



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CARTER v. RUSSIA

(Application no. 20914/07)

JUDGMENT

Art 2 (substantive) • Life • Poisoning and assassination of Russian defector and dissident in the United Kingdom by two persons acting as agents of Russia • Administration of poison amounting to exercise of physical power and control over man's life in situation of proximate targeting
Art 2 (procedural) • Domestic authorities' failure to conduct effective investigation into death
Art 38 • State's failure to comply with its procedural obligation on account of unjustified refusal to submit material requested by the Court

STRASBOURG

21 September 2021

FINAL

28/02/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Carter v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Georges Ravarani,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application against the Russian Federation (no. 20914/07) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British and Russian national, Ms Maria Anna Carter aka Marina Anatolyevna Litvinenko (“the applicant”), on 21 May 2007;

the decision to give notice of the application to the Russian Government (“the Government”);

the decision by the United Kingdom Government not to exercise their right to intervene in the proceedings;

the parties’ observations and the United Kingdom Government’s reply to the Court’s questions;

the decision to consider the admissibility and merits of the case together;

the decision to refuse the applicant’s request for an oral hearing;

the decision to refuse the applicant’s request for relinquishing jurisdiction to the Grand Chamber;

Having deliberated in private on 18 May and 22 June 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns the poisoning of the applicant’s husband, a Russian defector and dissident, in the United Kingdom. The applicant alleges that the killing was perpetrated on the direction or with the acquiescence or connivance of the Russian authorities and that the Russian authorities failed to conduct an effective domestic investigation into the murder.

THE FACTS

2. The applicant was born in 1962 and lives in the United Kingdom. She was represented before the Court by Sir Keir Starmer QC, Mr Ben

Emmerson QC and Professor William Bowring, barristers practising in London, and Ms Louise Christian, a solicitor.

3. The Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties and as appeared from the documents in the case file, may be summarised as follows.

THE CIRCUMSTANCES OF THE CASE

A. Mr Litvinenko's background and life in the United Kingdom

5. The applicant is the widow of Mr Aleksandr Valterovich Litvinenko, a Russian and British national who was born in 1962.

6. From 1988 onwards Mr Litvinenko worked in the USSR Committee for State Security (KGB) and its successor agencies, including Russia's Federal Security Service (FSB), initially in the organised crime unit and later at the anti-terrorism department. In 1994, whilst investigating an assassination attempt on Mr Boris Berezovskiy, a wealthy businessman and media tycoon, he developed a close friendship with him.

7. In 1997 Mr Litvinenko was tasked with the conduct of special operations which he regarded as unlawful, including an order to examine the possibility of assassinating Mr Berezovskiy. Mr Litvinenko reported the unlawful orders to the military prosecutor's office and also to the newly appointed head of the FSB. In November 1998 he made public his allegations against the FSB at a press conference before international media.

8. In December 1998 Mr Litvinenko was dismissed from the FSB. In March 1999 he was arrested and detained for eight months in the FSB Lefortovo remand prison on the charge of having abused official authority. In November 1999 he was acquitted by the trial court but immediately rearrested on similar charges. The second case was discontinued because he was able to establish his alibi. A third set of proceedings was then brought against him on the charge that he had planted evidence on a suspect. Those proceedings were still pending in Moscow when Mr Litvinenko left Russia in September 2000. He was ultimately convicted *in absentia* on those charges in 2002.

9. In 2001 the United Kingdom granted asylum to Mr Litvinenko and his family. They took up the option of changing their names: the applicant took the name of Maria Anna Carter and Mr Litvinenko the name of Edwin Redwald Carter. On becoming eligible for naturalisation as British citizens, they made an application to that effect and were granted citizenship at a ceremony on 13 October 2006.

10. In the United Kingdom Mr Litvinenko involved himself in a wide range of activities, mainly focused on exposing corruption in Russian

intelligence services and their links with organised crime. He published books that accused the FSB of masterminding the bombing of four apartment blocks in Moscow in 1999 in order to provide a justification for the decision to start the Second Chechen War. He maintained a friendship with Mr Berezovskiy, who had left Russia at the end of 2000 and become a political exile in the United Kingdom, where he was granted asylum. Mr Berezovskiy used his wealth to encourage and finance critics of the Russian authorities, such as Mr Litvinenko.

11. There was also evidence of Mr Litvinenko's consulting for British intelligence services on Russian organised crime in Europe and travelling to other European countries, in particular Spain, to assist their law enforcement; the United Kingdom Government neither confirmed nor denied those allegations, referring to their long-standing policy to that effect. Mr Litvinenko also cooperated with Mr Scaramella, a consultant for the commission established by the Italian Parliament to examine KGB activities and Russian organised crime in Italy.

12. Mr Litvinenko also undertook private security work which involved preparing "due diligence" reports for companies seeking to find out information about Russian business contacts. He worked with three London-based private security companies, RISC Management Limited, Triton International Limited and Erinys UK Limited. The inquiries he had undertaken to carry out required him to enlist the assistance of his contacts in Moscow. From 2005 he involved in his business activities Mr Andrey Lugovoy, formerly an officer of the KGB and the Federal Protection Service and head of security for Mr Berezovskiy's television station and later owner of a security company in Russia. One of the reports concerned a senior Russian official, the then assistant to the President of Russia, who had developed close links with the Tambovskaya criminal group, acquired business interests in Russian infrastructure projects and assisted a Colombian drugs cartel in a money-laundering scheme. The report – completed in September 2006 – apparently led to the collapse of the proposed business venture involving the official concerned, causing him significant financial losses.

B. The events preceding Mr Litvinenko's death

1. Mr Lugovoy's and Mr Kovtun's visit to London on 16-18 October 2006

13. On the morning of 16 October 2006 Mr Lugovoy flew from Moscow to London aboard a Transaero flight. He was accompanied by his long-standing acquaintance, Mr Dmitriy Kovtun.

14. The registration number of the aircraft that made the flight was EI-DDK. In contrast to the other aircraft on which Mr Lugovoy and Mr Kovtun flew during that period, the British police were unable to test

EI-DDK for radioactive contamination. On 1 December 2006, when the British embassy in Moscow notified the Russian authorities and Transaero of possible contamination of the aircraft, they received the reply from the Russian Chief Public Health Officer that all planes had been tested and that no contamination had been found. EI-DDK was scheduled to fly to London on the following day but the flight was cancelled, and the aircraft did not return to the United Kingdom.

15. On the afternoon of 16 October 2006 a meeting took place between Mr Lugovoy, Mr Kovtun, Mr Litvinenko and a representative of Erinys UK Limited in the company's boardroom. They sat around a table covered with baize cloth. Evidence of polonium contamination was later discovered on the area of the cloth located between the positions in which Mr Lugovoy and Mr Litvinenko were sitting and on two of the chairs.

16. After the meeting, the three Russian participants went together to a restaurant. Secondary radioactive contamination was found at one of the tables.

17. Later that day, after the dinner, Mr Litvinenko suddenly began to feel ill and vomited. He continued to feel unwell for the next two days. He did not seek medical assistance, assuming it was food poisoning.

18. At 1.30 p.m. on 17 October 2006 Mr Lugovoy and Mr Kovtun checked out of their hotel one day early without asking for a refund. Both of their rooms were subsequently tested and were found to contain significant contamination. Primary contamination, that is, contamination resulting from direct contact with radioactive material, was discovered in the u-bend of the sink in the bathroom of the room where Mr Lugovoy had stayed. The level of contamination was consistent with radioactive material being poured down the sink plughole.

19. Mr Lugovoy and Mr Kovtun moved to a different hotel and had business meetings on that day. Secondary contamination was later discovered in the hotel rooms and the offices they visited and on a CD that Mr Kovtun had given to a company representative.

20. On 18 October 2006 Mr Lugovoy and Mr Kovtun returned to Moscow aboard a Transaero flight. The aircraft (EI-DNM) was tested and was found to contain secondary contamination in the area of the seats on which the two men had sat. In their reply of 1 December 2006, the Russian authorities claimed that the aircraft had been free of contamination.

2. Mr Lugovoy's visit to London on 25-28 October 2006

21. From 25 to 28 October 2006 Mr Lugovoy returned to London. He had several business meetings, including one in the offices of Mr Bereзовskiy. It also appears that he met Mr Litvinenko at least once in a bar of the hotel where he was staying.

22. Secondary contamination was detected on the aircraft on which he had flown, in the offices he had visited and in his hotel room. The highest

readings were found in the bathroom bin, in particular on one area at the base of the inner casing of the bin, and on two towels in the hotel laundry. The pattern of contamination appeared to be consistent with an accidental spillage, perhaps followed by an attempt to clean up or dispose of the material.

3. Mr Lugovoy's and Mr Kovtun's visit to London on 31 October to 3 November 2006

23. Mr Lugovoy returned to London on 31 October 2006. He was accompanied by family and friends, on a trip to watch a football match which had been planned some time before Mr Lugovoy's meeting with Mr Litvinenko on 16 October.

24. On 1 November 2006 Mr Kovtun flew into London from Hamburg on a flight that he had booked three days previously. The return ticket from London to Moscow had been purchased for him some time before, on 27 October, when Mr Lugovoy was still in London.

25. On 1 November 2006 Mr Litvinenko had a brief meeting with Mr Scaramella (see paragraph 11 above) in a restaurant in central London. Mr Scaramella's hotel room, the Internet café he had used and the table at the restaurant where he had sat with Mr Litvinenko were subsequently tested and found to be free from contamination.

26. From there, Mr Litvinenko went to meet Mr Lugovoy and Mr Kovtun in the ground-floor bar of the hotel where they were staying. On his account, he drank some green tea from a teapot which was already on the table. The meeting lasted approximately twenty minutes.

27. Tests for contamination which were conducted at the hotel detected traces of radiation in many places. The highest readings were found in the bathroom of Mr Kovtun's room in a sediment trap, which was consistent with the theory that radioactive material had been poured down the plughole in one form or another. The other area of primary contamination was found on one of the bar's teapots, in particular on the inside of the spout where the radioactive material appeared to have bonded with tannin deposits. Testing also showed high levels of secondary contamination on a cubicle door, a sink and a hand dryer in the men's lavatories which, as it appeared from the CCTV footage, had been used by both Mr Lugovoy and Mr Kovtun but not by Mr Litvinenko.

28. After leaving the hotel bar, Mr Litvinenko visited Mr Berezovskiy's offices nearby. An acquaintance later gave him a lift home. Secondary contamination was found on the seat of the car and throughout Mr Litvinenko's house. However, no primary contamination was found anywhere in the house.

29. Later that day, Mr Lugovoy and his party went to see the match at the Emirates Stadium. On 3 November 2006 they left for Moscow, together

with Mr Kovtun. Secondary contamination was found on the seats they had occupied in the stadium and in the aircraft.

C. Mr Litvinenko's illness and death

30. In the early hours of 2 November 2006 Mr Litvinenko was taken ill. He started vomiting, suffered from abdominal pain and developed bloody diarrhoea. On 3 November he was admitted to a hospital where he was initially treated for gastroenteritis.

31. On observing that Mr Litvinenko's worsening condition did not fit with the diagnosis of gastroenteritis, medical staff started treating him for suspected thallium poisoning. His bone marrow had degenerated to the point where a transplant was considered to be the only means of restoring its function. On 17 November Mr Litvinenko was transferred to University College Hospital (UCH) to assess the possibility of a transplant.

32. On 21 November 2006 a pharmacist at UCH and staff at the poisons unit suggested the idea that chemotherapeutic agents or radioisotopes could have been used to poison Mr Litvinenko. Samples of his blood and urine were sent to the Atomic Weapons Establishment for testing. The initial results revealing the presence of polonium were considered an anomaly and further testing was requested.

33. Between about 3 p.m. and 5 p.m. on 23 November 2006 the results confirmed polonium contamination. At 9 p.m. Mr Litvinenko suffered a cardiac arrest and died from multiple organ failure.

34. The post-mortem conducted jointly by two pathologists established the cause of death to be acute radiation syndrome caused by the presence in Mr Litvinenko's body of very high levels of polonium-210. Scientific evidence indicated that the polonium-210 had entered the body by ingestion in the form of a soluble compound. The symptoms during the onset of Mr Litvinenko's illness had been consistent with the poisoning having taken place on 1 November.

D. Initial investigations and attempted extradition

1. The police investigation in the United Kingdom

35. Before Mr Litvinenko's death, the Metropolitan Police Service (MPS) had already commenced an investigation into his apparent poisoning. Working with the Health Protection Agency, the police examined and assessed more than sixty scenes and directed over forty requests for mutual legal assistance to fifteen States.

