



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

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### THIRD SECTION

Application no. 55589/17  
Aleksey Anatolyevich NAVALNY  
against Russia  
lodged on 17 July 2017

### STATEMENT OF FACTS

1. The applicant, Mr Aleksey Anatolyevich Navalny, is a Russian national, who was born in 1976 and lives in Moscow. He is represented before the Court by Mr K. Terekhov, a lawyer practising in Moscow.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is an opposition politician, anti-corruption campaigner and popular blogger.

4. On 10 April 2016 a Sunday night current-affairs programme presented by the vice-president of Russia's State television and radio broadcaster, Mr Dmitriy Kiselev, showed excerpts from a documentary film about the applicant. The documentary titled "The Browder Effect" was produced by Mr Yevgeniy Popov, the channel's investigative reporter, and was to be aired three days later. On the same day [a fifteen-minute video](#), "Operation Quake: Agent Navalny's secret exchanges", was posted to the channel's web-site.

5. The film portrayed the applicant as an agent codenamed "Freedom" who had been recruited by Mr Bill Browder, formerly a large portfolio investor in Russia via his Hermitage Capital Management fund. Browder had been banned from re-entering Russia since 2005 as a threat to national security; in 2009 Mr Sergey Magnitskiy, who represented his company in Russia and investigated a massive tax fraud, was taken into custody and

died in prison<sup>1</sup>. Following Browder’s lobbying efforts, the United States, Canada, the United Kingdom and other states enacted versions of the Magnitsky Act which provided for the freezing of assets and visa bans on Russian officials considered to be guilty of human-rights violations.

6. Mr Kiselev introduced the video:

“The political reporter of the Russia’s State television and radio broadcasting company, Yevgeniy Popov, has got hold of sensational material. It is criminal correspondence between a small-time political gambler and corrupt multiple offender Alexey Navalnyy and a British subject Bill Browder ... In short, Browder gave orders to Navalnyy who executed them in exchange for money acting rather like his agent ...”

7. The introduction was followed with footage from the film. The presenter Mr Popov showed an English-language document and read out its contents in Russian:

“Dec 23, 2007. Memorandum for: Chief of the Secret Intelligence Service. From: A. Belt. Subject: Agent Solomon’s report about finishing investigations on Navalny and assigning him the codename ‘Freedom’. A dialogue between an employee of the SIS and agent Solomon took place over an encrypted communication channel. The agent received approval for confidential cooperation with Alexey Navalny ... Navalny needs financial backing to carry out his side task special operation ‘Quake’ to undermine the existing constitutional order of the Russian Federation. Navalny has been assigned the pseudonym – Freedom.”<sup>2</sup>

The presenter went on to state that “agent Solomon” was in fact Mr Browder who had been part of the operation Quake ever since the US Central Intelligence Agency had developed it in 1986.

8. Another video sequence showed a text document which was described as the transcript of a Skype chat between the user “will-prince1” (Bill Browder) and “free\_dm” (the applicant). The reporter explained that “Browder was raining compliments upon Navalnyy, seeking to convince him to start joint ‘greenmail’ operations – this is what corporate blackmail is called”. An English-language Skype exchange between them was quoted in Russian translation:

“free\_dm: William, good afternoon. Let’s say I agreed. After all, it is necessary to start with something. What is your vision?”

will-prince1: Alexey, there are two main aspects to this task. The first thing is information and the second thing is organization ... I have also some excellently reliable information regarding fraud at [the Russian State bank] VTB, which will be great for starters.

...

free\_dm: William, I received the information about VTB. It is really interesting...

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1. See *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, 27 August 2019.

2. In all instances, the English text has been taken unedited as shown on screen.

will-prince1: Alexey, I believe you need to acquire some shareholdings. I'm sure you understand all the big names on the list. You need shares in Rosneft, Gazprom oil, Surgutneftegaz, LUKOIL, Sberbank ...”

9. More purported reports from the applicant's handler to his superiors were shown on screen and read out in Russian translation:

“During this meeting, agent Freedom was introduced to the first phase of secretly planned activities to expose ... corruption and embezzlement of Russian State's assets. For the implementation of the first phase of the plan agent Freedom has received funding in the amount of 100 million RUB ... The first part of these funds in the amount of 7 million RUB will be transferred to our trustee from Moscow Helsinki Group until January 26th. Agent A. Belt.”

“Jan 23, 2010. Subject: Report on performing duties under special operation 'Magnitsky List'. ... The agent reported about his meeting with agent Freedom, in which he gave the agent 300 thousand USD for the upcoming program supporting the 'Magnitsky List' in social networks. The project will be carried out by bloggers under the control agent of Freedom.”

10. The presenter added by way of clarification:

“The report enclosed a two-page list of names which Navalnyy suggested adding to the Magnitsky Act. In the meantime, the Union of Minority Shareholders, a fund he had created at Browder's request, continued to drown the largest Russian companies in court claims, charging their top managers with abuse.”

