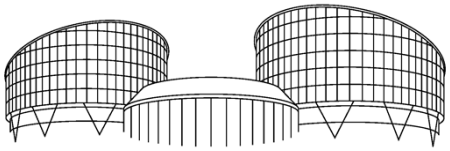

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NAVALNYY v. RUSSIA (No. 3)

(Application no. 36418/20)

JUDGMENT

Art 2 (procedural) • Domestic authorities' refusal to investigate in criminal proceedings plausible claims of applicant's poisoning with a chemical nerve agent prohibited by the Chemical Weapons Convention • Inadequate pre-investigation inquiry fell short of being public and made no allowance for the victim's right to participate in the proceedings • Failure to investigate possible political motive for attempted murder, involvement or collusion of State agents and the reported use of a prohibited substance
Art 46 • Individual measures • Prompt Art 2-compliant investigation in criminal proceedings required

STRASBOURG

6 June 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Navalnyy v. Russia (No. 3),

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

Jolien Schukking*, President*,
Pere Pastor Vilanova,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 36418/20) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Aleksey Anatolyevich Navalnyy ("the applicant"), on 21 August 2020;

the decision to indicate an interim measure to the Russian Government ("the Government") under Rule 39 of the Rules of Court, and the decision to lift it;

the decision to give notice of the application to the respondent Government;

the decision to give priority to the application (Rule 41 of the Rules of Court) and treat as confidential documents pertaining to the applicant's medical condition deposited with the Registry (Rule 33 § 1);

the parties' observations;

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see, for background information, *Kutayev v. Russia*, no. 17912/15, §§ 4-8, 24 January 2023);

Having deliberated in private on 16 May 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. This application concerns the refusal of the Russian authorities to investigate in criminal proceedings the applicant's alleged poisoning with a substance identified as a chemical nerve agent from the Novichok group.

THE FACTS

2. The applicant was born in 1976 and is currently detained in high-security correctional facility IK-6 in Melekhovo, Vladimir Region. He was represented by Ms O. Mikhaylova, a lawyer practising in Moscow.

3. The Government were initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by Mr A. Fedorov, Head of the Office of the Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

5. In August 2020 the applicant and several staff members of the Anti-Corruption Foundation (an NGO founded by the applicant) went on a work trip to Tomsk, Russia. On 20 August 2020 he took a flight from Tomsk to Moscow with one of his associates, while several others stayed in Tomsk. During the flight, he suddenly fell ill and lost consciousness. The flight crew had to make an emergency landing in Omsk, where ambulance doctors, after an initial assessment, provided him with urgent treatment. He was transported, in a coma, to a local municipal hospital, where he was put on life support.

6. On the same day the applicant's associate, Mr G., reported the incident to the Investigative Committee of the Russian Federation ("the Investigative Committee"), requesting a criminal investigation into the applicant's attempted murder by poisoning with an unknown substance. He stated that the intended assassination related to the applicant's political activity and thus fell under Articles 105 § 1 (murder) and 277 (attempt on the life of a State official or public figure) of the Criminal Code. On the same day Mr L., the applicant's representative, who had accompanied him on the trip to Tomsk, filed a similar criminal complaint with the Sovetskiy District Department of the Interior of Tomsk. He pointed to the fact that the applicant had suddenly fallen ill despite initially being well during the trip, and requested a criminal investigation into his poisoning.

7. On 21 August 2020 the Court granted a request for an interim measure lodged under Rule 39 by the applicant's wife and indicated to the Government to ensure that his family and doctors had access to him and that his condition be assessed with a view to transferring him to Germany for treatment.

8. On 21 August 2020, according to the Government, the Forensic Centre of the Omsk Regional Department of the Interior concluded that no potent or poisonous substances, narcotic substances, psychotropic substances or their precursors had been found on the cotton swab used to take samples from the applicant's palms or nail clippings obtained after hospitalisation. They did not provide any further details or a copy of the forensic report.

9. On 22 August 2020 the applicant was flown to Germany in a private medical plane for treatment at the Charité Hospital in Berlin. He remained in intensive care for several weeks, initially in a medically induced coma, followed by several months of rehabilitation.

10. On 24 August 2020 the Court lifted the interim measure indicated on 21 August 2020.

11. On the same day, according to the Government, a forensic medical examination (no. 2175) established that no poisonous (narcotic or potent)

substances had been found in or on the objects submitted for analysis. They did not provide any further details or a copy of the forensic report.

12. On 27 August 2020 Mr G.'s request for an investigation was forwarded to the West Siberian Transport Investigation Department of the Investigative Committee.

13. According to the Government, on the same day the Prosecutor General's Office sent a request for legal assistance to Germany in relation to the case. They did not disclose its content or provide a copy to the Court.

14. On 1 September 2020 Mr G. challenged the Investigative Committee's inaction before the Basmannyy District Court of Moscow under Article 125 of the Code of Criminal Procedure. He specified that Article 144 § 1 of that Code required the investigating authorities to take one of three decisions in response to his criminal complaint of 20 August 2020, namely to: (i) open a criminal investigation, (ii) refuse to open a criminal investigation or (iii) transfer the request to another investigating or judicial body with jurisdiction within three days of receipt.

15. On 2 September 2020 the German government announced that the results of the tests carried out on the applicant's samples had revealed unequivocal proof of the presence of a chemical nerve agent from the Novichok group of substances prohibited under the Chemical Weapons Convention (CWC – see the press release cited in paragraph 20 below).

16. On 3 September 2020 the head of the Investigative Committee's department for processing petitions submitted a written explanation to the Basmannyy District Court stating that Article 125 of the Code of Criminal Procedure was not applicable as there was no legal act to challenge under that provision.

17. On 4 September 2020, according to the Government, the clothes the applicant was wearing when he was admitted to the medical facility in Omsk were subject to a physical and chemical analysis. The relevant report (no. 2/281 of 4 September 2020) stated that no traces of narcotics, their derivatives, or psychotropic or poisonous substances had been found. The Government did not provide any further details or a copy of the report.

18. On the same day, the Basmannyy District Court dismissed Mr G.'s complaint on the grounds that his request had been forwarded to the relevant department (see paragraph 12 above) and that he, as the applicant's representative acting on his behalf, could access the information relating to its processing. Therefore, his rights had not been infringed.

19. On 7 September 2020 Mr G. appealed against the above-mentioned decision. He stated that the Investigative Committee had neither instituted the criminal proceedings he had requested nor taken a formal decision refusing to open an investigation within the three-day statutory time-limit. Moreover, he pointed out that the obligation to investigate the alleged attempted murder also arose from the public statement of the German authorities to the effect

that the attempt on the applicant's life had been carried out with a chemical nerve agent from the Novichok group.

20. On 14 September 2020 the German government's Press and Information Office published a press release concerning the results of laboratory tests on samples taken from the applicant (see paragraph 76 below), which read as follows:

> "On 2 September 2020 the Federal Government announced that, at the request of the Charité [Hospital in] Berlin, a specialist *Bundeswehr* laboratory had carried out toxicology tests on samples from Alexei Navalnyy. The results of these tests have revealed unequivocal proof of the presence of a chemical nerve agent from the Novichok group.
>
> This constitutes a severe violation of the Chemical Weapons Convention (CWC). The Federal Government has therefore requested that the Organisation for the Prohibition of Chemical Weapons (OPCW) help analyse evidence related to the Navalnyy case. This request for OPCW assistance was made in accordance with Article VIII 38 (e) of the CWC, which enables all States Parties to obtain technical assistance from the OPCW.
>
> On this basis, the OPCW has taken test samples from Mr Navalnyy and made the necessary arrangements to have these examined in OPCW designated laboratories.
>
> Moreover, the Federal Government requested that France and Sweden as European partners conduct an independent examination of the German evidence based on new samples taken from Mr Navalnyy. The results of this examination by specialist laboratories in France and Sweden have meanwhile been released and confirm the German findings.
>
> In efforts separate from the OPCW examinations, which are still ongoing, three laboratories have meanwhile independently of one another presented proof that Mr Navalnyy's poisoning was caused by a nerve agent from the Novichok group.
>
> We once again call on Russia to make a statement on the incident. We are closely consulting with our European partners regarding possible next steps."

21. According to the applicant, on the same day the laboratory under Sweden's Defence Research Agency, which deals with chemical, biological, radioactive and nuclear substances and is on the list of the OPCW designated laboratories, also confirmed the presence of Novichok in the samples taken from the applicant. It stressed that its findings were irrefutable. Furthermore, according to the applicant, an OPCW designated laboratory in France made the same finding. The applicant did not provide copies of these reports to the Court.

22. According to the Government, on the same day, 14 September 2020, the Prosecutor General's Office sent a request for legal assistance to Germany in relation to the case. They did not disclose its content or provide a copy to the Court.

