

(Translated from Russian)

Permanent Mission of the Russian Federation

No. 1738

The Permanent Mission of Russian Federation to the United Nations Office and other International Organizations in Geneva presents its compliments to the United Nations High Commissioner for Human Rights and, with reference to the joint enquiry from special procedures of the Human Rights Council (AL RUS 4/2021 of 2 March 2021), has the honour to transmit herewith information from the Russian Federation.

The Permanent Mission of the Russian Federation takes this opportunity to convey to the Office of the United Nations High Commissioner for Human Rights the renewed assurances of its highest consideration.

Geneva, 28 April 2021

Office of the United Nations High Commissioner for Human Rights



Information from the Russian Federation regarding the joint enquiry of the special procedures of the Human Rights Council concerning A.A. Navalny's arrest and the judicial decisions against him

Reference: AL RUS 4/2021

The Russian Federation, having examined the joint enquiry of the special procedures of the Human Rights Council concerning the legal basis for A.A. Navalny's arrest and the judicial decisions against him, wishes to provide the following information.

1. Yves Rocher case

On 30 December 2014, the Zamoskvoreche District Court in Moscow convicted Mr. Navalny for offences covered under article 1594 (2–3) of the Criminal Code of the Russian Federation (as amended by Federal Act No. 207-FZ of 29 November 2012) and article 1741 (2) (a) of the Code (as amended by Federal Act No. 420-FZ of 7 December 2011) in accordance with article 69 (2) of the Code and handed down a sentence, as amended in the appellate ruling of the criminal division of the Moscow City Court on 17 February 2015, of deprivation of liberty for a period of 3 years and 6 months; in accordance with article 73 of the Code, it was decided to consider the sentence passed on Mr. Navalny's to be suspended for a probation period of 5 years and he was required to give an undertaking not to change his permanent place of residence without informing the specialized public body responsible for reform of convicted persons, notify the body in advance of any change of actual place of residence and report for registration on a timely basis no less than twice a month.

The European Court of Human Rights in its judgment of 17 October 2017 (with effect from 5 March 2018) in the case of *Navalnyye v. Russia* held that there had been a violation of article 7 and article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms in the criminal proceedings against O.A. Navalny and A.A. Navalny.

By decision of the Presidium of the Supreme Court of the Russian Federation of 25 April 2018 on the proposal of the President of the Court, criminal proceedings against O.A. Navalny and A.A. Navalny were resumed in view of the new circumstances. As the Presidium of the Supreme Court found no grounds for finding that the court had not correctly applied the substantive law establishing the criminal and punishable nature of the act and other consequences under criminal law, the judgment of 30 December 2014 and the appellate ruling of 17 February 2015 were upheld.

Enforcement of the sentence of 30 December 2014

On 3 March 2015, A.A. Navalny was registered with the probation office of branch No. 11 of the Russian Federal Penal Service for Moscow and later with the probation office of branch No. 15 of the Russian Federal Penal Service for Moscow in connection with his move to a new place of residence, where he was informed about the sentence enforcement procedures and conditions and the consequences of failing to report to the probation office without valid reasons.

By a decision of the Lyublino District Court of Moscow of 14 May 2015, in addition to the obligation to report for registration in a timely manner no less than twice a month, the convicted person was required to report on the date established by the probation office.

By a decision of the Simonov District Court of Moscow of 4 August 2017, the convicted person's probation period was extended for 1 year, i.e. until 30 December 2020.

Revocation of probation

By a decision of the Simonov District Court of Moscow of 2 February 2021 at the recommendation of the head of the branch No. 15 probation office of the Federal Prison Service of Russia for Moscow, the conditional discharge of A.A. Navalny pronounced by the Zamoskvoreche District Court of Moscow of 30 December 2014 was reversed and the convicted person was sent to serve a sentence of deprivation of liberty for a term of 3 years and 6 months in an ordinary regime correctional colony.