11. Referring to the applicant's investigation incriminating the Prosecutor General and his sons in a series of business dealings and links with organised crime, the presenter said:

“An information attack on the prosecutor general Yuriy Chaika was an independent large-scale operation mounted by Browder and Navalnyy. The internet was flooded with exposés detailing allegedly illegal business dealings of the prosecutor's sons ...”

12. The applicant sued the State television and radio broadcaster, Mr Kiselev and Mr Popov, for defamation. In his submission, the allegations that he had corresponded with Mr Browder and acted as his paid agent, that he had agreed to blackmail large Russian companies, that he had been paid for exposing corrupt Russian officials, including the Prosecutor General Chayka, were statements of fact which were untrue and damaging to his reputation.

13. On 12 July 2016 the Savelovskiy District Court in Moscow dismissed the claim on the grounds that the film did not contain any actionable defamatory statements. It found that using a Skype handle “free\_dm” was not in itself dishonest or unethical. Nor was the fact that the applicant maintained correspondence with Mr Browder, even though the latter was a defendant in criminal proceedings in Russia. Describing the applicant as a “corrupt multiple offender” was the journalist's interpretation of the applicant's unlawful conduct established in the Leninskiy District

Court's final judgment of 18 July 2013<sup>3</sup>. Using the word "criminal" in respect of the applicant's correspondence with Mr Browder expressed the journalist's subjective opinion and emotional attitude to its contents. It could not cause damage to the applicant's reputation because both he and Mr Browder were convicted offenders.

14. The allegation that the applicant executed Mr Browder's orders for money acting as his agent was not, in the court's view, defamatory because asking someone to work for money was not illegal. The court held that Agent Belt's memorandum did not indicate that the applicant had accepted to work for a foreign intelligence service. It went no further than saying that the foreign intelligence service had assigned a codename to the applicant and approved the agent's initiative to work with him. The court noted that the applicant was free to sue the foreign intelligence service if he believed that such conduct on its part was breaching his rights. Similarly, the Skype exchange with Mr Browder did not suggest that the applicant had accepted to take part in greenmail operations. The words "let's say" which preceded his agreement suggested that he was dubious and uncertain about Mr Browder's offer.

15. The alleged payments to the applicant for exposing corruption and for supporting the Magnitsky list did not affect his reputation. The court noted that "anyone's efforts to expose corruption and embezzlement of Russian State's assets were welcomed and encouraged by the Russian State and general public, and the information about the individual who had planned and executed such operations could not be held to be damaging". Receiving money for exposing corruption or for promoting the "Magnitsky list" was not prohibited under Russian law and could not damage the applicant's reputation. Along the same line, the allegation that the applicant "drowned the largest Russian companies in court claims" and accused their management of abuse was interpreted by the court as a normal business practice of bringing legal claims against corporations in cases of abuse which was acceptable both in Russia and abroad and could not undermine the applicant's reputation.

16. The court also noted that the applicant had acknowledged being one of the authors of the video "Chayka". The video featured "distinctly negative statements about the Prosecutor General Chayka, his sons, colleagues and friends" and could rightly be described, in the court's opinion, to be "an information attack" on the prosecutor. The presenter's statement was therefore not actionable in defamation.

17. Finally, the court invoked the Convention standards under Article 10 to conclude:

"The video and its transcript concerned an important matter relating to the nature of a relationship between Russian opposition politicians and the US and UK intelligence

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3. See *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, 23 February 2016.

services and the main strategic objectives of each party. This matter objectively arouses considerable public interest and unconditionally requires a wide public discussion in the media. Statements that offend, shock or disturb must be allowed in the framework of that discussion, and Mr Navalnyy, as a public figure, must show a tolerant and non-confrontational attitude to such statements.”

18. In his statement of appeal, the applicant pointed out that the defendants had failed to produce any evidence in support of their allegations that he had had Skype exchanges with Mr Browder, that he had executed Mr Browder’s orders, that he had been recruited by a foreign service or that he had committed any corruption-related offence or been a multiple offender.

19. On 14 September 2016 the Moscow City Court endorsed the findings of the District Court in their entirety and rejected the appeal. On 24 March 2017 the Supreme Court of Russia refused the applicant leave to appeal to the cassation instance.

## COMPLAINT

20. The applicant complains under Article 8 of the Convention that untrue allegations about his relationship with foreign intelligence services which had been broadcast on State television and upheld by Russian courts had undermined his right to respect for his reputation.

### QUESTIONS TO THE PARTIES

1. Did the attack on the applicant's reputation attain the threshold of seriousness and cause prejudice to enjoyment of the right to respect for his private life within the meaning of Article 8 (see, for applicable principles, *Denisov v. Ukraine* [GC], no. 76639/11, §§ 95-114, 25 September 2018)?

2. Was there a violation of Article 8 of the Convention in connection with the Russian courts' judgments rejecting the applicant's claim in defamation? In particular, did the courts seek to obtain the original documents which had been shown in the film, from the defendants?