Neutral Citation Number: [2020] EWHC 2007 (Admin)

Case No: CO/1079/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2020

Before :

LORD JUSTICE BEAN
and
MR JUSTICE LEWIS

- -

Between :

THE QUEEN (on the application of GS, a child by her grandfather and litigation friend STEPHEN STANLEY STURGESS)	**Claimant**
- and -	
H.M. SENIOR CORONER FOR WILTSHIRE & SWINDON	**Defendant**
And	
(1) SECRETARY OF STATE FOR THE HOME DEPARTMENT **(2) ALEXANDER PETROV** **(3) RUSLAN BOSHIROV**	**Interested Parties**

Michael Mansfield QC, Henrietta Hill QC and **Adam Straw** (instructed by **Birnberg Peirce**) for the **Claimant**
Nicholas Moss (instructed by **Coroner's Service, Wiltshire Council**) for the **Defendant**
Sir James Eadie QC and **Jason Pobjoy** (instructed by **Government Legal Department**) for the **Home Secretary**
The Second and Third Interested Parties did not appear and were not represented

Hearing dates: 14 & 15 July 2020

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Approved Judgment

Lord Justice Bean and Mr Justice Lewis:

1. This is the judgment of the court to which we have both contributed.

2. This claim challenges the ruling of the Senior Coroner for Wiltshire and Swindon on 20 December 2019 on the scope of the inquest to be conducted into the death of Dawn Sturgess. The Claimant is the daughter of Dawn Sturgess. The evidence suggests that Ms Sturgess' death arose in the following context.

3. On 4 March 2018, Sergei Skripal and Yulia Skripal were poisoned by Novichok in Salisbury, Wiltshire in England. Novichok is a military-grade nerve agent and there is evidence which indicates that the Novichok may have originated in Russia. Two Russian nationals, Alexander Petrov and Ruslan Boshirov, had travelled from Russia to the United Kingdom at the beginning of March 2018. They visited Salisbury on the day of the poisoning. The United Kingdom Government believes that those two individuals are intelligence officers from the Russian military intelligence service ("GRU") and were seeking to kill Mr Skripal, who is a former GRU officer. Police inquiries have led to charges, including charges of attempted murder, being brought against Mr Petrov and Mr Boshirov.

4. Ms Sturgess died on 8 July 2018. The evidence indicates that on 30 June 2018 she had unknowingly sprayed herself with the Novichok, contained in a bottle that she believed to contain perfume. She collapsed and was taken to hospital but never regained consciousness. The Senior Coroner for Wiltshire and Swindon opened an inquest into her death. He has made provisional rulings on the scope of the inquest, although he has said that he will keep matters under review. The Senior Coroner ruled that the inquest will consider the acts and omissions of the two Russian nationals, Mr Petrov and Mr Boshirov, and whether any act or omission by them or either of them may have caused or contributed to Ms Sturgess' death. This will include investigating how the Novichok came to Salisbury. He has ruled that he will investigate who was responsible for Ms Sturgess' death provided that that issue is limited to the acts and omissions of Mr Petrov and Mr Boshirov. He has decided, however, that the inquest will not investigate whether other members of the Russian state were responsible for Ms Sturgess' death and will not investigate the source of the Novichok that appears to have killed her. It is those two rulings which the Claimant challenges.

<u>THE LEGISLATIVE FRAMEWORK</u>

5. The conduct of inquests is regulated by the Coroners and Justice Act 2009 ("the 2009 Act"). Section 1 of the 2009 Act sets out the obligation of the coroner to investigate certain deaths and is in the following terms:

> **"1. Duty to investigate certain deaths –**
> (1) A senior coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable conduct an investigation into the person's death if subsection (2) applies.
> (2) This subsection applies if the coroner has reason to suspect that –
> (a) the deceased died a violent or unnatural death;
> (b) the cause of death is unknown; or
> (c) the deceased died while in custody or otherwise in state detention."