23. On 18 September 2020 an investigator of the Transport Division of the Tomsk Department of the Interior (*Томский линейный отдел МВД* – "the Tomsk transport police") issued a decision refusing to open a criminal investigation into the applicant's alleged attempted murder as no objective

information had been received suggesting that any intentional criminal acts had been committed. The decision stated that the pre-investigation inquiry had been extended to 19 September 2020, that a request for legal assistance had been sent to the German authorities and that it had not been possible in the preceding period to obtain explanations from Ms P., one of the applicant's team members who had been on the trip to Tomsk.

24. On the same day, the deputy chief investigator reversed that decision and extended the pre-investigation inquiry by thirty days. The decision indicated that forensic examinations were still underway, that the request for legal assistance sent to the German authorities to have the applicant's wife and his doctor questioned had not been answered, that Ms P. had not yet been questioned and that other steps had to be taken.

25. According to the Government, on 24 September 2020 the Prosecutor General's Office sent a request for legal assistance to Germany in relation to the case. They did not disclose its content or provide a copy to the Court.

26. On 28 September 2020 the Moscow City Court upheld the Basmannyy District Court's decision of 4 September 2020, finding no breach of procedural or substantive law.

27. According to the Government, on the same day the Prosecutor General's Office sent a request for legal assistance to Germany in relation to the case. They did not disclose its content or provide a copy to the Court.

28. On 2 October 2020 the Kirovskiy District Court of Tomsk dismissed the complaint filed by Mr G., finding no evidence that the investigating bodies had been inactive or had breached the statutory time-limits. It took note of the inquiry file and found that the investigators had questioned over one hundred people and that forensic experts had examined over 500 physical exhibits. It also found that Mr L., the applicant's representative, had been duly notified of the decisions of the inquiry bodies. It stated, however, that the Tomsk transport police had not received any complaints concerning the applicant's alleged attempted murder, and that there was no proof that Mr L.'s request of 20 August 2020 had been transferred to them. On 7 October 2020 Mr G. challenged that decision.

29. Meanwhile, on 6 October 2020 the Organisation for the Prohibition of Chemical Weapons (OPCW) issued a press release concerning its findings in the applicant's case. The relevant parts read as follows:

> "The Organisation for the Prohibition of Chemical Weapons (OPCW) yesterday sent to the Federal Republic of Germany the report of the OPCW's mission to provide the technical assistance requested with regard to the poisoning of Mr Alexei Navalnyy on 20 August 2020.
>
> The results of the analysis by the OPCW designated laboratories of biomedical samples collected by the OPCW team and shared with the Federal Republic of Germany confirm that the biomarkers of the cholinesterase inhibitor found in Mr Navalnyy's blood and urine samples have similar structural characteristics to the toxic chemicals belonging to Schedules 1.A.14 and 1.A.15 that were added to the Annex on Chemicals to the [CWC] during the Twenty-Fourth Session of the Conference of the States Parties

in November 2019. This cholinesterase inhibitor is not listed in the Annex on Chemicals to the [CWC]."

30. On 12 October 2020 (according to the applicant) or 16 October 2020 (according to the Federal Security Service of the Russian Federation – "the FSS") Mr L., referring to the OPCW's findings, requested the FSS to institute criminal proceedings under Article 355 of the Criminal Code (development, production, stockpiling, acquisition or sale of weapons of mass destruction).

31. On 14 October 2020, according to the Government, a panel of forensic medical experts issued report no. 156-k, which did not confirm the diagnosis of poisoning. They did not provide any further details or a copy of the forensic report.

32. On 16 October 2020 the investigator of the Tomsk transport police issued a decision refusing to open a criminal investigation into the applicant's attempted murder on the grounds that no objective information had been obtained to suggest that any intentional criminal acts had been committed. The decision stated that over 200 people had been questioned (including medical staff, the airline staff and passengers of the flight, staff of the hotels, restaurants and airport café), over sixty sites had been inspected and 542 physical exhibits had been examined by forensic experts. It also stated that there had been no opportunity to question the applicant, his wife, Ms P. or other people whose evidence was necessary in order to take a lawful and well-reasoned decision in the case. Moreover, no reply had been received from the German, Swedish or French authorities pursuant to the earlier requests for legal assistance.

33. On the same day the deputy chief investigator reversed that decision and extended the pre-investigation inquiry by a further thirty days on the grounds that it was incomplete without questioning the applicant, his wife, Ms P. and others and without a response from the German, Swedish and French authorities.

34. On 21 October 2020 Mr G. challenged the inaction of the Tomsk transport police before the Kirovskiy District Court, relying on Articles 125, 144 and 145 of the Code of Criminal Procedure. The court recorded the complaint as lodged on 27 October 2020.

35. On 30 October 2020 the Kirovskiy District Court examined and dismissed that complaint. It found that the investigating authorities had acted lawfully, and that the inquiry was still ongoing. The court rejected a request made by Mr G. at the hearing to return the applicant's personal belongings seized for the inquiry as not within its competence.

36. On the same day Mr G. requested the Tomsk transport police to give him access to the inquiry file.

37. On 6 November 2020 Mr G. appealed against the Kirovskiy District Court's decision of 30 October 2020. He complained, in particular, that no criminal proceedings had been instituted into the alleged poisoning, and that the practice of terminating the inquiry simultaneously with its reopening (see

paragraphs 32-33 above) amounted to its indefinite extension. He pointed out that the inquiry was not an appropriate procedure as it did not afford the applicant the same procedural guarantees as a criminal investigation, in which he would have victim status. In a criminal case, he would be able to participate in the criminal prosecution, give statements, gather and submit evidence to be joined to the case file, request procedural steps or decisions to be taken to establish the circumstances of the case, make use of procedural rights related to the carrying out of forensic examinations and receive copies of procedural documents affecting his interests. The inquiry did not provide the applicant with such opportunities. He further specified that the questioning of over 200 people during the inquiry was not considered a "witness examination" and had not therefore been subject to any formalities. The people concerned could not, for example, be held liable for giving false statements. As regards the forensic examination of the 542 physical exhibits, the applicant and his representatives could not make use of the procedural rights which would be granted in criminal proceedings, such as the right to receive decisions on appointing experts and their reports, challenge experts, request the appointment of experts from a different institution or specific experts, be present during the expert examination, give explanations to the expert and request that additional questions be put to the expert. Lastly, he stated that there were no legal grounds for withholding the applicant's belongings after the termination of the inquiry.

38. On the same day Mr L. complained to the Lefortovskiy District Court of Moscow of inaction on the part of the FSS following his request to open a criminal investigation lodged on 12 (or 16) October 2020.

39. On 10 November 2020 the FSS replied to Mr L. that there were no grounds for taking any procedural steps in response to his request in view of the ongoing verification by another law-enforcement agency of the facts alleged therein.

40. On 14 November 2020 the investigator of the Tomsk transport police issued a decision refusing to open a criminal investigation and on the same day the deputy chief investigator reversed it.

41. On 16 November 2020 Mr L. complained to the Lefortovskiy District Court of inaction on the part of the FSS in relation to his request. He stated, in particular, that the FSS's reply of 10 November 2020 did not fall into one of the three categories provided for by Article 144 § 1 of the Code of Criminal Procedure.

42. On 20 November 2020 Mr G. lodged two complaints with the Kirovskiy District Court of inaction on the part of the Tomsk transport police (i) on account of their failure to open a criminal investigation on the basis of the inquiry file, and (ii) concerning their refusal to give the applicant's representatives access to the inquiry file. On the same day he lodged a complaint with the Leninskiy District Court of Novosibirsk of inaction on the part of the West Siberian Transport Investigation Department of the

Investigative Committee for failure to open a criminal investigation following his request of 20 August 2020.

43. On 25 November 2020 the Lefortovo District Court dismissed the complaint of inaction on the part of the FSS on the grounds that Mr L.'s request had not provided a sufficient factual basis to trigger an obligation to take any procedural steps in accordance with Article 144 § 1 of the Code of Criminal Procedure. Furthermore, the court noted:

> "The scope of Article 125 of the Code of Criminal Procedure only allows the court dealing with the complaint to review the lawfulness and well-foundedness of actions of public officials which may interfere with the constitutional rights and freedoms of parties to criminal proceedings or restrict their access to justice; at the same time, the court may not predetermine the decision of public officials in charge of an inquiry, reverse their decisions or require them to reverse their decisions, or require such officials to conduct a pre-trial investigation, issue a decision to institute criminal proceedings or refuse to institute them."

44. On 30 November 2020 Mr L. appealed against that decision.

45. On 26 November 2020 the Tomsk Regional Court dismissed the appeal against the Kirovskiy District Court's decision of 2 October 2020. The court found that the inquiry was ongoing at the time the complaint was lodged and that therefore its dismissal by the lower court had been justified. It was noted that the investigator had not given access to the inquiry material to the applicant's representative because the file had been in use, but that he had still had a right to access it.

