

Russia Expels German Diplomat Over Participation in Pro-Navalny Demonstration

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On 17 January 2021, prominent Kremlin critic Alexei Navalny was arrested by security forces at Sheremetyevo airport in Moscow upon returning from Germany, where he spent five months being treated for poisoning with a chemical nerve agent that he blamed on Russian President Vladimir Putin. Several days later, a court ruled that while in Germany Alexei Navalny had violated probation terms of a suspended sentence from 2014 and ordered him to serve two years and eight months in prison.

Shortly after Navalny's arrest, his team released a video message calling on his supporters to take to the streets. For example, under the slogan 'Freedom for Navalny!' a rally was announced on Facebook set to take place in Moscow's Pushkin Square on 23 January 2021. Similar calls were made for rallies in other parts of the country. According to media reports, 'interest in the rallies skyrocketed after Navalny's Anti-Corruption Foundation published a major investigation into billion-dollar "palace" on the Black Sea supposedly built for President Vladimir Putin. The video version of the investigation, which was released on YouTube, racked up more than 50 million views in two days.' Navalny's team did not apply for permission to hold the rallies, arguing that the fate of such applications was known in advance and pointing to the tight time-frame for such applications. The authorities warned people to stay away from the demonstrations, citing coronavirus restrictions and the fact that the events were not authorised.

On 23 January 2021, tens of thousands of people took to the streets in Moscow, and many more across Russia. The security forces arrested several hundred protesters and forcibly broke up the rallies.

On 26 January 2021, Federal Foreign Minister Heiko Maas joined his counterparts from G7 countries and the High Representative of the European Union condemning the arrest and detention of Alexei Navalny, stating:

We are also deeply concerned by the detention of thousands of peaceful protesters and journalists, and call upon Russia to adhere to its national and international obligations and release those detained arbitrarily for exercising their right of peaceful assembly on 23 January. The violent suppression by police forces of the right of individuals to express their opinion is unacceptable. These events confirm a continuous negative pattern of shrinking space for the opposition, civil society, human rights defenders and independent voices in Russia.

It is deplorable that Mr Navalny is being detained in relation to court decisions which the European Court of Human Rights determined in 2017 to be arbitrary and manifestly unreasonable. We the G7 Foreign Ministers call upon the Russian authorities for Mr Navalny's immediate and unconditional release. Russia is bound by its national and international obligations to respect and ensure human rights.

More pro-Navalny demonstrations took place on 31 January and 2 February 2021.

On 5 February 2021, the Russian Foreign Ministry announced that three diplomats from Germany, Poland and Sweden had been declared *persona non grata* for participating in the protests. In a media release it was stated:

The Ambassador of the Kingdom of Sweden, the Charge d'Affaires of the Republic of Poland and an envoy of the Embassy of the Federal Republic of Germany were summoned to the Ministry of Foreign Affairs of the Russian Federation.

A protest was lodged with the diplomats in connection with the recorded participation of diplomatic staff of the Consulates General of the Kingdom of Sweden and the Republic of Poland in St. Petersburg and the Embassy of the Federal Republic of Germany in Moscow in illegal demonstrations on 23 January 2021. It was emphasized that such actions on their part are unacceptable and do not correspond to their diplomatic status.

In accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961, diplomats who took part in illegal actions were declared 'persona non grata'. They were ordered to leave the territory of the Russian Federation as soon as possible.

The Russian side expects that in the future the diplomatic missions of the Kingdom of Sweden, the Republic of Poland and the Federal Republic of Germany and their personnel will strictly follow the norms of international law.

The German diplomat expelled was the head of the political department of the German embassy in Moscow. According to the embassy's website, the 'political department reports to the Foreign Office in Berlin on important political events and trends in the Russian Federation.'

On the evening of 5 February 2021, the Russian ambassador in Berlin was asked to come to the Federal Foreign Office for urgent talks, and Federal Foreign Minister Heiko Maas issued the following statement:

Russia's decision to expel multiple EU diplomats, including a member of the diplomatic staff of the German Embassy in Moscow, is in no way justified and further damages relations with Europe.

The German diplomat in question merely exercised his function pursuant to the Vienna Convention on Diplomatic Relations of observing developments

in Russia by lawful means. If the Russian Federation does not reconsider its decision, this will not remain unanswered.

Chancellor Angela Merkel also commented upon the Russian action, saying: 'We consider these expulsions to be unjustified. We believe it is yet another aspect that can be observed right now of Russia being quite far from the rule of law.'