6. Sections 5(1) and (2) set out the matters to be ascertained in an investigation. Section 5(3) prohibits the coroner from expressing opinions on certain matters. The section is in the following terms:

> "**5. Matters to be ascertained**
> (1) The purpose of an investigation under this Part into a person's death is to ascertain –
> (a) who the deceased was;
> (b) how, when and where the deceased came by his or her death;
> (c) the particulars (if any) required by the 1953 Act to be registered concerning the death.
> (2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c42)) the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.
> (3) Neither the senior coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than –
> (a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);
> (b) the particulars mentioned in subsection (1)(c).
> This is subject to paragraph 7 of Schedule 5."

7. In brief, under s 5(1)(b) of the 2009 Act, an inquest must ascertain how a person died in the sense of by what means that person died. See *R v Humberside Coroner ex parte Jamieson* [1995] QB 1 at page 24A-B. Where provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), in particular Article 2, apply, that may require a broader inquiry as provided for by s 5(2) of the 2009 Act. The inquest then will need not only to ascertain by what means the person died but also to ascertain in what circumstances the person died.

8. Section 10 of the 2009 Act deals with the determinations to be made after hearing evidence and provides that:

> "**10. Determinations and findings to be made –**
> (1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must –
> (a) make a determination as to the questions mentioned in section 5(1)(a) and (b)
> (read with section 5(2) where applicable), and
> (b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.
> (2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of –
> (a) criminal liability on the part of a named person, or
> (b) civil liability."

THE FACTUAL BACKGROUND

The Poisoning of the Skripals

9. The evidence available to date suggests the following. On Friday 2 March 2018, two Russian nationals travelling under the names of Alexander Petrov and Ruslan Boshirov travelled from Russia to Gatwick Airport in London. They travelled to London Victoria by train and stayed at a hotel in east London.

10. On Saturday 3 March 2018, the two Russians travelled by train to Salisbury, arriving at 14.25 and leaving at 16.11. On Sunday 4 March 2018, they made a second trip to Salisbury arriving at 11.48 and leaving at 13.50. There is CCTV footage of the two men at various locations around Salisbury including outside a petrol station on Wilton Road, a short walk from the home of Mr Sergei Skripal.

11. On 4 March 2018, Mr Skripal and his daughter Yulia Skripal were found, having collapsed, on a park bench at The Maltings in Salisbury. They were taken to hospital. Detective Sergeant Bailey visited their home. He too became ill and was taken to hospital. Also on 4 March 2018, Mr Petrov and Mr Boshirov left London Heathrow for Moscow at 22.30.

12. Statements made by the then Prime Minister (The Rt Hon Theresa May MP) to the House of Commons indicated that the United Kingdom Government believes that Mr Petrov and Mr Boshirov are agents of Russia's military intelligence service, the GRU, and attempted to assassinate Sergei Skripal using a military-grade nerve agent called Novichok. Mr Skripal was a GRU officer who acted as a double agent for UK intelligence services during the 1990s and early 2000s. He had been released from prison in Russia as part of an exchange of spies in 2010 and subsequently came to settle in the UK. The UK Government believes that their assassination attempt was conducted by the GRU and in the words of the Prime Minister, "almost certainly also approved outside the GRU at a senior level of the Russian state".

13. Following a police investigation, Mr Petrov and Mr Boshirov have been charged with offences including conspiracy to murder Sergei Skripal, the attempted murders of Sergei Skripal, Yulia Skripal and DS Bailey and the use and possession of Novichok. Russia does not extradite its nationals. A European Arrest Warrant has been issued for their arrest and a notice issued by Interpol to facilitate their arrest if they travel outside Russia.

The death of Dawn Sturgess

14. On 30 June 2018, Ms Sturgess collapsed in Amesbury, eight miles away from Salisbury, after spraying herself with the contents of a perfume bottle given to her as a present by her partner, Charlie Rowley. Both believed the bottle contained perfume. Both Ms Sturgess and Mr Rowley were admitted to hospital. Ms Sturgess never recovered consciousness and died on 8 July 2018. The post-mortem report concluded that Ms Sturgess had been poisoned by a Novichok nerve-agent. Tests carried out on Mr Rowley, on items at the house where Ms Sturgess collapsed, and on the perfume bottle, revealed the presence of Novichok.