The length of the sentence was calculated from the date of entry into legal force of the decision, with due account taken of the time spent in custody, from 17 January 2021 to the date when the decision became final, and of the time spent under house arrest, from 28

February 2014 to 30 December 2014, with each day counting as a day of deprivation of liberty.

By an appellate ruling of the Moscow City Court of 20 February 2021, the district court decision of 2 February 2021 was amended: the time during which Mr. Navalny was under house arrest, from 30 December 2014 to 18 February 2015, counted towards his sentence and the rest of the sentence was left unchanged.

Legal framework

According to article 74 (3) of the Criminal Code, if during the probation period the person under suspended sentence has systematically been in breach of public order for which administrative liability has been incurred and has systematically failed to comply with the court-ordered obligations imposed on him or her or has evaded supervision, the court at the recommendation of the authority referred to in paragraph 1 of the present article may revoke the conditional discharge and order the suspended sentence to be served.

In accordance with article 190 (5–6) of the Penalties Enforcement Code of the Russian Federation, a systematic violation of public order means the commission by a person on probation within the space of a year of two or more violations of public order for which he or she has incurred administrative liability. Systematic failure to comply with obligations means the commission of prohibited acts or failure of the person on probation to comply with prescribed action on more than two occasions within the space of a year or continuous failure to comply (more than consecutive 30 days) with the court-ordered obligations imposed on him or her. A person on probation whose whereabouts have not established for more 30 days is deemed to be evading supervision.

In handing down its decision on 2 February 2021, the court was guided by the provisions of articles 396, 397 and 399 of the Code of Criminal Procedure governing the procedure for reviewing and ruling on matters related to the enforcement of sentences, including the revocation of probation.

Factual background

As established by the court, Mr. Navalny for a long time failed to fulfil the obligations imposed on him under the sentence, systematically failed to report to the specialized public body, was repeatedly warned that the conditional discharge would be revoked, changed his place of residence without duly notifying the public body and evaded supervision, for which he was declared wanted.

Under such circumstances, the court, having considered the application of the head of the probation office, held that the conditional discharge should be revoked and the convicted person should actually serve the term of imprisonment imposed on him under the sentence of the Zamoskvoreche District Court of Moscow of 30 December 2014. In addition, the period from 20 August 2020 to 23 September 2020, during which Mr. Navalny was under inpatient treatment at Omsk Hospital No. 1 and later the Charité hospital in Berlin, which, as the court stated and was borne out by relevant medical documents, was not included in the period in which the convicted person failed to comply with the obligations imposed on him under the sentence.

2. Defamation case of Great Patriotic War veteran ██████████

By decision of the judge of judicial circuit No. 321 in the South Medvedkovo district of Moscow of 20 February 2021, A.A. Navalny was sentenced under article 1281 (2) of the Criminal Code (as amended by Federal Act No. 141-FZ of 28 July 2012) to a fine of 850,000 roubles. In accordance with article 70 of the Code, the unserved part of the sentence handed down by the Zamoskvoreche District Court of 30 December 2014 was added to the cumulative sentence and A.A. Navalny was sentenced to a total period of deprivation of liberty of 3 years and 6 months and fined 850,000 roubles, which, under article 71 (2) of the Code, is to be enforced independently.

Legal framework

In accordance with article 1281 (2) of the Criminal Code (as amended by Federal Act No. 141-FZ of 28 July 2012), under which A.A. Navalny was convicted, defamation

contained in a public statement, publicly performed work or the media is a criminal offence; the penalties provided for under this provision are a fine of up to 1 million roubles, or a fine equal to up to one year of the wages or other income of the convicted person, or by up to 200 hours of community service.