36. On 30 November 2006 the United Kingdom Crown Prosecution Service (CPS) requested the assistance of the Russian authorities under the provisions of the European Convention on Mutual Assistance in Criminal Matters (1959). The CPS requested that statements be taken from

Mr Lugovoy and Mr Kovtun, some members of Mr Lugovoy's family, Mr Lugovoy's lawyer and personal assistant, and the medical staff who were attending Mr Lugovoy and Mr Kovtun. From 5 to 19 December MPS officers and detectives interviewed witnesses, including Mr Lugovoy and Mr Kovtun, in Moscow.

37. On 22 May 2007 the MPS/CPS determined that there was sufficient evidence against Mr Lugovoy to charge him with Mr Litvinenko's murder by poisoning; a Magistrates' Court issued a warrant for his arrest, and the (then) Foreign and Commonwealth Office of the United Kingdom submitted a request for his extradition from Russia.

38. On 5 July 2007 Russia refused to extradite Mr Lugovoy on the grounds that the Constitution prohibited Russian nationals from being extradited to foreign States.

39. Following further investigation, on 4 November 2011 the MPS/CPS considered that there was sufficient evidence also to charge Mr Kovtun with the murder of Mr Litvinenko and applied for the issue of a warrant for Mr Kovtun's arrest.

40. Mr Lugovoy and Mr Kovtun were placed on international lists of wanted persons. They both remain wanted for Mr Litvinenko's murder.

2. The investigation in the Russian Federation

41. On 7 December 2006 the Russian Prosecutor General launched a criminal investigation "into the death of Mr Litvinenko and the attempted murder of Mr Kovtun". In April 2007, a deputy Prosecutor General and assisting investigators came to London and conducted several interviews there, including one with Mr Berezovskiy.

42. Mr Lugovoy gave press conferences denying any involvement in the Litvinenko poisoning and speculating that the British security services, members of the Russian "mafia" or Mr Berezovskiy were responsible. He also alleged that Mr Litvinenko and Mr Berezovskiy were in the pay of the British intelligence services and that Mr Litvinenko had sought to procure his assistance in finding compromising material on President Putin.

43. On 15 September 2007 Mr Zhirinovskiy, leader of the Liberal Democratic Party of Russia, announced that Mr Lugovoy – who had had no prior experience in politics and had not previously been involved in his party – would take second place on his party's candidate list for the Duma election. Following the election on 2 December 2007, Mr Lugovoy became a member of parliament and acquired parliamentary immunity. He was re-elected in 2011 and 2016 on the same party's ticket.

E. The inquest proceedings in the United Kingdom

44. In the United Kingdom a Coroner's inquest must be held to investigate the circumstances of a death where there is reasonable cause to

suspect that a deceased person died a violent or unnatural death. The Coroner has the power to investigate the main cause of death together with any actions and omissions which led directly to the cause of death.

45. On 30 November 2006 the Coroner for Inner North London formally opened an inquest into Mr Litvinenko's death and immediately adjourned it pending completion of the ongoing police investigation. The inquest remained adjourned for nearly five years, during which time it was believed that criminal prosecutions might still be brought. However, by 2011 the Coroner was satisfied that there was no realistic prospect of any named individual either returning or being extradited to the United Kingdom. He therefore decided that the inquest should be resumed and Sir Robert Owen, a High Court judge since 2001, was appointed to conduct the inquest. Sir Robert Owen designated the following individuals as "properly interested persons": the applicant; Mr Litvinenko's children; Mr Lugovoy; Mr Kovtun; the Commissioner of Police of the Metropolis; and Mr Berezovskiy. The Investigative Committee of the Russian Federation ("the ICRF") subsequently applied for, and was granted, properly interested person status. Being given the status of interested person gives participants the right to play an active part in the inquest hearing or any pre-inquest review hearing, including by examining witnesses.

46. In preparation for the inquest, the United Kingdom Government collated material in their possession and made it available for inspection to counsel and the solicitor to the inquest. Counsel to the inquest subsequently expressed the view that this material established a *prima facie* case as to the culpability of the Russian State in Mr Litvinenko's death. However, some of this material was of a sensitive nature and, as the law did not allow evidence to be taken in "secret" or "closed" sessions at a Coroner's inquest, the sensitive material, which included material relevant to the possible involvement of Russian State agencies in the death of Mr Litvinenko, was excluded from the inquest proceedings under the public interest immunity principle. Sir Robert Owen therefore invited the United Kingdom Government to establish an inquiry under the Inquiries Act 2005. Unlike a Coroner's inquest, an inquiry could hear evidence that could not be disclosed publicly.

47. The Secretary of State for the Home Department initially decided not to establish an inquiry. However, following a successful application for judicial review by the applicant, that decision was quashed and on 22 July 2014 the Secretary of State for the Home Department announced the Government's decision to establish an inquiry under the Inquiries Act 2005 to investigate Mr Litvinenko's death.

F. The “Litvinenko Inquiry” in the United Kingdom

1. The conduct of the inquiry

48. The inquiry was chaired by Sir Robert Owen, who had also conducted the inquest. The inquiry’s terms of reference were to investigate the death of Alexander Litvinenko in order to (i) “ascertain ... how, when and where [the deceased] came by his death” and (ii) “identify ... where responsibility for the death lies”. The question of whether the United Kingdom authorities could or should have taken steps which would have prevented the death of Mr Litvinenko was excluded from the scope of the inquiry as no material had been disclosed in the course of the preparation for the inquest to suggest that Mr Litvinenko was or ought to have been assessed as being at a real and immediate threat to his life.

49. The open hearings commenced on 27 January 2015 and lasted thirty-four days. Unless “enhanced measures” were in place, the public and press had unrestricted access to the hearings and a transcript of proceedings was posted on the inquiry website at the end of each day. A total of sixty-two witnesses gave oral evidence to the inquiry, and witness statements from a further twenty witnesses were read to the inquiry. The witnesses included Mr Litvinenko’s family, friends and business associates, medical professionals, nuclear scientists, police officers and experts in Russian history and testing by polygraph.

50. Over several days in May 2015, the Chairman held closed hearings of the inquiry to assess a considerable quantity of closed documentary evidence, oral evidence from witnesses and closed witness statements. Attendance at those hearings was limited to the Chairman, counsel and solicitor to the inquiry and the legal team for the Home Secretary. The issues covered included the question of whether Mr Litvinenko had any sort of relationship with British security and intelligence agencies, and if so the nature and extent of that relationship, and the question of whether the Russian State was responsible for his death. The assessment that the material was sufficiently sensitive to warrant being treated as closed evidence had been made by the Home Secretary, who had given effect to that decision by issuing a number of Restriction Notices. The Restriction Notices were published on the inquiry website and appended to the report.

51. The Chairman of the Litvinenko Inquiry granted applications for core participant status by the applicant, her son, the MPS, the Secretary of State for the Home Department and the Atomic Weapons Establishment. The ICRF confirmed in writing that it would not be making an application for core participant status in the inquiry.

52. Mr Lugovoy declined to give evidence to the inquiry, although he had been represented for a time during the preparation for the inquest.

53. On 13 March 2015 Mr Kovtun expressed a wish to become a core participant in the inquiry and give oral evidence via videolink. On 2 April

2015 the Chairman informed him that the granting of core participant status was conditional on his giving a confidentiality undertaking, providing a detailed witness statement, disclosing any material he claimed would be capable of exonerating Mr Lugovoy, and confirming that he intended to cooperate with the inquiry. The first date for his oral evidence was set for Monday 27 July 2015. On Thursday 23 July 2015 Mr Kovtun declined to give evidence on the grounds that, according to legal advice he had been given, prior to giving evidence he would need the ICRF to approve his application for a relaxation of the confidentiality obligations he owed to the ongoing Russian investigation. On 27 and 28 July 2015 counsel for the ICRF informed the inquiry that Mr Kovtun had not made any such application. A written statement by Mr Kovtun was read out at the hearing on 28 July 2015.

54. Towards the conclusion of the inquiry's hearings, an issue arose under the Crime (International Co-operation) Act 2003. The evidence obtained from Russia pursuant to the request for assistance – including the records of the interviews conducted in Russia with Mr Lugovoy and Mr Kovtun – had been obtained solely for the purposes of the criminal investigation and any criminal proceedings. The Russian authorities had subsequently given permission for that evidence to be used in the inquest proceedings but declined permission for the evidence to be used in the inquiry proceedings. The Chairman concluded that without the consent of the Russian authorities, the law precluded the use of the material for any purpose other than that specified in the request, namely the original criminal investigation and any subsequent prosecution. Accordingly, those records of interview could not be used by the inquiry.

55. The Chairman's report of the inquiry was completed and delivered to the Secretary of State for the Home Department in January 2016.

56. According to the report, no adverse inferences were drawn from the silence of any party concerned in the events which the inquiry was investigating (including Mr Lugovoy, Mr Kovtun and the Russian authorities), or from their refusal to participate. Instead, the Chairman took the view that a failure to participate or to give evidence would have the consequence that he would make findings of fact without the benefit of that party's contribution.

57. With regard to the standard of proof, the Chairman said the following:

“[I]n making findings of fact I have adopted the ‘flexible and variable’ approach to the standard of proof ... [W]here in this Report I state that ‘I am sure’ I will have found a fact to the criminal standard. When I use such expressions as ‘I find’ or ‘I am satisfied’ the standard of proof will have been the ordinary civil standard of proof, namely the balance of probabilities. Where it is obvious that I have found a fact but I have not used one of these terms, the standard will have been the civil standard. All other expressions, such as a reference to a state of affairs being ‘possible’ will not be a

finding of fact, but will indicate my state of mind in respect of the issue being considered.”

58. The Chairman endorsed the view that “there were reasons going beyond academic or judicial rigour why this Inquiry ought to be careful to restrict its conclusions to matters that were provable on the evidence before it”. He quoted the comments by Professor Service, an expert in Russian history, as reflecting his approach to the evidence:

“But we have to be really cautious – and there’s another aspect of this that exercises me, and that’s that Russians want to see us fairly going through evidence in a scholarly environment or a judicial environment or an Inquiry like this in a fashion that they know doesn’t happen in their own country. So we must not sink at all below our conventional standards. We absolutely mustn’t, because some of what we do in relation to this Inquiry will get back to Moscow, and we must not give them the opportunity to say that we failed to respect our own standards because those are standards that are really worth keeping to.”

59. On the use to be made of closed evidence, the Chairman clarified the approach he would take as follows:

“I would perform a global analysis of the evidence adduced both in the open and the closed hearings ... [A]ny facts as found and recorded in the open section of the report will have been informed both by the evidence that I heard in the open hearings and by the relevant closed hearings ... I would provide a single report to the Home Secretary, but the consequence of the restriction notices and orders that had been made meant that parts would not be published if to do so would be to damage national security or international relations.”

2. The inquiry’s findings as to the responsibility for the death of Mr Litvinenko

60. The Chairman found, to the criminal standard of proof (“beyond reasonable doubt”), that Mr Litvinenko had been fatally poisoned with polonium-210 on 1 November 2006. Primary contamination in the hotel bar where Mr Litvinenko was drinking tea with Mr Lugovoy and Mr Kovtun on that day, together with the absence of primary contamination in the other places that Mr Litvinenko had visited that day, pointed to the conclusion that he had ingested the fatal dose of polonium-210 whilst drinking the tea. There was also evidence that he had received an earlier – smaller – dose of polonium-210 prior to the fatal dose on 1 November 2006. Primary contamination found on the boardroom table at Erinyes, where Mr Litvinenko had met with Mr Lugovoy and Mr Kovtun, and similarly high levels of contamination in Mr Lugovoy’s hotel room indicated that the earlier dose was likely to have been received on 16 October 2006.

61. The Chairman examined the theories put forward by Mr Lugovoy at a press conference and by his representatives in the inquest proceedings that Mr Litvinenko had poisoned himself either by accident, in the course of handling illicitly obtained polonium-210, or in order to commit suicide. He found those suggestions to be entirely without merit because primary

radioactive contamination had not been found at Mr Litvinenko's house or on his clothing as it should have been, had he handled the substance on his own. There was no evidence at all that he had been involved in dealing with radioactive materials at any point in time or had had suicidal thoughts. It was also highly unlikely that, had he poisoned himself accidentally or deliberately, he would not have mentioned anything about the nature of the poison to the police or medical staff during the three-week period of painful and debilitating symptoms prior to his death.

