Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2375 (2021)[1]

The arrest and detention of Alexei Navalny in January 2021

Parliamentary Assembly

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 (the Court) 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, the Convention), as the relevant offences had been "extensively and unforeseeably construed", inconsistent with the essence of the offence; and had violated his right to a fair trial (Article 6 of the Convention), 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. The Assembly 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.

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1. *Assembly debate* on 22 April 2021 (14th sitting) (see Doc. 15270, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jacques Maire). *Text adopted by the Assembly* on 22 April 2021 (14th sitting).
See also Recommendation 2202 (2021).

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 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).

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 (right to respect for private life).

10. The Assembly notes that Mr Navalny has been categorised as an escape risk, despite having returned to Russia voluntarily; he has also 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 Navalnyye 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;

12.3. invites the European Committee for the Prevention of Torture and 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 this Resolution, in accordance with the Assembly's Rules of Procedure;

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