The involvement of the Senior Coroner

15. The Senior Coroner for Wiltshire and Swindon commenced an investigation into the death of Ms Sturgess on 8 July 2018. An inquest was opened and adjourned on 19 July 2018. In a letter dated 19 September 2019, he recognised Ms Sturgess' family, Mr Rowley, the Secretary of State for the Home Department, and Mr Petrov and Mr Boshirov, as interested persons pursuant to s. 47(2) of the 2009 Act. He explained that the inquest would "cover the movements of [Mr Petrov and Mr Boshirov] who entered the United Kingdom on 2 March 2018 and left returning to Moscow the following Sunday". He also expressed preliminary views on the scope of the inquest. His provisional view was that Article 2 of the Convention did not apply and did not require the inquest to take any particular form. He expressed his view that matters such as why Mr Skripal was living in Salisbury and any involvement he had with United Kingdom or other intelligence services would fall outside the scope of the inquest. The Senior Coroner also indicated, in a draft witness list accompanying the letter of 19 September 2019, that save for oral evidence from one police officer all the evidence at the inquest would be adduced in the form of written statements being read out.

16. Ms Sturgess' family filed written submissions on 3 October 2019 in response. The Home Secretary replied on 22 November 2019 and the family made further written submissions on 4 December 2019. The Senior Coroner considered those written submissions. He did not hear oral submissions from the interested persons.

The Senior Coroner's ruling

17. The Senior Coroner gave a detailed ruling dated 20 December 2019 on the application of Article 2 of the Convention and the proposed scope of the inquest. That ruling should be read fairly and in its entirety.

18. The Senior Coroner set out a review of the background as it appeared from the evidence in his possession. He set out the legal framework governing the conduct of inquests at paragraphs 16 to 34 of his ruling. Amongst other matters, he set out the relevant paragraphs of the judgment of Sir Thomas Bingham M.R., in *R v North Humberside Coroner ex parte Jamieson* [1995] Q.B. 1. He noted the observation of Lord Lane CJ in *R South London Coroner ex parte Thompson* [1982] S.J. 625 that:

> "The function of an inquest is to seek out and record as many of the facts concerning the details of the death as [the] public interest requires".

19. He summarised the substantive and procedural obligations imposed by Article 2 of the Convention. He first considered whether any obligation arose under Article 2 of the Convention because the relevant United Kingdom authorities knew or ought to have known of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of third parties. He concluded that there was no arguable basis for considering that there was any such risk and,

consequently, no arguable basis for holding that any obligation arose under Article 2 of the Convention by reason of those matters. That conclusion is not challenged in these proceedings.

20. The Senior Coroner then considered whether obligations arose under Article 2 of the Convention because it was alleged that the death arose as the result of the actions of a foreign state or the agents of that state. He reviewed the case law and concluded that Article 2 of the Convention does not impose an obligation to investigate the actions of a foreign state or agents of that state. He concluded that he was required to carry out an investigation into Ms Sturgess' death solely because her death occurred in suspicious circumstances.

21. The Senior Coroner then set out the issues which he would investigate as part of the inquest and those which he did not propose to investigate. Given the importance of his reasoning to the issues that arise in relation to Ground 1 of the claim, it is necessary to set it out in full:

> "*Scope of the Inquest*
>
> 71. I have set out at paras 16 – 34 above the coroner's functions when the duty under section 1 of the Coroners and Justice Act 2009 is triggered. An inquest is not an adversarial process and as stated in my preliminary view to the Interested Persons in September 2019, it is not a public inquiry or a substitute for a criminal trial (or civil trial).
>
> 72. The purpose of the inquest in this case, as I have already ruled, is to determine the answers to the matters to be ascertained at section 5(1) Coroners and Justice Act 2009 and at the end of the inquest to record these determinations on the "Record of Inquest". Any issue that falls within scope, in my view, must be an issue involving the examination of evidence that is relevant to ascertaining the answers to the four statutory questions which will ultimately be recorded on the Record of Inquest, if the evidence supports the making of those determinations.
>
> 73. It is accepted that, as a coroner conducting an inquisitorial process, I have a broad discretion in relation to the scope of the inquest including what witnesses to call and the evidence to be adduced at the final hearing. It is a process in respect of which I am entirely responsible for.
>
> 74. In exercising both judgment and judicial discretion, any decision on scope will incorporate my view as to what is necessary, desirable and proportionate to ensure that the statutory function given to me under the Coroners and Justice Act 2009 is discharged.
>
> 75. In the exercise of that discretion sometimes scope does extend beyond determining the matters to be ascertained having

