

## Navalny and the future of the Strasbourg Court

### Proposals for Germany, the Committee of Ministers and PACE What to do this week

18 April 2021

Faced with Russian defiance of the European Court of Human Rights (ECtHR) in the case of Alexey Navalny European democracies and elected parliamentarians have four options:

- *No strong response.* This is what Russian politicians demand. They have threatened the Council of Europe: even criticism would be too much, or Russia might turn its back and leave.
- *A slow response that takes years,* either by turning again to the Strasbourg Court (the Article 46 procedure) or by using, without any urgency, a new mechanism agreed to in February 2020 for dealing with “the most serious violations of fundamental principles.” Neither of these would save Navalny and both would send a signal of terrible weakness.
- *An accelerated use of the new mechanism triggered immediately with clear warnings of consequences: the suspension of Russia.* The Parliamentary Assembly or the Secretary General of the Council of Europe could and should trigger this mechanism as quickly as possible.
- *A strong and immediate response* by the Committee of Ministers, based on the Statute of the Council of Europe: other governments make clear that if Navalny is not released before the end of the month, the Committee of Ministers, under German chairmanship, will vote on Russia’s suspension. This would send a clear message: the continued imprisonment of Navalny is not compatible with Russian membership of the Council of Europe.

## The rules of the Council of Europe

Article 3 of the Statute of the Council of Europe refers to the respect for fundamental freedoms and the key notion of sincere collaboration in their realisation:

### Article 3

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and *collaborate sincerely and effectively* in the realisation of the aim of the Council as specified in Chapter I.

Article 8 of the Statutes spells out the consequences of continuous serious violation of these principles:

### Article 8

Any member of the Council of Europe which has seriously violated Article 3 may be *suspended from its rights of representation* and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

The Russian state has clearly and continuously violated Article 3 and its leaders show clearly that they do not intend to collaborate sincerely and effectively to change this. The treatment of Navalny – repeated detentions, house arrests, fake court cases on corruption, defamation, physical attacks and assassination attempts – and the absolute refusal on the part of the Russian state to change anything in its behaviour and to implement any of the measures proposed in a series of judgements by the ECtHR shows this lack of sincerity, with potentially deadly consequences.

The German presidency of the Council of Europe should therefore propose a decision for vote in the Committee of Ministers as quickly as possible. This decision should state that, in line with Article 8, based on decisions by the ECtHR, and considering a record of no sincere and effective cooperation for many years to implement Court judgments concerning Navalny as well as other repeated serious human rights violations, the Committee of Ministers warns Russia that it must immediately release Alexey Navalny or face a vote, before the end of the month, on the suspension of its rights of representation.

At the same time, at next week's session, PACE should call on the Committee of Minister to take this step while itself doing what it can do: trigger the new procedure adopted in February 2020 (see below).

These two steps should reinforce each other. What matters above all is to ensure immediate compliance with the Court order for his release, and the strongest possible message to get there.

### What PACE can do this week

In February 2020 the Committee of Ministers created a [procedure](#) for addressing “the most serious violations of fundamental principles and values enshrined in the Statute of the Council of Europe”.

This procedure was created upon Russian insistence. It reduced what PACE could do on its own to hold member states delegations accountable.

However, it does not overrule the right of the Committee of Ministers to act based on its own Statutes to ensure urgent action in case of a serious violation of Article 3. As it states: “it will not affect existing procedures and mandates.” The Committee of Ministers can act as before. This is even explicitly stated:

“The procedure does not preclude the direct implementation by the Committee of Ministers of Article 8.”

However, PACE can reinforce the effort by the Committee of Ministers by triggering this procedure in parallel. In doing so it is crucial is to insist on it being implemented within a few weeks, not months. While the procedure gives timelines, these are only “*indicative*” and not binding. The Committee of Ministers, PACE and the secretary general can set these as needed.

Here is what is needed for PACE to initiate it:

- A group of Parliamentarians submits a motion. This must be signed by at least 130 members of the Parliamentary Assembly. Signatories must come from three of the five political groups and from fifteen of the 47 national delegations.
- The 90-member Committee on Political Affairs and Democracy prepares a report and a recommendation on whether to initiate the procedure. This should happen this week. The Assembly votes on a resolution to initiate the procedure, after the adoption of the Committee’s report.
- An extraordinary meeting of the chair of the Committee of Ministers, the president of PACE and the secretary general is scheduled this week. They will organize a “high-level mission” to Russia “to discuss the concerns that led to the initiation of the procedure and to seek clarification of the situation.” This should include a visit to the penal colony where Alexey Navalny is held no later than next week.
- Upon their return the Committee of Ministers takes another vote on whether to proceed to the second stage. This could happen by the end of next week.
- Then the Secretary General is to prepare a road map containing “concrete actions, *with strict timeframes*, which the member State concerned should take.” This roadmap should be simple to prepare. And demand the release within three days of Alexey Navalny, if he has not by then been released already.
- In this way, if nothing happens, the Committee of Ministers concludes – by two thirds majority - that “there has been no improvement in the situation”. And moves

to a decision under Article 8 of the Statute of the Council of Europe whether to suspend Russia in line with Article 8.

There is no need for a long list of activities and measures. It is possible to move quickly.

### **Why this is a defining moment**

The Council of Europe has bent over backwards to accommodate Russia in recent years. It is now at a crossroads.

The Russian state has occupied part of the territory of one fellow member of the Council of Europe (Georgia) and annexed part of another (Ukraine). It tolerates neither protest, nor criticism, nor any real political opposition. It locks up its critics. It kills perceived enemies, both abroad and at home. Russian then consistently ignores Court rulings pointing all of these violations out.

Alexey Navalny's case is not just another serious violation. A prominent opposition politician, the survivor of several attacks and a political assassination, he has been imprisoned for an offence he never committed. The European Court of Human Rights (ECtHR) has ordered his release.

Following Navalny's sentencing this February the German Minister of State for Europe, Michael Roth, the President of the Council of Europe's Parliamentary Assembly, Belgian Liberal Rik Daems, and the Secretary General and former Croat Foreign Minister Marija Pejčinović Burić issued a joint statement:

“We deeply regret the recent decision of a Moscow court to sentence Aleksey Navalny to a prison term. This decision is based on a criminal conviction which the European Court of Human Rights ... found to have been arbitrary and manifestly unreasonable .... We call upon the Russian authorities to abide by their international obligations under the Convention.”

Their appeal met with scorn. Then the ECtHR ordered Navalny's release. Now action is needed, by all the institutions of the Council of Europe.

This is a dangerous moment for the Council of Europe. If the Russian state is allowed to ignore the Court, again, and to kill another critic of the government it will have transformed the Council into a club of states for whom the respect for fundamental rights is wholly optional. And made a mockery of any pretence that the European Court of Human Rights can protect Russian citizens. And it will gravely undermine the protection the Convention offers to everyone else in Europe.