62. Having excluded the theory of self-poisoning, the Chairman found, to the criminal standard of proof, that on 1 November 2006 Mr Litvinenko had been poisoned by Mr Lugovoy and Mr Kovtun, who had placed the polonium-210 in a teapot at the hotel bar; that they had done so with the knowledge that they were administering a deadly poison; and that they had made an earlier attempt to poison him on 16 October 2006. The findings rested on scientific evidence showing primary contamination in the rooms occupied by Mr Lugovoy (on 16 October) and Mr Kovtun (on 1 November) and in the teapot, and secondary contamination in the men's lavatories, which both had visited before meeting Mr Litvinenko, and in other places in London where they had gone. Transcripts of interviews which the German police had conducted in Hamburg, where Mr Kovtun had stayed before coming to London, showed that he had sought to enlist an acquaintance in the plan to poison Mr Litvinenko and confided in a family member that unknown persons might have poisoned "them all". The Chairman also considered and rejected the evidence as apparently inconsistent with Mr Lugovoy's and Mr Kovtun's involvement. He found in particular that a "lie-detector" test to which Mr Lugovoy had submitted in Moscow in 2012 to show his innocence had been seriously flawed in the manner of its administration and that members of security services, such as Mr Lugovoy, had in any event been trained to defeat similar tests. As to Mr Lugovoy's recurrent theme in press interviews that he had been the victim of a set-up by British intelligence services, an operation of that magnitude would have been a complex, expensive and extremely risky enterprise. However, there was not a shred of evidence to substantiate the claims of a set-up.

63. The Chairman found that all the evidence pointed to Mr Lugovoy and Mr Kovtun having acted on behalf of someone else when they killed Mr Litvinenko:

"There is no evidence at all that either Mr Lugovoy or Mr Kovtun had any personal reason to kill Mr Litvinenko. Mr Lugovoy may have commented after Mr Litvinenko's death that he regarded Mr Litvinenko as a traitor, but I do not think for a moment that that feeling on its own would have been sufficient to motivate Mr Lugovoy to plan and conduct the protracted and costly operation against Mr Litvinenko ... Moreover, had Mr Lugovoy and Mr Kovtun been acting on their own behalf, it seems highly unlikely that they would have had access to the polonium-210 that they used to poison Mr Litvinenko. All the evidence points in one

direction, namely that, when they killed Mr Litvinenko, Mr Lugovoy and Mr Kovtun were acting on behalf of someone else.”

64. The Chairman examined – and excluded – the possibilities, all brought up by Mr Lugovoy, that a number of parties, including Mr Berezovskiy, the British intelligence services, groups linked to organised crime, or Mr Scaramella had directed the killing. On the theory that Mr Berezovskiy might have retaliated against Mr Litvinenko for blackmailing him, the Chairman noted that there was no evidence of either blackmail occurring or Mr Lugovoy’s acting on Mr Berezovskiy’s behalf. In fact, Mr Lugovoy suggested that it was someone else acting for Mr Berezovskiy who had killed Mr Litvinenko, but that hypothesis was inconsistent with the finding that it had been Mr Lugovoy who had administered the deadly poison. The set-up by the intelligence services theory had been addressed before and found without merit. Even though it was not implausible that Mr Lugovoy or Mr Kovtun had acted on the orders of Russian crime gangs whose activities Mr Litvinenko helped to elucidate, there was no evidence linking any known criminal leaders to the killing. Nor had there been evidence of Mr Scaramella’s having any motive to kill Mr Litvinenko or being involved in his death.

65. The inquiry report turned to the possibility that one or more organisations of the Russian State may have been complicit in Mr Litvinenko’s death. Six chapters of the report covered the evidence that Russia was the source of polonium-210, the motives that the Russian State may have had for wishing Mr Litvinenko dead, and the evidence of links between Mr Lugovoy and Mr Kovtun and the Russian State.

66. Regarding the source of polonium-210, the Chairman accepted that there was no secure basis to find that the polonium used to poison Mr Litvinenko must have come from Russia but it certainly could have come from the Avangard production facility. The use of polonium-210 was a strong indicator of State involvement. That was both because ordinary criminals might have been expected to use a more straightforward, less sophisticated means of killing, and because polonium-210 must have come from a reactor, and such reactors were, in general, under State control.

67. The Chairman identified several reasons why organisations and individuals within the Russian State might have wished to target Mr Litvinenko. First of all, he was regarded as having betrayed the FSB as a result of the public disclosures he made before he left Russia, a betrayal which would have been compounded by his writing and campaigning in the United Kingdom. Secondly, according to Mr Lugovoy, the FSB had received information that Mr Litvinenko was working for British intelligence. Thirdly, Mr Litvinenko was a close associate of individuals such as Mr Berezovskiy who were prominent critics of the Russian authorities. Fourthly, the causes espoused by Mr Litvinenko – such as the FSB’s responsibility for the apartment bombings, the war in Chechnya and

collusion between the Russian authorities and organised crime – were of particular sensitivity to the Russian authorities. Lastly, there was undoubtedly a personal dimension to the antagonism between Mr Litvinenko and the President of Russia. In addition, the report noted that in the years prior to Mr Litvinenko's death the Russian authorities had been involved in the killing of a number of their opponents.

68. The report then addressed the links between Mr Lugovoy and Mr Kovtun and the Russian State. Both Mr Lugovoy and Mr Kovtun were Russian citizens, resident in Russia, and both had served in the Russian military with Mr Lugovoy being a former member of the KGB and Federal Protection Service. There was also evidence relating to a possible relationship between Mr Lugovoy and the FSB in the years up to and including 2006. Following his return to Russia, Mr Lugovoy had been supported and protected by the Russian authorities, which had awarded him an honour for services to the homeland. While that did not indicate that Mr Lugovoy must have been acting on behalf of the Russian State when killing Mr Litvinenko, this conduct towards Mr Lugovoy suggested a level of approval for the killing of Mr Litvinenko. While there was less evidence relating to Mr Kovtun, he nevertheless appeared to have suffered no ill-consequences as a result of the allegations made against him in respect of Mr Litvinenko's death. The Chairman concluded that when Mr Lugovoy had poisoned Mr Litvinenko, it was "probable" that he had done so under the direction of the FSB. The Chairman added that he regarded that "as a strong probability". He also found that Mr Kovtun was acting under FSB direction, possibly indirectly through Mr Lugovoy but probably to his knowledge.

69. The Chairman summarised his conclusions as follows:

"10.7 There is abundant evidence that Mr Litvinenko met Andrey Lugovoy and his associate Dmitri Kovtun for tea at the ... Bar of the ... Hotel ... during the afternoon of 1 November 2006 ...

10.8 I am sure that Mr Litvinenko ingested the fatal dose of polonium-210 whilst drinking tea in the ... Bar of the ... Hotel during the afternoon of 1 November 2006.

10.9 I have carefully considered the possibility that Mr Litvinenko ingested the fatal dose of polonium-210 as the result of an accident. I have also considered whether Mr Litvinenko might have taken the poison deliberately, in order to commit suicide.

10.10 I am sure that Mr Litvinenko did not ingest the polonium-210 either by accident or to commit suicide. I am sure, rather, that he was deliberately poisoned by others.

10.11 I am sure that Mr Lugovoy and Mr Kovtun placed the polonium-210 in the teapot at the ... Bar on 1 November 2006. I am also sure that they did this with the intention of poisoning Mr Litvinenko.

10.12 I am sure that the two men had made an earlier attempt to poison Mr Litvinenko, also using polonium-210, at the Erinys meeting on 16 October 2006.

10.13 I am sure that Mr Lugovoy and Mr Kovtun knew that they were using a deadly poison (as opposed, for example, to a truth drug or a sleeping draught), and that they intended to kill Mr Litvinenko. I do not believe, however, that they knew precisely what the chemical that they were handling was, or the nature of all its properties.

10.14 I am sure that Mr Lugovoy and Mr Kovtun were acting on behalf of others when they poisoned Mr Litvinenko.

10.15 When Mr Lugovoy poisoned Mr Litvinenko, it is probable that he did so under the direction of the FSB. I would add that I regard that as a strong probability. I have found that Mr Kovtun also took part in the poisoning. I conclude therefore that he was also acting under FSB direction, possibly indirectly through Mr Lugovoy but probably to his knowledge.

10.16 The FSB operation to kill Mr Litvinenko was probably approved by [the head of the FSB] and also by [the President of Russia].”

70. On 21 January 2016 the Chairman of the inquiry presented the report to Parliament. On the same day it was made publicly available, both in paper copy and online. Later that day the Russian ambassador to the United Kingdom dismissed the report as being a “blatant provocation of the British authorities” and “a whitewash for British special services’ institutional incompetence”¹.

RELEVANT LEGAL FRAMEWORK

I. INTERNATIONAL LAW AND PRACTICE

A. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

71. The United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended in Economic and Social Council Resolution 1989/65 of 24 May 1989, read:

“Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.” (Principle 18)

B. Responsibility of States for Internationally Wrongful Acts

72. The Draft Articles on the Responsibility of States for Internationally Wrongful Acts (“the Draft Articles”) provide as follows:

¹ <http://www.rusemb.org.uk/fnapr/5400>. Last accessed on the date of the judgment.

Article 8 – Conduct directed or controlled by a State

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.”

C. European Convention on Extradition

73. The European Convention on Extradition of 13 December 1957 (“the Extradition Convention”) was ratified by Russia on 10 December 1999 and entered into force on 9 March 2000. This Convention obliges the Contracting Parties to surrender to each other, subject to the provisions and conditions laid down in the Convention, “all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.” A Contracting Party has the right to refuse extradition of its nationals, but section 6(2) provides that where that is the case the requesting Party may ask it to submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

II. RUSSIA

A. The Constitution

74. Extradition of Russian nationals is prohibited (Article 61).

B. The Criminal Code

75. Russian nationals who have committed an offence outside Russian territory should be held criminally liable under the provisions of the Code if the committed act constitutes an offence in the State in which it was committed and if the offenders have not been convicted in that State (Article 12). The extradition of Russian nationals to the State in whose territory they committed an offence is not permitted (Article 13).

76. As a general rule, information from the preliminary investigation may not be disclosed. It may, however, be disclosed with the permission of a prosecutor or investigator but only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in criminal proceedings without their permission (Article 161).

C. Federal Assembly Member Status Act (Law no. 3-FZ of 8 May 1994)

77. A member of the State Duma enjoys immunity throughout his or her term of office. However, he or she may be deprived of immunity with the consent of the State Duma (sections 19 and 20).

78. Between 2010 and 2019 the State Duma stripped eight of its members of immunity on suspicion of their having committed criminal offences ranging from the use of violence against a police officer to fraud and embezzlement of public money.

III. THE UNITED KINGDOM

79. The Inquiries Act 2005 provides a statutory framework for Government Ministers to order inquiries to be held where events have occurred which have caused, or which are capable of causing, public concern. Inquiries are not adversarial in nature; rather, they are an inquisitorial process aimed at establishing the truth.

80. Inquiries are carried out by a chairman either sitting alone or with other members. Each member is appointed by a Minister and in appointing him or her the Minister must have regard, in particular, to the need to ensure that the inquiry panel (considered as a whole) has the necessary expertise to undertake the inquiry. The Minister must notify Parliament as soon as reasonably practicable of who has been appointed as chairman, the identity of any members who have been appointed and the inquiry's terms of reference.

81. The procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct. The chairman must take such steps as he considers reasonable to secure that members of the public (including reporters) are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry; and to obtain or to view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel. However, pursuant to section 19, both the chairman, through a Restriction Order, and the Minister, through a Restriction Notice, have the power to restrict public access and the disclosure of evidence where, in particular, there is a risk to national security or where a person has obtained information on condition of confidentiality.

82. The chairman has the power to require persons to give evidence or produce documents in their custody.

83. While an inquiry panel is not to rule on, and has no power to determine, any person's civil or criminal liability it should not be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes.

84. Following the close of the inquiry, the chairman must deliver a report to the Minister setting out the facts determined by the inquiry panel together with the panel's recommendations. It is generally the duty of the Minister to arrange for reports of an inquiry to be published, although if necessary in the public interest, certain material in the report may be withheld from publication. The report, as published, must be laid by the Minister, either at the time of publication or as soon afterwards as is reasonably practicable, before Parliament.

85. Both decisions of a Minister in relation to an inquiry and decisions of the panel members are susceptible to judicial review.

86. The Inquiry Rules 2006 deal with matters of evidence and procedure in relation to inquiries. Pursuant to Rule 5, the chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated. In deciding whether to designate a person as a core participant, the chairman must consider whether the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates; the person has a significant interest in an important aspect of the matters to which the inquiry relates; or the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.

87. Core participants and other persons required or permitted to give evidence are entitled to be legally represented throughout the inquiry proceedings. As a general rule, witnesses giving oral evidence may only be questioned by members of the inquiry panel and counsel or solicitor to the inquiry. However, the recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence. Furthermore, core participants may, either themselves or through their legal representatives, make opening and closing statements.

88. Following delivery of the report (or any interim report) to the Minister, but prior to publication, the chairman must give a copy of the version of the report which is to be published to each core participant and to their recognised legal representative, if any.