regard to section 5(1) Coroners and Justice Act 2009. That can arise in particular when as part of the investigation a concern may arise that may form the subject or a Regulation 28 report to prevent future deaths having regard to the Coroners (Investigations) Regulations 2013. I have not as part of my investigation revealed any hint of an issue that may give rise to the possibility of such a report in this case.

76. In this case I have considered the issue of scope by reference to discharging the procedural duty under Article 2 with a view to ensuring that the inquest will be Article 2 compliant and as regards in particular answering the four main statutory questions that I am required to undertake as part of conducting a Jamieson inquest – who died, when and where and how (by what means) that person came by their death? I have also considered the existence in law of any limitations on what I am able to record on the Record of Inquest when it comes to the matters to be ascertained. I will now cover all the issues that have been raised in the submissions.

The movements of the 2 Russian nationals who entered the United Kingdom on 2 March 2018 and left returning to Moscow the following Sunday and whether they may by act or omission have caused or contributed to Ms Sturgess' death (including how the Novichok came to be in Salisbury)

77. I have already indicated in my preliminary view that this issue should form part of the scope of the inquest and this is acknowledged and accepted by Mr Mansfield QC at para 36 of his submission and by Ms McGahey QC in her submission at para 43. As a result of reviewing the evidence, I have made both Mr Petrov and Mr Boshirov Interested Persons on the basis that they may by an act or omission have caused or contributed to Ms Sturgess' death. The investigation will include examining their movements in the United Kingdom following their arrival on 2 March 2018 until their departure on 4 March 2018. This will include what is known as regards their movements relative to the March 2018 incident here in Salisbury and in particular the attack on Mr Skripal and his daughter Yulia. It will also examine in detail their movements after they were spotted by a CCTV camera on the Wilton Road in Salisbury, a location which is in close proximity to Mr Skripal's home, and when they were subsequently picked up by other cameras closer to and in the centre of Salisbury. It will look at to what extent they were individually involved in bringing Novichok to Salisbury and what happened to the Novichok once it had been used in the attack relative to the appearance of Novichok again at the end of June 2018 in the town of Amesbury a few miles to the north of Salisbury. This part of the investigation is essential as, in discharging my

judicial role and hearing the evidence, I may have to consider whether the evidence supports the finding of a conclusion of "Unlawful Killing" in respect of Ms Sturgess' death. This in my view would fill in any investigative gap as regards the investigation into Ms Sturgess' death as unlike the position in relation to the death of Mr Litvinenko and the March 2018 incident, the CPS have not made a decision as regards criminal charges in relation to Ms Sturgess' death. As stated already at para 68 above this in my view will plug any deficiency or gap in relation to fully discharging the procedural duty under Article 2 by conducting an Article 2 compliant Jamieson inquest.

Who was responsible for Ms Sturgess death?

78. For reasons that I will elaborate on with regard to the next issue in relation to scope, provided it is limited to the acts and omissions of the two suspects, Mr Petrov and Mr Boshirov and of course Mr Rowley, who gave her the bottle of what he believed was perfume, then this will be covered in the inquest investigation. I have already given my reasons as to why I do not believe the United Kingdom as a state or through the actions of its agents has triggered the enhanced procedural obligation under Article 2 (the Osman duty) although I will keep that under review.

Whether members of the Russian state were responsible for the death?

