedied. This should result in the quashing of his conviction, since it relied upon an unlawful and unsustainable interpretation of the relevant offence, and thereby in the nullification of his sentence. The violations have not been remedied, however, and any measures that result from the conviction remain unlawful.

27. This is also the position of the Committee of Ministers in the exercise of its supervisory competence under the Convention. Consistent with its established practice in cases involving violations of article 7 of the Convention, the Committee of Ministers has called for Mr Navalny's conviction to be quashed and for all negative consequences, including his imprisonment, to be promptly erased. The Assembly should fully support the position of the Committee of Ministers and invite it to use all the tools at its disposal to ensure Mr Navalny's immediate release and the full implementation of the Court's *Navalnyy* judgment by the Russian authorities. In this regard, the date of the Committee of Ministers' next CM/DH meeting in June 2021 offers an important perspective.

28. The Court has also granted an interim measure requiring the Russian authorities to release Mr Navalny.³¹ In [Resolution 1991 \(2014\)](#) "Urgent need to deal with new failures to co-operate with the European Court of Human Rights", the Assembly noted that interim measures are legally binding. The Assembly should therefore call on the Russian Federation to implement the Court's interim measure forthwith.

29. Further issues have now arisen concerning Mr Navalny's detention conditions and his state of health, including possible violations of article 8 of the Convention (right to respect for private life, in relation to surveillance of Mr Navalny's communications with his lawyers, and the release and broadcasting of videos showing Mr Navalny in prison), article 3 (prohibition on inhuman or degrading treatment or punishment, in relation to the systematic sleep deprivation, and apparently excessive and unnecessary use of strip searches prior to meetings with his lawyers), and, most egregiously, articles 2 (right to life) and 3 (in relation to the failure to provide essential health care). These circumstances make it all the more necessary to release Mr Navalny immediately. The Assembly should also add its voice to those who are calling for Mr Navalny to be immediately provided with all necessary medical treatment, pending his release. In addition, the Assembly should propose that the Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT) visit Penal Colony no. 2 in order to monitor Mr Navalny's conditions of detention, and call on the Russian authorities to authorise the publication of any report resulting from such a visit.

30. Finally, the Assembly should encourage the Russian delegation to engage constructively in any future work on follow-up to the adopted texts.

30. CM/Del/Dec(2021)1398/H46-39.

31. The Committee of Ministers has not addressed the non-implementation of the interim measure as this does not fall within its competence under the Convention.