

The Nemtsov Murder and Rule of Law in Russia

-a closer look into the assassination of the Russian oppositional politician Boris Nemtsov

A report by

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1. INTRODUCTION: THE SAFETY OF LAWMAKERS AND ACTIVISTS

The assassination of Boris Nemtsov, prominent oppositional politician in Russia, illustrates all too well the negative trend in Russian democracy and rule of law. Five men have been found guilty of carrying out the murder in a judicial process subject to substantial criticism, while the instigators and the motive behind the assassination remain unidentified. Solving this case is important not only for Mr Nemtsov's family and friends, but also to prevent future attacks on the opposition.

A number of elected representatives in the OSCE region have paid the ultimate price for their political activity. One of them, Anna Lindh – foreign minister of Sweden – became the target of a person with mental illness, drug issues and a hatred for politicians, with the randomness of the attack contributing to its cruelty. Not long after, Serbian Prime Minister Zoran Đinđić was assassinated in what appears to be a carefully planned conspiracy. Three years ago, British MP Jo Cox was murdered for her political views by a hateful right-wing extremist and this year an attempt from another right-wing extremist to murder British MP Rosie Cooper was averted.

The ability of elected politicians to conduct their work without fear is a fundamental prerequisite for any representative democracy. Safeguarding the integrity and functioning of the political system requires the protection of those who work within it, and democracy particularly requires that opposition politicians and activists are able to act without fear of reprisal. The murder of a politician is not only devastating for their loved ones – but it is also an attack on democracy. Any lingering doubts about the motives and perpetrators behind such attacks cast long, chilling shadows over the political life of a country. Therefore, it is crucial that attacks on politicians are subject to thorough, impartial and transparent investigation.

The assassination of Boris Nemtsov took place in the context of an increasingly repressive climate in Russia. The government of the Russian Federation uses a range of legal tools, such as “anti-extremism” legislation and laws on “foreign agents” and “undesirable organisations” to stifle political dissent and opposition. Attacks on human rights defenders and activists are enabled by smear campaigns and impunity.¹ The judiciary, Freedom House concludes in its latest report, is subordinate to the political authorities and access to due process is not guaranteed, particularly for members of the opposition.²

In society governed by the rule of law, the political opposition is equally protected. When such a system is lacking, so that justice and the protection of democratic rights cannot be sought at the national level, the international community must engage.

The safety of lawmakers and political activists is an increasingly urgent matter. While comprehensive statistics on threats and violence against politicians are lacking, studies conducted in individual OSCE member states indicate a substantial problem that may affect the quality of democracy. A 2017 survey of British candidates found

¹ Amnesty International, *Amnesty international urges Russia to respect fundamental freedoms*, statement delivered on behalf of Amnesty International and Human Rights Watch in relation to the adoption of the Human Rights Council Periodic Review Outcome, 2018

² Freedom House, *Freedom in the world 2018*, 2018

that a third of the candidates had experienced abuse of some kind during the elections the same year.³ The latest Swedish survey found that one out of four elected representatives have experienced threats or violence in their role as politicians.⁴

When it comes to the ability of oppositional forces to operate, an even darker picture emerges. As stated in the OSCE PA Third Committee draft resolution of 2019, state repression is increasing in the OSCE region.

We see today a hardening climate, with threats, harassment and intimidation tactics increasingly directed towards lawmakers. The threats come both from members of the public, organised groups and repressive states.

In the document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, the participating states “categorically and irrevocably” declared “that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned.” This is why, earlier this year, I was appointed Special Rapporteur on the Nemtsov case by President Tsetereli.

- THE OSCE PARLIAMENTARY ASSEMBLY SPECIAL RAPPORTEUR

At the Annual Session of 2018 in Berlin, the OSCE Parliamentary Assembly adapted a resolution urging the Russian authorities to undertake a new investigation into the assassination of Boris Nemtsov, including those who ordered or facilitated the crime, and to cooperate with the OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe on this matter.

In February 2019, Swedish MP and Vice President of the OSCE PA Margareta Cederfelt was appointed Special Rapporteur and tasked to overview and report to the OSCE PA on the investigation into the murder of Boris Nemtsov.

It is not within the capacity of the Rapporteur to pursue a criminal investigation. The mandate, rather, is to bring attention to the existing information regarding the Nemtsov case, and to continue to build the political will necessary for a new investigation.

³ Committee on Standards in Public Life, *Intimidation in Public Life: A Review by the Committee on Standards in Public Life*, 2017

⁴ The Swedish National Council for Crime Prevention BRÅ, *The Politician’s Safety Survey 2015*, 2016

2. THE ASSASSINATION OF BORIS NEMTSOV

- BORIS NEMTSOV

Boris Nemtsov was shot on Bolshoi Moskvoretsky Bridge in Moscow, on 27 February 2015. At the time of his death, he was a Member of the Yaroslavl Regional Duma and a leading figure within the Russian opposition.

First elected to Parliament in 1990, Mr Nemtsov served as Member of the Russian Parliament, presidential representative in the Nizhny Novgorod Region, Governor of the Nizhny Novgorod Region and Deputy Prime Minister of the Russian Federation before becoming a prominent opposition leader. Throughout his political career, Mr Nemtsov showed a strong dedication to promoting democracy. He worked tirelessly and fearlessly to expose and fight corruption, often at odds with powerful sections of society, and produced several investigative reports on this subject.

On 1 March 2015, Mr Nemtsov was meant to participate in a protest march of which he was one of the organisers. At the time of his murder, he was also working on an investigative report on Russian military involvement in Ukraine.

As one of several murders of well-known oppositional figures in Russia in recent years, the assassination is reported to have contributed to a climate of fear.⁵ The demonstration two days after the assassination was made into a mourning march, where up to 50 000 people are reported to have participated.⁶

- INVESTIGATION AND TRIAL

The Chief Investigative Directorate of the Investigative Committee of the Russian Federation was responsible for the investigation into the assassination.

Five men - Zaur Dadayev, *Anzor Gubashev*, *Shadid Gubashev*, *Temirlan Eskerkhanov* and *Khamzat Bakhaev* – were arrested, beginning in early March 2015. Zaur Dadayev and Anzor Gubashev initially confessed but later retracted their confessions. A sixth man, Beslan Shavanov, died from an exploding hand grenade during his attempted arrest in Grozny. In October the same year, Ruslan Mukhudinov was named as the organiser of the assassination.

In May 2015, MP Dmitry Gudkov initiated a parliamentary investigation into the assassination. The initiative was denied on procedural grounds.⁷

In January 2016, the case against Ruslan Mukhudinov and other unidentified individuals who instigated and funded the assassination was severed from the original case against the five men arrested for executing the murder. Mr Mukhudinov was indicted *in absentia* and the main case was declared solved.⁸

⁵ New York Times, *Fear Envelops Russia After Killing of Putin Critic Boris Nemtsov*, 28 Feb 2015

⁶ The Guardian, *Mourners bid farewell to Boris Nemtsov, but fear their hopes have died with him*, 03 Mar 2015

⁷ Russia Today, *Duma rejects in-house Nemtsov assassination probe proposal*, 18 May 2015

⁸ Russia Today, *Nemtsov assassination probe complete - Russian investigators*, 29 Jan 2016

The trial began in October 2016 and finished in June 2017. The five men listed above were found guilty by a jury and sentenced to between 11 and 19 years in prison for involvement in the assassination. According to the verdict, they were hired to kill Mr Nemtsov for 15 million rubles by Mr Mukhudinov. Mr Dadayev was the one who shot Boris Nemtsov, while his accomplices assisted in planning and executing the murder.

Regarding the separate case against the instigators of the assassination, no arrests have been made and the case remains open. No motive has been confirmed. The question of who commissioned the assassination, and why, thus remains open.

3. INITIATIVES WITHIN THE INTERNATIONAL COMMUNITY

Since 2015, there have been a number of activities within the international community regarding the Nemtsov case.

- PETITION BY RUSSIAN ACTIVISTS

In an OSCE context, the case was first brought up during the 2015 OSCE Human Dimension Implementation Meeting session on the independence of judges and prosecutors. In a statement delivered by the organisation For Open Russia, based a petition initiated by Russian activists and signed by 8 000 people, the OSCE, the Council of Europa and the UN were called on to establish special commissions to monitor and assist the investigation. The motive of Mr Nemtsov's murder was said to have been political and the organisers and sponsors were said to likely belong to the inner circle of Chechen leader Ramzan Kadyrov. The statement also described how Boris Nemtsov prior to his death was subject to threats, public defamation, physical attacks and arrests based on trumped-up criminal cases. His appeals to authorities regarding the publication of illegally obtained material from his phone and the death threats made against him were not investigated and according to the statement, impunity and media attacks made the assassination possible. The investigators of Mr Nemtsov's murder were said to be prevented from conducting effective investigation in Chechnya and the international community was therefore called on to act. The petition was delivered to the then OSCE Chair-in-Office, the incoming Chairmanship, the ODIHR Director and the leadership of the OSCE PA.⁹

- THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

Under the *Special Procedures of the United Nations Human Rights Council concerning the investigation of Mr Boris Nemtsov's killing* in 2015, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions issued a joint communication to the Russian Federation.¹⁰ They expressed concerns that Mr Nemtsov could have been killed because of his peaceful and legitimate political activity and that the impartiality and independence of the investigation may have been affected by public judgements by Government officials regarding the motives behind the murder.

The three Rapporteurs also cited allegations that Mr Nemtsov had previously been arrested in connection with peaceful protests, that a number of political murders and attacks in the Russian Federation remained unsolved and that this exacerbated a climate of impunity and fear. They therefore requested information on the

⁹ For Free Russia, *Statement on the need for international assistance to the investigation of the murder of the Russian opposition leader Boris Nemtsov*, 02 Oct 2015

¹⁰ OHCHR, *Joint Communication of Special Procedures of the United Nations Human Rights Council*, UL RUS 1/2015, 06 Mar 2015

investigation and on the steps taken to ensure the safety of political opponents and activists in the Russian Federation. More specifically, they requested:

Additional information and comments on the listed allegations.

Details, and where available results, of any investigation and juridical or other inquiries carried out into the murder.

Detailed information about the composition, procedures and status of the body in charge of such investigation and how it complies with international standards of impartiality, effectiveness and independence.

Measures taken to ensure the safety of political opponents and activists and guarantee that they can carry out their activities, including meeting and assembling peacefully, without interference.

In response to this, the Permanent Mission to the United Nations and Other International Organisations in Geneva submitted a reply from the Russian Federation.¹¹ This statement explained that the investigation had been assigned to the Chief Investigative Directorate of the Investigative Committee of the Russian Federation and that the five individuals identified by the investigation had been arranged on criminal charges and placed in pre-trial detention. Regarding the request for details of the investigation, the statement explained that the data of the preliminary inquisition could be revealed only with the permission of the investigator.

The statement further outlined the legal basis of the Investigative Committee, particularly Articles 5 and 6 of Federal Law No 403-FZ, which dictate that the Investigative Committee, including the Chief Investigation Directorate, operate on the basis of legality, independence, openness and inadmissibility of interference. Any attempts to exert pressure in any form on an officer of the Investigative Committee in order to influence a procedural decision or obstruct his procedural activities, the statement underlined, would be liable in accordance with Russian legislation.

Regarding measures taken to ensure the safety of political opponents and guarantee that they can carry out their activities without interference, the statement cited Article 31 of the Constitution of the Russian Federation on the right to peaceful assembly, as well as the sections of Federal Law and Criminal Code prohibiting illegal obstruction of the holding of a meeting. No information on any particular measures taken to ensure the safety of political opponents was provided.