46. On 4 December 2020 the Kirovskiy District Court dismissed the complaint of 20 November 2020. Referring to the decisions of 14 November 2020 (see paragraph 40 above), it found no failure on the part of the Tomsk transport police to open a criminal investigation on the basis that the inquiry was underway. It further held that it was lawful at that stage not to return the applicant his belongings. The decision contained the following reasoning:

> "The court is not allowed to consider any complaint requiring the investigator to take specific steps as it does not fall within the scope of judicial review under Article 125 of the Code of Criminal Procedure, which would be contrary to Article 38 of the Code that protects the procedural discretion of the investigator. For this reason, the applicant's request to institute criminal proceedings on the basis of the inquiry file and to return the items that were seized during the pre-investigative inquiry does not fall within the scope of judicial review under Article 125 of the Code of Criminal Procedure."

47. On the same date the court dismissed the complaint concerning the lack of access to the inquiry file (see paragraph 42 above) on the grounds that no such obligation existed before the final decision in the inquiry. On 8 December 2020 Mr G. appealed against both decisions. He pointed out, *inter alia*, that the decisions of 14 October 2020 had only been notified to him in the court's decision of 14 December 2020 and reiterated his arguments for the opening of a criminal file.

48. On 13 December 2020 the investigator of the Tomsk transport police issued a decision refusing to open a criminal investigation and on the same

day the deputy chief investigator reversed it. The latter decision was not provided to the Court.

49. On 14 December 2020 journalists of Bellingcat (an investigative journalism collective) and *The Insider* (an online newspaper) published a report on their investigation into the applicant's alleged poisoning. They revealed that since 2017 he had been under FSS surveillance, and that the agents involved in it had specialised in toxic chemical substances. The findings of the report were based on the telephone and geolocation data of the phones used by the named persons identified as security agents.

50. On 15 December 2020 Mr L. filed a request with the Military Investigation Department of the Investigation Committee, requesting a criminal investigation into the applicant's alleged poisoning by security agents, referring to the publication by Bellingcat and *The Insider*. He filed a similar request on 21 December 2020.

51. On 17 December 2020 Mr L. lodged a complaint with the Kirovskiy District Court of failure on the part of the Tomsk transport police to open a criminal investigation. He relied, *inter alia*, on the OPCW's findings as regards the chemical substance identified in the samples taken from the applicant and challenged the effectiveness of the inquiry, in particular on account of the applicant's inability to exercise victim's rights. He also complained that the inquiry bodies had unlawfully retained the applicant's belongings.

52. On 21 December 2020 the Leninskiy District Court dismissed the complaint against the West Siberian Transport Investigation Department of the Investigative Committee (see paragraph 42 above). It held that there had been no inaction on the part of that authority as Mr G.'s request for an investigation had been forwarded to the authority with jurisdiction, the Tomsk transport police, and the inquiry was underway. Mr G. challenged that decision on 28 December 2020.

53. On the latter date the Tomsk Regional Court examined and dismissed the appeal against the decision of the Kirovskiy District Court of 30 October 2020 (see paragraph 35 above). It reiterated the lower court's findings as regards the ongoing inquiry. As regards the retention of the applicant's seized belongings, it found that it was lawful on the basis that the inquiry had resumed.

54. On 30 December 2020 the Military Investigation Department of the Investigation Committee replied to Mr L.'s requests of 15 and 21 December 2020 (see paragraph 50 above), stating that they did not contain any specific facts that would warrant an investigation. Those complaints were forwarded to the Russian Transport Police for the Siberian Federal District. Mr L. challenged that decision before the 235th Garrison Military Court of Moscow on 15 February 2021.

55. On 11 January 2021 the investigator of the Tomsk transport police issued a decision refusing to open a criminal investigation and on the same

day the deputy chief investigator reversed it. The latter decision was not provided to the Court.

56. On 15 January 2021 the Kirovskiy District Court dismissed the complaint concerning the failure of the Tomsk transport police to open a criminal investigation, noting that the decisions of 18 September 2020, 16 October 2020, 14 November 2020, 13 December 2020 and 11 January 2021 (see paragraphs 23, 32, 40, 48 and 55 above) had all been reversed and that the inquiry was ongoing. Therefore, there had been no inaction on the part of the investigating authorities, nor was the retention of the applicant's belongings unlawful. Mr L. appealed against that decision on 5 February 2021.

57. On the same day the applicant requested the Tomsk transport police to transfer the inquiry file to the Main Military Investigation Department of the Interior, which had jurisdiction as the case reportedly involved FSS agents. This request was refused on 20 January 2021 as unsubstantiated, and on 6 March 2021 Mr L. challenged the refusal before the Kirovskiy District Court, stating, in particular, that it had been impossible for the applicant to access the inquiry file, and that the inquiry had been ineffective.

58. According to the Government, on 15 January 2021 the German authorities replied to Russia's request for legal assistance. They informed the Russian authorities that the *Bundeswehr* Institute of Pharmacology and Toxicology had conducted a toxicological test on three water bottles transferred to the laboratory of the Charité Hospital, and that traces of a nerve agent had been found on two of those bottles. The Government did not provide a copy of this document to the Court.

59. On 10 February 2021 the investigator of the Tomsk transport police issued a decision refusing to open a criminal investigation. Mr G. challenged the investigator's decision on 12 April 2021. He reiterated the circumstances of the applicant's poisoning, hospitalisation, the findings of the OPCW designated laboratories, and the publication by Bellingcat and *The Insider* identifying the persons implicated in the applicant's surveillance and poisoning. He complained about the investigator's failure to assess the *corpus delicti* under Articles 105 and 277 of the Criminal Code. He also reiterated the complaints concerning the lack of an effective investigation and the lack of access to the inquiry material and other procedural rights which the applicant could not exercise for lack of victim status in the criminal proceedings. Furthermore, he complained about the retention of the applicant's belongings.

60. On 15 February 2021 the Novosibirsk Regional Court allowed the appeal against the Leninskiy District Court's decision of 21 December 2020 (see paragraph 52 above). It found no proof that Mr G.'s request for an investigation had been forwarded to the Tomsk transport police and remitted the case to the first-instance court for fresh examination.

61. On 20 February 2021 the Leninskiy District Court, acting in fresh proceedings, rejected the complaint and found that Mr G.'s request for an investigation had been forwarded to the authority with jurisdiction, the Tomsk transport police. Mr G. challenged that decision on 26 February 2021.

62. On 15 March 2021 the Kirovskiy District Court dismissed Mr L.'s challenge against the decision of 20 February 2021 (see paragraph 61 above). It found that there were no grounds to transfer the inquiry file to the Main Military Investigation Department of the Interior, noting that from 15 November 2020 to 10 February 2021, thirty-seven people had been questioned and five requests for information answered, before the inquiry had been closed on the latter date. The closure of the file did not mean that the inquiry had been ineffective. Mr L. appealed against that decision on 5 April 2021.

63. On 22 March 2021 the 235th Garrison Military Court of Moscow dismissed Mr L.'s complaint concerning the Investigative Committee's refusal to open criminal proceedings against the FSS agents allegedly implicated in the applicant's poisoning (see paragraph 54 above). It held that courts acting under Article 125 of the Code of Criminal Procedure had no competence to verify the substance of an investigator's decision as to whether a complaint contained information on the circumstances of an alleged offence. Those circumstances had, in any event, been the subject of the inquiry closed on 10 February 2021 (see paragraph 59 above). The contested decision had therefore been lawful. Mr G. appealed against that decision on 24 March 2021. He stated, in particular, that the impugned decision did not fall into one of the three categories provided for by Article 144 § 1 of the Code of Criminal Procedure, and that there was no evidence that any verifications or other actions had been taken at his request. That appeal was dismissed on 18 May 2021 by the Second Western District Military Court (whose decision was not made available to the Court).

64. On 29 April 2021 the Kirovskiy District Court dismissed Mr G.'s challenge against the decision of 10 February 2021 by which the Tomsk transport police refused to open a criminal investigation (see paragraph 59 above). Referring to report no. 156-k, it found that the diagnosis of poisoning had not been confirmed by the forensic medical experts (see paragraph 31 above). It also found that the presence of a toxic substance had not been confirmed by the inquiry. The material of the German, Swedish and French laboratory tests had not been made available to the inquiry bodies following the request for legal assistance because of the applicant's objections or (in the case of Sweden) for public policy reasons. For the same reasons, it had not been possible to question the German doctors who had treated the applicant or to obtain his medical records from the German hospital. The origin of the bottle on which the toxic substance had been discovered was unknown, and the test had been carried out by a laboratory outside the Russian Federation. Having concluded that the applicant had objected to making the essential

information available for the inquiry, the court concluded that the closure of the inquiry in the absence of elements of a criminal offence had been lawful. In addition, the court dismissed the applicant's complaint concerning the investigator's failure to assess the *corpus delicti* under Articles 105 and 277 of the Criminal Code, stating that "the conducting of an inquiry and the taking of decisions under Articles 144-145 of the Code in relation to the aforementioned offences [could not] be carried out by investigators of the transport police".