THE LAW

I. THE GOVERNMENT'S COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

89. Before embarking on an examination of the admissibility and merits of the applicant's complaints, the Court needs to address the issue of the Government's compliance with their procedural obligation under Article 38 of the Convention to submit evidence that the Court has requested from them. Article 38 reads as follows:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

90. When giving notice of the application, the Court asked the Government to submit a copy of materials relating to the domestic investigation into the death of Mr Litvinenko. The Government refused the request on the grounds that the investigation was at the time ongoing. They cited Article 161 of the Code of Criminal Procedure, which in their view restricted disclosure of any case-file materials in the interests of the investigation (see paragraph 76 above).

91. The Court subsequently reiterated its request to the Government to submit specifically the documents from the investigation file on which they had relied in their observations, including a forensic study of the polonium-210 samples, Mr Lugovoy’s statements, and copies of legal assistance requests addressed to the United Kingdom authorities. The Government declined to submit any documentation, citing the same provision.

92. The Court reiterates that the obligation to furnish the material requested by the Court is binding on the respondent Government from the moment such a request has been formulated, whether it be on initial notification of an application to the Government or at a subsequent stage in the proceedings. A failure on the Government’s part to submit such material which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also disclose the respondent State’s non-compliance with its obligations under Article 38 of the Convention (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 202-06, ECHR 2013).

93. In the instant case, the Government did not produce the material requested by the Court or furnish any explanation for their failure to do so, beyond a reference to a provision of the Code of Criminal Procedure which, as they interpreted it, precluded the disclosure of documents from the file of an ongoing investigation. The Court has rejected the Russian Government’s reliance on that provision in many cases concerning disappearances in the Chechen Republic, finding that it did not contain an absolute prohibition but rather set out the procedure for, and limits to, such disclosure (see *Musikhanova and Others v. Russia*, no. 27243/03, § 107, 4 December 2008, and *Sasita Israilova and Others v. Russia*, no. 35079/04, § 145, 28 October 2010). It is also significant that at the time the Court reiterated its request for documentation (see paragraph 91 above), some fifteen years after the events in question, the Government did not claim that the investigation was still ongoing. Moreover, many requested documents had previously been disclosed in the framework of the United Kingdom inquest procedure or

formally notified to the United Kingdom authorities and could therefore no longer be considered confidential.

94. Accordingly, the Court considers that the respondent State has failed to comply with its obligations under Article 38 of the Convention on account of its unjustified refusal to submit the requested material. In so far as the Government have sought to rely on the documentation which they have refused to provide, the Court will draw appropriate inferences from their failure to produce them.

II. PRELIMINARY ISSUE: THE ADMISSIBILITY OF THE LITVINENKO INQUIRY REPORT

A. Submissions by the parties

95. The Government submitted that the findings of the Litvinenko Inquiry could not be used to establish any violation of the Convention by Russia, for two reasons. Firstly, it was not the role of an inquiry to determine anyone's civil liability or criminal guilt. Secondly, the ICRF had carried out an analysis of the report prepared by the Chairman of the inquiry and concluded that his findings were inconsistent with the evidence which it had itself put forward, and that the Chairman had acted in contravention of United Kingdom law. From the 249 documents the ICRF had provided to the inquest, only 19 had been used in the inquiry. In particular, no use had been made of the statements by medical staff who had examined Mr Lugovoy and Mr Kovtun in Russia, the reports establishing the absence of contamination on certain aircraft and at the homes and offices of Mr Lugovoy and Mr Kovtun, or a statement by the Rosatom State nuclear energy corporation showing that no theft or unauthorised use of polonium had been reported. Furthermore, since the ICRF had not applied for the status of a core participant in the inquiry, it had not been able to challenge the evidence or tell "the other side of the story".

96. The applicant submitted that nothing in the Government's claims cast any doubt on the evidence used in the inquiry or any procedural process that had led to the Chairman's findings. The admissibility of documents in the inquiry proceedings depended on their relevance, and the Chairman did not need to comment on each piece of evidence. The specific documents cited by the Government touched upon matters which were of marginal or no relevance to the inquiry's terms of reference. In contrast, where documents did go to the heart of the inquiry, such as the results of Russian testing for contamination on the planes, the Chairman had explained why he had accorded no weight to them. Other evidence, including Mr Lugovoy's and Mr Kovtun's interviews provided under mutual legal assistance during the inquest, had not been used in the inquiry for legal reasons because the Russian authorities had withheld their permission to use them. As far as

core participant status was concerned, the ICRF had decided not to engage with the inquiry, describing it as a “pseudo-process”. The ICRF had deliberately absented itself and had later prevented Mr Kovtun from giving oral evidence, precisely so that the Russian authorities could later criticise the inquiry’s findings as “one-sided”.

B. The Court’s assessment

1. Principles relating to the admissibility of evidence

97. As master of its own procedure and its own rules, the Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it. The Court is not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence and there are no procedural barriers to the admissibility of evidence in the proceedings before it (see *Ireland v. the United Kingdom*, 18 January 1978, § 210 *in fine*, Series A no. 25, and, more recently, *Merabishvili v. Georgia* [GC], no. 72508/13, § 315, 28 November 2017).

98. The Court’s reliance on evidence obtained as a result of a domestic investigation and on facts established within domestic proceedings has depended on the quality of the domestic investigative process, and the thoroughness and consistency of the proceedings in question (see *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 238, ECHR 2011, and *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017).

2. Application of the principles

99. In this instance, the contested evidence is the findings of a public inquiry into the death of Mr Litvinenko held in the United Kingdom.

(a) Conduct of the inquiry

100. The inquiry was established under the Inquiries Act 2005, which contained detailed provisions to ensure the independence and impartiality of the chairman and any members (see paragraphs 79-85 above). A High Court judge with many years’ experience on the bench was appointed as Chairman. He was assisted by a team of lawyers, including counsel to the inquiry, whose sole function was to elicit the facts, “without fear or favour towards any party or any particular line of inquiry”, and to examine all the evidence from an objective and independent standpoint.

101. In addition to being independent, the inquiry satisfied the requirements of transparency and accountability. The open evidence was received, and the witnesses were heard, in public hearings. Members of the public and press had unrestricted access to the hearings and a transcript of

proceedings was posted on the inquiry website at the end of each day (see paragraph 49 above). Documentary evidence could be accessed at, and downloaded from, the inquiry website throughout the duration of the proceedings. The report of the inquiry was both laid before Parliament and published (see paragraph 70 above).

102. Decisions taken by the Chairman were susceptible to judicial review (see paragraph 85 above), with the consequence that any person affected by a decision or ruling could bring an application for judicial review before three judges of the Divisional Court in order to challenge it.

103. All interested parties were eligible to apply for core participant status and many did, with their applications being granted by the Chairman (see paragraph 51 above). The Russian authorities chose not to make such an application, whether through the ICRF or any other State agency. Similarly, Mr Lugovoy and Mr Kovtun declined to become core participants or give evidence, even though Mr Lugovoy had been a party to the inquest, and Mr Kovtun had promised at a late stage to testify via videolink before reneging on that commitment (see paragraphs 52-53 above). Had any of these parties been core participants, they would have been entitled, either personally or through their appointed legal representatives, to have made opening and closing statements, and, if appropriate, to have applied for permission to question witnesses giving evidence in the open hearings (see paragraphs 49, 86 and 87 above). Nonetheless, even in their absence steps were taken to ensure that the proceedings were fair. It is highly significant that the Chairman addressed the consequences to be attached to their decision not to participate and decided that no inferences would be drawn from their absence (see paragraph 56 above).

104. The Court cannot assess the well-foundedness of the Government's claim that, in the opinion of the ICRF, the conduct of the inquiry contravened United Kingdom law, because the Government neither produced a copy of the ICRF report containing those findings nor explained what those findings were or what specific issues of non-compliance were alleged.

(b) Terms of the inquiry and the use of evidence

105. The Court is satisfied that the inquiry was thorough and meticulous in its assessment of the evidence. Indeed, the Chairman expressly recognised that the circumstances of the inquiry called for an exceptionally rigorous and exemplary approach (see paragraph 58 above). A total of sixty-two witnesses gave oral evidence, and witness statements from a further twenty witnesses were read to the inquiry (see paragraph 49 above). The Chairman adduced a large volume of evidence obtained from a variety of sources, but was precluded from considering the evidence obtained from Russia by way of mutual legal assistance as the Russian authorities had

refused to allow this material to be used in the inquiry proceedings (see paragraph 54 above).

106. An inquiry may not find a person guilty of a criminal offence or determine a question of civil liability because it is not part of the function of an inquiry to prove a case of any kind. However, the Inquiry Rules permitted the Chairman to make findings of fact from which the likelihood of liability could be inferred if the evidence permitted this, seeking out and recording all factual matters required by the public interest, even if that involved reaching conclusions about the identity of the person or persons responsible for the death, and the motives underlying it (see paragraph 83 above). The Chairman was entitled to set out which of his findings of fact were made to the criminal standard of proof, that of “beyond reasonable doubt”, and which ones to the ordinary civil standard of proof, that of the “balance of probabilities” (see paragraph 57 above).

107. In so far as the Government contended that the inquiry was “one-sided” as there was no one to tell the “other side of the story”, the Court notes that they failed to offer any details as to what exactly “the other side of the story” might be. It is clear that the inquiry considered and ultimately rejected as unsupported by evidence alternative explanations for Mr Litvinenko’s death, including those that Mr Lugovoy put forward in his press appearances. In particular, the Chairman considered whether Mr Litvinenko might have poisoned himself, either accidentally or deliberately (see paragraph 60 above). He also considered whether the killing of Mr Litvinenko might have been directed by the United Kingdom intelligence services, groups linked to organised crime, or Mr Litvinenko’s business associates or acquaintances. However, none of these theories were supported by any evidence whatsoever (see paragraph 64 above).

108. It is true that neither the parties nor the Court have had access to the closed evidence, as this material has been in the exclusive possession of the United Kingdom Government. However, in cases where the Court has not had sight of national security material on which decisions restricting human rights are based, it has instead scrutinised the national decision-making procedure to ensure that it incorporated adequate safeguards to protect the interests of the person concerned (see, *mutatis mutandis*, *Yam v. the United Kingdom*, no. 31295/11, § 56, 16 January 2020). The Court therefore takes note of the fact that the closed evidence procedure was set out in detail in the inquiry report and the nature of the closed material was described, albeit in broad terms. The Chairman, counsel and the solicitor to the inquiry and the legal team for the Home Secretary were present at the closed hearings. Counsel could make submissions regarding documentary evidence, and witnesses giving oral evidence could be questioned by the Chairman and counsel (see paragraph 87 above). Although material subject to a Restriction Notice could not be referred to in the public hearings and had to be redacted from the report prior to its publication, the Restriction Notices were

themselves public documents, which were published both on the inquiry website and also as appendices to the report (see paragraph 81 above). The Court is therefore satisfied that, to the extent possible under the circumstances, the taking and use of closed evidence was attended with appropriate safeguards.

109. Lastly, the Court notes that the findings of the inquiry do not stand alone. They were consistent with the outcome of a criminal investigation conducted by the MPS. Having assessed the evidence obtained by the MPS, the CPS determined that there was sufficient evidence against both Mr Lugovoy and Mr Kovtun to charge them with Mr Litvinenko's murder by poisoning (see paragraphs 37 and 39 above). The fact that they did not ultimately stand trial for the crimes with which they were charged was not therefore due to a lack of evidence but rather due to the Russian Federation's refusal to extradite them.

(c) Conclusion

110. As there is no reason to doubt the quality of the domestic investigative process, or the independence, fairness and transparency of the inquiry proceedings, the Court considers that it cannot disregard the findings of the inquiry into the death of Mr Litvinenko solely because the authorities of the respondent State abstained from exercising their right to participate in those proceedings. Accordingly, the Court finds that the inquiry report should be admitted into evidence.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

111. The applicant complained under Articles 2 and 3 of the Convention that her husband, Mr Litvinenko, had been murdered in a particularly painful manner by Mr Lugovoy (with others) while acting as an agent for, or in connivance with, or with the knowledge and support of, the Russian authorities, and that the Russian authorities had failed to conduct an effective investigation into the murder. The Court will consider this complaint from the standpoint of the right to life guaranteed under Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Submissions by the parties

1. Compatibility ratione loci and jurisdiction

(a) The Government

112. The Government submitted that the application was inadmissible *ratione loci* in its entirety because the events had occurred outside Russian jurisdiction. At the time of his poisoning, Mr Litvinenko was a British national physically present in the United Kingdom. Russia had no “actual authority” over British territory and there was no causal link between any actions by the Russian authorities and the events in the instant case. The circumstances of the applicant’s case did not fall within any of the exceptions to the territorial principle of establishing the State’s jurisdiction as they had been set forth in *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, §§ 134-38, ECHR 2011) and *Jaloud v. the Netherlands* ([GC], no. 47708/08, §§ 139-53, ECHR 2014). Moreover, whilst in those cases the presence of the respondent State’s military personnel acting in an official capacity on the territory of a third State was undisputed, the present case was substantially different in that the person responsible for Mr Litvinenko’s death had never been identified and that, whoever that person was, there was no reason to believe that he or she had acted on the authority or with connivance of the Russian State. In support of their position, the Government referred to the findings of a domestic investigation which had not established Mr Lugovoy’s involvement in the killing and also to their argument that the inquiry report was inadmissible in the proceedings before the Court (see paragraph 95 above).