Following this communication, the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his 2016 report restated his request for Russian authorities to publicly share the results of the criminal investigation and any relevant juridical inquiries. The Rapporteur also expressed that he would appreciate additional information about how the relevant investigation body operated in

¹¹ OHCHR, *Information provided by the Russian Federation in connection with the joint communication of the Special Procedures of the United Nations Human Rights Council concerning the investigation of Mr Boris Nemtsov's killing*, UL RUS 1/2015, 20 May 2015

accordance with international standards of impartiality, effectiveness and independence, including in relation to its composition and procedures.¹²

According to the Office of the United Nations High Commissioner for Human Rights, no further activities have taken place in relation to Mr Nemtsov's murder.

- UNITED NATIONS HUMAN RIGHTS COMMITTEE

The allegations that the persons who confessed to the murder of Mr Nemtsov had been tortured were brought up in the United Nations Human Rights Committee in 2015, in connection with the seventh periodic report of Russia on its implementation of the provisions of the International Covenant on Civil and Political Rights. In its response, the Russian delegation replied that torture against detainees was prohibited, that any evidence derived through torture was not admissible in court and that all claims of cruel treatment were carefully investigated. The delegation informed that Mr Dadayev had not lodged any complaint with the Investigative Committee regarding torture and had been granted the opportunity to meet with the Public Civilian Oversight Commission.¹³

- THE EUROPEAN COURT OF HUMAN RIGHTS (ECHR)

Temirlan Eskerkhanov, Anzor Gubashev and Shadid Gubashev filed complaints to the European Court of Human Rights regarding their treatment before and during the trial. The complaints relied particularly on Article 3 of the European Convention, the prohibition of inhuman or degrading treatment, and on Article 5 § 4, the right to have lawfulness of detention decided speedily by a court. The complaints concerned, among other things, the length of detention prior to the trial, overcrowding of the Moscow remand prisons and convoy cells, conditions during transfers to and from their hearings and excessively long proceedings during the trial.¹⁴ The court announced its judgment on 25 July 2017. The applications of the Gubashev brothers were ruled inadmissible since their lawyers had disclosed to the media the terms of the friendly-settlement negotiations, thus violating Article 39, Section 2 of the Convention and Rule 62, Section 2 of the Rules of Court.¹⁵ Concerning Mr Eskerkhanov's application, however, the Court ruled that there had been a violation of Article 3 with regard to the conditions of Mr Eskerkhanov's detention in the IZ-77/6 facility since May 2015 and the conditions of his transport and detention. The Court also concluded that there had been a violation of Article 5, Section 4 concerning the lack of a speedy review of the grounds for Mr Eskerkhanov's detention. Mr Eskerkhanov was therefore awarded reparations of 6 000 euros.

Zhanna Nemtsova, daughter of Boris Nemtsov and recognised as a victim in the case, currently has a case pending before the ECHR. Ms Nemtsova's application argues that inability and unwillingness by the Russian authorities to identify the contractors

¹² OHCHR, The Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report of the Special Rapporteur*, Human Rights Council Thirty-second session, 16 Jun 2016

¹³ OHCHR, *The Human Rights committee considers the report of Russia*, 17 Mar 2015

¹⁴ European Court of Human Rights, *Judgments of 25 July 2017*, Press Release ECHR 254 (2017), 25 Jul 2017

¹⁵ European Court of Human Rights *Information Note 209 Article 35*, 2017

and organisers of the assassination constitute a violation of Article 2 of the European Convention concerning the right to life, including the obligation for the state to investigate murder.¹⁶

- THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE) SPECIAL RAPPORTEUR

In 2016, the Parliamentary Assembly of the Council of Europe appointed Lithuanian MP Emanuelis Zingeris as Special Rapporteur on the case. On 7 June this year, Mr Zingeris presented his report *Shedding light on the background of the murder of Boris Nemtsov to the PACE Committee on Legal Affairs and Human Rights*.

The Rapporteur has so far been unable to carry out his planned fact-finding mission to Russia due to a travel ban issued against him, and received no response from his multiple attempts to contact Russian authorities. However, based on a review of the case files, Mr Zingeris was able to conclude that “the available evidence shows that the Russian authorities did not investigate the murder thoroughly, effectively and in good faith.” The Committee therefore called for a reopening of the case.

The Rapporteur found a number of issues regarding the physical evidence and witness statements. This includes irregular treatment of evidence, inconsistencies in witness statements, vital potential evidence not obtained and a number of persons present near the scene of the murder never traced or interviewed.

Various aspects of the investigation and case against the accused, according to the Rapporteur, “appear implausible or even impossible”. Mr Zingeris also found “numerous irregularities in the judge’s conduct of the trial”, including bias favouring the prosecution, unreasonable rejections of requests from the defence and the Nemtsov family and a decision to “artificially limit the case to those immediately responsible” that “seems designed to prevent public inquiry into who might have ordered the killing.”¹⁷

- THE U.S HOUSE OF REPRESENTATIVES

In March 2019, a bill was passed in the United States House of Representatives on the investigation into Mr Nemtsov’s death. In this bill, the Russian President and persons around him are said to have covered up the assassination of Mr Nemtsov, and the Russian Government is urged to allow an impartial international investigation into the case. The bill also calls for the American Secretary of State to produce a report on the assassination and to sanction those responsible under the Magnitsky Act.¹⁸ Such sanctions have been imposed on Ruslan Geremeyev for his alleged role in the assassination of Mr Nemtsov.¹⁹ In June 2019, the United States Senate passed a resolution which called for accountability and justice in the case of

¹⁶ Supplement application form, *Nemtsova v. Russia*, Application no. 43146/15, 10 Apr 2018

¹⁷ Zingeris, E. *Shedding light on the murder of Boris Nemtsov*, Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, Doc. 14902 Report, 07 Jun 2019

¹⁸ H. Res. 156, 2019

¹⁹ Zingeris (2019)

the assassination of Boris Nemtsov.²⁰ The United States Government sanctioned Ruslan Geremeyev in May 2019 under the Magnitsky Act for his role in organizing the assassination of Boris Nemtsov, adding that he was “acting as an agent of or on behalf of Head of Chechen Republic Ramzan Kadyrov”.²¹

²⁰ S. Res. 81, 2019

²¹ U.S Department of the Treasury. *Treasury Targets Additional Individuals Involved in the Sergei Magnitsky Case and Gross Violations of Human Rights in Russia*, 16 May 2019

4. CRITICISM OF THE INVESTIGATION AND TRIAL

During and following the investigation and trial, a large number of issues were raised by Mr Nemtsov's legal representatives, independent media, political activists, independent investigators, Russian Human Rights officials and international observers regarding the impartiality, efficiency and independence of the investigation and legal proceedings.

It is not within the capacity of the Rapporteur to pursue a criminal investigation or to determine the guilt of the defendants. Thus, this section constitutes a summary of the criticism that has been publicly voiced against the investigation into the assassination of Mr Nemtsov and the trial that followed. The Rapporteur takes no stand as to the accuracy of the allegations.

- CLASSIFICATION AND DELIMITATIONS OF THE CASE

Several decisions made by the head investigator regarding the classification and delimitations of the case, as well as public commentary on the potential motive by high-ranking officials, have raised concerns over the independence of the investigation and led to allegations of undue steering and restrictions imposed upon the investigation.

The assassination of Boris Nemtsov was classified as ordinary murder, referring to Article 105 of the Criminal Code, rather than an attack on the life of a Statesperson or public figure under Article 277. The latter classification, in line with the previous notion that attacks on lawmakers and political activists are particularly harmful to society, constitutes an aggravated offence where no statute of limitations applies. Despite the fact that Mr Nemtsov was a member of the Yaroslavl Regional Duma and a well-known political figure – both in light of his previous positions and because of his prominent role in the opposition – the state prosecutor Viktor Antipov decided not to pursue the case under Article 277, going on to state that “We cannot allow for the murders of all sorts of opposition members to be classified under classifying Article 277.”²² Antipov's statement has been interpreted by some commentators to show that there was a lack of political motivation to investigate this crime in accordance with the letter and spirit of the law.²³ The Nemtsov family's motion to reclassify the case was rejected by the investigator and subsequently by the court on the grounds that the murder did not put an end to any official state function by Mr Nemtsov, and that it had been established by the investigation that the assassination was not connected with his political work.²⁴

The investigation into the instigators and financiers of the assassination was severed from the original case in January 2016. According to Ms Nemtsova's representatives and PACE Rapporteur Zingeris there is nothing to suggest that any initiatives or meaningful action has been taken by the Investigative Committee of the Russian

²² Novaya Gazeta, 24 Jul 2019

²³ Kara-Murza, Vladimir. *The Kremlin is blocking scrutiny of its investigation into the murder of Boris Nemtsov*. Washington Post. 02 Aug 2018

²⁴ Supplement application form, *Nemtsova v. Russia*, Application no. 43146/15 ECHR, 10 Apr 2018 and Russia Today, 25 Dec 2015

Federation in this second separate investigation All requests made by Nemtsova's representatives in this separate case have also either been fully or partially rejected by the Investigative Committee.²⁵ The decision to separate the original case into two might be motivated by the wish to be able to formally close the case of Nemtsov's murder without having to address motive and the identity of the initiators and organizers.

High-ranking officials publicly voicing their positions on the motives for the murder raised concerns about the impartiality of the investigation, as stated by three Rapporteurs under the UN High Commissioner on Human Rights.

The possibility that Mr Nemtsov may have been killed for his oppositional activities, which has been presented by his friends and allies, a range of experts as well as regular Russian citizens, was reportedly ruled out by investigators as early as the days after the assassination.²⁶ President Putin stated that the murder was a provocation aiming to harm Russia's reputation²⁷ and a spokesperson for the President informed the media immediately after the murder that there were no political reasons for Mr Nemtsov to be killed, since he did not pose any political threat to the President.²⁸ Investigative Committee spokesman Vladimir Markin informed the media days after the assassination that the investigators were looking into five possible motives – a provocation aimed at destabilising Russia, Mr Nemtsov's opinions on the Charlie Hebdo attack in Paris, the war in Ukraine, Mr Nemtsov's business activities and his personal life.²⁹

In September 2015, the head investigator informed media as well as the lawyers representing Ms Nemtsova that it had been established that Mr Nemtsov's murder was "not in any way connected with his work as a state official, politician or public activist".³⁰ This reasoning has been challenged since up to the present date, no motive for the murder has been established and among the motives listed by the Investigative Commission spokesperson, all except Mr. Nemtsov's business activities and personal life concern his political and public activities.

The decisions not to classify the assassination of Mr Nemtsov as murder of a public figure and to separate the instigators, organisers and motive behind the assassination from its execution, as well as public statements made regarding the potential motives, have contributed to allegations that the investigation was subject to outside influence and purposefully restricted to exclude investigation into persons responsible for initiating the crime, as well as certain potential motives, particularly Mr Nemtsov's oppositional activities.

²⁵ *Nemtsova v. Russia*, Application no. 43146/15 and Zingeris (2019)

²⁶ The Guardian. *Mourners bid farewell to Boris Nemtsov, but fear their hopes have died with him*, 03 Mar 2015

²⁷ Ibid.

²⁸ Novaya Gazeta, 28 Feb 2015

²⁹ Russia Today, *Dashcam video shows Nemtsov's murder site '3 minutes after the attack'*, 4 Mar 2015

³⁰ Russia Today, *'No political motive in Nemtsov assassination' – investigators*, 25 Dec 2015

- LACK OF CLARITY REGARDING THE INVESTIGATIVE BODY

Commentators have pointed out a lack of clarity regarding the investigative body responsible for the investigation. While the Russian Permanent Mission to the United Nations informed the three Rapporteurs of the OHCHR that the Investigative Committee of the Russian Federation was the body responsible for the investigation into Mr Nemtsov's murder, PACE Rapporteur Mr Zingeris in his report finds that inconsistencies in the dates in the case files suggest a parallel investigation took place. The arrests, he states, appear to have been made based on this parallel investigation, since they took place before the relevant evidence was processed by the official investigation.