Factual background

The court found that A.A. Navalny, with the intention of publicly disseminating information known to be false on the Internet and constituting an affront to the honour and dignity of the veteran of the Great Patriotic War of 1941–1945, ██████████, and damaging his reputation, posted on his personal Telegram messenger channel, available at <https://t.me/navalny>, and on his Twitter page, both of which are public, a video that was previously posted on the Internet in which ██████████ expresses his civic-minded support for changes to the Constitution of the Russian Federation, accompanied by comments of defamatory nature, which contain information known to be false about the victim's life and allegations of reprehensible acts and behaviour engaged in by the victim portraying him as a person who is occupying a shameful and humiliating position and is beneath contempt. The verdict shows that A.A. Navalny's criminal actions caused moral damage to the victim, ██████████

Current status of proceedings in the case

On 2 March 2021, the defendant brought an appeal against the decision of the judge of judicial circuit No. 321 in the South Medvedkovo district of Moscow of 20 February 2021.

According to information posted on the official website of the ordinary courts of law in Moscow, on 13 April 2021 the criminal case against Mr. Navalny was submitted for review on appeal to the Babushkin District Court of Moscow and the court hearing was scheduled for 29 April 2021.

Thus, to date, the sentence of the judge of the judicial district No. 321 of the South Medvedkovo District of Moscow of 20 February 2021 has not come into legal force.

3. Location of A.A. Navalny

Convicted prisoner A.A. Navalny has been serving his sentence of deprivation of liberty in Correctional Colony No. 2 of the Department of the Federal Penal Service for Vladimir Province since 11 March 2021.

Pursuant to A.A. Navalny's application of 15 March 2021, in accordance with the requirements of article 17 of the Penalties Enforcement Code of the Russian Federation, ██████████ ██████████ was notified on 17 March 2021 of his arrival at the facility where he would be serving his sentence.

According to the information of the Commissioner for Human Rights in the Russian Federation, from the moment of his arrival (11 March 2021) at the correctional institution until 25 March 2021, A.A. Navalny was placed in the quarantine section. He was subsequently transferred on 5 April 2021 to the medical unit due to a respiratory illness and placed in the unit's dormitory together with 16 other convicted persons. The facility has a total capacity of 60 inmates. The fact that there are so many vacant places is the result of the humanization of criminal policy in Russia, which has led to a steady decline in the number of persons sentenced to deprivation of liberty.

The total surface area of the facility is 310.18 m², with a sleeping area of 184 m², common rooms with a television, rooms for rehabilitation work with convicted persons with regulations governing the procedures and conditions of serving sentences, a dining room equipped with the necessary furniture, a refrigerator, a kettle, dishes and a microwave oven, storage rooms for personal effects, and washing and toilet rooms equipped with six sinks and five toilets. Privacy in the toilets is fully protected.

The room temperature is maintained at no less than 23°C.

A.A. Navalny, like all other inmates in the penal institution, is provided with an individual sleeping place and bedding. At his request, the bed frame was replaced with a stiffer one, which is good for his back. Bed linen and underwear are changed at least twice every seven days.

From the dormitory there is an exit to the on-site open-air sector of the detention facility with a total area of 164.3 m², where A.A. Navalny and other inmates can walk in the fresh air and, in accordance with the daily schedule of the correctional facility, engage in sports without restrictions.

All prisoners, including A.A. Navalny, are provided with three hot meals a day. The food used for cooking meets shelf-life safety standards. The prison administration and medical staff check the quality of the cooking on a daily basis.

In addition, the convicted person has 55,418.27 roubles in his personal account (or US\$ 718 at the exchange rate as at 10 April 2021), which allows him to purchase food and basic necessities in the store of the correctional facility at his own discretion in accordance with the procedures established by the penalties enforcement legislation of the Russian Federation. Money transfers received by inmates are credited to their personal accounts without restriction. During his stay in the correctional facility, A.A. Navalny made a purchase in the shop on one occasion.

As part of his right to receive parcels, A.A. Navalny received a parcel from his relatives weighing 13 kg.