The United States expressed support for the European countries. US Secretary of State Antony Blinken wrote on Twitter:

The U.S. condemns the expulsion today of three European diplomats from Russia for observing the January protests. This arbitrary and unjustified act is Russia's latest departure from its international obligations. We stand in solidarity with Germany, Poland, and Sweden.

A US State Department spokesperson also stated that it was 'standard practice' for Western diplomats to observe foreign protests.

On 8 February 2021, Germany responded in kind. A Federal Foreign Office spokesperson declared:

Today, the Federal Foreign Office has declared a staff member of the Russian Embassy in Berlin persona non grata in accordance with Article 9 of the Vienna Convention on Diplomatic Relations of 18 April 1961. With this step, the Federal Government is responding to a decision by the Russian Federation of Friday, 5 February 2021. Russia had expelled several EU diplomats, including a staff member of the Germany Embassy in Moscow. That decision was in no way justified. The German diplomat in question had merely exercised his function pursuant to the Vienna Convention on Diplomatic Relations of observing developments in Russia by lawful means.

The Russian side, however, saw things differently. During her regular media briefing on 11 February 2021 the spokeswoman for the Russian Foreign Ministry alleged that the expelled diplomats had violated diplomatic law by interfering in the internal affairs of Russia, saying:

The Vienna Convention on Diplomatic Relations signed in 1961 (Clause 1 of Article 41) and the Vienna Convention on Consular Relations signed in 1963 (Clause 1 of Article 55) ... include provisions according to which all persons enjoying relevant privileges and immunities have a duty to respect the laws and regulations of the receiving state and also not to interfere in the internal affairs of that state. ...

The commentary of the UN International Law Commission on the draft articles of the 1961 Vienna Convention cites participation in political campaigns as a conspicuous example of interference in the internal affairs of the receiving state in violation of the norms of diplomatic law.

The rallies that were held in Moscow and St Petersburg on January 23 and 31, 2021, had not been coordinated with the executive authorities of these constituent members of the Russian Federation, as stipulated in the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Pickets dated June 19, 2004. Moreover, the organisers of these rallies stated publicly and deliberately that they had no intention to coordinate these events with the authorities. They said that this was their new tactic, and that they were doing this knowingly and deliberately. Consequently, anyone taking part in these events, including foreign diplomats and consular officials, were aware of violating the laws of the receiving state.

They also violated the temporary ban on public events introduced in connection with the coronavirus pandemic. Presidential Executive Order No. 316 of May 11, 2020, On Procedure for Extending the Measures to Ensure Sanitary and Epidemiological Wellbeing of the Population in the Regions of the Russian Federation due to the Spread of the Novel Coronavirus Infection (COVID-19), allows the senior officials in the Russian regions to introduce special restrictions. Executive Order of the Moscow Mayor No. 12-UM dated March 5, 2020, prohibits public and other mass events in Moscow. Foreign diplomats were perfectly aware of this.

Therefore, the participation of staff members of consulates general of Sweden and Poland and the Embassy of Germany in the January 23 and 31 rallies not only amounts to interference in the internal affairs of Russia but was also a deliberate and knowing disregard for the laws and rules of the receiving state.

The functions of a diplomatic mission consist, *inter alia*, in 'ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State'. According to the International Law Commission (ILC), the 'phrase "conditions and developments" covers the political, cultural, social and economic activities of the country, and in general all aspects of life which may be of interest to the sending State.' However, only 'lawful means may be used by the mission in ascertaining these conditions and developments.' Diplomats are also under a general duty 'to respect the laws and regulations of the receiving State', including any health laws, and 'not to interfere in the internal affairs of that State.'

The disagreement between Russia and Germany was about whether the German diplomat simply observed the event or whether he participated himself in the unauthorised protests. While the former would have been in accordance with the functions of the diplomatic mission, the latter would have constituted a violation of Russian domestic law and an interference in the internal affairs of Russia. According to the ILC the prime example of interference in the internal affairs of the receiving State is the participation by diplomats in 'political campaigns'.

Video footage of the demonstration showed the German diplomat walking with or among the protesters in the streets of Moscow. The diplomat did not shout anything and did not carry any placard. It could nevertheless be argued that marching with

the protesters crossed the threshold from merely observing to actively participating in the unauthorised demonstration. In any case, walking together with the other protesters violated the applicable coronavirus restrictions on public events. The German diplomat thus violated the laws of the receiving State.

Violations of the laws of the receiving State, however, do not inevitably lead to the expulsion of the wrongdoing diplomat. Whether a diplomatic agent is declared *persona non grata* is first and foremost a political decision. The expulsion of the diplomat was thus more a message to convey Russia's displeasure over Germany's interest in the fate of Alexei Navalny than a response to a violation of Russia's laws.

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