The arrests were announced by Federal Security Service of the Russian Federation (FSB). Other independent investigators have concluded that the investigation was in fact conducted by the FSB and in several the statements given by the defendants on the matter of torture and ill-treatment, the presence of FSB officials is mentioned.³¹

- MISSING EVIDENCE

One important point of criticism concerns potential evidence and witness statements that the investigation allegedly did not attempt to obtain.

The site of the murder – Bolshoi Moskvoretsky Bridge – is located very close to the Kremlin and according to multiple sources, it is heavily surveyed by security cameras, traffic cameras and patrolling police units. A number of vehicles, including police cars and busses equipped with cameras, crossed the bridge close to the time of the murder. Despite this, video evidence from surveillance cameras, CCTV, the garbage truck and passing busses is missing from the case file.³²

Several conflicting statements were made by authorities regarding the footage from surveillance cameras. Representatives of the Federal Protective Service, FSO, informed investigators and journalists that the site, despite its proximity to the Kremlin, was not a zone of responsibility of the FSO and thus the FSO had no cameras aimed at the bridge. Queries from the Nemtsov family lawyers and MP Mr Gudkov received similar answers from the FSO. Checking this statement against the list of streets under FSO surveillance provided in a Government of Moscow decision, news site Gazeta.ru showed that the site was in fact listed as under FSO surveillance.³³ Photos taken on the site at the time of the murder also reportedly show the existence of surveillance cameras.³⁴ According to information given to one media outlet, the surveillance cameras on the site were turned off for maintenance the night or the murder.³⁵ Other media reports, citing sources in the investigation,

³¹ Dunlop, J.B. *The February 2015 Assassination of Boris Nemtsov and the Flawed Trial of his Alleged Killers*, Ibidem, Stuttgart (2019). John B. Dunlop is a Senior Fellow Emeritus at The Hoover Institution, Stanford University

³² Zingeris (2019)

³³ Dunlop (2019)

³⁴ Ibid.

³⁵ Ibid.

said that analysis of video footage from the surveillance cameras at the site of the murder was made by the investigators.³⁶

- VIDEO FOOTAGE AND PHYSICAL EVIDENCE

A number of discrepancies in the physical evidence, critics have found, were not explained by the investigation and serious doubts have been raised as to whether the physical evidence is consistent with the verdict. Among other things, the injuries sustained by Mr Nemtsov, as well as traces of powder gases on his coat, have been found to be inconsistent with the scenario provided by the persecution during the trial and in Mr Dadayev's confession.³⁷ The only available video footage of the moment when Boris Nemtsov was shot down is from the weather camera of the TV Tsentr station across the river. This footage was released publicly by the TV station and is included in the investigation. The exact moment when Mr Nemtsov was shot is not visible on this video because for 2.5 seconds, he was obscured by a slowly passing garbage truck.³⁸

The PACE Rapporteur also raises a number of other issues concerning the evidence. The forensic treatment of the bullet casings, the Rapporteur states, was irregular and may have tainted evidence. Furthermore, the crime scene records were incomplete regarding details and well as photos of the location of bullets and bullet casings missing. The ballistics studies, of which one concluded that only one weapon had been used and another was inconclusive, lacked detailed information in support of their conclusions. Forensic medical experts, on the other hand, found that two different weapons may have been used.³⁹

A second video, recovered from the dashcam of a car reportedly passing by the scene minutes after Mr Nemtsov was shot, was released to the public by a journalist. This video has by independent investigators been claimed to show a second gunman shooting the wounded Mr Nemtsov.⁴⁰

- WITNESS STATEMENTS

Several of the existing witness statements, several of which were presented at the trial in support for the guilt of the defendants, have been said to be problematic.

Anna Duritskaya, Mr Nemtsov's girlfriend who was with him when he was killed, was initially not allowed a lawyer when giving her statement. The statement she gave was incomplete and inconsistent when compared with other evidence, such as the video footage from the TVT camera, and she refused to sign the statement. Several witnesses, such as Mr Molodykh, who was present at the bridge, the person who sold the getaway car and the cleaner of the apartment where the defendants stayed, were initially unable to identify one or several of the defendants but later changed their positions and stated during the trial that they were able to do so.⁴¹

³⁶ Ibid.

³⁷ Zingeris (2019)

³⁸ Dunlop (2019)

³⁹ Zingeris (2019)

⁴⁰ Dunlop (2019)

⁴¹ Zingeris (2019)

- POTENTIAL WITNESSES AND SUSPECTS

Video footage from the TVT camera, as well as other cameras close to the bridge, shows a number of people present at or near the site of the murder, as well as passing cars, that were never traced or identified.⁴² This leaves a large number of potential witnesses whose statements were not taken.

Commentators who propose the theory that the assassination was a larger operation, conducted by security services and involving a second shooter, have also pointed out persons present on the bridge as potential suspects. This includes several unidentified persons present on Bolshoi Moskvoretsky Bridge and the witness Mr Molodykh, who is suggested to be the person standing over Mr Nemtsov in the dashcam video, allegedly firing a gun.⁴³

Commentators and media sources have assessed that Mr Nemtsov was most likely under surveillance by security service operatives at the time of his death.⁴⁴ If this is correct, security service operatives may be important witnesses.

The way the assassination was carried out has also led experts to emphasize security agencies as suspects in the case. The argument goes as following: Carrying out an assassination in this heavily monitored area would only be possible with at least the prior approval of the security services in charge of video surveillance and patrolling. For the assassination to have been carried out the way it was – a shooter appearing on the bridge and a get away-car ready nearby – the organizers must also have known that Nemtsov and Duritskaya would take this route. The couple decided to walk from the restaurant and taking a detour over the Bolshoi Moskvoretsky Bridge despite the late hour and bad weather, instead of returning home with Mr. Nemtsov's private driver or choosing the shortest route home via the subway. This decision would have been impossible to predict without listening in on their conversation or hacking Mr. Nemtsov's phone. Such advanced surveillance, and such a well-coordinated operation, some experts assess, could not have been conducted by the five men convicted – it could only have been done by the security services and would have involved a larger number of personnel.⁴⁵

The suspected mastermind of the assassination, Mr Mukhudinov, has so far not been apprehended. His motives for allegedly initiating the murder remain unclear, as does how a soldier and driver would have obtained the 15 million roubles.

Given the structure of Chechen society, a number of observers have inferred that the five men convicted for the murder of Mr Nemtsov would not have taken on the murder of a prominent public figure and executed it next to the Kremlin without orders or at least consent from higher-ranking persons. This notion is also backed by the fact that the identified defendants and suspects in the case had professional and family ties to high-ranking officials in Chechnya and that several such officials were

⁴² Ibid.

⁴³ Dunlop (2019)

⁴⁴ Dunlop (2019)

⁴⁵ Dunlop (2019) and Knight, Amy. *Orders to kill - the Putin regime and political murder*, Thomas Dunne Books (2017)

linked by evidence to the defendants' activities before the murder. Requests were made by the Nemtsov family for several persons to be questioned in relation to the murder based on their ties to the defendants and, in some cases, evidence tying them to the defendants' activities in Moscow. Nearly all these requests were denied.

Mr Dadayev, Mr Shavanov and Mr Mukhudinov all served in the Sever Battalion, a part of the Russian Interior Troops, under Ruslan Geremeyev. He was their immediate superior and Mr Mukhudinov was his driver, while Mr Eskerkhanov served as a police officer under a relative of Mr Geremeyev's, Vakha Geremeyev. The apartment in Moscow where the defendants stayed prior to the murder was rented by Ruslan Geremeyev. He also travelled to and from Moscow with Mr Dadayev and according to media sources he travelled in one of the cars used to follow Mr Nemtsov and was repeatedly seen with the defendants before the assassination.⁴⁶ A nephew of Mr Geremeyev, Artur Geremeyev, owned a second apartment in the same building, which was also used by the defendants, and (he) was seen in their company on surveillance footage. In this apartment, a key card for a hotel room where uncle of Mr Geremeyev and member of the Russian federation Council, Suleyman Geremeyev, had previously stayed.⁴⁷

The Commander of the Sever Battalion, Alibek Delimkhanov, was both the superior officer of Mr Dadayev, Mr Shavanov and Mr Mukhudinov and a relative of Mr Geremeyev. He has close ties with the Chechen leadership, including Ramzan Kadyrov. Mr Delimkhanov had also in September 2014 signed permits for Mr Dadayev and Mr Geremeyev to carry arms in Moscow and Ingushetia, respectively, on dubious travel assignments.⁴⁸

Aside from the persons listed above, requests were also made by the Nemtsov family to question former Deputy Director of the Federal Protective Service (FSO) and Commander-in-Chief of the Interior Troops, Victor Zolotov; Aslanbek Khatayev, Chechen police officer who met with the defendants the day before the murder and was in Mr Geremeyev's apartment; Shamkhan Tazabayev, former head of riot police under the Chechen Ministry of the Interior who visited the apartment right after the murder; Dzhabril Makhmudov who frequently visited the Moscow apartment where the defendants stayed, including right after the murder had taken place, and who has been said to be an FSB employee; and Ramzan Kadyrov, leader of the Chechen Republic who publicly praised Mr Dadayev and had previously threatened Mr Nemtsov.⁴⁹

The Nemtsov family lawyers provided a witness statement by Chechen politician in exile, Akhmed Zakayev, who states that in 2012 he was made aware, by his contacts in Chechnya, of a plan by persons among the Russian leadership to kill two opposition politicians, one of them Mr Nemtsov. Mr Zakayev stated: "It was in early

⁴⁶ Novaya Gazeta, 24 Feb 2016

⁴⁷ Zingeris (2019)

⁴⁸ Notice of Violation addressed to General Zolotov from General Tutevich 27 Jan 2016, as quoted by Prokhorov, V. in Complaint from Decision refusing interrogation of General Zolotov as a witness in criminal cases 201/403114-15 and 41602007701000004, 1 May 2017

⁴⁹ Zingeris (2019) and Dunlop (2019)

February 2012 that I learnt about reprisals being prepared against the leaders of the Russian opposition. The source of that information was the inner circle of Mr. Ramzan Kadyrov and Mr. Adam Delimkhanov. We remember that, at the end of 2011, following mass protest manifestations in Moscow, Mr. Putin, then-head of the Russian Government, and the head of his security service Gen. Viktor Zolotov both flew to Chechnya... Some two or three weeks after Mr. Putin and Gen. Zolotov left Chechnya, I got reports directly from Chechnya that the senior officials of Russia had worked out a plan to remove the leaders of the Russian opposition. In particular, they were planning to kill Mr. Boris Nemtsov and Mr. Garry Kasparov..."⁵⁰

Andrey Piontkovskiy has confirmed that this information was given to him and Mr Nemtsov in 2012 and that a simultaneous TV appearance of President Putin, in which he warned that the opposition planned to sacrifice one of their own in order to destabilise the country, made them take this information seriously.⁵¹ These witness statements were accepted into the case file but requests for them to be further investigated were denied.