79. This issue for me causes a problem on 3 fronts. Firstly, I am prohibited from determining matters of criminal liability on the part of a named person as this would directly contravene section 10(2)(a) Coroners and Justice Act 2009 (para 18 above). If as part of an investigation and upon considering the evidence I identify individuals involved, then they could not be named in the Record of Inquest as the death of Ms Sturgess has undoubtedly involved the commission of a criminal act e.g. the usage of an organo-phosphate nerve agent which is prohibited under International Law and Domestic Law. To contravene and ignore section 10(2) referred to above would be unlawful.

80. Secondly, this issue not only refers to potentially identifying individuals but also linking them to a foreign state. The determination of such a link would in my view be a direct violation of section 10(2)(b) Coroners and Justice Act 2009 which prohibits me determining matters of civil liability generally and would therefore be unlawful. Whilst states do not generally attract criminal liability (unless legislation says otherwise) they are recognised in law as a separate legal personality in the sense that a state can sue and be sued. Mr Rowley has indicated only recently in the press that he intends

to sue Russia for £1 million pounds. That would be a civil claim. The family may also possibly be able to sue for example under the Fatal Accidents Act 1976, an alternative civil claim.

81. Leading on from the above, if such a connection were to be found having analysed the evidence, then that potentially could amount to a violation of the European Convention on Human Rights in respect of the "Right to Life". The Russian Federation ratified the European Convention on Human Rights in 1998. It is for the purposes of the said Convention a Contracting State. Generally, the obligation to protect life under the Convention is the responsibility, as I have already stated, of the state within whose territory the individual(s) exist. The Convention is living instrument and over the years case law, as already highlighted, has developed exceptions to the jurisdictional territorial principle contained in Article 1 of the Convention. The *Guzelyurltu* case I have already highlighted as a prime example insofar as placing an obligation under Article 2 to investigate the deaths of individuals that occurred, in that case, within the territory of another Contracting State. Another example recognised by the European Court of Human Rights is where there is a use of force by a state's agents operating outside its own territory (see para 13 of Ms McGahey QC's submission referencing the case of Al Skeini and others v United Kingdom (2011)). This is something that has been suggested by Mr Mansfield QC in his submission and the United Kingdom Government insofar as the Russian Federation is concerned in relation to the March 2018 incident here in Salisbury. The Chamber of the European Court of Human Rights in the case of *Issa and others v Turkey* no. 31821/96 (2004) at para 71 found that Article 1 of the Convention (see para 50 above) cannot be interpreted so as to allow a state party to perpetrate violations of the Convention on the territory of another state, which it could not perpetrate on its own territory. Such a civil claim would be founded on the European Court of Human Rights power under Article 41 of the Convention to award "just satisfaction" to those who have suffered violations of their Human Rights. It is an award relative to a claim for compensation or damages to an injured party. Such a claim is also a civil claim so the identification and determination of any wrongdoing here involving a foreign state would again be unlawful and contravene section 10(2)(b) Coroners and Justice Act 2009.

82. The final concern relates to my exercise of judicial discretion relative to determining how, meaning by what means, Ms Sturgess came by her death. There is no evidence that points to Ms Sturgess being the intended target of the March 2018 attack. Evidence points to that individual being Mr Skripal. The incident involving Ms Sturgess occurred nearly

four months after the attack on the 4 March 2018. Ms Sturgess, on the face of the evidence I have seen, appears to have been in the wrong place at the wrong time and her death may well have arisen as a result of "collateral damage", a phrase that I apologise in using but I am unable to express it any other meaningful way. Ms McGahey QC described Ms Sturgess as a victim of unpredictable misfortune. In my view issues to do with the possible involvement of a foreign state and members of that state relative to conducting a Jamieson inquest are too remote in circumstances where my focus should be on matters that are directly causative or contributory to the death and as a consequence of the above three concerns, I rule that they fall outside the scope of this inquest.

The source of the Novichok that killed Ms Sturgess?

83. Again, for the same reasons I have given in the previous paragraphs numbered 79 – 82, I rule that it falls outside the scope of this inquest for being too remote in respect of a Jamieson inquest and to determine the source of the Novichok would I fear involve determining a country of origin which is likely to give rise to a determination of civil liability which in itself would be unlawful.