(b) The applicant

113. The applicant submitted that the authority, knowledge, support and connivance of the Russian authorities in her husband’s murder had occurred in Russia. The acts of preparation, planning, knowledge and agreement had taken place in Russian territory. The polonium-210 used to kill Mr Litvinenko had been produced at the Avangard facility in Russia and had been made available to Mr Lugovoy and others. Mr Lugovoy and others had travelled from Russia to the United Kingdom to carry out the act of murder and returned to Russia afterwards. The applicant relied on the Court’s case-law that “the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State’s responsibility under the Convention” (citing *Cyprus v. Turkey* [GC], no. 25781/94, § 81, ECHR 2001-IV).

114. The application of fatal force by a State agent to an individual outside the State's national territory was sufficient, in itself, to bring that individual into the State's jurisdiction (she referred to the *Al-Skeini and Others* and *Jaloud* judgments, cited above). Holding otherwise would mean that an assassination committed on the sovereign territory of Russia would be in violation of Article 2, whilst precisely the same conduct committed on the territory of another Contracting State would not – even where the victim had been granted asylum to protect him against the risk. This would create a perverse incentive for the State concerned to conduct assassinations abroad, rather than in Russia, because extraterritorial assassinations would be free from constraint under the Convention, and free from the supervision of the Court. It would, at the same time, create a perverse incentive to violate the sovereignty of other Contracting States of the Council of Europe.

115. The applicant concluded that Russia also had jurisdiction, or had assumed jurisdiction, over the matter on account of it having commenced a criminal investigation. The Russian authorities also asserted their exclusive jurisdiction in so far as the provisions of the Constitution and the reservation to the European Convention on Extradition prevented them from extraditing Mr Lugovoy to the United Kingdom for trial.

2. *Substantive obligation under Article 2 of the Convention*

(a) **The Government**

116. The Government submitted that the domestic investigation “into the death of A.V. Litvinenko and attempted murder of D.V. Kovtun” had not established the involvement of any Russian authorities or agents of special services. The investigation had not found evidence of any leak or theft of polonium-210 from the Avangard production facility, where the applicant claimed the polonium-210 used to poison Mr Litvinenko had been produced, or from its storage rooms or laboratory, and a search in Mr Lugovoy's office, car and home had not yielded any useful material for the investigation. Moreover, the material submitted by the British authorities did not contain sufficient evidence for Mr Lugovoy's prosecution in Russia. The Russian investigators did their best in the situation of a dearth of evidence which was attributable to the British authorities' failure to execute fully Russia's requests for legal assistance. The applicant's own conduct had been counterproductive; she stated that she did not wish to have any part in the Russian investigation or exercise her procedural rights. She also put forward unsubstantiated allegations of the existence of a pattern or practice of State-sponsored assassinations. Not only did those claims fall outside the scope of the present case but they were based on the erroneous assumption that the State's responsibility for a particular incident could be established by reference to other kinds of blameworthy conduct allegedly attributable to that State. The applicant was

not a victim of any of the alleged incidents and their circumstances were irrelevant to the present proceedings.

(b) The applicant

117. The applicant submitted that a thorough investigation by the British authorities had collected compelling evidence in support of her claim that her husband had been murdered by Mr Lugovoy with others, acting as agents for, or with the knowledge, support and connivance of, the Russian authorities. First of all, evidence was found of a polonium trail at three addresses in London which Mr Lugovoy had used and on the aircraft he had taken to travel between Moscow and London. Secondly, scientific evidence established that it was highly likely that the polonium-210 used to kill Mr Litvinenko had come from a government facility in Russia; it was inconceivable that material of such quality could have come into Mr Lugovoy's possession without the authority or connivance of the Russian authorities. Lastly, the Government had failed to rebut the strong presumption which the available evidence created.

118. The applicant invited the Court to accept and adopt the finding of the inquiry that there was a "strong probability" of Mr Lugovoy and Mr Kovtun acting as agents of the Russian State when they had murdered Mr Litvinenko and that the assassination had been authorised by the Russian FSB. That finding was corroborated by overwhelming evidence establishing that the Russian State had engaged, over many years, in a pattern and practice of extraterritorial targeted assassinations in Qatar (2003, Zelimkhan Yandarbiyev), the United Kingdom (2006, Litvinenko; 2018, Sergey Skripal), Bulgaria (2015, Emelian Gebrev), Montenegro (2016, Milo Đukanović), Germany (2019, Zelimkhan Khangoshvili) and elsewhere in Europe. Those events formed part of the same overall pattern of Convention violations as those at issue in the present case. They each involved a premeditated and carefully planned clandestine killing, or attempted killing, by Russian State agents, in violation of the substantive guarantee of Article 2, on the sovereign territory of another Contracting State, followed by a carefully planned and executed attempt to cover up State responsibility through the failure to cooperate with an independent investigation, deliberate attempts to disrupt or frustrate such an investigation, and a campaign of State-sponsored misinformation.

3. Procedural obligation to investigate

(a) The Government

119. On the procedural obligation of the respondent State in a situation where the death of the person concerned occurred outside the scope of that State's jurisdiction, the Government submitted that particular regard should be had to the transnational dimension of the case, which imposed a duty on

all the States concerned to cooperate effectively with each other. The investigative authorities in Russia, which was both a requested and requesting State, had taken all necessary steps to trigger the proper mechanisms for cooperation and also properly responded to similar requests from the United Kingdom authorities. In fact, the Russian authorities had sent a number of requests for legal assistance to the United Kingdom authorities which had failed to act upon them. The Government referred, by way of example, to a letter of 5 March 2007 by which the United Kingdom authorities had refused to inspect certain scenes and interview certain witnesses on the grounds that these actions were not deemed important for the investigation. The United Kingdom authorities had withheld the medical report on the cause of death and samples of polonium-210, and had not interviewed all individuals whose statements Russia wished to obtain. As a consequence, the Russian investigation had been denied information which could have helped the authorities to elucidate the matter. Moreover, in so far as the United Kingdom authorities appeared to believe that their jurisdiction was the appropriate venue for any trial relating to the murder of a British national occurring on British soil, it was clear that they had no genuine interest in seeking or providing assistance to the Russian investigation. In contrast, the Russian authorities had fully complied with the United Kingdom's requests for legal assistance: they had interviewed Mr Lugovoy and others, had identified the users of mobile telephone numbers, and had provided medical reports and other data. It was, however, impossible to grant the extradition request because of the constitutional ban on the extradition of Russian nationals. Lastly, Mr Lugovoy's election to Parliament in December 2007 had provided him with immunity from prosecution.

(b) The applicant

120. On the procedural limb of Article 2, the applicant submitted that the Russian authorities had had every opportunity to carry out an investigation between December 2006 and December 2007 before Mr Lugovoy had obtained immunity. Referring to the United Nations Principles on the investigation of extra-legal executions (see paragraph 71 above), she argued that the duty to investigate fell on the Russian authorities because of their refusal to extradite Mr Lugovoy to the United Kingdom. The investigation had fallen short of the effectiveness requirement: there had been no accountability for the preparatory acts such as the obtaining of polonium-210; witnesses had not been interviewed and evidence had not been secured; and no one's prosecution had been achieved or contemplated.

(c) The United Kingdom Government

121. Replying to the Court's invitation to respond to the Russian Government's allegations of insufficient cooperation, the United Kingdom Government submitted that, prior to the Russian Government's refusal to execute the request for extradition of Mr Lugovoy, the United Kingdom authorities had complied, so far as possible, with the mutual legal assistance requests addressed to them. Thereafter, the provision of further evidence to Russia had been suspended owing to the growing concerns that the Russian State was likely to have been responsible for Mr Litvinenko's murder on British soil. It was felt that the provision of evidence could lead to a trial taking place in Russia which would be but a sham or a publicity stunt designed to displace responsibility for the murder. If the trial had been held and concluded, this would have permitted Mr Lugovoy to rely on the bar of double jeopardy in order to resist extradition to the United Kingdom in the event of his apprehension outside Russia.

122. As regards the Russian Government's allegations relating to particular pieces of evidence, the United Kingdom Government submitted that Mr Litvinenko's medical file and notes, and also written and oral evidence from the two pathologists who had conducted his post-mortem examination, had been examined in open session and published on the inquiry's website. The inquiry had also received detailed evidence from an expert nuclear physicist concerning the properties and sources of polonium-210. Furthermore, had the ICRF applied for core participant status, it would have been afforded access to all the materials of the inquiry, with the exception of the sensitive evidence received in closed hearings.

B. The Court's assessment*1. General principles relating to jurisdiction***(a) Exercise of extraterritorial jurisdiction – general considerations**

123. Article 1 of the Convention reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

124. The Court reiterates that the exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputed to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention. While a State's jurisdictional competence under Article 1 is primarily territorial, the Court in its case-law has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be

determined with reference to the particular facts (see *Al-Skeini and Others*, cited above, §§ 130-132; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 70-73, ECHR 2012; and *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, §§ 97-98 and 101-02, 5 May 2020).

(b) Substantive obligation under Article 2 of the Convention

125. The two main criteria governing the exercise of extraterritorial jurisdiction are that of “effective control” by the State over an area outside its territory (spatial concept of jurisdiction) and that of “State agent authority and control” over individuals (personal concept of jurisdiction) (see *Al-Skeini and Others*, cited above, §§ 133-40, and *Georgia v. Russia (II)* [GC], no. 38263/08, § 115, 21 January 2021). In the present case, it is the second of these criteria that is relevant.

126. Under the personal concept of jurisdiction, “the use of force by a State’s agents operating outside its territory may bring the individual thereby brought under the control of the State’s authorities into the State’s Article 1 jurisdiction” (see *Al-Skeini and Others*, cited above, § 136). Jurisdiction in such cases does not arise solely from the control exercised by the Contracting State over the physical premises in which individuals are held but rather from “the exercise of physical power and control over the person in question” (ibid.). Whenever a State through its agents exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual. In this sense the Convention rights can be “divided and tailored” (ibid., § 137; see also *Jaloud*, cited above, § 154).

127. The Court reiterates that “a State may also be held accountable for violation of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State’s authority and control through its agents operating – whether lawfully or unlawfully – in the latter State” (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV, and *Issa and Others v. Turkey*, no. 31821/96, § 71, 16 November 2004). That approach was followed in a series of cases including *Isaak and Others v. Turkey* ((dec.), no. 44587/98, 28 September 2006), *Pad and Others v. Turkey* ((dec.), no. 60167/00, 28 June 2007), *Andreou v. Turkey* ((dec.), no. 45653/99, 3 June 2008) and *Solomou and Others v. Turkey* (no. 36832/97, §§ 48-51, 24 June 2008). In those cases, control over individuals on account of incursions and targeting of specific persons by the armed forces or police of the respondent State was sufficient to bring the affected persons “under the authority and/or effective control of the respondent State through its agents”.

128. The Court has held that “accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory

of another State, which it could not perpetrate on its own territory” (see *Issa and Others*, § 71, and *Solomou and Others*, § 45, both cited above). Targeted violations of the human rights of an individual by one Contracting State in the territory of another Contracting State undermine the effectiveness of the Convention both as a guardian of human rights and as a guarantor of peace, stability and the rule of law in Europe.

129. In its recent judgment in *Georgia v. Russia (II)*, the Court referred in particular to cases where State agents targeted an individual’s life and limb extraterritorially even without having formally exercised powers of arrest or detention over that person (see *Georgia v. Russia (II)*, cited above, §§ 130-31). It considered that those cases concerning, as they did, “isolated and specific acts involving an element of proximity” must be distinguished from situations of “armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos” which exclude any form of “effective control” over an area or of “State agent authority and control” over individuals (*ibid.*, §§ 132-33 and 137-38).