Among the persons listed above, Ruslan Geremeyev, Artur Geremeyev and Alibek Delimkhanov were summoned to the court. Alibek Delimkhanov did appear before the court. The one attempt to bring Ruslan and Artur Geremeyev before the Investigative Committee failed because neither were found at their respective homes.⁵² Previous attempts by investigators to indict Geremeyev in abstensia in relation to the murder were reportedly blocked twice by General Aleksandr Bastrykin, head of the Investigative Committee.⁵³ According to media sources, the attempt to obtain Ruslan Geremeyev was hindered by Chechen law-enforcers.⁵⁴ If true, this implies undue involvement from officials both within the federal and Chechen authorities in the investigation.

- TORTURE AND ILL-TREATMENT

Another issue raised in relation to the investigation is accusations of torture. Member of the Civic Supervisory Commission Andrey Babushkin voiced these concerns after a visit to the pre-trial detention centre where he found Mr Dadayev and the Gubashev brothers physically injured.⁵⁵ Mr Dadayev told Mr Babushkin that he, upon arrest, had been starved and hooded. He also told him that a former subordinate of his, Rustam Yusupov, had been detained with him and that he had confessed so that Mr Yusupov would be released unharmed.⁵⁶ Shadid Gubashev told Mr Babushkin that his brother Anzor had confessed after torture, while Anzor Gubashev did not voice any complaints at the time. During the trial, both Anzor and

⁵⁰ Record of voluntary interview of Mr Akhmed Kh. Zakaev, conducted by Vadim Prokhorov, 04 Oct 2018

⁵¹ Record of voluntary interview of Mr Andrey A Piontkovskiy, conducted by Vadim Prokhorov, 01 Mar 2018

⁵² Motion to the Moscow Circuit Military Court by lawyers Prokhorov and Mikhaylova, 01 Dec 2016

⁵³ RBC, 20 January 2016

⁵⁴ Novaya Gazeta, 03 Oct 2015

⁵⁵ Tass, *Human rights authority urges probe into reported torture of Nemtsov murder suspects*, 11 Mar 2015

⁵⁶ NY Times, *Official Raises Doubts on Confession in Nemtsov Case*, 12 Mar 2015

Shadid Gubashev stated that they had been tortured after their arrest, that investigator Krasnov had been present at the time and that he also had threatened them.

The treatment of the defendants during the court hearings has also been subject to suspicions of torture. Temirlan Eskerkhanov complained during the trial that he and the other defendants were not allowed to eat or visit the bathroom during the long court proceedings and Anzor Gubashev claimed that he had been ill-treated and threatened by the convoy guards during transport, with the consent of the investigator present.⁵⁷

Allegations of inhumane treatment and torture of three of the defendants have been brought before the European Court of Human Rights. The conditions at the detention facilities and transfers and excessively long proceedings were found to violate the European Convention on Human Rights regarding prohibition of inhuman or degrading treatment and the right to a speedy decision by a court on the lawfulness of detention in the case of Mr Eskerkhanov.

Beslan Shavanov's death due to an exploding hand grenade during the attempted arrest, which according to media sources happened in the presence of a deputy minister of the Chechen Interior Ministry, have also raised suspicions that he was killed.⁵⁸

- THE TRIAL

A point of concern for critics of the trial, including one of the jurors, is that judge Zhitnikov appeared to be biased in favour of the prosecution, including by letting the prosecution speak at length while allowing and contributing to the defence being overly interrupted.⁵⁹

Commentators also question decisions made by the judge in regard to what evidence to rule admissible, such as ruling inadmissible surveillance footage of Mr Dadayev that the defence claimed provided an alibi for the murder and the dashcam video allegedly showing the crime scene minutes after Mr Nemtsov was shot, while allowing allegedly irrelevant evidence discrediting the defendants to be presented.⁶⁰

Representatives of Ms Nemtsova maintained that the judge purposefully restricted the range of evidence and testimonies to exclude potential instigators and organisers of the assassination and any focus on Mr Nemtsov's political work. Professor John B. Dunlop also finds that all attempts to discuss the FSB operatives allegedly shadowing Mr Nemtsov were averted by the judge.⁶¹

Several jurors were removed over the course of the trial, including close to the verdict. Jurors interviewed by the media have criticised some of these rulings as

⁵⁷ Dunlop (2019)

⁵⁸ Novaya Gazeta 28 Feb 2016 and Zingeris (2019)

⁵⁹ Dunlop (2019)

⁶⁰ Ibid.

⁶¹ Ibid.

unfair and interpreted them as attempts to remove jurors who were critical of the trial and of the prosecution's case.⁶²

Commentators have also noted irregularities in witness appearances during the trial. Anna Duritskaya, who was with Mr Nemtsov when he was killed, was not allowed to participate in the trial through a video link. Instead, her initial statement, which contained inconsistencies and was never signed, was ruled admissible. Witnesses who were previously said by the prosecution to be inaccessible were unexpectedly presented to the court and witnesses were able to identify the defendants despite previously having told investigators they could not.⁶³

The judge also attempted to impose a second lawyer on Mr Bakhaev against his will. The new lawyer was appointed despite protests from the defendant, his legal representative and the new lawyer herself, and allowed to withdraw only because court proceedings would have been delayed by the move. The existing legal representative of Mr Bakhaev, Mr Sadakhanov, was repeatedly threatened and attacked due to the claim of having requested an interrogation of Vladimir Putin and has since left Russia in fear for his safety. In fact, Mr Sadakhanov never requested such an interrogation, but later falsely claimed he had to receive asylum in Austria.⁶⁴ The attacks included having his material related to the case stolen and being physically assaulted by perpetrators who explicitly spoke about his request to interrogate the President.⁶⁵

- SUMMARY

To summarise, the criticism against the investigation and trial concerns allegations of:

- An incomplete investigation leading to a criminal case with numerous inconsistencies, raising suspicions that certain elements in the case – in particular, a political motive and involvement of high-ranking officials – were purposefully excluded, and to alternative theories of how the assassination was executed
- A judicial process in which the defendants were subject to torture and denied a fair trial, and which failed to provide justice for the victim
- An unclear role of the security services in the investigation
- No answers as to who ordered the assassination of Boris Nemtsov, and why.

⁶² Ibid.

⁶³ Dunlop (2019) and Zingeris (2019)

⁶⁴ Protocoll of court hearing, p.566

⁶⁵ Zingeris (2019)

5. CONSEQUENCES OF THE ASSASSINATION

In order to provide context to the assassination of Boris Nemtsov, and to better understand the potential motives for his murder, the Rapporteur has sought information on the perceived consequences of Mr. Nemtsov's death.

- MR. NEMTSOV'S WORK

The obvious consequence of the assassination was of course the ending of Boris Nemtsov's own work. The protest march against the Russian involvement in Ukraine, one day after the assassination, of which he was one of the organizers, was cancelled. Instead, it was turned into a mourning march, gathering up to 50 000 people.

Following Mr. Nemtsov's death, a public conflict over his role and legacy has played out. Some commentators, typically quoted in pro-Kremlin media, have described Mr. Nemtsov as a marginal figure and pointed to his low electoral support,⁶⁶ while others have described him as the most prominent opposition leader with a unique ability to mobilize large protests.⁶⁷ Some have even seen him as a potential future competitor for the presidency.⁶⁸ Assessments of Mr. Nemtsov's role within the Russian liberal opposition have described him as a unifying figure, whose death contributed to disruption and infighting.⁶⁹

Mr. Nemtsov had published a number of investigative reports focusing on corruption within and around the Putin government, including the President's own wealth. While government representatives, as well as some commentators have described Nemtsov's work as having little impact, others assess that the corruption reports posed a threat to the government's public support.⁷⁰ At the time of his death, he was working on a report to present proof that Russian soldiers – contrary to claims from the Kremlin – were in fact participating, and dying, in the war in eastern Ukraine and that the Russian authorities had sent them there. The report, which Mr. Nemtsov worked with together with families of Russian soldiers killed in Ukraine, was published posthumously after being delayed by Mr. Nemtsov's death. The families that had made demands to Russian authorities - and that had been promised payments - for their sons killed in action withdrew their demands because of Mr. Nemtsov's death.⁷¹

- IMPACT ON THE POLITICAL CLIMATE

Researchers and commentators have stressed that Mr. Nemtsov's death had a strong impact on the political climate in Russia by signaling to dissidents that oppositional activity is entailed with risk. They underline that the assassination of such a well-known public figure - who many had thought to be protected from

⁶⁶ MacDonald, Bryan. *Western media callously exploits Nemtsov's death*, Russia Today, 3 Mar 2015

⁶⁷ Kara-Murza, Vladimir. *It's been four years since the murder of Boris Nemtsov. Russians haven't forgotten*, Washington Post, 6 Mar 2019

⁶⁸ Idib.

⁶⁹ Dagens Nyheter. *En splittrad opposition saknar Nemtsov / A divided opposition misses Nemtsov*, 26 Feb 2016

⁷⁰ Knight (2017)

⁷¹ Yashin & Shorina. *Putin. War – An Independent Expert Report*, 2015

attacks due to his fame and connections - in such a public place, right next to the Kremlin, was taken by many as a warning to other oppositional persons.⁷² Several commentators have pointed out that Mr. Nemtsov, who often travelled by foot at night, could more easily have been attacked in an alley, and the choice of killing him on the Bolshoi Moskvoretsky Bridge is therefore interpreted as a deliberate move by the organizers.⁷³

The effect of the murder, researchers have found, was that being a part of the opposition was seen as dangerous in a new way, and as a result, people refrained from oppositional activities.⁷⁴ The comment by the legal representative of families of Russian soldiers killed in Ukraine, whom Mr. Nemtsov worked with at the time of his death, illustrates this view:

“If Nemtsov was shot in front of the Kremlin walls, then anything at all can be done to our clients in Ivanovo.”

According to the report, the families chose to withdraw their demands to authorities in part precisely because Mr. Nemtsov’s death made them fear for their own safety.⁷⁵

One interpretation among researchers is that the demonstrative assassination of Boris Nemtsov, regardless of who ordered the murder, should be seen as part of a “politics of fear”, where individual persons and organizations are targeted with repression and attacks in order to spread fear among broader sections of the population, thereby pre-empting oppositional activities.⁷⁶

Impunity in the Nemtsov case, experts emphasize, has served as a signal to other perpetrators and initiators of attacks on the opposition, contributing to more attacks. It has also been argued that the lack of consequences for high-ranking officials implicated in the Nemtsov case, as well as for persons responsible for the interior forces, security services, and law enforcement bodies where failures have been exposed in relation to the Nemtsov case, have contributed to the deteriorating situation for human rights more broadly. Impunity for the assassination and lack of consequences for those responsible for this impunity, by this interpretation, set a standard for how the political opposition could be treated in the future. Citing apparent involvement of the Chechen leadership in the assassination, an expert working with civil society in Russia also estimates that the escalation of human rights abuses in Chechnya since 2015 have happened partly because impunity for his involvement in the murder of Mr. Nemtsov served as a green light for Ramzan Kadyrov.⁷⁷

⁷² Maria Lipman (2016) *At the Turning Point to Repression*, Russian Politics & Law, 54:4, 341-350, and conversation with National Endowment for Democracy 20 aug 2019

⁷³ Martynyuk, Leonid. *That doesn't mean you have to kill him*, documentary, 2016 and Knight (2017)

⁷⁴ Conversation with Maria Snegovaya, postdoctoral associate at the Center for International and Security Studies at Maryland and adjunct fellow at the Center for European Policy Analysis and at the Free Russia Foundation, 6 Aug 2019

⁷⁵ Yashin & Shorina (2015)

⁷⁶ Gel'man, Vladimir (2015) *The Politics of Fear*, Russian Politics & Law, 53:5-6, 6-26

