

EIN briefing for the Committee of Ministers  
Tuesday, 5 September 2017

CASE OF NAVALNY AND OFITSEROV v. RUSSIA (46632/13)  
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## Introduction

Alexey Navalny is a prominent Russian opposition politician and the founder of the major Russian independent NGO — the Anti-Corruption Foundation. In 2013, he was convicted and given a 5 years suspended sentence for defrauding Russian state enterprise Kirovles. The Kirovles case was widely regarded as politically motivated and aimed at preventing political and anti-corruption activities of Alexey Navalny. The case was also widely used by Russia's state-controlled media to damage Navalny's reputation.

In June 2013, Alexey Navalny filed a complaint to the ECHR regarding the Kirovles case. The ECHR judgement was delivered in February 2016, confirming the violation of Article 6 of the Convention.

The implementation of this judgement resulted in the reopening of the Kirovles case, a new trial against Mr Navalny and a new conviction that is the same as the old one.

We believe that there was no actual implementation of the ECHR judgement, and that the Russian Federation authorities used it instead for further political persecution and prevention of Mr Navalny's political activities.

## The Kirovles case

The Kirovles criminal case was initiated in June 2012 on the third attempt. During the previous investigations carried out by the Russian law enforcement authorities, no criminal offence was identified.

From the very beginning the case had clear marks of political persecution. For example, the Investigative Committee official said that Mr Navalny "mocked the state," so the development of the criminal investigation was the result of that.

As a result, Mr Navalny and the other applicant were convicted of defrauding the Kirovles state company through what was later identified by the ECHR as the "acts indistinguishable from regular commercial middleman activities."

Mr Navalny was convicted and given a 5-year prison term, taken into custody immediately after the hearing. Immediately after the announcement of the sentence the massive protests took place on the streets of Moscow and other Russian cities. Later the same day, the prosecutors unexpectedly requested the court to release Mr Navalny pending appeal. Such a move was unprecedented in the Russian court practice. The reputable Russian journalist states in his book that there was a meeting in the Russian Presidential administration regarding "Navalny's problem," where the president of Russia Putin "shouted at his subordinates" saying that "Navalny's imprisonment will make him a hero.. it's more effective to make him an outcast..." Despite the fact that such presidential involvement in the work of

the court system should've resulted in a huge political scandal, nobody ever doubted this claim by the journalist or sued him for slander.

## Judgement and implementation

According to the ECHR judgement, the Russian courts construed the criminal law “unforeseeably and arbitrarily”; the trial and conviction were based on the plea-bargain agreement and “without judicial examination” of the facts. In reviewing the case, the ECHR has identified an obvious “link to public activities.”

As the result of the ECHR judgement, the Russian authorities had cancelled the court judgement and reopened the criminal case. The Russian Federation also paid Mr Navalny the non-pecuniary damages and reimbursement of legal costs awarded by ECHR.

Was the ECHR decision implemented? Yes, formally it was implemented. But then a new “accelerated” trial of Mr Navalny took place at the beginning of 2017.

Here are some details of the new trial indicating that the violations of Convention were not eliminated.

- Mr Navalny was tried for the very same “criminal” activities that were earlier identified as indistinguishable from commercial activities.
- The prosecutors presented the letter of accusation that was just a copy of the old one used in 2013.
- The state prosecutors were the same individuals that accused Mr Navalny during the “original” trial in 2013.
- The judge was new, but he is a subordinate of the old judge who found Mr Navalny guilty in 2013 and who still works in the district court of Kirov.
- The plea-bargaining agreement was used as the basis for proving conspiracy in the same way it was done in 2013.
- The prosecutors used the old written testimonies instead of examining eyewitnesses during the trial.
- No eyewitnesses from the defendant’s side were allowed to testify during the trial. Literally all motions and requests by the defendants were dismissed.
- The judge dismissed the defendant’s request to examine the accounts of Kirovles company.
- The new trial was somehow “accelerated.” The other hearings in different cities where defendant’s lawyers were involved were magically postponed in order for the new Kirovles trial to accelerate. Mr Navalny’s lawyer stated that there was a meeting of judges in Moscow and that all judges who had other hearings involving Kirovles lawyers, were told that they should put these other hearings “on hold.”
- The new verdict nearly copies the old verdict and only one page is completely different. The new verdict has the same typos as the old one.
- Finally, the link between the Kirovles charges against Mr Navalny and his public activities has not been addressed at the hearing.