84. In relation to this issue and the previous issue above, as I alluded to in my preliminary view dated 19 September 2019 which was sent to all the Interested Persons, the case of *Coroner for Birmingham Inquests (1974) v Hambleton* [2018] EWCA Civ 2081 provided helpful confirmation of the existing case law. When it came to the perpetrator issue and the identification of those involved in relation to the pub bombings, the Lord Chief Justice, Lord Burnett said as follows at para 56 in relation to the perpetrator issue:

"It is difficult to criticise the coroner, still less to stigmatise as unlawful a decision to refuse to explore a distinct question which the jury is prohibited by statute from answering."

The reference above of course is to the prohibition on appearing to determine matters, in an inquest, of criminal liability on the part of a named person or civil liability generally. He had earlier indicated at para 51 of his judgment in relation to the coroner's approach to the issue of scope as follows:

"The Coroner was correct to consider the question of scope in the context of providing evidence to enable the jury to answer the four statutory questions. The scope of an inquest is not determined by looking at the broad circumstances of what occurred and requiring all matters touching those circumstances to be explored."

> This has very much been my approach when initially considering the issue of scope back in September 2019 and now, focussing on what evidence I need to examine so as to enable me, in accordance with the Coroners and Justice Act 2009 to ascertain the answers, subject to the evidence, to the four statutory questions namely, who, when, where and how (by what means) the deceased died."

22. In paragraph 85, the Senior Coroner recorded that he would also consider another issue, namely the medical care given to Ms Sturgess. From paragraph 86 onwards, he made general observations dealing with additional points in the written submissions made on behalf of the Claimant and also observations on whether Russia may be under an obligation to investigate the death. He indicated that he would be prepared to release the coroner's file to the Russian Federation for those purposes. In paragraph 91, the Senior Coroner noted that, in the inquest into the killing of Alexander Litvinenko, Sir Robert Owen had ruled, recognising the public interest, that the alleged Russian involvement in the death of Mr Litvinenko should be included within the scope of the inquest. The Senior Coroner stated that he had given his reasons for concluding that, in this case, in the exercise of his judicial discretion he had concluded that that issue fell outside the scope of the inquest. He stated that he did acknowledge "the public interest factor in this case". He made observations on the appropriateness of inquests to deal with certain matters. He referred to the restrictions imposed by the 2009 Act on what coroners are allowed to ascertain. He made observations on possible difficulties in dealing with sensitive material in an inquest.

THE PROCEEDINGS

23. The Claimant issued a claim form on 17 March 2020 seeking judicial review of the decision of the Senior Coroner not to investigate the responsibility of Russian officials other than Mr Petrov and Mr Boshirov for the death of Dawn Sturgess, or the source of the Novichok that killed her. Permission to apply for judicial review was granted. The claim form sets out two grounds of claim. Ground 1 contends that the decision of the Senior Coroner was unlawful for each of four reasons. Ground 2 deals with Article 2 of the Convention. The grounds in summary are:

    Ground 1a. The Defendant's reasoning was inconsistent and irrational. The primary reason for not investigating other Russian officials (including others involved in the United Kingdom or those in command) was that there was a prohibition on determining civil or criminal liability. That prohibition applied equally to Mr Petrov and Mr Boshirov but did not prevent the investigation of the responsibility of those two men. Similarly, reliance on the fact that Ms Sturgess was not the intended victim of the attack was inconsistent as this was not being held to prevent an investigation into the responsibility of Mr Petrov and Mr Boshirov;

    Ground 1b. The Defendant erred in failing to take into account material considerations relating to what informative inquest conclusions could in fact be

reached. The Defendant failed to recognise that the prohibition on the determination of civil or criminal liability would not prevent informative conclusions as to the responsibility of Russian officials or agents nor that the investigation of these issues would in any event serve important functions;

Ground 1c. The Defendant failed to take into account relevant considerations namely the grave public interest at stake and the coronial function of exposing wrongdoing and allaying suspicion.