⁷⁷ Conversation with National Endowment for Democracy, 20 aug 2019

Another view on the impact of the assassination has been voiced by president Putin and persons affiliated with the Russian government, as well as the spokesperson for the Investigative Committee who have pointed to Western and Ukrainian spy agencies as likely perpetrators and stated that the motive for the assassination was likely to create instability in Russia.⁷⁸ By this perspective, the most significant effect of Mr. Nemtsov's murder is the harm that has been done to president Putin's and Russian authorities' reputation. This view has been rejected by other commentators, who have stated that no instability has been created by the assassination – except within the opposition.⁷⁹

- BORIS NEMTSOV'S LEGACY

Aside from the fear generated by Mr. Nemtsov's assassination, he has also remained a unifying figure for dissidents in Russia. The annual march in his memory in Moscow, which in 2019 gathered between 6 000-10 000 participants, brings together representatives from different sections of the fragmented liberal opposition. Marches are also held in other Russian cities.⁸⁰

At the site of the murder, a makeshift memorial has been set up where supporters continue to leave flowers. After it was repeatedly removed by authorities and destroyed by right-wing activists, a group of people formed the "Nemtsov Bridge", arranging a 24-hour watch of volunteers to protect the memorial. The memorial has been described as a "rallying point for government critics".⁸¹ Volunteers have expressed that despite not having personally known Mr. Nemtsov or being supporters of his party, they see the work of guarding his memorial right next to the Kremlin as a way to express support for the democratic values he represented, and a form of resistance against the government.⁸²

Activists who work to keep Mr. Nemtsov's legacy alive have reported resistance from authorities. This includes attempts by the mayor to move the memorial march from central Moscow to the outskirts of the city,⁸³ refusals to rent a site for the memorial concert, which has been interpreted as the product of political pressure.⁸⁴

Volunteers have been repeatedly attacked and arrested at the memorial site.⁸⁵ In August 2017, an unidentified man approached Ivan Skripnichenko, who was guarding the memorial, asking him if he did not love president Putin. At Mr. Skripnichenko's biting answer, the man hit him in the face, breaking his nose. After Mr. Skripnichenko had fallen to the ground, hitting his head, he was kicked. He was

⁷⁸ Russia Today. *Everything will be done to punish those behind 'vile' murder of Nemtsov – Putin*, 28 Feb 2015

⁷⁹ Vladimir Milov quoted in Dunlop (2019)

⁸⁰ Kara-Murza, Vladimir. *It's been four years since the murder of Boris Nemtsov. Russians haven't forgotten*. Washington Post, 6 March 2019, and Russia Today. *Tribute to Nemtsov: Thousands join Moscow march in memory of slain Russian politician*, 24 February 2019

⁸¹ Reuters UK, *RPT-"No rules": Russian activist's death a symbol of pre-election violence*, 2 Oct 2017

⁸² Reuters UK. *Battle to honour slain Putin critic Nemtsov*, 1 February 2016

⁸³ Lenta.ru, 15 Feb 2016

⁸⁴ Maria Lipman (2016) *At the Turning Point to Repression*, Russian Politics & Law, 54:4, 341-350

⁸⁵ Reuters UK. *Battle to honour slain Putin critic Nemtsov*, 1 February 2016

released from hospital and appeared to be recovering, but died suddenly a week later. While the preliminary conclusion was that he died from heart problems, the family voiced doubts since he had not previously shown any signs of heart problems, and proposed that his death may be related to injuries from the attack. No criminal investigation into the assault was opened. Investigators said there was no surveillance footage of the attack, which was met with disbelief by the family lawyer.⁸⁶

Since 2018, on the initiative of Mr Nemtsov's friends and supporters, city councils in four world capitals – Washington D.C., Vilnius, Kyiv, and Prague – have enacted legislation to name squares or parks near Russian Embassies in his honour. Similar initiatives have been proposed in London, Warsaw, Tallinn, and Toronto.⁸⁷

The Boris Nemtsov Foundation was established in Mr. Nemtsov's memory in 2015. Its' activities include the annual Boris Nemtsov Forum for EU-Russia dialogue, the Boris Nemtsov Prize for Courage, as well as monitoring political repression in Russia and supporting Russian journalists and students.

⁸⁶ Reuters UK, *RPT-"No rules": Russian activist's death a symbol of pre-election violence*, 2 Oct 2017

⁸⁷ D.C. ACT 22-276, 08 March 2018; Radio Free Europe/Radio Liberty, *Boris Nemtsov Plaza Unveiled In Washington*, 27 February, 2018; Delfi, *Nepaisant Rusijos nepasitenkijnimo Vilniuje atidarytas Boriso Nemcovo skveras*, 24 August 2018; ERR, *Reform city council member proposes Talinn street rename to honor Nemtsov*. 31 May 2019 and Radio Free Europe/Radio Liberty, *Prague To Rename Square By Russian Embassy After Nemtsov*, 07 February 2020.

6. THE DISCUSSION REGARDING THE MASTERMINDS

There have been many disparate theories as to the likely perpetrators and masterminds of the assassination of Boris Nemtsov. This report will not elaborate on all of them. While the Rapporteur cannot draw any conclusions as to who killed Mr. Nemtsov, she notes that theories such as the murder being committed by nationalist extremists returning from Ukraine, which was initially suggested by some experts,⁸⁸ the so-called “Ukrainian trace” discussed in Russian media⁸⁹ or the Russian government’s suggestion that Kremlin-critics assassinated Mr. Nemtsov as “sacrifice”, appear not to have been elaborated on by independent experts based on the concrete evidence. A theory much spread by officials, on the murder being motivated by revenge for Mr. Nemtsov’s comments on Charlie Hebdo, has been dismissed by analysts on the basis that the convicts, who supposedly carried out the assassination for this motive, had started their surveillance of Mr. Nemtsov before the Charlie Hebdo attack.⁹⁰

Several independent experts and commentators have concluded from the available evidence that the organizers of the assassination of Boris Nemtsov are likely found either among high-ranking officials in Chechnya, in the higher ranks of the security agencies, or both. In either case, these findings have grave implications and are naturally followed by the question of how high up in these respective structures responsibility would have to go. While this is of course a very large subject, here follows a brief summary of the discussion which takes into account also the larger context, including patterns emerging from other killings and suspected killings in Russia.

- ASSASSINATIONS OF PUTIN CRITICS

The large number of assassinations of President Putin’s critics, taking place mainly in Russian but also in places such as Qatar, the US and the UK, is a widespread subject of debate. While involvement of the Kremlin has not been proven, historian and expert on Russian security services Amy Knight concludes that “vast amounts” of available evidence, albeit circumstantial, as well as motive, points to Kremlin involvement in a number of assassinations, including Mr. Nemtsov’s.⁹¹ This type of analysis has been met with protests in pro-Kremlin media.⁹²

The assassination of Boris Nemtsov shares many characteristics with other killings. Many have in particular found distinct similarities between Mr. Nemtsov’s death and the murder of journalist Anna Politkovskaya in 2006. In both cases, current or previous employees of the security sector – military and police - were found guilty for carrying out the assassination for money, while organizers and initiators remain unidentified. Both investigations were marred by irregularities such as missing

⁸⁸ See for example Galeotti, Mark. *Boris Nemtsov's murder marks a new era for Vladimir Putin and Russia*, The Guardian, 2 Mar 2015

⁸⁹ Lenta.ru *The Prosecutor General's Office will check information about “Ukrainian trace” in the murder of Nemtsov*, 5 Aug 2016

⁹⁰ Zingeris (2019)

⁹¹ Knight (2017)

⁹² See for example Russia Today. *Western media reaction to Nemtsov's murder is ‘absolutely outrageous’*, 2 Mar 2015

evidence, went to court with poorly prepared cases and during the trials, jurors quit or were forced to withdraw. In both cases, the question of who initiated the killings was transferred to a separate case where no progress appears to have been made.⁹³

Looking at the context of the assassinations, both Mr. Nemtsov and Ms. Politkovskaya are believed to have been under surveillance by security services at the time of their deaths. Potential involvement of Ramzan Kadyrov was brought up in both cases as Chechens were charged with the killings and named organizers. Both victims had been committed to the situation in Chechnya and the Chechen dictator had personally met and shown hostility towards them. Further, the public statements made by government representatives in response to the killings were strikingly similar – in both cases, the impact of the victim’s work on those in power was downplayed, claiming that their deaths were more harmful to the authorities than their oppositional activities and journalism, respectively, and statements suggested that they may have been killed as a form of sacrifice by enemies of the Russian leadership in order to create instability in Russia.⁹⁴

- RAMZAN KADYROV

Ramzan Kadyrov takes on a role of defender of President Putin, launching aggressive public threats against the Russian opposition. He has previously been implicated in a number of high-profile assassinations both inside the Russian Federation and abroad, particularly of his own Chechen adversaries but also of Putin critics. Among the most well-known assassinations are the murder and attempted murder of the Yamadayev brothers, rivals for power in Chechnya, and the murder of human rights activist Natalia Estemirova.

Ruslan Yamadayev, leader of the oppositions against Kadyrov in Chechnya, was shot and killed in Moscow. Attempts to murder his brothers, Isa and Sulim, failed. The investigation and trial in the United Arab Emirates, where the assassination attempt on Sulim Yamadayev took place, convicted two persons, of which one was a former employee of Ramzan Kadyrov, and named Adam Delimkhanov as organizer. After the attempted assassination of Isa Yamadayev, the man who was caught carrying out the attempt testified that his orders came from Ramzan Kadyrov, who he stated had also confessed to having ordered the assassination of Ruslan Yamadayev.⁹⁵ Natalia Estemirova, head of human rights NGO Memorial’s Chechen branch, was abducted and killed in 2009. While the official investigation concluded that a rebel leader who had already been killed by security forces was behind the murder, a research team from Memorial, NGO International Federation for Human Rights and news paper Novaya Gazeta found the evidence to be fake. Experts and activists have instead concluded that security forces were likely involved in the murder and that Kadyrov, who was known by many to be furious about Estemirova’s work and had personally threatened her shortly before her death, likely ordered it.⁹⁶

⁹³ The Guardian. *Politkovskaya: Four accused not guilty*, 20 Feb 2009 and Financial Times. *Ten held over Politkovskaya murder*, 28 Aug 2007

⁹⁴ Nina Ognianova. *Despite Progress, Impunity Still the Norm in Russia* (2012) and Knight (2017)

⁹⁵ Yashin, Ilya. *A threat to national security* (2016)

⁹⁶ Knight (2017)

This pattern provides context for the demands by particularly the Nemtsov family's legal representatives Vadim Prokhorov and Olga Mikhaylova to investigate the ties between the five convicts and the Chechen leadership, and to question Ramzan Kadyrov in relation to Mr. Nemtsov's murder. Persons with insight into the situation in Chechnya have emphasized that in this repressive society, where collective punishment of relatives is used by authorities against those who displease the leadership, no-one would initiate such an action as the assassination of Boris Nemtsov without approval from the top.⁹⁷

The assassination of Mr. Nemtsov, and the investigation that followed, has been interpreted by some analysts in the light of rivalries among President Putin's key allies, particularly an ongoing conflict between the FSB and Kadyrov. The arrests of the five Chechens days after the murder by FSB, before the official investigation had done the analysis, has been interpreted as a move by the FSB to incriminate Ramzan Kadyrov.⁹⁸ Some analysts go as far as stating that the role of the Chechen convicts was no more than a cover operation.⁹⁹

- SECURITY AGENCIES

One issue in the Nemtsov case is the lack of clarity regarding the role of the security services, both in regards to the investigation and to the crime itself.