130. The line of cases referred to by the Grand Chamber – *Issa and Others*, *Isaak and Others*, *Pad and Others*, *Andreou* and *Solomou and Others*, all cited above – concerned the actions of the respondent States’ armed forces on or close to their borders. However, in the view of the Court, the principle that a State exercises extraterritorial jurisdiction in cases concerning specific acts involving an element of proximity should apply with equal force in cases of extrajudicial targeted killings by State agents acting in the territory of another Contracting State outside of the context of a military operation. This approach is consistent with the wording of Article 15 § 2 of the Convention, which allows for no derogations from Article 2, except in respect of deaths resulting from lawful acts of war.

(c) Procedural obligation to investigate

131. As regards the procedural limb of Article 2 in cases where the death occurred under a different jurisdiction from that of the State in respect of which the procedural obligation is said to arise, the Court has held that the institution by the investigative or judicial authorities of the respondent State of their own criminal investigation into that death is in principle sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim’s relatives who bring proceedings before the Court. The Court has emphasised that that approach is in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, capable of binding the State even when the death occurred outside its jurisdiction (see *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, §§ 188-89, 29 January 2019, with further references; see also *Romeo Castaño v. Belgium*, no. 8351/17, § 37, 9 July 2019).

132. Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link may nevertheless be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, “special features” in a given case will justify a departure from this approach (see *Güzelyurtlu and Others*, cited above, § 190). However, the Court has not defined *in abstracto* which “special features” trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other (*ibid.*, § 190).

2. Admissibility

(a) Procedural limb of Article 2

133. The Court notes that the Russian authorities instituted their own criminal investigation into the death of the applicant’s husband under the domestic law provisions which gave them jurisdiction to investigate offences against Russian nationals wherever they were committed (see paragraphs 41 and 75 above). The pursuance of those proceedings established a “jurisdictional link” between the applicant, who complained under the procedural limb of Article 2 in respect of her husband’s death, and the Russian State (see *Güzelyurtlu and Others*, cited above, § 191).

134. In addition, the Court notes that the suspects in the murder are Russian nationals who, since their return to Russia, have enjoyed constitutional protection from extradition. That protection was relied upon by the Russian authorities to refuse the extradition of one of them to the United Kingdom (see paragraphs 38 and 45 above). As a consequence, the United Kingdom authorities were prevented from pursuing the criminal prosecution of the suspects. Whereas the possibility that a State may refuse a request for extradition of its own national is not as such incompatible with the obligation to conduct an effective investigation, the fact that the Government retained exclusive jurisdiction over an individual who is accused of a serious human rights violation constitutes a “special feature” of the case establishing the respondent State’s jurisdiction under Article 1 of the Convention in respect of the applicant’s complaint under the procedural limb of Article 2 (see *Hanan v. Germany* [GC], no. 4871/16, § 142, 16 February 2021). Any other finding would undermine the fight against impunity for serious human rights violations within the “legal space of the Convention”, impeding the application of criminal laws put in place by the

United Kingdom to protect the right to life of their citizens and, indeed, of any individuals within its jurisdiction (see *Güzelyurtlu and Others*, cited above, § 195).

135. The Court therefore concludes that the Government’s objection of incompatibility *ratione loci* should be dismissed in respect of the procedural limb of the complaint.

(b) Substantive limb of Article 2

136. As regards the complaint under the substantive limb of Article 2, the Court considers that the Government’s objection *ratione loci* – that is to say, whether or not Mr Litvinenko was under the control of Mr Lugovoy and others and whether or not Mr Lugovoy and others acted as agents of the Russian State at the material time – is interlinked with the substance of the applicant’s complaint and will be examined together with the merits (see *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 52, 26 May 2020).

(c) Conclusion as to the admissibility

137. The Court considers that the complaint raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

3. Merits

(a) Procedural obligation under Article 2

138. The essential purpose of an investigation is to “secure the effective implementation of the domestic laws which protect the right to life” and ensure the accountability of those responsible. In order to be effective, an investigation must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 172-73, 14 April 2015). The investigation’s conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case and must

be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (*ibid.*, §§ 174-75).

139. In the present case the Russian investigative authorities launched an investigation into the death of Mr Litvinenko in December 2006, two weeks after his death (see paragraph 41 above). However, the issue is not so much whether there was an investigation, since it appears that there was one, as whether it was “effective” and whether the authorities were determined to identify and prosecute those responsible for the death of Mr Litvinenko.

140. The Government provided the Court with an outline of the investigative steps which had been taken. It would appear that in April 2007 a Deputy Prosecutor General and assisting investigators travelled to London, where they conducted several interviews (see paragraph 41 above). Furthermore, the Government referred to a number of elements in their observations. In particular, they claimed to have carried out tests for polonium-210 on the aircraft used by Mr Lugovoy and Mr Kovtun to travel between London and Moscow, on both Mr Lugovoy and Mr Kovtun themselves, and on items relating to them. They also claimed that interviews had been carried out with some of Mr Litvinenko’s family members and associates. Nevertheless, while documentary evidence of some of these tests or interviews may have been submitted to the inquest, no such documentation has been submitted to the Court.

141. When giving notice of the application to the Government, the Court specifically asked them a number of questions concerning the conduct of the domestic investigation. In particular, it asked whether Mr Lugovoy had been interviewed; whether the polonium-210 trail had been searched for and located within Russia; whether Mr Lugovoy’s home, car or office had been tested for polonium-210; whether the production and storage facilities at the laboratory where polonium-210 was manufactured had been checked for any missing batches; and whether the officials responsible for production, storage or circulation of polonium-210 had been interviewed. The Court also asked the Government to submit a copy of material from the domestic investigation file, which they declined to do (see paragraph 90 above).

142. In their observations to the Court, the Government stated that Mr Lugovoy had been interviewed by Russian investigators and his car and home had been searched but no material evidence had been discovered and no basis had been found for establishing criminal liability. They further claimed that the investigative authorities had established no leakage of polonium-210 from production or storage rooms of the facility where it was manufactured, and that no incidences of theft were established. The Court asked the Government to submit copies of the documents to which they referred in their observations and which formed a basis for their assertions. However, once again, the Court’s request for documentation has been declined without justification (see paragraph 91 above).

143. As the Court has indicated in paragraph 94 above, a failure on a Government's part to submit material which is in their hands without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations. In the present case, on account of the Government's unjustified refusal to submit the requested documentation, the Court finds that the respondent Government have failed to discharge their burden of proof so as to demonstrate that the Russian authorities have carried out an effective investigation capable of leading to the establishment of the facts and the bringing to justice of those responsible for Mr Litvinenko's killing.

144. It also appears that the Russian authorities attempted to thwart the efforts of the British investigators to establish the facts of the case. They refused to make available the aircraft on which Mr Lugovoy and Mr Kovtun had travelled from Moscow to London for testing for radioactive contamination (see paragraph 14 above). They also made an unsubstantiated claim that the aircraft on which the two men had flown back to Moscow was free of contamination (see paragraph 20 above).

145. Shortly after a magistrates' court issued a warrant for the arrest of Mr Lugovoy, a last-minute announcement was made that he would run for election to the Duma as a member of the Liberal Democratic party. When he was elected two months later, he acquired parliamentary immunity (see paragraph 43 above). He was subsequently re-elected on the same party's ticket. This, however, was not an absolute bar to his being investigated or even prosecuted; the relevant legal provisions and the practice of their application indicated that he could have been deprived of his immunity with the consent of the lower chamber of Parliament, of which he was a member (see paragraphs 77 and 78 above). Yet there is no indication that the Russian authorities sought to explore this possibility.

146. There remains the Government's argument that the investigation in the present case had a transnational dimension and that any failings on the part of the Russian authorities had been due to the United Kingdom authorities' failure to comply with their requests for legal assistance. As no complaint has been made against the United Kingdom, it does not fall to the Court to consider whether the United Kingdom authorities complied with their obligation to cooperate with their Russian counterparts (see, by contrast, *Güzelyurtlu and Others*, cited above, §§ 241 et seq.). Nonetheless, for the reasons set out below the Court does not accept that the actions of the United Kingdom authorities displace the inference that their Russian counterparts failed to conduct an effective investigation into Mr Litvinenko's death.

147. As the Government have not submitted either the criminal investigation file or the requests to the United Kingdom for legal assistance, they have not demonstrated that the material requested from the United Kingdom was in fact necessary for the Russian authorities' own

investigation to progress. This omission is of particular note given that by the time the requests were made the Russian investigation had already concluded that there had been no leaks or thefts from the Russian facility manufacturing polonium-210, and had already “exonerated” Mr Lugovoy and Mr Kovtun of their involvement in the killing and indicated that no other suspects were being investigated.

148. In the light of the foregoing, the Court considers that there has been a violation of the procedural limb of Article 2 to the Convention on account of the Russian authorities’ failure to conduct an effective investigation into the death of Mr Litvinenko.

(b) Substantive obligation under Article 2 of the Convention

149. At the time he was poisoned, Mr Litvinenko was in the United Kingdom and therefore not present in an area over which the Russian State exercised “effective control”. It remains therefore to be established whether the Russian State can be held accountable for the alleged violation of his right to life under the personal concept of jurisdiction.

150. In the light of the Court’s case-law summarised in paragraphs 126-130 above, the fate of the applicant’s complaint about the assassination of her husband depends on the answers to the following two interrelated questions: (i) whether the assassination of Mr Litvinenko amounted to the exercise of physical power and control over his life in a situation of proximate targeting; and (ii) whether it was carried out by individuals acting as State agents. The Court will establish the facts on the basis of the evidence available in the case file.

(i) Evaluation of evidence by the Court

151. In assessing evidence in cases concerning an alleged violation of the right to life, the Court has adopted the standard of proof “beyond reasonable doubt”. However, it has not borrowed the approach of the national legal systems that use that standard, since its role is not to rule on criminal guilt or civil liability but on Contracting States’ responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no pre-determined formulae for assessment of evidence. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties’ submissions (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

152. In addition, the conduct of the parties in relation to the Court's efforts to obtain evidence may constitute an element to be taken into account (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII). In this connection, the Court has held that where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008, and *Tagayeva and Others*, cited above, § 586).

153. The Court has found a violation of Article 2 where a *prima facie* case had been made that an individual was killed by State agents and the Government failed to provide any other satisfactory and convincing explanation of the events. It has also found that it could draw inferences from the Government's conduct in respect of the investigation documents (see, for example, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 139, 24 February 2005). It has not, however, found a violation in cases where the applicant's allegations are tenable but the circumstances of the death nevertheless remain a matter of speculation and assumption (see, for example, *Buldan v. Turkey*, no. 28298/95, § 81, 20 April 2004).

(ii) *Establishment of the facts*

154. In the present case, the circumstances of Mr Litvinenko's death are no longer a "matter of speculation and assumption". It has been established, beyond reasonable doubt, that he was poisoned with polonium-210, a rare radioactive isotope. It has been further established, also beyond reasonable doubt, that the poison was administered by Mr Lugovoy and Mr Kovtun.

155. Primary contamination – that is to say, evidence of direct contact between the radioactive substance and the surface on which it was deposited – was found in the hotel rooms where Mr Lugovoy and Mr Kovtun stayed on three occasions but also in the boardroom where they had first met Mr Litvinenko and in the teapot from which his tea had been poured. Secondary contamination – resulting from a transfer of primary contamination by someone's hand or foot – was discovered in most places that Mr Lugovoy and Mr Kovtun had visited during their stay in London (and also, in Mr Kovtun's case, in Hamburg) and on the aircraft on which they had flown. In contrast, the other locations tested for contamination, including Mr Litvinenko's home, Mr Berezovskiy's offices and Mr Scaramella's room, were free from traces of direct contact with the radioactive substance (see paragraphs 18, 22, 25 and 27 above).

156. A pattern of contamination in Mr Lugovoy's and Mr Kovtun's hotel rooms, where the highest readings were located in the bathroom bin or sink plughole, pointed to attempts having been made to dispose of the

poison by throwing it into a bin or pouring it down the sink. It is significant that Mr Lugovoy and Mr Kovtun made not one but three separate attempts to poison Mr Litvinenko. Each time they came to London from Moscow either directly or, in Mr Kovtun's case, via Hamburg (see paragraphs 13, 21 and 23-24 above).

157. In these circumstances, the Court rejects the Government's assertion that the perpetrator or perpetrators of the assassination have not been identified. In the light of the documentary and other evidence which the parties have submitted to it, the Court, having regard to the standard of proof which it habitually employs when ascertaining whether there is a basis in fact for an allegation of unlawful killing, namely proof "beyond reasonable doubt", finds it established that the assassination was carried out by Mr Lugovoy and Mr Kovtun.

(α) Whether Mr Lugovoy and Mr Kovtun exercised physical power and control over the life of Mr Litvinenko in a situation of proximate targeting

158. As framed in paragraph 150 above, the Court's inquiry will first address the issue whether the assassination of Mr Litvinenko amounted to the exercise of physical power and control over his life in a situation of proximate targeting.