65. On the same day the same judge of the same court, acting in separate proceedings, dismissed the complaint about the retention of the applicant's belongings (see paragraph 59 above), stating that the refusal to institute criminal proceedings was the subject of concurrent judicial proceedings, and that in the event that the decision was reversed, the complaint in issue would become redundant.

66. On 15 May 2021 Mr G. appealed against the Kirovskiy District Court's decision upholding the finding that no criminal investigation was necessary. He argued, in particular, that the obligation to investigate the applicant's poisoning also followed from the established use of chemical substances prohibited under the Chemical Weapons Convention (CWC). He reiterated that it was necessary to institute criminal proceedings to set the framework for an effective investigation, secure the applicant's procedural rights and enable any requests for foreign legal assistance. He stated, in particular, that the applicant had not been notified of any requests for legal assistance referred to by the court or provided with copies of the relevant correspondence.

67. On 28 June 2021 the Tomsk Regional Court examined and dismissed the appeal against the decision of the Kirovskiy District Court of 29 April 2021 (see paragraph 64 above). Upholding the lower court's findings, the Regional Court noted that the diagnosis of poisoning had not been confirmed and that the requests for foreign legal assistance had been refused, while the publication by Bellingcat and *The Insider* reflected only the authors' views, which did not call for additional verification by the investigator.

68. On the same day the same court dismissed the appeal against another decision concerning the retention of the applicant's belongings (see paragraph 65 above). It found that at the time of the first-instance hearing, parallel proceedings were pending in relation to the refusal to open a criminal investigation. In those circumstances, the decision of the lower court to reject the applicant's complaint had been correct.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL PROCEDURE AND CRIMINAL LAW

69. Article 125 of the Code of Criminal Procedure provides for the judicial review of decisions and acts (or failures to act) by an investigator or a prosecutor which are capable of adversely affecting the constitutional rights or freedoms of the participants in criminal proceedings. The court must examine such a complaint within five days. The complainant, his or her counsel, the investigator and the prosecutor are entitled to attend the hearing. The complainant must substantiate his or her complaint (Article 125 §§ 1, 2, 3 and 4).

70. Following the examination of the complaint, the court must either declare the challenged decision, action or inaction unlawful or unjustified and instruct the responsible official to rectify the indicated shortcoming, or dismiss the complaint (Article 125 § 5).

71. Article 144 establishes that every criminal complaint (report of a crime) must be accepted, verified and decided upon within three days by an inquiry officer, an inquiry agency, an investigator or a prosecutor. They may proceed, with experts' assistance or on their own, to conduct documentary verifications, checks and examinations of documents, objects or bodies, and may issue compulsory instructions on the operational-search activities to be carried out (Article 144 § 1). The aforementioned period of three days may be extended to ten days, and where it is necessary to conduct documentary verifications, checks, forensic examinations or examinations of documents, objects or bodies, to thirty days (Article 144 § 3).

72. Following the examination of a report of a crime, the competent authority decides either to open a criminal case, to refuse to open a criminal case or to forward the report of a crime to another law-enforcement agency with the relevant jurisdiction (Article 145 § 1). In such a case, the same authority must take measures to preserve the evidence (Article 145 § 3). The complainant may challenge the decision taken pursuant to Article 145 § 1 (Article 145 § 2).

73. The relevant provisions of the Criminal Code read as follows:

Article 105 – Murder

"1. Murder, that is, the intentional causing of death to another person, shall be punishable by imprisonment of six to fifteen years, with or without restriction of liberty for up to two years."

Article 277 – Attempt on the life of a State official or public figure

"An attempt on the life of a State official or public figure, committed with a view to terminating his State or other political activity, or out of revenge for such activity, shall be punishable by imprisonment of twelve to twenty years, with restriction of liberty for up to two years, life imprisonment or the death penalty."

Article 355 – Development, production, stockpiling, acquisition or sale of weapons of mass destruction

> "The development, production, stockpiling, acquisition or sale of chemical, biological, toxic and other types of weapons of mass destruction prohibited by an international treaty of the Russian Federation shall be punishable by imprisonment of five to ten years."

II. RELEVANT INTERNATIONAL LAW AND MATERIALS

A. Organisation for the Prohibition of Chemical Weapons

1. Chemical Weapons Convention

74. The Organisation for the Prohibition of Chemical Weapons (OPCW), an intergovernmental organisation comprising 193 Member States, is the implementing body for the Chemical Weapons Convention (CWC), which entered into force on 29 April 1997 (5 December 1997 in respect of Russia).

75. Under the CWC, the States Parties undertake never under any circumstances to develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone; to use chemical weapons; or to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the CWC (Article I). Each State Party undertakes to prohibit natural and legal persons under its jurisdiction from undertaking any activity prohibited to a State Party under the CWC, including enacting penal legislation with respect to such activity (Article VII).

2. OPCW technical assistance in the applicant's case

76. On 4 September 2020 the German government requested technical assistance from the OPCW Technical Secretariat in relation to the applicant's suspected poisoning. The OPCW conducted a technical assistance visit to Germany to collect biomedical samples from the applicant at the Charité Hospital in Berlin, with his consent. On 6 September 2020 blood and urine samples were taken by the hospital staff under the direct supervision and continuous observation of members of the OPCW technical assistance team. The chain of custody was maintained, and the samples were transported to the OPCW Laboratory, which sent them to two designated laboratories for analysis.

77. On 6 October 2020 the OPCW Technical Secretariat issued a summary of the report, stating that the results of the analysis demonstrated that the applicant had been exposed to a toxic chemical acting as a cholinesterase inhibitor. The biomarkers of the cholinesterase inhibitor found in his blood and urine samples had similar structural characteristics to the toxic chemicals belonging to Schedules 1.A.14 and 1.A.15 in the Annex on Chemicals to the CWC. This cholinesterase inhibitor was not listed in the

Annex on Chemicals to the CWC.[1] Germany requested the OPCW Technical Secretariat to share the summary of the report with all States Parties to the CWC and make it publicly available.

78. In October 2020 the Russian Federation requested that the OPCW Technical Secretariat consider sending experts to Russia. The OPCW replied that the Technical Secretariat was ready to deploy a team of experts to the Russian Federation at short notice, provided that, in line with the approach taken with Germany, the necessary legal requirements were fulfilled and that the applicant's consent to access his medical file and samples held by the Russian Federation was obtained.[2]

79. The technical assistance visit to the Russian Federation did not take place. At the request of the Russian Federation, the OPCW published correspondence between the OPCW Technical Secretariat and the Russian Federation from 1 October to March 2021 related to this matter.[3]

80. On 5 October 2021, at the OPCW Ninety-Eighth Session of the Executive Council, 45 States Parties to the CWC requested the Russian Federation to provide information concerning the applicant's poisoning, the steps taken to investigate the incident and the planned action, and to explain in detail the state of play of the envisaged cooperation with the OPCW, especially with regard to the requested technical assistance visit.[4]

B. Council of Europe

81. On 14 October 2020 the Parliamentary Assembly of the Council of Europe (PACE) appointed a rapporteur to prepare a special report to "contribute to shedding light on the circumstances of the [applicant's] poisoning". According to the rapporteur's explanatory memorandum of 10 January 2022[5], on 17-18 December 2020 he conducted a fact-finding visit to Berlin to meet the German authorities and the applicant. He also consulted a wide range of individuals involved in different capacities and experts in different fields, including in Russian politics, medicine and organophosphorus poisoning (attributable to specific nerve agents), as well as the United Nations Special Rapporteur on extrajudicial, summary or

[1] Note by the OPCW Technical Secretariat S/1906/2020 of 6 October 2020 "Summary of the report on activities carried out in support of a request for technical assistance by Germany" (Summary of the report, accessed n 27 January 2022). See also Note by the OPCW Technical Secretariat S/1979/2021 of 3 August 2021 "Correspondence from Germany to the OPCW requesting technical assistance in the case of Mr Alexei Navalny, and associated documents" (Declassified documents, accessed on 27 January 2022).

[2] OPCW reply of 2 October 2020 (accessed on 27 January 2022).

[3] OPCW correspondence with the Russian delegation October-December 2020 and February-March 2021 (accessed on 27 January 2022).

[4] OPCW EC-98/NAT.7 Note Verbale No. 093/2021 of 5 October 2021 (Note verbale, accessed on 27 January 2022).

[5] PACE Report of 10 January 2022.

arbitrary executions. On 19 January 2021 the PACE committee authorised the rapporteur to conduct a fact-finding visit to the Russian Federation. On 4 October 2021 he contacted the Russian delegation to PACE to propose that it take place on 16-18 November 2021, but he did not receive any substantive reply to his proposal and the visit did not take place.