At night A.A. Navalny, like other prisoners, is allocated eight hours of uninterrupted sleep. At the same time, according to the legislation of the Russian Federation, the staff of the facility are required to make their rounds of the prisoners' quarters, including at night, but they do not have the right to interrupt their sleep. A.A. Navalny's sleep has not been forcibly interrupted.

Mr. Navalny has access to all the necessary resources of the correctional facility, including a well-equipped gym, a library, a laundry, etc. The library has a collection of 6,866 publications and is widely used. There are no reports that his movements in the dormitory have been restricted.

A.A. Navalny has not expressed any desire to carry out work and has not applied to the head of the facility with the relevant paperwork.

Upon his arrival at the correctional facility, Mr. Navalny was examined by a medical officer. His general state of health was found to be satisfactory and no injuries were detected.

During his stay in the correctional facility, Mr. Navalny was repeatedly examined by doctors in various fields of medicine: on 19 March 2021 by a neurologist; on 23 March 2021 by a psychiatrist; and on 6 April 2021 by a general practitioner. Based on the results of medical examinations and consultations with a neurologist and neurosurgeon from the civilian hospital of Vladimir Province, on 24 March 2021, he underwent additional examinations, including by magnetic resonance imaging (MRI) and electroneuromyography of the lower limbs, which resulted in the diagnosis of [undisclosed for the purposes of medical confidentiality], which did not require hospitalization. Based on the diagnosis, appropriate medication was prescribed.

Information about the diagnosis, the MRI results and course of treatment were communicated to the inmate on 30 March 2021. However, A.A. Navalny refused to receive the treatment prescribed for him, which is indicated in his outpatient medical records.

On 5 April 2021, Mr. Navalny was transferred to a ward in the prison's medical unit due to a respiratory illness. He had all the necessary tests taken, including a test for coronavirus infection, which showed that he did not have the disease. In the medical unit of the detention facility, he was in a double room measuring 16.45 m² and had access to a television set, a refrigerator and a toilet, which offered him privacy. On 9 April 2021, as his health had improved, A.A. Navalny was transferred to the dormitory of the unit.

According to the Russian Federal Penal Service, as of 9 April 2021, Mr. Navalny does not require examinations or treatment in medical organizations outside the prison system.

Since 31 March 2021, A.A. Navalny has refused to eat, which has resulted in his being placed under increased medical supervision.

A.A. Navalny exercises his right of defence through his four lawyers. He was visited by his lawyers on 18 occasions between 11 March and 10 April 2021.

While serving his sentence, A.A. Navalny committed 14 violations of the established procedures for serving sentences (refusal to perform assigned duties, refusal to make his bed, disruption of the daily routine, violation of the dress code), for which he was reprimanded.

There is no evidence of cruel or harsh treatment of A.A. Navalny.

On 28 March 2021, Mr. Navalny was visited by a member of the Council for Civil Society and Human Rights under the President of the Russian Federation, [REDACTED] and a member of the Civic Chamber of the Russian Federation, [REDACTED]. On 1 April 2021, members of the Public Monitoring Commission of Vladimir Province visited Mr. Navalny in the correctional facility and found no evidence of violations of detention conditions or a failure to provide him with the necessary medical care or any other violations of his rights.

Since 1 April 2021, on the instructions of the Commissioner for Human Rights in the Russian Federation, the staff of her Office has been in constant telephone contact with Navalny's lawyers, [REDACTED], and they constantly monitor the observance of his rights.

According to the Commissioner, the detention conditions and medical care of A.A. Navalny comply with the current legislation of the Russian Federation and international standards.

4. In the Russian Federation, article 31 of the Constitution guarantees every citizen the right to conduct peaceful unarmed assemblies, meetings, rallies, demonstrations, marches and protests.