The new trial resulted in the same suspended 5 year sentence for Mr Navalny. So we can state that the ECHR decision was not actually implemented.

## Political persecution

The circumstances and results of the new trial against Mr Navalny show that the Russian authorities mocked justice instead of implementing the ECHR judgement.

Mr Navalny has a long career as a politician. For many years he follows the path of a person who wants to be elected and get to the office the way it usually happens in the democratic countries. He does not want to be the “official successor,” he does not want to get “approval” of his candidacy from the current state officials. Mr Navalny just wants to exercise his constitutional rights and stand for fair elections in Russia. And this is what the Russian “state” fears the most.

Unfortunately the ECHR judgement did not result in compliance with the Convention, but instead was used by the Russian authorities to continue their political persecution of Mr Navalny. The authorities were happy to cancel the old conviction and start a new one. And they will be happy to do this again and again.

The new Kirovles trial forced Mr Navalny to diverge his attention from political campaigning and anti-corruption investigations. The state again used the Kirovles trial to promote him as a criminal across all state-controlled media.

And finally this new Kirovles trial confirmed his ineligibility to stand for the presidential elections for the next 15 years and in 2018 presidential elections accordingly.

In order to pursue their political goals Russian authorities are clearly and gracelessly abusing the local and international legal systems.

- The state electoral policies are aimed at preventing independent candidates to run for offices at any levels.
- Soon after the first Kirovles conviction, the special amendment of the electoral law was enacted that prevented Mr Navalny from running in presidential elections.
- The local courts are dismissing the claims of independent candidates ignoring the evidence of violations of electoral laws.
- Mr Navalny has a number of successful ECHR cases regarding his unlawful detentions and other persecution by Russian authorities.
- Russia is widely and shamelessly using Interpol to pursue its political opponents.

And we have to recognize that at this stage of the battle for human rights and rule of law the Russian authorities are winning.

## Solution

We believe that the Council of Europe and the Committee of Ministers can prevent Russia from abusing the ECHR. We also believe that Mr Navalny’s ability to exercise his rights to a fair trial and to partake in the elections will benefit the Russian society.

Based on the aforementioned circumstances, we see that the primary goal of the Russian authorities is to prevent Mr Navalny from being registered as a candidate for the upcoming presidential elections and that the authorities will try to delay implementation of the ECHR judgement until the registration period ends.

We believe that there is no need to hear the second Kirovles case substantially and in detail, since it is just a copy of the first one. So we kindly ask the Committee of Ministers and respectively the ECHR to execute extraordinary procedure and to deliver the ECHR judgement regarding the second Kirovles trial before December 2017 with the requirement for Russian authorities to cancel the second sentence before the registration of candidates.

We anticipate a clear communication from the Committee of Ministers and the ECHR stating that they understand why the Russian authorities are charging Mr Navalny with criminal offence and that they understand the authorities' strategy of making Mr Navalny appeal over and over again. Finally, the Committee of Ministers and the ECHR should send a clear message that they will not allow the use of ECHR procedures against the sense of justice and will not tolerate this ongoing abuse.

The applicants encourage the Committee of Ministers to

- Acknowledge the political motivation to charge the co-applicants with a criminal offence including in order to prevent Mr Navalny from participating as a candidate in future elections.
- Note concern over the manner in which the Russian authorities interpreted the original ECtHR judgment, which subsequently led to an ineffective re-trial.
- As a result, call for the re-opening of the proceedings not to be repeated again with the same violations and mistakes but rather to be wholly compliant with Convention norms, including fair trial;
- Note the intention of Mr Navalny to register as a candidate for the 2018 presidential elections in the Russian Federation, an objective that the applicant is currently prevented from realizing unless the case is closed by the end of December 2017.