82. On 26 January 2022 PACE adopted Resolution 2423 (2022)[6] based on the rapporteur's report. It noted "the ample medical evidence" showing that the applicant had been poisoned with an organophosphorus cholinesterase inhibitor whilst in Russia. It pointed out that five different tests had established that the poison was structurally related to a group of chemicals generally referred to as "Novichok", an extremely toxic nerve agent known to have only been produced in State laboratories of the USSR and, reportedly, Russia.

83. The Resolution called on the Russian Federation to fulfil its obligations under the European Convention on Human Rights "by launching an independent and effective investigation into the [applicant's] poisoning", stressing that those carrying it out had to be independent of the FSS, and that the investigation would ideally benefit from international co-operation.

84. It also called on the Russian Federation to fulfil its obligations under the CWC "by investigating the alleged development, production, stockpiling and use of a chemical weapon on Russian territory" and by providing substantive replies to questions posed by other States Parties as soon as possible. Lastly, PACE called on the Russian Federation to reach an agreement on a technical assistance visit by the OPCW at the very earliest opportunity.

C. The United Nations

85. On 30 December 2020 the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, appointed by the UN Human Rights Council, sent a letter[7] to the Russian authorities. The letter, which was made public on 7 June 2021, set out the Rapporteurs' findings, which were the result of a four-month investigation into the applicant's case and covered the following matters:

(a) the timeline of the alleged poisoning;
(b) the diagnosis of and scientific investigation into the applicant's poisoning;
(c) the origins and characteristics of Novichok and its use as a chemical weapon;

[6] PACE Resolution 2423 (2022) of 26 January 2022.
[7] UN Special Rapporteurs' letter of 30 December 2020 (Reference AL RUS 11/2020).

(d) the motive for the applicant's poisoning, including alleged patterns of attacks on him and of surveillance;
(e) Russia's response to the allegations of attempted killing and poisoning;
(f) trends and patterns of targeted killings and attempted targeted killings over time, implicating Russian State officials acting within the Russian Federation and extraterritorially.

86. The Rapporteurs referred to the allegations that the Russian authorities had violated the applicant's right to life. They stated that at the time of the chemical weapon attack the applicant had been under the intensive surveillance of the intelligence agencies, making it very unlikely that third parties could act without their knowledge, and that there was clear evidence that Novichok was a chemical weapon developed by the Russian government. This was indicative of Russia's failure to fulfil its obligations to prevent or protect against arbitrary killings by non-State actors. Furthermore, the use of Novichok could involve the responsibility of Russia under the CWC, given its obligation not to use chemical weapons, to destroy all chemical weapons in its territory and to prevent the use of chemical weapons by non-State actors, including by effectively prohibiting illicit trafficking in the substance. The Rapporteurs emphasised the government's obligation to conduct an independent, impartial, prompt, thorough, effective, credible and transparent investigation of the above-mentioned allegations.

87. The Rapporteurs requested the government to provide observations in relation to the facts of the case, the above-mentioned allegation and the measures taken to investigate the attack on the applicant, as well as to identify the source of the Novichok.

88. Lastly, in view of the seriousness of the allegations as they concerned the use of a prohibited chemical weapon, and the international implications, the Rapporteurs also called on the Russian government to request or allow an independent international investigation into the chemical attack on the applicant and his attempted killing.

89. The Rapporteurs did not receive a response from the Russian authorities.

90. On 7 June 2021 the Rapporteurs made a joint statement[8] in which they expressed their conclusion that Russia was responsible for the attempted arbitrary killing of the applicant. They said that only Russia was known to have developed, stored and used Novichok. A novel version had been used against the applicant, suggesting further development of the toxin. It was also "very unlikely" that non-State actors would have the capacity to develop or use the nerve agent, or that private buyers would have the expertise to properly handle it. They also referred to reports of repeated threats and attacks against the applicant and stated that his poisoning and attempted killing, along

[8] UN Special Rapporteurs' Statement of 7 June 2021.

with the lack of investigation and the denying narratives, were part of a larger trend.

THE LAW

I. JURISDICTION

91. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

92. The applicant complained about the Russian authorities' refusal to institute criminal proceedings in respect of his attempted murder. He alleged that he had been poisoned with a chemical agent which only the State security services had had access to, and complained that the Russian authorities had failed to conduct an effective investigation. He relied on Article 2, the relevant parts of which provide as follows:

Article 2

"1. Everyone's right to life shall be protected by law."

A. Admissibility

1. The parties' submissions

(a) The Government

93. The Government submitted that on the date the applicant had lodged his application form, 2 November 2020, an inquiry into reports of a criminal offence allegedly committed against him had been ongoing, as had his complaints of inaction on the part of the authorities. Moreover, his initial application of 21 August 2020 with a request for interim measures had been filed before any of the procedural steps in the case could be completed, even though the pre-investigation inquiry had been initiated immediately and the police had begun questioning the employees of the catering facilities and reviewing the CCTV footage as early as on 20 August 2020.

94. They submitted that in the Russian legal system, a pre-investigation inquiry was mandatory and an integral part of examining reports of an alleged crime. Therefore, it could not be considered an ineffective remedy and it had to be carried out before applying to the Court.

95. The Government disagreed that the pre-investigation inquiry in the present case had been excessively long in view of the objective reasons for its duration and significant number of measures involved. They relied on legislation of other member States that provided for a pre-investigation inquiry without specified time-limits (France, Norway, the Netherlands and Switzerland) and claimed that in practice such inquiries could take up to six months, particularly in the Netherlands. Therefore, the duration of the inquiry in the present case had not been incompatible with Russian law or with the practice in other member States.

96. In addition, they alleged that the applicant had not provided evidence of any applications or requests filed with the investigating authorities, or of specific proposals to improve the effectiveness of the inspection activities.

97. Based on the above, the Government argued that the applicant had not exhausted domestic remedies before lodging his application with the Court.

(b) The applicant

98. The applicant contested the Government's allegations. He pointed out that at the time of submission of his observations, on 21 May 2021, his representatives had lodged eleven sets of proceedings concerning the authorities' failure to institute a criminal investigation into his poisoning. Having had recourse to judicial protection and review, he had not achieved the goal of securing a meaningful and impartial investigation into his poisoning with a toxic warfare agent. Moreover, he submitted that the procedure set out in Article 125 of the Code of Criminal Procedure had not been capable of providing an effective remedy for his complaint, referring to the domestic courts' reasoning for dismissing his actions. He quoted, in particular, the decision of the Lefortovskiy District Court of 25 November 2020 (see paragraph 43 above) and the decision of the Kirovskiy District Court of 4 December 2020 (see paragraph 46 above), which stated that his complaints fell outside the scope of judicial review under that provision.

99. The applicant also indicated that the authorities had failed to update him on the progress of the pre-investigation inquiry and that he had only learned of the decisions refusing to open criminal proceedings and their reversals during the judicial examination of his subsequent complaints.

2. The Court's assessment

(a) Applicability of Article 2 of the Convention

100. Although the applicability of Article 2 is not in dispute in the present case, it is a matter that goes to the Court's jurisdiction and which it must establish of its own motion (see *Jeanty v. Belgium*, no. 82284/17, § 58, 31 March 2020, and *Lapshin v. Azerbaijan*, no. 13527/18, § 70, 20 May 2021).

101. The Court reiterates that the protection of Article 2 of the Convention may be invoked not only in the event of the death of the victim of violent acts. Article 2 also comes into play in situations where the person concerned was the victim of an activity or conduct, whether public or private, which by its nature put his or her life at real and imminent risk and he or she has suffered injuries that appear life-threatening as they occur, even though he or she ultimately survived (see *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI, and *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020, with further references).

102. The circumstances of the case as set out by the parties and the documents available in the case file, in particular the applicant's sudden illness during a flight between Tomsk and Moscow, followed by an emergency landing, urgent intervention by medics and subsequent intensive and lengthy treatment, leave no doubt that his life was at serious and imminent risk.

103. The sudden and unexplained change in his health together with other clinical symptoms led the medics to suspect poisoning. Irrespective of whether he was indeed a victim of a premeditated attack, or whether the attack involved chemical weapons and was carried out with the involvement of State agents, the claim of poisoning was not implausible.

104. Once such a matter has come to the attention of the authorities, this imposes on the State *ipso facto* an obligation under Article 2 to carry out an effective investigation (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 140-45, 25 June 2019). Accordingly, even if it was not immediately clear that the applicant's life was put at risk by an "activity or conduct", or by the "use of force", the situation was such as to impose on the State an obligation to carry out an effective investigation within the meaning of Article 2.

105. In conclusion, given the nature of the incident and the overall context, Article 2 is applicable in the present case, even though the applicant ultimately survived.

(b) Exhaustion of domestic remedies

106. The Court notes that the Government's objection, in so far as they argued that the applicant's complaints were premature, is based on the argument that the applicant lodged his application while the pre-investigation inquiry into reports of a criminal offence was ongoing, and his complaints as regards its progress were still pending before the domestic courts. It observes that according to the parties' subsequent submissions, the pre-investigation inquiry ended with a decision of 10 February 2021 by which the Tomsk transport police refused to open a criminal investigation. That decision was upheld by the Kirovskiy District Court on 29 April 2021 and, at final instance, by the Tomsk Regional Court on 28 June 2021. These developments render the Government's objection as to the non-exhaustion of domestic remedies

redundant, and the Court dismisses it without considering whether the aforementioned inquiry constituted an effective domestic remedy.

107. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

108. The applicant alleged that national authorities had failed to discharge their procedural obligation under Article 2 of the Convention, in particular that they had refused to conduct an investigation into his poisoning with a chemical agent prohibited as a weapon of mass destruction and to identify those implicated in the criminal offence.

109. He submitted that the obligation to conduct a criminal investigation had first been triggered by the circumstances of his sudden illness during the flight from Tomsk, then by the conclusions of the laboratories confirming the presence of a toxic agent (cholinesterase inhibitor) in the samples collected at the Charité Hospital, the related statement made by the German authorities on 14 September 2020 (see paragraph 20 above) and the OPCW's statement of 6 October 2020 (see paragraph 29 above) concerning the similarity of the biomarkers found in those samples to the toxic chemicals prohibited under the CWC. These statements had contained affirmations concerning the "irrefutable" evidence provided by the toxicology tests that he had been poisoned with a Novichok-type nerve agent. The above elements were later compounded by the information revealed in the investigation by the journalists of Bellingcat and *The Insider*, and followed by the international community's calls on Russia to conduct an investigation to identify and punish those responsible for the attack on him. He referred, in particular, to the UN Special Rapporteurs' letter of 30 December 2020 requesting the Russian government to investigate the attack on him and identify the source of the Novichok (see paragraphs 87-88 above).

110. Despite these facts and his own repeated requests to open a criminal investigation into the alleged attempted murder and the strong indications that it had involved the use of chemical weapons prohibited by an international treaty ratified by Russia, the national authorities had refused to institute criminal proceedings.

111. The applicant contested the Government's allegations that the pre-investigation inquiry had constituted an effective investigation within the meaning of Article 2 of the Convention. He put forward three main reasons why the inquiry had not replaced and could not replace a criminal investigation, which, according to him, had been indispensable in his case.

First, the inquiry had not been public, secondly, it had not afforded him victim status, and thirdly, it had not provided a formal framework for gathering evidence admissible in criminal proceedings. As regards each element he specified the following.

112. The non-public nature of the inquiry had prevented him, his family and his representatives from having access to essential information about its progress and findings. From the outset, the doctors had refused to disclose the diagnosis to the family and had kept secret the relevant medical documents, including the results of the laboratory tests. Throughout the subsequent proceedings, he and his representatives had been denied access to the inquiry file, despite their repeated requests and complaints.

113. As regards victim status, under domestic law, a decision to grant it could only be made once criminal proceedings were instituted. Victim status would have enabled him to participate in the criminal prosecution, give statements, collect and present evidence to be joined to the file, request procedural steps or decisions to be taken to establish the relevant facts, file applications related to expert examinations and obtain copies of procedural documents bearing upon his rights. In the absence of any criminal proceedings, he had not been granted victim status and therefore could not exercise any of these rights, moreover, he had not been protected by the relevant guarantees.

114. In relation to the above, the courts had referred to him in their decisions as an "individual claiming to be a victim", a term not provided for by domestic law and which had only been used on rare occasions (probably once) in a ruling of the Constitutional Court in a different context. The applicant claimed that the use of that term, compounded by the fact that they had not used his name, demonstrated the domestic courts' bias towards him.

115. Lastly, as regards the lack of a formal framework in the conduct of the inquiry, the applicant pointed out that the practice of closing and resuming it had allowed it to be extended for a virtually unlimited duration without a final decision. Furthermore, the number and scope of procedural acts that could be conducted during the pre-investigation inquiry had been limited, and these acts had not been subject to the formal requirements applicable in criminal proceedings. In particular, the witnesses had been questioned in an informal interview without being given procedural status or being sworn in to tell the truth, and could not be liable for perjury, unlike questioning in the context of criminal proceedings. Expert examinations had been conducted without the applicant's participation as there had been no requirement for him to be notified of the decisions appointing experts, which meant he could not demand the experts' recusal or reassignment, propose additional questions to ask them, provide them with information or attend an expert examination.

116. Moreover, the applicant alleged that the police in charge of the investigation lacked the authority, legal competence and operational means to conduct an investigation into serious offences such as those alleged in this

case. He referred, in particular, to the Kirovskiy District Court's decision of 29 April 2021 confirming that investigators of the transport police could not conduct an inquiry or take decisions in relation to the offences of murder and attempt on the life of a public figure (see paragraph 64 above).

117. At the time of submission of the applicant's observations, the authorities had issued six refusals to institute criminal proceedings in the case. Five of them had been reversed on the same date and the inquiry extended until the next refusal, and the challenge to the latest refusal had been pending.

118. Based on the above, the applicant concluded that no effective investigation had been carried out by the Russian authorities into his attempted murder, in violation of the procedural limb of Article 2 of the Convention.

(b) The Government

119. The Government alleged that the investigation into the events of 20 August 2020 had been carried out effectively, that is, in accordance with the requirements set out in the Court's case-law. They referred to the measures taken by the investigating authorities in the course of verifying the reports of the crime allegedly committed against the applicant, as well as to the facts established during that inquiry. In particular, inquiry officials had registered the reports of the applicant falling ill and his subsequent hospitalisation. They had interviewed 262 people, including doctors and medical staff of the hospital, emergency medical service workers, the flight crew and passengers, employees of the airport services, cafes and restaurants, hotel staff and seven members of the applicant's team who had accompanied him on the trip. They had inspected ninety-four sites and objects and performed sixty-three forensic examinations on 542 seized objects, including food, other items and samples from the hotel and catering facilities visited by the applicant.

120. The Government specified that during the applicant's stay in the hospital he had undergone eight biochemical blood tests, eleven acid-base balance blood tests, six general blood tests, five electrocardiograms, twenty-five glucose tests and five general urine tests. The final diagnosis had been established after six consultations on the basis of the tests, which had revealed the absence of any toxic substances (including from the group of cholinesterase inhibitors). The Government referred, in particular, to the medial forensic reports of 21 August, 24 August and 14 October 2020 (see paragraphs 8, 11 and 31 above) and the forensic report of 4 September 2020 relating to the applicant's clothes (see paragraph 17 above), none of which corroborated the allegation of poisoning.

121. They also alleged that the investigating authorities had seized and examined video footage of the applicant's and his team's movements between 17 and 20 August 2020.

122. The Government further alleged that the applicant's wife had made contradictory statements as regards her husband's health. In particular, she had initially told the medical staff performing a check-up on the applicant that he had been on a diet and had experienced indigestion in the three to five days prior to his hospitalisation. However, she had later testified to the German authorities that the applicant had not had any health problems in the period preceding his hospitalisation and had not had any dietary restrictions or been taking medication or food supplements.

123. Based on the above, the Government concluded that the inquiry conducted in relation to the events of 20 August 2020 had been comprehensive and had convincingly established that there was no reason to believe that the applicant could have been poisoned. Moreover, they contended that they had taken all the necessary measures to establish the circumstances of the case, particularly since they could not obtain the necessary evidence from foreign countries.

124. In particular, the Government claimed that they had no documentary evidence relating to the applicant's questioning by the German authorities, the findings of the German hospital or the three toxicology tests performed in Germany, France and Sweden. These had not been provided following Russia's requests for legal assistance of 27 August, 14 September, 24 September and 28 September 2020 (see paragraphs 13, 22, 25 and 27 above). The German authorities' response had been limited to the statement that traces of a nerve agent had been found on two bottles (see paragraph 58 above), whereas France and Sweden had refused Russia's requests for legal assistance. The applicant had not provided the relevant documents either. Moreover, he had objected to the disclosure of his medical documents to the Russian authorities through requests for legal assistance.

125. The Government also alleged that Germany had not responded to another request for legal assistance relating to an anonymous false threat of a bomb at Omsk Airport before the emergency landing on 20 August 2020, which had allegedly been sent through a server in Germany.

126. They further referred to the Court's case-law in relation to the duty imposed on member States under Article 2 of the Convention to cooperate in the investigations of a cross-border or transnational nature. They referred, in particular, to *Güzelyurtlu and Others v. Cyprus and Turkey* ([GC] no. 36925/07, §§ 229-36, 29 January 2019), and *Rantsev v. Cyprus and Russia* (no. 25965/04, 7 January 2010). They alleged that in view of the lack of information from foreign jurisdictions, the Russian authorities had duly fulfilled their procedural obligation to conduct an effective investigation into the incident involving the applicant, including the duty to cooperate.

127. In conclusion, the Government stated that in the given circumstances, the inquiry bodies had exhausted all possibilities of establishing the relevant circumstances as they had no other legal instruments for reclamation of additional documents and information in accordance with

criminal procedure and international law. Based on the foregoing, they had taken all the necessary measures to establish the circumstances of the events of 20 August 2020. No facts had been established indicating that a criminal offence had been committed against the applicant.