The following were established with a view to implementing this right: Federal Act No. 54 of 19 June 2004 on Meetings, Rallies, Demonstrations, Marches and Picketing, which establishes the principles and procedure for holding and organizing public events; guarantees for citizens to exercise their right to hold a public event; and a notification procedure for holding a public event that reflects the democratic nature of the law on public events. Furthermore, Act. No. 54-FZ provides that Russian legislation in this area is to be based on the Constitution, generally recognized principles and standards of international law and the international treaties to which the Russian Federation is a party.

Notification of a public event under article 7 of Act No. 54-FZ (except for meetings and single pickets that do not use prefabricated demountable constructions) must be given in writing by the organizer to the executive authority of a constituent entity of the Russian Federation or local authorities no earlier than 15 days and no later than 10 days prior to the date of the public event.

Under Act 54-FZ, article 5 (5), the organizer of a public event has no right to hold it if the notice of holding a public event is not submitted in time or if no agreement has been reached with the executive authority of the constituent entity of the Russian Federation or local authorities to change the venue or time of a public event on the basis of a reasoned proposal.

The procedure for preliminary notification of an executive authority of a constituent entity of the Russian Federation or local authorities of a public event aims at informing in advance the relevant public authorities about the form, place (or itinerary) and start and end time of the public event, the estimated number of participants, means of ensuring public order and organizing medical care and information about the organizers and persons authorized to manage and conduct the public event. Otherwise, public authorities, without having a reliable understanding of the planned public event and its nature and scale, would be deprived of a real opportunity to perform their duty to respect and protect human and civil rights and freedoms and to take necessary measures, including preventive and organizational measures, to ensure that the conditions for holding a public event are safe for both the participants themselves and others.

The violation of the established procedure for organizing or holding a public event, and also participation in an unauthorized meeting, rally, demonstration, march or picketing, interfering with public amenities, transport, social infrastructure, communications or pedestrian or vehicle traffic, or with citizens' access to their homes, transport facilities or

social infrastructure, constitute administrative offences under article 20.2 of the Code of Administrative Offences.

It is also necessary to take into account the legal position of the Constitutional Court of the Russian Federation set out in the Decision No. 24-P of 18 June 2019, which provides that, in the Russian Federation in relation to other rights and freedoms specified in the Constitution, the right to conduct peaceful unarmed assemblies, meetings, rallies, demonstrations, marches and protests guarantees citizens a genuine opportunity through the conduct of public events (assemblies, meetings, rallies, demonstrations, marches and protests) to influence the activities of public authorities by maintaining a civilized peaceful dialogue between civil society and the State. This does not exclude the protesting nature of such public events, which can be expressed in criticism of both individual actions and the decisions of State authorities and local government authorities and their policies in general.

Consequently, legislative, organizational and other measures taken by public authorities to adequately ensure the right to freedom of peaceful assembly should not lead to excessive State control over the activities of organizers and participants of public events, with unwarranted restrictions on the freedom to conduct meetings, rallies, demonstrations, marches and protests.

At the same time, given that the exercise of this right is associated with serious risks caused by the presence of a large number of people in one place and the possibility of conflict situations regardless of the intentions of the organizers of public events and their participants, both citizens themselves, by virtue of the constitutional prohibition of the exercise of human and civil rights and freedoms in violation of the rights and freedoms of others (Constitution, art. 17 (3)), and the State, pursuant to its constitutional obligation to observe and protect human and civil rights and freedoms (Constitution, art. 2), must use all legal means to prevent and suppress any manifestation that does not correspond with the very essence of the right to peaceful assembly.

The State authorities or local government authorities to which issues that give rise to public events are addressed must examine the substance of the issues in question, take the necessary decisions on them in accordance with the procedure established by the legislation of the Russian Federation and notify the organizer of the public event of the decisions taken (Federal Act No. 54-FZ, art. 18 (2)).

Article 149 of the Criminal Code establishes criminal liability for unlawful obstruction of or participation in a meeting, rally, demonstration, march or protest, or coercion to take part in such actions, if such acts are committed by an official using his or her official position, or with the use or threat of violence.