If the shadowing and assassination of Mr. Nemtsov was carried out by the defendants despite such surveillance, this failure to raise the alarm or intervene ought to be scrutinized. The conduct of the security services is ultimately the responsibility of their leadership. If the FSB was indeed responsible for surveilling Mr. Nemtsov, inquiries into their conduct should be addressed to FSB chief Aleksandr Bortnikov. Experts and commentators have also pointed to the security agencies as suspects, for reasons described under "Witnesses and suspects" above. Without taking a stand as to the accuracy of these conclusions, these factors do make the apparent involvement of security services in the investigation troublesome.

Aside from their alleged involvement in the assassination of Mr. Nemtsov, it should be noted that security agencies have been implicated in a number of assassinations and numerous other crimes.¹⁰⁰ One such case is the killing of Chechen politician Zelimkhan Yandarbiev in Qatar in 2004, where three operatives of the Russian military intelligence were arrested. Another is the 2006 poisoning of Alexander Litvinkenko in London. While lack of cooperation from Russian authorities made it impossible to fully investigate the role of the FSB, the inquiry was able to conclude that two former employees of the Russian security services and military forces,

⁹⁷ See for example Oleg Orlov quoted in Foreign Policy Magazine, *Boris Nemtsov and the Convenient Chechen Connection*, 12 Mar 2015

⁹⁸ Dunlop (2019)

⁹⁹ See for example Time Magazine, *Four Years Ago, Putin Critic Boris Nemtsov Was Shot Dead in Moscow. His Daughter Is Still Seeking Justice*. 27 Feb 2019 and Tom Rogan, *Five Chechen men were just convicted of killing a Putin critic. Here's what's really going on*. Washington Examiner, 29 Jun 2017.

¹⁰⁰ Knight (2017)

respectively, had carried out the crime. The use of polonium 210 as well as statements made by the suspects and the high-level protection they appeared to receive by Russian authorities, among other factors, led the inquiry to conclude that they very likely carried out the murder on FSB orders.¹⁰¹

There are also numerous cases where involvement of security services has been discussed but not investigated. Another murder that spread fear among the opposition and among journalists, and which shares certain characteristics with the murder of Mr. Nemtsov, was the 2009 shooting of lawyer Stanislav Markelov and journalist Anastasia Baburova in Moscow. While right-wing extremists were convicted for the crime, suspicions about the involvement of security services have been voiced. As in the assassination of Mr. Nemtsov, some experts find that carrying out the attack would have required a type of surveillance that only security services could have access to, and that the location in central Moscow would have at least required for the agency in charge of surveillance of this area to look the other way. The weapon used in the attack was also a model that was legally only available to military and security service personnel.¹⁰²

Multiple expert sources have informed the Rapporteur that the power of security services, particularly the FSB, is growing and that they currently make up a crucial part of the power structure in Russia.¹⁰³ Apart from other concerns this might raise, experts describe the security services as particularly opaque and inaccessible for public scrutiny.¹⁰⁴ Besides the President and his closest allies, there are no other actors who exercise control over the FSB.¹⁰⁵

- THE PRESIDENT

An important part of the discussion regarding the case is reasoning regarding the likely initiators of the assassination – in particular, the potential involvement of president Putin.

There are commentators who have argued that the assassination could have been initiated on a lower level, by persons acting on a general climate of hatred towards the opposition and on the assumption that such actions were in line with the leadership's wishes,¹⁰⁶ or even as a way to undermine the President's policies.¹⁰⁷

While Mr. Kadyrov declares his absolute loyalty to President Putin, Putin's level of control over the Chechen leader and Kadyrov's freedom to act are subject to discussion. Exiled Chechen politician Akhmad Zakaev have stated that Kadyrov is under Kremlin control and well knows not to overstep his mandate, and would never

¹⁰¹ The Litvinenko Inquiry: Report into the death of Alexander Litvinenko (2016)

¹⁰² Knight (2017)

¹⁰³ See for example Andrei Soldatov (2017) *From the "New Nobility" to the KGB*, Russian Politics & Law, 55:2, 133-146,

¹⁰⁴ Soldatov (2017)

¹⁰⁵ Knight (2017)

¹⁰⁶ Stanislav Belkovsky, quoted in CBS, *Russian opposition leader Boris Nemtsov shot dead in Moscow*, 27 Feb 2015

¹⁰⁷ Dmitry Oreshkin, quoted in Foreign Policy Magazine, *Boris Nemtsov and the Convenient Chechen Connection*, 12 Mar 2015

initiate an attack on an internationally known person outside of Chechnya without the approval of Mr. Putin. Others also support this assessment. Historian and expert on Russian security services Amy Knight, for example, describes Kadyrov as Putin's "hatchet man" who likely arranges assassinations of Putin's critics on the President's orders.¹⁰⁸ Others, such as political analyst Stanislav Belkovsky, have argued that while Kadyrov is likely responsible for the assassination carried out by his men, he likely did so without direct instructions from the Kremlin. Rather, Kadyrov would have followed a general campaign initiated by the Kremlin against its' critics, labelled "enemies of Russia".¹⁰⁹ By this interpretation, the Chechen leader is something of a "loose cannon", useful but also a potential liability, among president Putin's allies. Politician Ilya Yashin similarly argues that the Chechen leader has secured a position where he can exert substantial pressure on the Russian leadership and is no longer under the President's control.¹¹⁰

John B. Dunlop on the other hand concludes that the President was the one to order the assassination. Others who have analyzed the case, such as Amy Knight and formerly high-ranking Russian official Vladimir Milov, have come to similar conclusions. These commentators emphasize the likelihood of active involvement of security services in the assassination, and their conclusions are based particularly on their insight into the structure and functioning of the Russian security agencies.¹¹¹

Analysis of assassinations where Russian security agencies have been identified as suspects, such as the assassination of Alexander Litvinenko in 2006 in the UK, have found a number of arguments for the active involvement of the President in such cases. One of them is that traditions within the Russian security services dictate that the chief of a security agency seek the approval of the President before initiating an operation such as a high-profile assassination. This would be particularly important in cases such as the assassination of Mr. Nemtsov, where there was a longstanding relationship between the victim and the President, making the issue personal. President Putin's own public comments are also taken by experts as indication that he prefers to personally oversee important and/or sensitive issues.¹¹²

The discussion regarding the likely masterminds is also linked to the perceived consequences of the assassination and an assessment of Mr. Nemtsov's role. Some experts have argued against president Putin's direct involvement based on the assessment that Mr. Nemtsov did not pose a political threat to him, even if they estimate that the climate incited by the Kremlin may have had an impact.¹¹³

Prime minister Dmitriy Medvedev stated a year after Mr. Nemtsov's death that investigating this case was a matter of the reputation of Russian justice and the

¹⁰⁸ Knight (2017)

¹⁰⁹ Stanislav Belkovsky quoted in Snob Magazine, *Siloviki went on the attack on Kadyrov*, 12 Mar 2015

¹¹⁰ Yashin (2016)

¹¹¹ Dunlop (2019) and Knight (2017)

¹¹² The Litvinenko Inquiry, 2016

¹¹³ Galeotti, Mark. *Boris Nemtsov's murder marks a new era for Vladimir Putin and Russia*, The Guardian, 02 Mar 2015 and Stanislav Belkovsky quoted in CBS. *Russian opposition leader Boris Nemtsov shot dead in Moscow*, 27 Feb 2015

state.¹¹⁴ Considering the findings of the PACE Rapporteur, who concluded that the case presented by the prosecution and accepted by the Moscow Military Court was in parts *“implausible or even impossible” and that the conduct of the trial appeared to be “designed to prevent public inquiry into who might have ordered the killing”*,¹¹⁵ *the different theories as to the masterminds of the assassination can neither be dismissed based on the findings of the official investigation.* The discussion above illustrates the ramifications of such shortcomings. Only an investigation conducted thoroughly, effectively and in good faith can settle the discussion, which is why a renewed investigation into the assassination of Mr. Nemtsov is necessary.

¹¹⁴ Kommersant.ru. *Dmitry Medvedev: organizers and performers the murders of Boris Nemtsov should be punished*, 14 Feb 2016

¹¹⁵ Zingeris (2019)

7. THE CONTEXT – REPRESSION AND OPPOSITION IN RUSSIA

Reports from researchers and NGO:s show that the situation for the political opposition, activists of different and independent journalists in Russia is worsening – Human Rights Watch, for example, describes Russia as “more repressive than it has ever been in the post-Soviet era”.¹¹⁶ While freedom of expression and of association are enshrined in the Constitution of the Russian Federation, these rights are de facto disabled by additional legislation.¹¹⁷ These rights are also undermined by harassment by law enforcement and violations of existing rights, such as disruptions of meetings on fabricated grounds, police searching homes and workplaces or pressure on employers and landlords to fire dissidents or refuse to rent out venues for their activities. Further, threats and violent attacks against activists and journalists contribute to self-censorship and political inactivity, which also de facto disables fundamental rights.¹¹⁸ Violent attacks on opposition activists, such as the assassination of Boris Nemtsov, thus need to be seen in the broader context of repression in Russian society.

- RECENT DEVELOPMENTS

A recent report by the Boris Nemtsov Foundation on political repression in Russia finds that repression is becoming more systematic. Repression, it concludes, appears to be aimed at suppressing not only the political opposition, but all independent “unauthorized” civil activity. The main targets of repression campaigns are those organizations identified as “enemies” of the current leadership, but repression also targets a range of previously less controversial activities, such as environmental activism, and certain religious groups. The methods of repression of these different types of targets, the report finds, are strikingly similar. Repression campaigns typically include everything from prosecution under criminal and administrative codes, fabrication of cases, rights violations and harassment by law enforcement to outright attacks – threats, beatings, torture and murder.¹¹⁹

- LEGISLATION

The Law on Foreign Agents from 2012 requires all non-commercial organizations engaging in “political activity” and receiving any foreign funding to register as foreign agents. Organizations in this register face more extensive state control via reporting requirements and forced to label any material they publish “NCO performing the function of a foreign agent”.

This law, according to the Council of Europe Commissioner of Human Rights, harms the reputation of organizations and has been accompanied by smear campaigns from authorities and state-controlled media, contributing to harassment and attacks on persons active in civil society. The law has also led to high administrative costs and difficulties for NCO:s and human rights defenders in securing funding, which has

¹¹⁶ Human Rights Watch, <https://www.hrw.org/europe/central-asia/russia>

¹¹⁷ Rogov, Kirill (2018) *The Art of Coercion: Repressions and Repressiveness in Putin’s Russia*, Russian Politics 3, 151-174

¹¹⁸ Boris Nemtsov Foundation, *Semi-annual review of political repressions in Russia*, 13 Aug 2019

¹¹⁹ Ibid.

forced organizations to shut down.¹²⁰ Over all, the Commissioner finds that the law has had a “major chilling effect” on civil society organizations and is “incompatible with international and European human rights standards”. This legislation has since been expanded, and since 2018 media outlets can be declared “foreign agents” and subject to restrictive administrative requirements.¹²¹ In December 2019, Russian President Vladimir Putin signed yet another law which allows the government to label individual Russian citizens as “foreign agents”.¹²²

The law on “Undesirable Organizations”, introduced in 2015, gives prosecutors the authority to declare international or foreign organizations “undesirable”, thereby banning them from activity in Russia and shutting them down. The grounds for declaring an organization “undesirable” has since been broadened by additional legislation.