159. The evidence of premeditation strongly indicates that the death of Mr Litvinenko had been the result of a planned and complex operation involving the procurement of a rare deadly poison, the travel arrangements for Mr Lugovoy and Mr Kovtun, and multiple attempts to administer the poison. Mr Litvinenko was not an accidental victim of the operation or merely adversely affected by it; the possibility that he may have ingested polonium-210 by accident is not borne out by the evidence (see paragraph 61 above). On the contrary, repeated and sustained attempts to put poison in his drink demonstrate that Mr Litvinenko was the target of the planned operation for his assassination.

160. The Court further notes that the evidence has established, beyond reasonable doubt, that Mr Lugovoy and Mr Kovtun knew that they were using a deadly poison rather than a truth serum or a sleeping pill (see paragraph 69 above). When putting the poison in the teapot from which Mr Litvinenko poured a drink, they knew that, once ingested, the poison would kill Mr Litvinenko. The latter was unable to do anything to escape the situation. In that sense, he was under the physical control of Mr Lugovoy and Mr Kovtun, who wielded power over his life.

161. In the Court's view, the administration of poison to Mr Litvinenko by Mr Lugovoy and Mr Kovtun amounted to the exercise of physical power and control over his life in a situation of proximate targeting. That being so, if this act was imputable to the respondent State, the Court considers that it was capable of falling within the jurisdiction of that State in line with its case-law cited above.

(β) Whether Mr Lugovoy and Mr Kovtun acted as State agents

162. The Court will next consider whether Mr Lugovoy and Mr Kovtun acted as agents of the respondent State.

163. It has been found as a fact that when Mr Lugovoy and Mr Kovtun committed the murder of Mr Litvinenko, they were not acting on their own initiative, but on the direction of another entity (see paragraphs 63 and 69 above). There was no evidence that either man had any personal reason to kill Mr Litvinenko and it was not plausible that, if acting on their own behalf, they would have had access to the rare radioactive isotope used to poison him. The use of polonium-210 strongly indicates that Mr Lugovoy and Mr Kovtun were acting with the support of a State entity which enabled them to procure the poison. A radioactive isotope was an unlikely murder weapon for common criminals and must have come from a reactor under State control (see paragraphs 64-66 above).

164. Not only the means by which the killing had been perpetrated, but also the motives pointed to State involvement. The public inquiry carefully reviewed and discarded several theories as to the entities which might have wished Mr Litvinenko dead, which left the theory of State involvement as the only tenable one. The inquiry report further identified several reasons why organisations and individuals within the Russian State would have wished to target Mr Litvinenko. Having reviewed all evidence before him, the Chairman considered that there existed a strong probability that when poisoning Mr Litvinenko, Mr Lugovoy and Mr Kovtun were acting under the direction of the Russian security service (see paragraph 68 above).

165. In a case of an extraterritorial extrajudicial targeted killing, the authorities of the State on whose soil it was carried out can only do so much. They can and should, circumstances permitting, identify the perpetrators of the execution and the elements linking them to the State allegedly responsible for the execution. This was what the United Kingdom authorities did in the instant case. The Court considers that the identification of the perpetrators of the killing and the indication of their connection with the authorities of the respondent State established a strong *prima facie* case that, in killing Mr Litvinenko, Mr Lugovoy and Mr Kovtun were acting under the direction or control of the Russian authorities.

166. While there existed a theoretical possibility that the assassination of Mr Litvinenko might have been a “rogue operation” not involving State responsibility, the information needed to corroborate this theory lies wholly, or in large part, within the exclusive knowledge of the Russian authorities, which moreover asserted exclusive jurisdiction over Mr Lugovoy and Mr Kovtun by invoking the constitutional protection against extradition. In these circumstances, the burden of proof was shifted onto the authorities of the respondent State, which were expected to carry out a meticulous investigation into that possibility, identify those involved in the operation and determine whether or not Mr Lugovoy’s and Mr Kovtun’s conduct was

directed or controlled by any State entity or official, which is a factor indicative of State responsibility (see Article 8 of the Draft Articles in paragraph 72 above).

167. The Government, however, have not made any serious attempt either to elucidate the facts or to counter the findings arrived at by the United Kingdom authorities. In fact, they have failed to engage with any fact-finding efforts, whether those conducted in the United Kingdom or those undertaken by the Court. They declined to participate in the public inquiry into the death of Mr Litvinenko. They did not comply with their obligations under Article 38 of the Convention on account of their unjustified refusal to submit a copy of materials relating to the domestic investigation (see paragraph 94 above) which they claimed did not establish any State involvement in Mr Litvinenko's death.

168. Most significantly, as the Court has found above, the Russian authorities failed to carry out an effective investigation themselves (see paragraph 148 above). There is no evidence that, having full access to Mr Lugovoy and Mr Kovtun upon their return to Russia, the Russian authorities have undertaken a verification of the facts already established in the United Kingdom's public inquiry – facts which, as the Court has found above, demonstrated Mr Lugovoy's and Mr Kovtun's responsibility for the killing of Mr Litvinenko. The Court reiterates that Mr Lugovoy's parliamentary immunity was not an absolute bar to his being investigated or prosecuted (see paragraph 145 above).

169. Consequently, the Court considers that adverse inferences may be drawn from the respondent State's refusal to disclose any documents relating to the domestic investigation. Noting the Government's failure to displace the *prima facie* evidence of State involvement, the Court cannot but conclude that Mr Litvinenko was poisoned by Mr Lugovoy and Mr Kovtun acting as agents of the respondent State. The act complained of is attributable to that State.

(iii) Conclusion on the substantive limb of the complaint

170. Having considered both prongs of the inquiry as framed in paragraph 150 above, the Court has accepted that, when they poisoned Mr Litvinenko, Mr Lugovoy and Mr Kovtun were acting as agents of the respondent State and that they exercised physical power and control over his life in a manner sufficient to establish a jurisdictional link with the respondent State for the purposes of Article 1 of the Convention. Accordingly, the Government's objection of inadmissibility *ratione loci* must be dismissed.

171. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from

which no derogation is permitted (see *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI).

172. As the Government have not sought to argue that the killing of Mr Litvinenko could be justified by reference to any of the exceptions in the second paragraph of Article 2, the Court finds that there has been a violation of the substantive limb of that Article.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

173. Lastly, the applicant complained under Article 3 about the distress and anguish caused to her and her son as a result of her husband's murder and her own contamination with a radioactive isotope.

174. The Court holds that the complaints which the applicant submitted on behalf of her son must be declared inadmissible *ratione personae* because she was not herself a victim of the alleged violations. It further notes that she did not produce any material capable of showing that the alleged side effects resulting from radioactive poisoning or the distress and anguish she had experienced had gone beyond the threshold of severity under Article 3 of the Convention. This complaint is therefore manifestly ill-founded and must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

176. The applicant asked the Court to determine the amount of award in respect of pecuniary and non-pecuniary damage.

177. The Government pointed out that the applicant failed to specify the amount.

178. Pursuant to Rule 60 § 1 of the Rules of Court, an applicant who wishes to obtain an award of just satisfaction in respect of pecuniary damage must make a specific claim to that effect. Since in the present case the applicant failed to specify the amount claimed, the Court makes no award under this head (Rule 60 § 3) (see *Narodni List D.D. v. Croatia*, no. 2782/12, § 77, 8 November 2018).

179. In contrast, since non-pecuniary damage does not, by its nature, lend itself to precise calculation, Rule 60 does not prevent the Court from examining claims for non-pecuniary damage which applicants did not

quantify, leaving the amount to the Court's discretion (see *Nagmetov v. Russia* [GC], no. 35589/08, § 72, 30 March 2017). Making an assessment on an equitable basis, the Court awards the applicant 100,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

180. As regards the claims for damages which the applicant submitted, on 28 February 2020, of her own initiative after the time-limit fixed for the submission of claims had expired, the Court notes that they did not refer to any new elements of which she had not been aware when submitting her original claims or to any new expenses which she might have incurred after the expiry of the initial time-limit. In accordance with Rule 38 § 1 and Rule 60 § 3, the Court rejects this part of the applicant's claims. Moreover, in so far as she claimed "exemplary or punitive damages" to reflect the particular character of the violation she had suffered and to serve as a deterrent in respect of violations of a similar nature by the respondent State, the Court has declined to make any such awards in the past (see the cases cited in *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, § 97, 23 November 2010) and finds no reason to depart from the established case-law.

B. Costs and expenses

181. The applicant also claimed EUR 31,488.36 for the work of her representatives before the Court.

182. The Government commented that, as a general principle, governments should not bear responsibility for an applicant's decision to employ expensive lawyers (they referred to the United Kingdom Government's position in *I.J.L. and Others v. the United Kingdom* (just satisfaction), nos. 29522/95 and 2 others, § 10, 25 September 2001).

183. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 22,500 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

184. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that the respondent Government have failed to comply with their obligations under Article 38 of the Convention;

2. *Joins*, by a majority, the Government's objection of inadmissibility *ratione loci* to the merits of the substantive limb of Article 2 and *dismisses* it in respect of the procedural limb;
3. *Declares*, by a majority, the complaints concerning Mr Litvinenko's death admissible and the remainder of the application inadmissible;
4. *Holds*, by six votes to one, that there has been a violation of Article 2 of the Convention under the substantive and procedural limbs and *dismisses* the Government's objection of inadmissibility *ratione loci*;
5. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 22,500 (twenty-two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

CARTER v. RUSSIA JUDGMENT

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

P.L.
M.B.

PARTLY DISSENTING OPINION OF JUDGE DEDOV

I regret that I cannot join the conclusions of the majority in finding a violation of both the procedural and the substantive limb of Article 2 of the Convention. I am not sure that those findings have been made beyond reasonable doubt. I found many deficiencies in the analysis by the British inquiry and by the Court which raise reasonable doubts as to the involvement of the suspects in the poisoning and whether they were acting as agents of the State.

A. Procedural obligation and jurisdictional link

1. My starting-point relates to the general basis for establishing a procedural obligation and a jurisdictional link. The Court has stated that “in cases where the death occurred under a different jurisdiction from that of the State in respect of which the procedural obligation is said to arise, ... the institution by the investigative or judicial authorities of the respondent State of their own criminal investigation into that death is ... sufficient to establish a jurisdictional link for the purposes of Article 1” (see paragraph 131 of the judgment). In my opinion, there was no jurisdictional link resulting either from the institution of the investigation by the Russian authorities or from any “special feature”. The latter was indicated by the Court in paragraph 134 of the judgment, where it stated that “the fact that the Government retained exclusive jurisdiction over an individual who is accused of a serious human rights violation constitutes a ‘special feature’ of the case establishing the respondent State’s jurisdiction under Article 1 of the Convention”. The constitutional protection from extradition in general cannot serve as a “special feature” because this type of immunity is available to all Russian citizens under the Russian Constitution in line with international standards. Furthermore, the respondent State was prevented from fulfilling the obligation to conduct an effective investigation because the United Kingdom authorities refused to cooperate and to provide access to the investigation files in order to verify even the basic evidence confirming that the victim had been poisoned by polonium and that episodes of primary and secondary contamination had occurred (no public access exists to such materials, which were considered part of the inquiry, and the relevant links do not work).

2. Indeed, the Russian authorities instituted an investigation “into the death of Mr Litvinenko and the attempted murder of Mr Kovtun”. However, the main purpose of the investigation was to identify the perpetrators who attempted to murder Mr Kovtun in circumstances connected with the death of Mr Litvinenko, as both “suspects” were contaminated when they returned to Russia. This brings me to the conclusion that the present case is different from the circumstances of the investigation in *Güzelyurtlu and Others*

v. Cyprus and Turkey ([GC], no. 36925/07, 29 January 2019). As regards Mr Litvinenko himself, the Russian authorities did not have jurisdiction to investigate, since by the time of the event, Mr Litvinenko had changed his citizenship to become a citizen of the United Kingdom, and had even changed his name to Edwin Redwald Carter to establish a link with his new home State and to terminate any civil status connected with Russia.

3. When it appeared that Mr Kovtun and Mr Lugovoy – who both had victim status in the Russian investigation – were considered suspects by the United Kingdom authorities, the Russian investigators asked for the material from the British criminal file (mainly because the Russian investigators were unable to find any material evidence supporting the involvement of the suspects in the killing), but their request was rejected by the United Kingdom authorities. It appears that in accordance with the observations of the Government, the British investigators refused to provide their Russian colleagues with any basic material evidence, including the samples of polonium (to compare with Russian polonium), the forensic medical report on the causes of death and any other material which could have constituted a basis for opening a criminal case against the “suspects”. Furthermore, the Russian investigators were denied assistance and cooperation in order to test any theories other than the main one. This raises doubts from the very beginning as to the impartiality of the British investigation (contrary to the Court’s conclusion in paragraph 110 of the judgment that “there is no reason to doubt the quality of the domestic investigative process, or the independence, fairness and transparency of the inquiry proceedings”).