In accordance with article 16 (2) of Federal Act No. 54-FZ, one of the grounds for termination of a public event is the commission of unlawful actions by its participants. Repeated violations of the established procedure for organizing or holding a meeting, rally, demonstration, procession or protest is a criminal offence (Criminal Code, art. 212.1).

Currently, article 212.1 of the Criminal Code is applied in the light of Constitutional Court decision No. 2 P of 10 February 2017 on the case concerning the review of the constitutionality of the provisions of article 212.1 of the Criminal Code of Russia in connection with the complaint of ██████████.

In particular, according to the position of the Constitutional Court, the provisions of article 212.1 of the Criminal Code assume that a person may be held criminally liable for an offence under this article only if his or her violation of the established procedure for organizing or holding a meeting, rally, demonstration, march or protest has led the infliction or actual threat of injury of citizens or harm to the property of natural or legal persons, the environment, public order, public safety or other constitutionally protected values. According to the data of the Judicial Department under the Supreme Court, for the period 2017–2019, there were no convictions under article 212.1 of the Criminal Code.

During the conduct of public events, participants must comply with all legitimate demands of the organizer, persons authorized by the organizer, the authorized official of the executive authority of the constituent entity or the local authority and internal affairs officials and comply with the requirements of public order and regulations for the holding of public

events and with the requirements under national legislation and other legal instruments for ensuring transport and road traffic safety if the event is held with the use of public transport.

The obligation to ensure appropriate conditions for the organization and conduct of public events, the rights, freedoms, safety of citizens and public order while they are being held is entrusted to the relevant State and local authorities, such as the internal affairs agencies, including the Ministry of Internal Affairs, whose mission is to protect the lives, health, rights and freedoms of Russian citizens, foreign nationals and stateless persons, to fight crime, maintain public order, protect property and ensure public safety.

Furthermore, it is the duty of law enforcement officials to protect the rights of all citizens, not only participants in public events.

According to the Regulations on the Federal Service for Supervision of Communications, Information Technology and Mass Media, approved by the Government of the Russian Federation by Decree No. 228 of 16 March 2009, State regulation in the field of communications, control and supervision of activities in the field of communications and restriction of access to information resources in information and telecommunications networks, including the Internet, within the powers established under Federal Act No. 149-FZ of 27 July 2006 on Information, Information Technologies and Data Protection, fall within the competence of the Service. The above-mentioned law also establishes the procedure for restricting access to different kinds of information, including information containing calls for mass rioting, extremist activities, participation in mass (public) events held in violation of established procedures and inaccurate information of significant public interest disseminated in the guise of credible reports.

For example, the mechanism for restricting access to information containing calls for mass rioting or extremist activities is provided for in article 15.3 of Federal Act No. 149-FZ.

Moreover, article 10 of Federal Act No. 149-FZ prohibits the dissemination of information that advocates war or incites ethnic, racial or religious hatred or enmity or the dissemination of other information for which criminal or administrative liability is incurred.

Article 212 of the Criminal Code establishes criminal liability for calling for mass rioting or participation in riots and for violence against citizens.

Article 280 of the Criminal Code establishes criminal liability for public calls for extremist activities, inter alia through the use of the media or information and telecommunications networks, including the Internet.

Upon discovery of the information in question, the Procurator General of the Russian Federation or his or her deputies apply to the federal executive body responsible for control and oversight of the media, information technologies and communications, the Federal Service for Supervision of Communications, Information Technology and Mass Media, with a request for measures to be taken to restrict access to information resources.

In accordance with Federal Act No. 54-FZ, as soon as the place and/or time of a public event is approved by the executive authorities of a constituent entity of the Russian Federation or local authorities, the organizers are free to make advance announcements about the place or places, times and purposes of the public event and provide any information relating to the preparations for and conduct of the public event, including calling on citizens and their associations to take part in those preparations.

The failure to reach an agreement with the authorities on such events constitute grounds for requiring the information to be blocked.