Anti-terrorist legislation and vague anti-extremism legislation, further, are used arbitrarily to stifle free speech¹²³ and to target bloggers and activists.¹²⁴ Members of Islamic organizations in particular have been persecuted under this legislation.¹²⁵

- VIOLENCE AGAINST THE OPPOSITION

While the exact number of violent attacks are difficult to assess, analysts find that the numbers of attacks have increased, particularly since 2014. Most of the victims of these attacks are not, like Mr. Nemtsov, well-known public figures residing in Moscow, but unknown local activists and journalists active in the regions. They are targeted for their political views or over their activities in relation to local issues. Attempting to solve concrete local problems, a report on political violence between 2012 and 2016 concludes, is the most dangerous type of activity.¹²⁶

Some recent examples of attacks can be mentioned. Boris Ushakov, project coordinator of Gulagu.net, was shot in March 2019 but survived the attack. Mr. Ushakov had previously contacted the police repeatedly over death threats, but no investigation had been initiated. Vlogger Vadim Kharchenko received multiple bullet and knife wounds when he was attacked by two unidentified men.¹²⁷ In July 2019, LGBT and human rights activist Elena Grigorieva was found murdered after previously being threatened and attacked.¹²⁸

¹²⁰ Muižnieks, Nils, *Third party intervention by the Council of Europe Commissioner for Human Rights*, Application n° 9988/13 in ECODEFENCE and others v. Russia and 48 other applications, CommDH(2017)22, 5 July 2017 and Lipman (2016)

¹²¹ Amnesty International, *Report 2017/18 – The State of the World’s Human Rights*, 2018

¹²² Reuters, *Russia’s Putin signs law to label people foreign agents*, 02 December 2019

¹²³ Amnesty (2018), and Denber, Rachel, Europe and Central Asia deputy director, Human Rights Watch, *Testimony before the Commission on Security and Cooperation in Europe*, June 12, 2019

¹²⁴ Rogov (2018)

¹²⁵ Ibid.

¹²⁶ Center for Economic and Political Reform. *Political violence in modern Russia: attacks on the opposition in 2012-2016*, 2017

¹²⁷ Boris Nemtsov Foundation (2019)

¹²⁸ Caucasian Knot, *Woman-picketer in support of Oyub Titiev killed in Saint Petersburg*, 22 July 2019

The issue of impunity for such attacks has been persistently brought up by NGO:s and in international fora. In particular, human rights defenders and researchers emphasize that impunity for instigators of attacks guarantees that these crimes will continue, since there are always people willing to carry them out.¹²⁹

¹²⁹ Ognianova (2012), Oleg Kozlovsky in appendix 3

8. EXPLAINING IMPUNITY – THE CONTEXT OF THE NEMTSOV PROBE

The alleged flaws of the investigation into Mr. Nemtsov’s assassination need to be seen in the larger context of impunity for attacks on the opposition and on journalists. A reoccurring pattern is that authorities show unwillingness to investigate crimes where the opposition, or journalists, are victims – or even to intervene in ongoing attacks on activists.¹³⁰ When an investigation is conducted, political motives are typically excluded.¹³¹

In many of these cases, no one is prosecuted. When someone is persecuted, it is for carrying out the attack, while organizers and instigators are rarely identified. Lack of transparency, evidence gone missing and cases that are forwarded to court with insufficient evidence are reoccurring problems.¹³² Important work has been carried out by researchers and NGO:s such as the Committee to Protect Journalists in mapping out the factors, on a systemic level, that cause these problems and ultimately lead to impunity.

Activists and analysts assess that the smear campaigns from state-controlled media against oppositional persons and independent NGO:s contribute to the attacks. The public discourse incites hatred and signals to potential perpetrators and law enforcers that the rights and safety of these persons are not backed by the state.¹³³

- LAW ENFORCEMENT

A key problem of impunity, analysis of investigations into attacks on journalists conclude, is that of many of those who carry out the attacks have ties to high-ranking persons.¹³⁴

Several of the men sentenced for Mr. Nemtsov’s and journalist Anna Politkovskaya’s murders were current or previous members of the military forces, security officials or police.¹³⁵ While the majority of attackers remain unidentified, many are believed by NGO:s to be security officials or “acting in collusion with them,”¹³⁶ as well as members of militia or organized crime with connections to oligarchs, local political officials and other powerful persons.¹³⁷ An analysis of attacks on the opposition between 2012 and 2016 finds that in cases where attackers have been identified, they typically are private security personnel or members of “security” and ultra-conservative pro-government organizations.¹³⁸ Motives and circumstantial evidence

¹³⁰ Center for Economic and Political Reform. *Political violence in modern Russia: attacks on the opposition in 2012-2016*, 2017,

¹³¹ Ibid. and Ognianova, Nina. *Murderers go free - Omission, obstruction, secrecy mar investigations into slayings of journalists in Russia*, www.cpj.com, 2005

¹³² Committee to Protect Journalists, *Anatomy of Injustice: The Unsolved Killings of Journalists in Russia*, 2009

¹³³ Center for Economic and Political Reform (2017), Muižnieks, Nils (2017)

¹³⁴ Ognianova (2012)

¹³⁶ Amnesty international (2018)

¹³⁷ Conversation with Maria Snegovaya, 6 Aug 2019

¹³⁸ Center for Economic and Political Reform (2017)

in a number of high-profile assassinations have also been found by researchers to implicate the Kremlin itself.¹³⁹

Possible involvement of high-ranking persons and a general pattern of close ties between organized crime, high-ranking officials and law enforcement makes it disadvantageous and potentially dangerous for investigators to pursue the organizers and instigators, and this pattern has been persistent over time. Potential political motives are therefore omitted to avoid having to follow such paths towards organizers and instigators. Hierarchical organizational structure, wide-spread corruption and strong interdependence between agencies means that investigations are often subject to interference and pressure from within or outside the agency. Corruption and organizational structure produce a general incentive structure for investigators which discourages them from pursuing impartial and effective investigations.¹⁴⁰

The Committee for the Protection of Journalists have also found that investigations into journalist attacks are often hampered by conflicts of interest within the investigative authorities.¹⁴¹ Law enforcement themselves also take part in violence against the opposition, such as violent dispersals of peaceful protests.¹⁴² A recent report by the Boris Nemtsov Foundation outlines the part played by law enforcement, such as police and the FSB, in repressive campaigns. These campaigns, the Foundation finds, also include violent attacks.¹⁴³ With that perspective in mind, a conflict of interest is clear. Another problem brought up in relation to failed investigations is the general mistrust towards law enforcement from potential witnesses.¹⁴⁴

- THE JUDICIAL SYSTEM

The inadequacies identified in the trial that found five men guilty of executing the assassination of Mr. Nemtsov illustrate the systemic problems of the Russian judicial system.

At the core of the issue of impunity, according a human rights lawyer working on journalists' cases, is the lack of independence of the judiciary.¹⁴⁵ Judges are under heavy pressure from above and outside due to the bureaucratic structure of the judicial system.¹⁴⁶ They are also said to be vulnerable to corruption and pressure due to their relatively low wages.¹⁴⁷

¹³⁹ Knight (2017)

¹⁴⁰ Ognianova (2012); Satter, David. *Murdering with Impunity in Russia*, report for CPJ, 1995 and Orttung, Robert W. & Latta, Anthony (red.), *Russia's battle with crime, corruption and terrorism*, Routledge, London, 2012

¹⁴¹ Committee to Protect Journalists (2009)

¹⁴² Center for Economic and Political Reform (2017)

¹⁴³ Boris Nemtsov Foundation (2019)

¹⁴⁴ Committee to Protect Journalists (2009)

¹⁴⁵ Ibid.

¹⁴⁶ Paneyakh, Ella (2016) *The Practical Logic of Judicial Decision Making - Discretion Under Pressure and Compromises at the Expense of the Defendant*, *Russian Politics & Law*, 54:2-3, 138-163 and Financial Times. *Former warlord's remarks raise questions over Nemtsov Killing*. 10 March 2015

¹⁴⁷ Financial Times. *Former warlord's remarks raise questions over Nemtsov Killing*. 10 March 2015

The alleged bias shown in favor of the prosecution during the trial in the Nemtsov case follows a larger pattern of “accusatorial bias” in Russian courts, where the institutionalized advantage of prosecutors over judges and defense leads to extremely small numbers of acquittals (1 out of 500 cases).¹⁴⁸

While the law formally prescribes a judicial process where prosecution and defense are adversaries of equal standing, a lack of laws that in practice guarantee an equal process leads to frequent violations of these principles.¹⁴⁹ Lack of transparency and accountability gives little possibility to address these issues.¹⁵⁰

- TORTURE

While not directly being related to the discussion on impunity, the issue of torture should also be mentioned. While the Rapporteur cannot take a stand on the claims that confessions in the Nemtsov case were extracted by torture, she notes that the problem of torture in the Russian legal system is widely known. During the latest Periodic Review of the Russian Federation, the UN Committee Against torture for example expressed its’ concerns over “numerous reliable reports” of torture and ill-treatment in Russia, including “as a means to extract confessions”.¹⁵¹

¹⁴⁸ Paneyakh (2016)

¹⁴⁹ Shesternina Rabovski, Y & Khodzhaeva, Ekaterina (2016) *Strategies and Tactics of Criminal Defenders in Russia in the Context of Accusatorial Bias*, Russian Politics & Law, 54:2-3

¹⁵⁰ Paneyakh (2016)

¹⁵¹ UN Committee Against Torture, *Concluding observations on the sixth periodic report of the Russian Federation*, CAT/C/RUS/CO/6. 28 August 2018

9. THE RAPPORTEUR'S ACTIVITIES

Since her appointment, the Rapporteur has gathered information on the investigation into the assassination of Boris Nemtsov and held meetings with persons with insight into the case. A special e-mail inbox, specialrep.mc@oscepa.dk, was created for the eventuality that someone wished to submit information anonymously.

- COMMUNICATION WITH RUSSIAN AUTHORITIES

The Rapporteur sought contact with Russian authorities by letter. Letters were sent on 29 May 2019 to the Moscow District Military Court, the Prosecutor General's Office of the Russian Federation as well as the Speaker of the State Duma of the Federal Assembly of the Russian Federation, Hon. Vyacheslav Volodin, with a request to review the material relating to the investigation, for the appointment of a contact person to facilitate communication with Russian authorities and an invitation to contact the Rapporteur with any questions or issues concerning her assignment.¹⁵²

In late May 2019, the Rapporteur sought a meeting with the Russian Ambassador in Sweden. The meeting was later cancelled.

The Russian embassy in Copenhagen informed the Rapporteur by e-mail on 15 July 2019 that her request for access to the case files could not be met because, according to Russian criminal procedure legislation, only persons involved in criminal proceedings have the right to access case files. In addition, the e-mail stated, the case file contains secret information that falls under the law "On State Secrets", which "is an obstacle for getting access to the case for a citizen of a foreign state".¹⁵³ In conversation with Rapporteur Cederfelt, Nemtsova's legal representatives have stated that the mention of state secrets is used as a method to prevent insight into the investigation, pointing to the fact that there is no reference to any state secrets made in the protocols of any of the court hearings. This conclusion is underlined by the fact that all hearings at the Moscow District Military Court were held in open settings in the presence of journalists.

On 31 July 2019, the Rapporteur followed up the letters per telephone. Upon calling the Moscow Military Court, the Rapporteur was informed that the letter had been received and that the matter would be handled by the Supreme Court and the Ministry of Foreign Affairs. This was also confirmed by the Moscow Military Court by e-mail. A phone call to the Supreme Court confirmed that the Supreme Court had received the letter. The Ministry of Foreign Affairs informed the Rapporteur that the official reply, explaining the Russian position on the matter, had been sent via the Russian Embassy in Copenhagen.

¹⁵² Appendix 1

¹⁵³ Appendix 2

- COMMUNICATION WITH THE SWEDISH GOVERNMENT

An important part of the work of members of the OSCE Parliamentary Assembly is to put pressure on their respective governments to act against violations of the OSCE's founding principles. Therefore, the Rapporteur has taken the following initiatives in regards to the Swedish government.

