



Russia was responsible for assassination of Aleksandr Litvinenko in the UK

In today's **Chamber** judgment¹ in the case of [Carter v. Russia](#) (application no. 20914/07) the European Court of Human Rights held that there had been:

unanimously, a failure by the Government to comply with their obligations under Article 38 (obligation to furnish necessary facilities for the examination of a case) of the European Convention on Human Rights,

by 6 votes to 1, a violation of Article 2 (right to life) in its substantive and procedural aspects.

The case concerned the poisoning and death of the applicant's husband, Aleksandr Litvinenko, in the United Kingdom, and the investigations into his death. Mr Litvinenko had worked for the Russian security services before defecting to the United Kingdom where he was granted asylum. In 2006 he was poisoned with polonium 210 (a radioactive substance) in London and died. A public inquiry in the UK found that the assassination had been carried out by a certain Mr Lugovoy and a Mr Kovtun, who had been acting on behalf of someone else.

The Court found in particular that there was a strong prima facie case that, in poisoning Mr Litvinenko, Mr Lugovoy and Mr Kovtun had been acting as agents of the Russian State. It noted that the Government had failed to provide any other satisfactory and convincing explanation of the events or counter the findings of the UK inquiry.

The Court also found that the Russian authorities had not carried out an effective domestic investigation capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible for the murder.

Principal facts

Background

The applicant, Maria Anna Carter aka Marina Litvinenko, is a British and Russian national who was born in 1962 and lives in London. She is the widow of Aleksandr Litvinenko, a Russian and British national who was born in 1962.

Mr Litvinenko had worked for the Soviet and Russian security services (the KGB and later the FSB). In November 1998 he went public with allegations that he had been asked to examine the possibility of assassinating a wealthy businessman. He was fired from the security service and fled from Russia.

In 2001 he and his family were granted asylum in the United Kingdom; they acquired British citizenship in 2006. They changed their names. Mr Litvinenko became involved in exposing corruption and links to organised crime in the Russian intelligence services. It is alleged that Mr Litvinenko also worked with the British, Spanish and Italian authorities, advising on Russian organised crime and KGB operations in Europe.

Mr Litvinenko's death

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

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

In October 2006 Andrey Lugovoy, a long-standing acquaintance of Mr Litvinenko, visited London three times, each time in the company of Dmitriy Kovtun.

During the first visit on 16 October 2006, a meeting took place between Mr Lugovoy, Mr Kovtun and Mr Litvinenko and others and they went together to dinner. Mr Litvinenko vomited later that night and remained ill for two days. The following day Mr Lugovoy and Mr Kovtun checked out of their hotel one day early. The room was later found to contain significant polonium contamination, with signs pointing to the substance having been poured down the sink plughole. Further evidence of polonium contamination was found in areas that the pair had visited in London, including the room where the meeting had taken place and the restaurant in which they had dined.

From 25 to 28 October 2006 Mr Lugovoy visited London for a second time, apparently meeting with Mr Litvinenko, among other things. A pattern of polonium contamination consistent with accidental spillage was detected in his hotel room.

On 31 October 2006 Mr Lugovoy and Mr Kovtun returned to London for a third time. The following day they met with Mr Litvinenko, drinking tea in their hotel bar. Extensive traces of polonium were found, including in the teapot and the men's toilets, which had been used by the former two but not by Mr Litvinenko. On 3 November 2006 they returned to Moscow. Polonium contamination was found in the aeroplane and in their seats in the Emirates Stadium in London, where they had watched a football match.

On 2 November 2006 Mr Litvinenko was taken ill, with vomiting, abdominal pain and bloody diarrhoea. The next day he was admitted to hospital. Following a transfer to University College Hospital, it was suspected that he had been poisoned using chemotherapeutic agents or radioisotopes. Mr Litvinenko died on 23 November 2006. The cause of death was established to be acute radiation syndrome caused by very high levels of polonium 210, which had entered the body as a soluble compound via ingestion.

Proceedings following Mr Litvinenko's death

A police investigation was opened in the UK before Mr Litvinenko's death. On 22 May 2007 the Crown Prosecution Service determined that there was sufficient evidence against Mr Lugovoy to charge him with Mr Litvinenko's murder. The authorities attempted to have him extradited to the UK for trial. That was refused by the Russian authorities because of the constitutional protection against extradition of Russian nationals. In 2011 Mr Kovtun was also charged with the murder and an arrest warrant against him was sought. On 2 December 2007 Mr Lugovoy became a member of the Russian Parliament and thus acquired parliamentary immunity. Mr Lugovoy and Mr Kovtun both remain wanted for the murder.

On 7 December 2006 the Russian Prosecutor General launched a domestic criminal investigation, of which the Court has little information.

