



House-arrest order and restrictions on opposition activist Navalnyy violated the Convention

In today's **Chamber judgment**¹ in the case of **Navalnyy v. Russia (No. 2)** (application no. 43734/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 (right to liberty and security),

a violation of Article 10 (freedom of expression),

and a violation of Article 18 (limitation of use of restriction on rights) of the European Convention on Human Rights.

The case concerned Mr Navalnyy being held under house arrest during a criminal investigation against him and the restrictive measures imposed on him during that time.

The Court found that the house-arrest order had not been justified, particularly in view of the fact that there had been no risk of Mr Navalnyy absconding and trying to avoid the investigation.

The restrictions on him, including tight limits on his communicating, had been out of proportion to the criminal charges he had faced. It was also apparent that he had been treated in that way in order to curtail his public activities.

Principal facts

The applicant, Aleksey Anatolyevich Navalnyy, is a Russian national who was born in 1976 and lives in Moscow (Russia). He is an anti-corruption campaigner and opposition political activist.

In February 2014 the applicant was placed under house arrest while being investigated, along with his brother, for alleged fraud and money laundering in relation to two companies, Multidisciplinary Processing Ltd and Yves Rocher Vostok Ltd.

During the investigation he received a warning for travelling to Moscow Region without proper authorisation and was arrested twice after attending a court hearing in Moscow to hear verdicts against people who had taken part in a political rally in May 2012 and attending a stationary demonstration on the evening of the verdicts. In February 2014 he was placed under house arrest, which was extended several times. It was based on a risk he might abscond during the investigation, threaten witnesses, or continue his alleged criminal activity.

The order included restrictions. He was banned from communicating with anyone but his immediate family or lawyers; from receiving or sending any correspondence; from using any means of communication or the Internet; and from making statements to the media about his criminal case. He was given a tracking bracelet and was not allowed to go to work, take walks, carry out errands or leave his apartment other than to attend procedural acts and the occasional doctor's visit.

In August 2014 the Zamoskvoretskiy District Court narrowed the prohibition on his communicating to being that of his communicating with anyone involved as a witness in the criminal case. In

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.

October the same court ended the ban on his making public comments as it was not in compliance with the Code of Criminal Procedure. It also stated that the banned means of communication now included the radio and television.

In December 2014 Mr Navalnyy and his brother were found guilty of the charges in relation to MPK and Yves Rocher Vostok. The applicant was given a suspended sentence of three and half years in jail and a fine, although the fine was quashed on appeal.

In January 2015 he announced publicly that he refused to comply with the house arrest, cut off his bracelet and went to his office. He stated that he had not been given a written extension to the house-arrest order within the legal time-limit. He was not stopped or penalised.

Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 (a), (b), and (c), 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court) of the European Convention on Human Rights, the applicant complained about his house arrest for 10 months, in particular that the measure was unnecessary and arbitrary.

He also complained under Article 10 (freedom of expression) of the European Convention that the measures against him during that time were aimed at preventing him from pursuing his public and political activities, and alleged under Article 18 (limitation on use of restrictions on rights) that the measures were politically motivated.

The application was lodged with the European Court of Human Rights on 6 June 2014.

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

Vincent A. De Gaetano (Malta), *President*,
Branko Lubarda (Serbia),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 5

The Court held that the house arrest had been a deprivation of liberty within the meaning of the Convention and it therefore had to comply with one of the permissible grounds under Article 5.

It noted that the house-arrest order had been deemed necessary because Mr Navalnyy had allegedly breached the previous preventive measure of an undertaking not to leave Moscow during the investigation, which apparently indicated that the authorities feared his absconding.

However, he had shown no sign of aiming to flee the investigation, indeed, he had attended all the necessary investigatory acts. The travel restriction had not stated whether he should notify investigators before or after visiting Moscow Region and those visits had apparently been family outings, with no connection to the case. He had also been under intense surveillance at the time.

The Court therefore did not see how the domestic court could have determined that Mr Navalnyy had breached his undertaking not to leave Moscow and could not discern a reason based in the criminal process to order house arrest. The order had therefore been unlawful, which had applied

throughout the house-arrest period. His detention had not met the requirements of Article 5 § 1 and there had been a breach of the Convention.

Article 10

The Government argued that Mr Navalnyy's freedom of expression had not been restricted while he was under house arrest, for instance, he had given an interview to the *New York Times*. The restrictions on his communications had been to prevent him commenting on the criminal case.

Mr Navalnyy stated in particular that the restrictions had been unlawful as they were not on the exhaustive list set down in the Code of Criminal Procedure.

The Court took note of the two court decisions in August and October 2014 which had eased the communication restrictions on Mr Navalnyy, which meant that before that time they had not been in accordance with the law.

The subsequent prohibition on using radio and television as a means of communication had been even wider than the earlier ones. However, the Court did not rule on whether the new restriction had complied with domestic law as it had anyway not pursued a legitimate aim. In particular, there had been no link between that measure and any risk of his absconding.

Furthermore, while the restrictions in the Code of Criminal Procedure could sometimes be justified by the aim of a carrying out a proper criminal investigation, such had not been the situation in Mr Navalnyy's case. There had been no link between the communications ban and the need to make sure he appeared before an investigator or court, and no link with the goals of criminal justice.

The Court found that he had faced restrictions on his freedom of expression that had not been in accordance with the law and had not pursued any of the aims in Article 10 § 2. He had therefore suffered a violation of Article 10.

Article 18

The Court noted that the house arrest had been ordered after Mr Navalnyy's two arrests in February 2014 for taking part in unauthorised public gatherings. Those events had been part of the earlier case of *Navalnyy v. Russia*, which had led to the finding of a violation of Article 5, Article 11 and Article 18. It had accepted in that case that he had been targeted as a political activist.

It found that the house-arrest order, which had lasted 10 months, was not in proportion to the alleged crimes, indeed his brother, the main defendant, had not suffered such a measure. The restrictions on Mr Navalnyy during his house arrest had become more and more incongruous over time and parts of the communications ban had even been found to be unlawful in court.

The Court held that the evidence it had relied on in *Navalnyy v. Russia* could be used in this application too and that it corroborated his allegations that the house-arrest and restrictions on him had been aimed at limiting his public activities. They had pursued the same aim of the suppression of political pluralism and had had an ulterior purpose within the meaning of Article 18. There had therefore been a violation of that provision, taken in conjunction with Article 5.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,665 in respect of costs and expenses.

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.