Ground 1d. The Defendant misdirected himself in holding that a determination of state wrongdoing would contravene the prohibition on a determination of civil liability.

Ground 2. The Defendant erred in concluding that Article 2 of the Convention did not require him to investigate the issue of Russian state responsibility and the source of the Novichok.

24. At the hearing on 14 and 15 July 2020 the Claimant, the Senior Coroner and the Secretary of State for the Home Department were represented by counsel and made written and oral submissions. The second and third interested parties, that is Mr Petrov and Mr Boshirov, did not participate in the proceedings. The Senior Coroner appeared solely to assist the Court in deciding whether his rulings were correct in law and indicated that, if not, he would welcome guidance on the future conduct of the inquest. The Secretary of State sought to uphold the rulings of the Senior Coroner.

25. The hearing was conducted remotely by video link because of the current coronavirus pandemic. It was a public hearing. The parties, members of the media and others had access to a link and could (and at least one member of the media did) observe proceedings. We are grateful to counsel for their submissions. We are also grateful to them and their legal teams for the preparation of the necessary materials and authorities which enabled the hearing to be conducted quickly and efficiently.

GROUND 2 – ARTICLE 2 OF THE CONVENTION

Submissions

26. The Claimant began her case with a consideration of Ground 2 and the scope of Article 2 of the Convention. Mr Adam Straw submitted that the United Kingdom was under an obligation to investigate arguable breaches of Article 2 of the Convention by the agents of a foreign state which resulted in a death in the United Kingdom. He submitted that the obligation would not arise simply because the other foreign state failed to investigate. Rather, the obligation only arose where an effective investigation could not take place in the foreign state. In the present case, he submitted, there was an obligation on the United Kingdom to investigate the responsibility of Russian agents in the killing of Dawn Sturgess because an investigation into the death could not effectively be carried out in Russia. The family and potential witnesses were present in the United Kingdom and would be likely to be unwilling to travel to Russia. The biological samples were in the United Kingdom and the United Kingdom authorities would not provide the samples to Russia. Mr Straw expressly accepted that the United Kingdom acted reasonably in refusing to provide the underlying samples and was not in breach of any obligation to co-operate.

27. Mr Straw submitted that the conclusion that there was a duty on the United Kingdom authorities to investigate actions of the Russian state was consistent with the decision of the Grand Chamber of the European Court of Human Rights in *Guzelyurtlu v Cyprus and Turkey* (2019) 60 EHRR 12. He accepted, however, that that case did not determine the issue that arose in this case. There was no authority either way on the question of whether Article 2 of the Convention imposed an obligation on the United Kingdom in the present circumstances to investigate the actions of a foreign state. He submitted that the development of such an obligation was consistent with the principles recognised in *Guzelyurtlu* and other cases such as *Al-Skeini v United Kingdom* (2011) 53 EHRR 18.

28. Sir James Eadie Q.C., for the Home Secretary, submitted that Article 2 of the Convention did not impose an obligation on the United Kingdom to investigate the actions of a foreign state. Article 2 imposed substantive obligations on a state not to take life without lawful justification and to have in place effective criminal law provisions to protect life supported by appropriate enforcement machinery to prevent or punish such breaches. It also imposed a duty to take reasonable measures to protect life when the state knows or ought to know of a real and imminent threat to life. In addition, Article 2 of the Convention imposed procedural obligations applicable in cases where there were reasons to suspect that a state was in breach of its substantive obligations. The essential purpose of that procedural obligation was to ensure that the state was held to account for breaches by it or its agents of the state's obligation under Article 2 of the Convention. That article did not impose obligations on one state to investigate credible allegations of a breach by another state of that other state's obligations. There was no authority supporting the existence of such a duty. It was inconsistent with the decision of the Divisional Court in *R (Litvinenko) v Secretary of State for the Home Department* [2014] H.R.L.R. 6.

29. Furthermore, Sir James submitted that there was no basis for concluding on the facts that an effective investigation *could not* take place in Russia. The key evidence in relation to the development of the Novichok was in Russia and the persons accused of involvement in the plot to bring Novichok to the United Kingdom to try and kill Mr Skripal were in Russia. The reality was that Russia would not investigate and would not accept responsibility for the use of Novichok in the United Kingdom. In those circumstances, the particular factual premise which, the Claimant argued, underlays the imposition of an obligation on the United Kingdom was not made out.