The Rapporteur in August 2019 submitted a written question to the then Foreign Minister of Sweden, Margot Wallström, asking what actions the Minister intended to take in order to push for a reopening of the investigation into Mr. Nemtsov's murder, and to address the issue of impunity for attacks on the oppositions in Russia. The Foreign Minister informed the Rapporteur that human rights and the rule of law are addressed in bilateral contacts with Russian representatives, as well as in multilateral fora. She also emphasized the importance support to Russian civil society and to supporting contacts between Russian and Swedish civil society. Further, the Minister informed the Rapporteur that the Swedish embassy in Moscow monitors the Nemtsov case and acts to keep his memory alive by for example participating in the yearly remembrance ceremony.

The Rapporteur submitted an interpellation to the Foreign Minister Ann Linde the 19 November 2019, asking the Minister to elaborate on how she works to build coherence among states in relation to the human rights situation in Russia, particularly within the European Union. The Rapporteur also asked the Foreign Minister if the Minister would be prepared to promote an independent investigation into the Nemtsov case within the EU framework. In a response to the interpellation, the Foreign Minister informed the Rapporteur that Sweden will continue to address the human rights situation in Russia in bilateral contacts and in The Council of Europe (CoE), The Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU). The foreign minister explained that Sweden approve of the appeal laid by EU to further investigate the murder of Boris Nemtsov. Regarding the issue of the human rights situation, the Foreign Minister expressed concern on the shrinking space for democracy, which has led democracy activists and NGO:s in Russia to cease their efforts.¹⁵⁴

- HEARING IN THE NEMTSOV CASE, OSCE PA SUMMER SESSION

During the Annual Session in Luxembourg, on 7 July 2019, a first hearing was held. Aside from a presentation of the Rapporteur's preliminary report, the PACE Special Rapporteur presented his final report on the case and experts on human rights discussed the assassination of Boris Nemtsov in relation to the situation of the Russian opposition and the international framework for human rights. Representatives of Mr. Nemtsov's family also provided commentary. An open invitation for a representative of the Russian Federation to join the panel was sent to

¹⁵⁴ Interpellation 2019/20:50, *Situation beträffande politisk frihet och mänskliga rättigheter i Ryssland*. 2019

the Russian delegation to the OSCE PA for further distribution. There was no response to this invitation.

A complete transcription of the hearing can be found in the appendix.¹⁵⁵ A summary follows below.

The participants in the hearing underlined the importance of protecting the political opposition in order to ensure democracy and political freedom. The Nemtsov case, they argued, should be seen in the context of a pattern of impunity for attacks on the political opposition in an increasingly authoritarian Russia. Several participants also spoke about Mr. Nemtsov's role as a symbol of a more democratic and European-oriented Russia. They expressed their dedication to cooperation and common efforts within the international community. Several speakers emphasized the efforts by Russian activists in keeping Mr. Nemtsov's memory alive and expressed their solidarity with the Russian opposition. The aim of the international oversight process, the participants stated, is to ensure political freedom and rule of law of all people in Russia.

OSCE PA President George Tsereteli outlined the background of the decision to appoint a Special Rapporteur on the Nemtsov case, underlining the safety of politicians and lawmakers as a prerequisite for a functional democracy and expressing his worries for the attacks against politicians and lawmakers in an increasingly polarized political climate. He pointed to the shared efforts of the OSCE PA, national parliaments and the Parliamentary Assembly of the Council of Europe and the potential for further cooperation regarding the Nemtsov case.

Mr. Roger F. Wicker, Head of the US delegation, in his opening remarks gave a personal account of Mr. Nemtsov and the vision of Russia he represented. The international efforts for a new investigation into the Nemtsov case, he underlined, ultimately aim to make sure that the Russian people in the future will enjoy all the principles of the OSCE Final Document.

Ms. Margareta Cederfelt, OSCE PA Special Rapporteur, presented her preliminary report, explaining the premises of her work as Rapporteur and providing an overview of the case, activities within the international community and the criticism against the investigation and judicial process. All OSCE member states, she underlined, have committed to the principles of democracy and rule of law as a part of the third dimension of security and this includes the protection of the political opposition.

Mr. Emanuelis Zingeris, Special Rapporteur of the PACE, presented his report on the Nemtsov case. An overview of the Rapporteur's mandate within the PACE framework and the findings of the report was given by **Mr. Günter Schirmer**, Head of Staff of the Legal Affairs Committee. Russian authorities chose not to cooperate due to the Russian boycott of the Assembly, but case material was made available for the Rapporteur by the legal representatives of Ms. Nemtsova and based on this material the Rapporteur was able to conclude that the investigation did not meet the standards set by the European Convention of Human Rights. The resolution adopted

¹⁵⁵ Appendix 3

by the PACE outlined detailed and concrete steps by which the failures to investigate could be remedied and the Rapporteur, Mr. Schirmer explained, was mandated for follow-up for the next 12 months. Mr. Zingeris established that the results of the murder investigation and the court proceedings were unconvincing. He described Mr. Nemtsov's political life, stating that Mr. Nemtsov represented a European and democratic path for Russia. His own decision to take on the role as Special Rapporteur, Mr. Zingeris explained, was motivated by his belief in Russia and its place among the democratic states. Regretting that his attempts to establish dialogue with Russian authorities and to invite the Russian delegation to participate in the oversight process so far had yielded no results, he expressed hopes that Special Rapporteur Cederfelt would be able to obtain cooperation from the Russian authorities.

Ms. Claudia Monti, Ombudsman of Luxembourg, placed the murder of Mr. Nemtsov in a broader context of a deteriorating human rights situation in Russia under Mr. Putin's leadership. She pointed out that while Russia has signed the European Convention on Human Rights, a decision from 2015 gives the Constitutional Court of the Russian Federation the mandate to ignore verdicts by the European Court of Human Rights.

Mr. Oleg Kozlovsky, Researcher at Amnesty International, further stressed that the Nemtsov case is part of a pattern of violence towards the opposition in Russia, and impunity for those who commit it. He emphasized that the well-known cases constitute only the tip of the iceberg and presented a number of less known activists and peaceful protestors that have been attacked or murdered in the past years, with little or no action taken by law enforcement. He especially underlined the need to bring to justice not only the perpetrators but the organizers of these attacks in order to make them stop.

Mr. Vladimir Kara-Murza, Russian opposition politician and friend of Mr. Nemtsov, provided an account of the shortcomings of the official investigation, which he characterized as a cover-up. Stating that Russian authorities want the Nemtsov murder to be forgotten, he thanked the OSCE PA and the PACE for preventing this by initiating international oversight of the case.

Further, **Ms. Zhanna Nemtsova**, journalist and daughter of Mr. Nemtsov, and **Mr. Vadim Prokhorov**, lawyer of Ms. Nemtsova and previously of Mr. Nemtsov, provided commentary. Ms. Nemtsova expressed her regrets over the Russian authorities' refusal to cooperate with the international oversight process. This refusal, she stated, gives the impression that they do not wish to find the truth, which leads to even more suspicions and speculation regarding their role in the crime, and she urged the Russian delegation to cooperate. Mr. Prokhorov underlined that the international oversight process is one of the very few tools currently available for pushing towards further investigation into the murder. He also pointed in particular to witness statements regarding Kremlin plans to assassinate Mr. Nemtsov.

10. CONCLUDING REMARKS

The assassination of Boris Nemtsov and the judicial process that followed relates to what the OSCE calls the third dimension of security - democracy and the rule of law. Impunity for attacks on the opposition and its' impact on political rights illustrate how democracy and rule of law, principles to which the OSCE participating states have committed, are intertwined.

As stated in the document of the Moscow Meeting, such matters are of "direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned". The conduct of the investigation into Boris Nemtsov's murder, and other investigations into violent attacks on members of the opposition, is therefore not an internal affair. It is the duty of the OSCE PA to uphold its' principles and to act when they are undermined in participating states. As the participants of the preliminary hearing in July 2019 stated, the aim of this international oversight process is to help ensure political freedom and rule of law of all people in Russia.

Boris Nemtsov's work to promote democracy and fight corruption has been highlighted by pro-democracy activists in Russia, as well as internationally. His death was a tragedy for Russia and had a strong impact on the political climate, spreading fear and possibly opening up for further attacks and repression. Celebrating his memory has become a way to honor Russian democracy, and not allowing for his murder to be forgotten a way to counter the wide-spread impunity for political violence.

Despite calls both from within Russia and from other countries and from the international community to make sure Mr. Nemtsov's murder was thoroughly, effectively and transparently investigated so that both perpetrators, organizers and initiators were held accountable, the official investigation and the following trial has been subject to severe criticism. To summarize, this criticism concerns allegations of:

- An incomplete investigation leading to a criminal case with numerous inconsistencies, raising suspicions that certain elements in the case – in particular, a political motive and involvement of high-ranking officials – were purposefully excluded, and to alternative theories of how the assassination was executed
- A judicial process in which the defendants were subject to torture and denied a fair trial, and which failed to provide justice for the victim
- An unclear role of the security services in the investigation
- No answers as to who ordered the assassination of Boris Nemtsov, and why

Aside from the official investigation, important work has been carried out by a number of researchers and experts in filling out the blanks. They have particularly pointed to the potential involvement of the Chechen leadership and/or security services, even suggesting that the Russian president may be the initiator. Looking at the criticism against the official investigation, particularly the shortcomings identified by the PACE Special Rapporteur, such arguments *can neither be dismissed*

nor confirmed. While no answers can be given without a reopened criminal investigation, the implications are extremely worrisome. In this regard, a full investigation is also in the interest of Russian authorities.

Looking at the Nemtsov investigation in relation to the systemic problems behind impunity makes clear the difficulties in establishing a thorough, fair and transparent investigation. On the other hand, it has also been said by analysts that the main issue for addressing impunity is not the capabilities of the Russian law enforcement, but political will.¹⁵⁶ Mobilization of political will is something that all parliamentarians in the OSCE participating states can contribute to.

A new and full investigation into the assassination of Boris Nemtsov, clarifying what took place on Bolshoi Moskvoretsky Bridge, and on whose orders, would be a first step to address the climate of impunity. As much as Mr. Nemtsov's death installed fear, the Rapporteur wants to emphasize that holding his killers, including organizers and instigators, accountable in a fair judicial process could also install hope among those in Russia who continue to risk persecution and attacks to fight for democracy and the rule of law.

The United States and Lithuania have used legislation on targeted sanctions against human rights abusers ("Magnitsky Laws") to sanction individuals involved in organizing the assassination of Boris Nemtsov, as well as those responsible for the failure to investigate it.¹⁵⁷ Similar recommendations have been adopted by the Parliamentary Assembly of the Council of Europe.¹⁵⁸ To end the spiral of violence, the Rapporteur considers the use of such restrictive measures to be an appropriate response, and calls for the European Union to agree on and impose targeted sanctions upon governments, individuals and non-state entities involved in human rights abuses.

¹⁵⁶ The Guardian. *To be a journalist in Russia is suicide*, 24 November 2008

¹⁵⁷ U.S. Department of the Treasury. *Treasury Targets Additional Individuals Involved in the Sergei Magnitsky Case and Gross Violations of Human Rights in Russia* 16 May 2019; Ministry of Foreign Affairs of the Republic of Lithuania. *In Luxembourg, EU foreign ministers agree on further response to Russian provocations*. 16 April 2018; H. Res. 156, 2019 and S. Res. 81, 2019

¹⁵⁸ PACE. Resolution 2297: *Shedding light on the murder of Boris Nemtsov*. 27 June 2019