In the UK, an inquest and a public inquiry were carried out. In January 2016 the inquiry found it established, beyond reasonable doubt, that Mr Litvinenko had been poisoned using polonium and that the poison had been administered by Mr Lugovoy and Mr Kovtun. It excluded accidental or deliberate self-poisoning. It also rejected the suggestion that Mr Lugovoy had been set up by British intelligence.

The inquiry noted the motives that entities within 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. On the strength of both open and closed evidence, it found that Mr Lugovoy had been acting under FSB direction and Mr Kovtun had also been acting under FSB direction, possibly indirectly through Mr Lugovoy but probably with his knowledge.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment), the applicant complained 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 application was lodged with the European Court of Human Rights on 21 May 2007. The proceedings before the Court were suspended from 16 December 2014 until 8 March 2016 pending the outcome of the public inquiry in the United Kingdom.

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

Paul **Lemmens** (Belgium), *President*,
Georgios **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
and also Milan **Blasko**, *Section Registrar*.

Decision of the Court

Preliminary issues

The Court firstly ruled that Russia had failed to provide, without justification, the requested material (documents from the investigation file, including Mr Lugovoy's statements and copies of legal assistance requests addressed to the United Kingdom authorities) necessary for the Court's investigation into the case, in violation of Article 38 of the Convention.

The Court also dismissed the Russian Government's objection to the use of the UK public inquiry report as evidence. It found that, as the inquiry had met the requirements of independence, fairness and transparency, it could not disregard its findings solely because the Russian authorities had abstained from exercising their right to participate in those proceedings.

Article 2 (procedural aspect)

The Court considered that a procedural jurisdictional link between Russia and the death of Mr Litvinenko in the UK had been established by reason of Russia's having launched a domestic investigation into the matter. In addition, the fact that Russia retained exclusive jurisdiction over an individual (Mr Lugovoy) who was accused of a serious human-rights violation constituted a "special feature" of the case, establishing Russia's jurisdiction in respect of the alleged procedural violation of Article 2.

Although the Government had provided the Court with an outline of the investigative steps taken, the Court pointed out that no documentary evidence had been submitted to corroborate their claims. The Court had asked the Government to submit documentary evidence with their observations, which the Government had declined to do.

Owing to this, the Government had failed to demonstrate that the Russian authorities had carried out an effective investigation capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible for the murder.

The Court furthermore noted that parliamentary immunity which Mr Lugovoy had held since 2007 was not an absolute bar to his being investigated or even prosecuted; the relevant legal provisions

and their application indicated he could have been deprived of his immunity with the consent of the lower chamber of Parliament of which he was a member.

The Court considered that there had been a violation of the procedural limb of Article 2 on account of the Russian authorities' failure to conduct an effective investigation into the death of Mr Litvinenko.

Article 2 (substantive aspect)

Mr Litvinenko had been in the UK when poisoned, and therefore not in an area where Russia exercised effective control. To decide whether Russia had jurisdiction by virtue of its agents operating outside its territory ("personal concept of jurisdiction"), the Court considered two interrelated questions: (i) whether the assassination of Mr Litvinenko had amounted to the exercise of physical power and control over his life in a situation of proximate targeting, and (ii) whether it had been carried out by individuals acting as State agents.

The Court found it established, beyond reasonable doubt, that the assassination had been carried out by Mr Lugovoy and Mr Kovtun. The planned and complex operation involving the procurement of a rare deadly poison, the travel arrangements for the pair, and repeated and sustained attempts to administer the poison indicated that Mr Litvinenko had been the target of the operation and that he had been under the physical control of Mr Lugovoy and Mr Kovtun, who had wielded power over his life.

As to whether Mr Lugovoy and Mr Kovtun had acted as agents of the respondent State, the Court found that there was no evidence that either man had had any personal reason to kill Mr Litvinenko and that, if acting on their own behalf, they would not have had access to the rare radioactive isotope used to poison him. The UK inquiry had discarded several theories as to why the assassination had been carried out, leaving State involvement as the only remaining plausible explanation. The Court held that the identification of the perpetrators of the killing and the indication of their connection with the Russian authorities had established a strong prima facie case that, in killing Mr Litvinenko, Mr Lugovoy and Mr Kovtun had been acting on the direction or control of the Russian authorities.

Had the pair been involved in a "rogue operation", the information to prove that theory would lie entirely in the Russian authorities' hands. However, the Government had made no serious attempt to provide such information or to counter the findings of the UK authorities.

The Court thus drew conclusions from the Russian Government's refusal to provide the documents from the domestic investigation file and its failure to rebut the prima facie case of State involvement. It found that Mr Litvinenko's assassination was imputable to Russia.

As the Government had not sought to argue that the killing of Mr Litvinenko could be justified by the exceptions in the second paragraph of Article 2, the Court found that there had been a violation of that Article in its substantive aspect.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 100,000 euros (EUR) in respect of non-pecuniary damage and EUR 22,500 in respect of costs and expenses. It also rejected the applicant's claim for "punitive" damages.

Separate opinions

Judge Dedov expressed a partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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