128. Thus, according to the Government, there had been no violation of Article 2 of the Convention under its procedural limb.

2. The Court's assessment

(a) General principles

129. The relevant general principles are summarised in the cases of *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015), and *Nicolae Virgiliu Tănase*, cited above, §§ 157-71. Those directly relevant to the present case are the following.

130. The State's obligation under Article 2 § 1 of the Convention to protect the right to life requires by implication that there should be an effective official investigation when an individual has sustained life-threatening injuries in suspicious circumstances, even when the presumed perpetrator of the attack is not a State agent (see *Mustafa Tunç and Fecire Tunç*, cited above, § 171, with further references; *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; and *Yotova v. Bulgaria*, no. 43606/04, § 68, 23 October 2012).

131. In particular, where it is not clearly established from the outset that the death has resulted from an accident or another unintentional act, and where the hypothesis of unlawful killing is at least arguable on the facts, the Convention requires that an investigation which satisfies the minimum threshold of effectiveness be conducted in order to shed light on the circumstances of the death (see *Mustafa Tunç and Fecire Tunç*, § 133, and *Lapshin*, § 97, both cited above).

132. The Court assesses compliance with the procedural requirement of Article 2 on the basis of several essential parameters: the adequacy of the investigative measures, the promptness and reasonable expedition of the investigation, the involvement of the victim or next of kin and the independence of the investigation. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *Mustafa Tunç and Fecire Tunç*, cited above, § 225; *Nicolae Virgiliu Tănase*, cited above, § 171; and *Gasangusenov v. Russia*, no. 78019/17, § 90, 30 March 2021).

133. 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 (see *Mustafa Tunç and Fecire Tunç*, cited above, §§ 174-76, and *Carter v. Russia*, no. 20914/07, § 138, 21 September 2021).

134. The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and to the identification and, if appropriate, punishment of those responsible. This is an obligation which concerns the means to be employed and not the results to be achieved. The authorities must take all reasonable steps available to them to secure the evidence concerning an incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Lapshin*, cited above, § 98, with further references).

135. Furthermore, 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, where appropriate, the identity of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 175; *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009; *Mazepa and Others v. Russia*, no. 15086/07, § 78, 17 July 2018; *Huseynova v. Azerbaijan*, no. 10653/10, § 115, 13 April 2017; and *Cerf v. Turkey*, no. 12938/07, § 72, 3 May 2016). The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Lapshin*, cited above, § 99, with further references).

136. Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the victim or next of kin must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Huseynova*, § 106, and *Yotova*, § 78, both cited above).

(b) Application of these principles in the present case

137. The Court refers to its finding above that the incident presented a serious and imminent risk to the applicant's life, triggering the State's obligation under Article 2 to carry out an effective investigation (see paragraphs 102-104 above).

138. It further notes that at the time of its occurrence, the gravity of the situation was not questioned by the intervening professionals (the flight crew and the medics) who responded to it as a matter of urgency, or by the competent authorities. Indeed, the Government in their observations argued that there had been an effective investigation in the case in the form of a pre-investigation inquiry, which they considered to have been thorough and comprehensive.

139. The Court's task is therefore to assess whether the pre-investigation inquiry referred to by the Government satisfied the minimum threshold of effectiveness required by the Convention. It reiterates from the outset that in the context of the Russian legal system, a "pre-investigation inquiry" alone is not capable of leading to the punishment of those responsible, since the opening of a criminal case and a criminal investigation are prerequisites for

bringing charges against alleged perpetrators which may then be examined by a court. In cases where the "pre-investigation inquiry" was not followed by a "preliminary investigation", the Court regarded such a legal framework as inadequate. In particular, it was deemed unsuitable for establishing facts, especially to verify conflicting versions of events, or for gathering evidence admissible in criminal proceedings, and it did not ensure the applicants' right to effective participation in proceedings as they could not be granted "victim" status (see *Lyapin v. Russia*, no. 46956/09, §§ 128-35, 24 July 2014; *Fanziyeva v. Russia*, no. 41675/08, § 53, 18 June 2015; and *Dalakov v. Russia*, no. 35152/09, § 71, 16 February 2016).

140. It follows that under the Court's case-law, the mere fact of the investigating authority's refusal to open a criminal investigation into credible allegations falling within the ambit of Articles 2 and 3 could be indicative of the State's failure to comply with its obligation to carry out an effective investigation.

141. Turning to the specific circumstances of the present case, the Court will assess whether the particular features of the pre-investigation inquiry conducted in the present case could nevertheless meet the criteria of effectiveness.

(i) Public nature

142. The Government's main argument in support of the claim that the investigation had been effective was that a considerable number of investigative steps had been taken to verify the origin of the incident, such as the questioning of numerous witnesses and multiple forensic tests. However, since no documentation relating to these steps was submitted to the Court, it is not in a position to verify the content or formal validity of the measures in question, or to ascertain that the authorities drew reasonable conclusions from that material. Moreover, it does not appear from the domestic judicial decisions that those steps were scrutinised by the national courts.

143. The Court is mindful of the fact that the applicant and his representatives had limited knowledge of the investigative steps taken by the inquiry bodies and had no access to the inquiry material. They regularly complained about it to the domestic courts (see paragraphs 47, 57 and 59 above). One of the main arguments they put forward in their requests for a formal criminal investigation was that the applicant had otherwise been unable to obtain the procedural status of a victim, which deprived him of virtually any opportunity to participate in the proceedings or to be informed of their progress.

144. In particular, the Government relied on the forensic reports of 21 August, 27 August and 4 September 2020 (see paragraphs 8, 11 and 17 above), which stated that the experts had found no traces of certain substances in the swabs from the applicant's palms or his nail clippings, and that no such substances had been found on unidentified objects submitted for analysis or

the applicant's clothes. Without access to these reports, which were not made available to the Court, it is impossible to identify the scope of the forensic examinations or to determine whether any experts' findings were omitted from the Government's submissions. It is also established that neither the applicant nor his representatives participated in the forensic examinations, in the appointment of experts or in formulating questions, or exercised other rights afforded to victims in criminal proceedings for lack of such procedural status.

145. The Court also notes that the applicant did not succeed in having his clothes returned to him after numerous complaints. No substantive reply was given to him as to the reasons for their retention, even after the inquiry was terminated as unworthy of pursuing in criminal proceedings (see paragraph 68 above). The authorities thus withheld items that could constitute important evidence without a proper procedural decision to that effect and without an explanation of why they were holding on to them despite their conclusion that there was no matter to investigate.

146. It follows that the inquiry conducted in this case fell short of being public and made no allowance for the victim's right to participate in the proceedings.

(ii) Adequacy

147. The applicant alleged that the inquiry had failed to address three essential aspects of his attempted murder: first, the possible political motive for the attack, secondly, the possible involvement or collusion of State agents, and thirdly, the use of a substance prohibited by an international treaty as a chemical weapon.

148. The Court notes that immediately after the incident, the lawyers instructed by the applicant's family urged the authorities to investigate the incident as attempted murder by poisoning with an unknown substance. They indicated the applicant's political activity as the likely motive for the attack. The Court notes that the applicant is a prominent opposition figure whose activism, particularly in the fight against corruption, has resulted in his multiple arrests, detentions, criminal convictions and ill-treatment, and that in several of his cases before the Court he has made a well-founded claim of persecution for political reasons (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, §§ 172-76, 15 November 2018; *Navalnyy and Yashin v. Russia*, no. 76204/11, §§ 73-75 and 112, 4 December 2014; *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, §§ 117-19, 23 February 2016; *Navalnyye v. Russia*, no. 101/15, §§ 68 and 84, 17 October 2017; and *Navalnyy and Gunko v. Russia*, no. 75186/12, §§ 47-48, 10 November 2020). The Court also notes that there had already been reports of repeated threats and attacks against the applicant (see paragraph 90 above). The Court therefore considers that the political motive should have been an essential element of the investigation (see, for similar reasoning in respect of attacks

on journalists and activists, *Kolevi*, §§ 197-201; *Huseynova*, § 115; and *Mazepa*, §§ 73 and 78, all cited above).

149. However, inasmuch as it can be established on the basis of the documents made available to the Court, not only did the inquiry fail to address the incident's possible link to the applicant's public activities, it did not seriously pursue the version of premediated assault, even though no natural causes had been identified by any medical or forensic examination at any stage. Even if the early tests did not reveal the presence of the toxic substances looked for, this was not in itself sufficient to rule out the version of poisoning, especially in the absence of any other plausible explanation for the sudden illness.