B. Jurisdiction under the substantive limb of Article 2

Source of polonium-210

4. The Court found that “[t]he use of polonium-210 strongly indicates that Mr Lugovoy and Mr Kovtun were acting with the support of a State entity which enabled them to procure the poison” (see paragraph 163 of the judgment). However, the results of the inquiry were not so evident. It was not established by the British experts that the polonium discovered by the investigators in the United Kingdom was identical to the polonium produced in Russia. Obviously, the experts had the opportunity to obtain samples from the United States purchaser of the Russian polonium, but they could not confirm that the polonium that was used as a poison had been produced in Russia. Moreover, the inquiry established that there were many reactors and laboratories in Europe, including in the territory of the United Kingdom, where polonium could be produced. The conclusion was reached only because in Russia there was a “programme” for the production of polonium. The Court should not have relied on such general and vague reasoning.

Control of the victim by the suspects

5. The first point of doubt relates to the contamination of means of transport. No contamination was found in the airport bus which carried the suspects when they arrived in London. Since this fact was established by the British investigators, the chairman of the inquiry paid no attention to it. When the Russian investigators found no contamination in the Russian aeroplane which carried the suspects to London, the chairman became very suspicious about the independence and impartiality of the Russian investigation. Such double standards could hardly be acceptable in a judicial examination. No polonium was detected at the airports in either Moscow or London. All these facts may prompt the reasonable theory that the suspects did not carry any poison with them, and that they were targeted on British territory by third parties.

6. The second point of doubt relates to the use of polonium by the suspects. Contamination was detected in rooms in different hotels. The Court paid special attention to this fact and concluded that the suspects had made several attempts to poison the victim (see paragraph 159 of the judgment). According to the inquiry and the Court, a high level of contamination in bathroom bins and sink plugholes pointed to attempts having been made to dispose of the poison by throwing it into a bin or pouring it down the sink. The Court noted (or even concluded) that “the evidence has established, beyond reasonable doubt”, that the suspects “knew that they were using a deadly poison” (see paragraph 160 of the judgment). I am not sure that an international court that had no control over the investigation and inquiry can reach such firm conclusions in a situation where there was a lack of direct evidence to support the subjective intentions of the individuals concerned and thus to establish the subjective element of the crime.

7. I wonder myself whether the suspects could really have been so careless and reckless, since they allegedly knew that they were in possession of polonium, that it was a radioactive chemical element, and that if it was poured down the sink, the traces of the poison would remain detectable for a period of six months. It would have been more prudent to keep the polonium in a container preserving it from detection at airports (this could have been a small glass jar) and to throw it into a rubbish bin on a street far away from the hotel. Rather, those facts could reasonably give rise to a theory that it could have been any third parties who were tracking the movements of the “suspects” and left the contamination in every hotel rooms where they stayed, disposing of the poison in the same places and in the same manner, as a way of planting evidence against the “suspects”.

8. The third point of doubt (deriving from the previous paragraph) relates to the possibility that third parties might have been the real perpetrators. The Court noted that “[t]he public inquiry carefully reviewed and discarded several theories as to the entities which might have wished

Mr Litvinenko dead, which left the theory of State involvement as the only tenable one. The inquiry report further identified several reasons why organisations and individuals within the Russian State would have wished to target” the victim (see paragraph 164 of the judgment). However, the British investigation followed by the inquiry paid little attention to theories other than the involvement of agents of the Russian State. They concentrated heavily and disproportionately on that theory. However, the theory of involvement of the British intelligence service, owing to the circumstances in which the material evidence was found in the hotels, could be considered much more tenable than the involvement of Russian agents in the poisoning. The main theory supported and developed by the inquiry becomes even more doubtful since it is not based on any direct evidence, but on the contrary is based on the statements of witnesses who specialise in conspiracy theories undermining the reputation of the Russian authorities (especially the Russian intelligence service) and portraying them as the devil. In contrast, the assessment of the British intelligence service in the inquiry report appears to be completely positive. I am not surprised that a British judge would find the Russian, not British, intelligence service responsible for the poisoning. But again, this raises the questions of double standards, independence and impartiality of the inquiry.

Whether the suspects were agents of the State

9. The Court has reached its conclusion using very general wording (“the indication of their connection with the authorities of the respondent State established a strong prima facie case that, in killing Mr Litvinenko, Mr Lugovoy and Mr Kovtun were acting under the direction or control of the Russian authorities” – see paragraph 165 of the judgment). It appears that only the circumstances of the poisoning were supported by material evidence. However, the involvement of the State in the poisoning was confirmed with the same conviction but without any evidence at all. The inquiry thus transformed from a quasi-criminal investigation to mere conspiracy theories. The Court based its assessment on the reactions of the authorities, which did not carry out an effective investigation and then refused to extradite the suspects and did not seek to deprive one of them of parliamentary immunity. I explained above that extradition is prohibited under the Russian Constitution, and that an effective investigation was not possible without the material evidence held by the United Kingdom authorities and was difficult, or even unrealistic, to achieve on account of the fact that the crime was committed outside the territory of the Russian Federation, and therefore the key investigative steps were outside the control of the Russian authorities.

10. Neither the inquiry nor the Court had any evidence that the suspects were State agents. Instead, the Court shifted that burden of proof to the Russian Government in a situation when there was no prima facie claim.

The Court fully relied on the conclusions of the inquiry and paid little attention to the fact that Mr Lugovoy had ended his State service in 1995 and Mr Kovtun in 1992, eleven and fourteen years respectively before the poisoning. Since then, they had been fully engaged in the private sector of the economy. Their motivation to kill cannot be justified by any of the reasons imagined in the report, including revenge. On the contrary, they provided security services to Mr Berezovsky, the victim's associate and even "friend", so the suspects had proved their friendship, loyalty and trust on many occasions. I must say that the 1990s were very difficult years for the Russian people, who had to live in a failed State at that time. Organised crime rapidly developed and flourished. The law-enforcement officers were not motivated to continue their service and moved in large numbers to the private sector. This was quite natural, so there were no motives for either of the suspects to return to State service, and especially to agree to kill Mr Litvinenko. The response in the inquiry report (as well as the analysis) was inspired by a conspiracy theory: "there is no such thing as a former KGB man" (see Chapter 9 of the inquiry report).

11. It was not taken into consideration that the suspects had terminated their relations with the State institutions. Instead, all the previous and consequent activities of Mr Lugovoy were aimed at developing private security services in Russia and limiting the State's influence in this field. Furthermore, he was invited to engage in law-making activities by an opposition political party, and not by the ruling party. He was re-elected as an active member of the party – not simply for the purpose of immunity. Later, he was awarded an honour for his parliamentary activity.

C. Motivation

12. The inquiry report and the Court in the present judgment preferred not to develop other theories, including the involvement of British intelligence in the death of the victim. Both Mr Berezovsky and Mr Litvinenko left Russia together at the same time. Obviously, Mr Berezovsky could be considered much more dangerous for the Russian authorities as he intended to play a key role in Russian politics as a shadow director to gain power, money and influence without taking any responsibility. His manner of government distorted democracy in Russia, but instead he obtained refugee status in the United Kingdom as a political opponent of the Russian government. However, Mr Berezovsky was never a target, even if there was allegedly (according to Mr Litvinenko) an attempt to kill him in Russia just before his departure. I think that Mr Berezovsky was not so active against his Russian opponents after settling in London. In contrast, Mr Litvinenko started a new life earning money by selling negative compromising information about Russian intelligence and high-ranking officials. He published a book about explosions at buildings in Moscow,

blaming the Russian intelligence service, but this allegation has never been confirmed by any evidence. The inquiry report also presents a large amount of such implausible information provided by various witnesses.

13. It seems that the United Kingdom intelligence service was interested in such information even though it was very far removed from the interests of national security. Indeed, this information would be considered valuable if a different purpose had been pursued, namely to present the Russian authorities as the devil. No doubt the Russian intelligence services were and are considered an adversary by British intelligence. Also, I have no doubt that the relationship between the United Kingdom and American intelligence services is very different in nature from the relationship between the United Kingdom and Russian intelligence services. I presume that the Cold War has never ended for the intelligence services. Mr Churchill declared that cold war many years ago, and no other subsequent Prime Minister has declared officially that the war is over. Therefore, I am not surprised that the British judge found the Russian State responsible, and therefore confirmed the version of events put forward by the victim himself before his death and also provided in the application many years before the inquiry report was issued.

14. It could reasonably be understood that the election of Mr Lugovoy as a member of the national parliament was motivated by the fact that he had become a victim of the Cold War. The fact is that Mr Litvinenko worked for the United Kingdom intelligence service and those of some other countries, and expressed his dissatisfaction that Mr Lugovoy was not proactive in favour of British intelligence. Mr Litvinenko made no secret of the fact that he was an intelligence agent (probably because this would raise the credibility of the information provided by him) and the United Kingdom intelligence service could not tolerate this anymore. These circumstances should lead to the conclusion that many other people who had been targeted by Mr Litvinenko's attempts to find negative information about them, as well as the United Kingdom intelligence service, could have been interested in getting rid of him, so all those theories should have been a priority for the purposes of the investigation and inquiry. But nothing was done to that end: "I have heard no evidence to support this allegation" (see Chapter 3 of the inquiry report).

D. Approach of the Court to the assessment of the evidence

15. In such a controversial situation which casts doubt on the impartiality and independence of the British inquiry, the Court should have avoided such direct and unconditional endorsements of the findings of the inquiry report. While the Court may draw inferences from the material available to it, as well as from the authorities' conduct, when establishing the relevant facts of a case, it is ultimately for the Court to make its own

findings and reach its own conclusions on the applicant's allegations (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 16, ECHR 2012).

16. The main problem in the present case is how the Court assessed the evidence in front of it. It relied entirely on the conclusions of the inquiry report without taking into consideration the level of probability with regard to the responsibility of the State. The Court therefore confirmed that the suspects acted on behalf of and on the instructions of the authorities without any reference to such probability, as though this were an established fact. At the same time the Court concluded that there was a *prima facie* claim which was not refuted by the Russian Government. Indeed, the Government did not institute a criminal investigation in respect of the “suspects”, they refused to participate in the public inquiry, and they even refused to provide the Russian criminal case file to the Court. That could make the Court suspicious and more confident that there was really a *prima facie* claim. However, there was nothing to be refuted by the Government as the complaint under the substantive limb of Article 2 was not based on any material evidence. The persons who expressed their opinion about alleged State involvement cannot be considered witnesses from the criminal-law point of view as their “knowledge” was not based on facts, documents or any other material evidence. It was just a theoretical possibility. Therefore, the quality of the claim in the present case is doubtful, in my view, and so I have doubts that there was a *prima facie* claim in the present case.

17. The inquiry proceedings lacked the guarantees of a fair trial for many reasons. Since the defendants (individuals and officials of the respondent State) were not present in the proceedings, there should have been more scrutiny to ensure the effectiveness of the defence. However, the legal assistance was not effective: counsel for the defence did not raise any doubts such as those expressed above in the present opinion; nor did he examine the prosecution witnesses, who were left free to provide absolutely unbelievable statements and frivolous allegations. The inquiry chairman expressed a positive attitude in relation to the British investigation and a negative one in relation to the Russian investigation and its efforts to promote alternative scenarios. The assessment of evidence by the inquiry chairman was one-sided and was deficient in ensuring a fair balance and equality of arms. Obviously, the principles of a fair trial were not respected in the inquiry proceedings, but the Court did not take that into account while assessing the evidence in the present case.

18. Contrary to the essential elements of a fair trial (see *Čepek v. the Czech Republic*, no. 9815/10, § 48, 5 September 2013, and *Alexe v. Romania*, no. 66522/09, § 37, 3 May 2016), the Court considered most of the allegations and probabilities to be established facts. The inquiry started with the question of criminal charges against the individuals concerned but ended with the responsibility of the Russian authorities, an outcome which

the respondent State would not have been able to anticipate. I consider that the investigating authorities of both States did not engage in full-scale cooperation with each other (especially with regard to the investigation of alternative scenarios); the United Kingdom authorities did not question any defence witnesses; counsel for the defence performed his functions purely formally during the inquiry; the link between the suspects and the authorities was not established; and no other actions of the Russian authorities can be interpreted as the State praising the suspects for the killing. Although the system of presumptions developed in the Court's case-law suggests that the Court relies upon formal truth and the activity of the parties alone, all the factors mentioned above should not have allowed the Court directly, without any reservations, to accept as established those factual allegations that were made in the inquiry report and were not rebutted by the Russian Government.