150. The obligation to investigate the possible poisoning took on a new dimension after the German government's announcement concerning the evidence obtained with the assistance of the Organisation for the Prohibition of Chemical Weapons (OPCW) indicating that the applicant's poisoning had been caused by a chemical nerve agent from the Novichok group (see paragraphs 15 and 20 above). Russia, as a party to the Chemical Weapons Convention (CWC), was under an obligation to investigate in criminal proceedings any activities breaching the prohibition of chemical weapons, which was, moreover, incorporated as a specific provision in the Criminal Code (see paragraphs 73-75 above). It follows that under international and domestic law, Russia was required to open a criminal investigation with a view to establishing the origin of the prohibited substance, as well as to identify those responsible for the applicant's ingestion of the substance.

151. Moreover, the Court notes that Russia's international obligations in relation to an investigation in this case were brought to its attention in the reports of the PACE and UN rapporteurs (see paragraphs 81-90 above). However, it does not appear that the domestic authorities followed up on the statements issued by these international bodies.

152. As regards the Russian authorities' claim that the investigation could not be opened because of a lack of cooperation on the part of the German authorities, who did not grant their request for legal assistance (see paragraph 124 above), the file contains insufficient information as to the communication between the Russian and German authorities in this regard. That material was not disclosed to the Court (see paragraphs 13 and 22 above). It therefore cannot verify the validity of the Government' argument in that respect.

153. In any event, the Court finds it difficult to accept that the domestic inquiry could not be framed as a criminal investigation because some of the evidence was being withheld abroad. Crucially, the failure to open criminal proceedings was in itself an obstacle to those investigative actions that could be carried out under Russian jurisdiction. The Court reiterates that the obligation to conduct an effective investigation concerns the means to be employed and not the results to be achieved, and that the authorities must take

the reasonable steps available to them to explore plausible allegations of a violation of the right to life, even if they may eventually prove unfounded (see *Kolevi*, § 201; *Lapshin*, § 98; and *Mazepa and Others*, § 78, all cited above).

154. Moreover, it may appear that even though Germany did not provide the requested information through the procedure for legal assistance, the German government engaged in cooperation by means of other international instruments. In particular, the OPCW Technical Secretariat's summary report of 6 October 2020 was shared with Russia and made public at Germany's request. Coming from an independent body with a mandate recognised by Russia, the report which confirmed the use of chemical weapons was in itself capable of providing prima facie evidence sufficient to initiate a domestic investigation in Russia.

155. Likewise, the domestic authorities could not rely on their inability to question the applicant, his wife Ms P. and other people living abroad as a reason for not opening a criminal investigation (see paragraphs 23, 24, 32 and 64 above). The applicant, his family, his associates and his representatives gave numerous statements and regularly made detailed submissions to the investigating bodies and judicial authorities, setting out their allegations of attempted murder and referring to possible proof. The authorities were therefore sufficiently informed of their position on the matter. The main reason they could not be questioned as witnesses was the lack of procedural status: a person could only be questioned as a victim or witness in the framework of criminal proceedings, which had not been opened. Procedural status has legal consequences for those questioned as it defines their responsibilities and guarantees. The fact that the people concerned refused to be questioned, remotely or possibly in Russia, cannot be legitimately held against the applicant and has no bearing on the State's obligation under Article 2 to conduct an effective investigation, which exists *ipso facto* (see *Nicolae Virgiliu Tănase*, cited above, § 145).

156. Lastly, the Court will consider the complaint regarding the alleged failure to investigate the possible involvement or collusion of State agents in the applicant's poisoning. In addition to considerations related to the applicant being a public figure, the Court has previously established that the applicant was under intensive surveillance by the security services (see *Navalnyy v. Russia (no. 2)*, no. 43734/14, §§ 46 and 62, 9 April 2019), and it had been reportedly ongoing (see paragraph 49 above). Therefore, an attack by a private individual was likely to be discovered. The need to investigate the possible involvement of State agents was therefore clearly present from the outset. Moreover, after the OPCW's confirmation of the use of the substances classified as chemical weapons, this line of investigation should have become a priority. The development and use of such chemicals required time, skill and a level of organisation that could hardly be achieved by

individuals unconnected to State agencies. Concealing any such activities over a substantial period of time would also appear unlikely.

157. Suspicions of involvement or collusion by State agents were reinforced after the publication by Bellingcat and *The Insider*. The allegations contained therein, which named the specific State agents implicated in the applicant's poisoning (see paragraph 49 above), were sufficiently serious to require thorough verification. However, the summary way in which this material was dismissed (see paragraph 67 above) shows that these allegations were either not verified or that the findings were not disclosed.

158. To comply with the requirements of the procedural limb of Article 2 in the present case, the domestic authorities should have explored these allegations, even if they were eventually to prove unfounded. In the absence of evidence that such line of inquiry was pursued, this cannot be considered adequate (see *Kolevi*, cited above, §§ 200-01; *Cerf*, cited above, § 72; and *Mazepa and Others*, cited above, § 78).

(iii) Conclusion

159. On 20 August 2020 the applicant found himself in a situation presenting a serious and imminent risk to his life, and the nature of that incident triggered the State's obligation under Article 2 to carry out an effective investigation.

160. The inquiry conducted by the domestic authorities fell short of being public and made no allowance for the victim's right to participate in the proceedings. Furthermore, the inquiry failed to explore the allegations of a possible political motive for the attempted murder, as well as possible involvement or collusion by State agents, and did not follow up on the reported use of a substance identified as a chemical weapon prohibited by international and domestic law. As such, it was not capable of leading to the establishment of the relevant facts and the identification and, if appropriate, punishment of those responsible and therefore could not be considered adequate.

161. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

162. The applicant complained that he had had no effective remedy at his disposal in respect of the alleged violation of Article 2 of the Convention. He relied on Article 13, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

163. The Court observes that this complaint concerns the same issues as those examined under the procedural limb of Article 2. However, having regard to its conclusion above under Article 2 and its case-law concerning the lack of an effective investigation, the Court considers it unnecessary to examine those issues separately under Article 13 (see *Tagiyeva v. Azerbaijan*, no. 72611/14, § 84, 7 July 2022).

IV. ARTICLE 46 OF THE CONVENTION

164. The relevant parts of Article 46 of the Convention provide:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

165. As the Court's judgments are essentially declaratory, the respondent State remains generally free, subject to the supervision of the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 638, 13 April 2017). However, in a number of exceptional cases, where the very nature of the violation found was such as to leave no real choice between measures capable of remedying it, the Court has indicated the necessary measures in its judgments (see, *inter alia*, *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 144, ECHR 2013, and *Nihayet Arıcı and Others v. Turkey*, nos. 24604/04 and 16855/05, §§ 173-76, 23 October 2012).

166. In the present case, the Court has found that the Russian authorities failed to carry out an effective investigation into credible allegations of attempted murder, aggravated, moreover, by the suspected use of substances prohibited by the Chemical Weapons Convention (CWC) in the attack against him. This failure persisted despite multiple calls by international bodies on the Russian government to elucidate the circumstances of the incident, which constituted a matter of serious public concern (see, for similar reasoning, *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, §§ 189-95, 24 May 2011).

167. For these reasons, the Court considers that the specific individual measures required of the Russian Federation in order to discharge its obligations under Article 46 of the Convention must include prompt investigation in criminal proceedings, which must be effective within the meaning of Article 2 and take into account the Court's findings in this judgment (see *Abuyeva and Others v. Russia*, no. 27065/05, §§ 241-43,

2 December 2010; *Aslakhanova and Others v. Russia*, nos. 2944/06 and 4 others, §§ 223-39, 18 December 2012; and *Gasangusenov*, cited above, § 102).

168. In the examination of any future cases lodged by the applicant the Court, where appropriate, will draw inferences for the purposes of other related complaints, for as long as the Convention-compliant investigation has not taken place.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. 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

170. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

171. The Government contested this claim as excessive and out of line with the awards made by the Court in other cases concerning the lack of an effective investigation. They referred to *Dobriyeva and Others v. Russia* (no. 18407/10, § 93, 19 December 2013); *Kagirov v. Russia* (no. 36367/09, § 138, 23 April 2015); and *Jabłońska v. Poland* (no. 24913/15, § 88, 14 May 2020), in which the Court awarded between EUR 15,000 and EUR 26,000 in respect of violations similar to those alleged in this case.

172. The Court considers that the applicant sustained non-pecuniary damage on account of the violation of Article 2 of the Convention under its procedural limb. Having regard to the particular circumstances of the case and making its assessment on an equitable basis, the Court awards EUR 40,000 to the applicant in respect of non-pecuniary damage.

B. Costs and expenses

173. The applicant did not submit any claims under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicant's complaints as they relate to facts that took place before 16 September 2022;

2. *Declares* the complaints under Article 2 of the Convention admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention taken in conjunction with Article 2;

5. *Holds*
   (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, EUR 40,000 (forty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction;

7. *Holds* that the Government must take all necessary and appropriate measures to ensure in the present case that the procedural requirements of Article 2 of the Convention are complied with.

Done in English, and notified in writing on 6 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Jolien Schukking President