30. Mr Nicholas Moss for the Senior Coroner drew attention to the detailed ruling of the Senior Coroner on the scope of the duty imposed by Article 2 of the Convention and his review of the case law. He submitted that it was for this court to determine whether that ruling was correct.

Discussion

31. Article 2 of the Convention provides as follows:

> "Article 2 Right to Life
>
> 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which no more than absolutely necessary:
   (a) in defence of any person from lawful violence;
   (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
   (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

32. The issue in this case is whether a state where a death has occurred is required by Article 2 of the Convention to carry out an investigation into the actions of agents of a foreign state who may be responsible for the death. In our judgment, the procedural obligation imposed on a state by Article 2 of the Convention is intended to ensure that a state is held accountable for breaches for which it is or its own agents are responsible. It is not intended to impose an obligation on a state to investigate the actions of a foreign state which may have caused or contributed to a death. Article 2 of the Convention does not, therefore, impose an obligation on the United Kingdom to carry out an investigation of the actions of agents of a foreign state, Russia, in the present circumstances. We reach that conclusion for the following reasons.

33. First, the structure of Article 2 is to impose substantive obligations on a state to protect life. The procedural obligations are ancillary to those substantive obligations. They are intended to ensure that there is an effective investigation of breaches by that state of its substantive obligations. Thus, Article 2 of the Convention imposes substantive obligations on a state not to take life intentionally without lawful justification and to have in place effective criminal laws, backed by enforcement machinery, to deter crimes against the person. A state must also take reasonable measures to protect an individual where the state knows, or ought to know, that there is a real and immediate risk to his life. See *R (Amin) v Secretary of State for the Home Department* [2004] 1 A.C. 652 at paragraph 20; *R (Middleton) v West Somerset Coroner* [2004] 2 A.C. 182 at paragraph 2.

34. Article 2 of the Convention also imposes procedural obligations on a state. The precise scope of those obligations differs according to the circumstances. Where a person has died in suspicious circumstances, but there is no suggestion of state involvement, the obligation to have in place effective criminal law provisions supported by enforcement machinery includes an obligation to have some form of effective investigation into the death. That may be satisfied by a police inquiry, or an inquest (conducted under section 5(1) of the 2009 Act) or a combination of both. See, e.g., *Menson v United Kingdom* (2003) 37 EHRR CD 220 at 229. More extensive procedural obligations are imposed on a state where the death results from killings deliberately, or allegedly, carried out by agents of the state. There is then an obligation to initiate an effective public investigation by an independent official body. See *Jordan v United Kingdom* (2003) 37 EHRR 2; *Amin* at paragraph 20; and *Middleton* at paragraph 3. In each situation, however, the purpose of the procedural obligation is linked to determining whether that state has complied with its own substantive obligations. The procedural obligations are intended to ensure that a state holds its agents to account for deaths occurring under their responsibility.

35. Secondly, the case law demonstrates that the situations where the European Court has imposed additional procedural duties on a state arise when that state's own agents have been responsible for a breach of the right to protect life. By way of example, in *Al-Skeini v United Kingdom* (2011) EHRR 18 the European Court of Human Rights

was dealing with a situation where British soldiers had killed Iraqi citizens in Iraq following the invasion and occupation of Iraq by the United States and the United Kingdom. The Court held first that the United Kingdom was exercising the public powers normally exercisable by a sovereign government and had assumed responsibility for south-eastern Iraq. The United Kingdom exercised authority and control through its soldiers over individuals in that area and those individuals came within the scope of the United Kingdom's jurisdiction under Article 1 of the Convention. In that context, the Court held at paragraph 163 of its judgment (footnotes omitted) that:

> "The obligation to protect the right to life under this provision, read in conjunction with the state's general duty under art. 1 of the Convention "to secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention" requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the state. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility."

36. In other words, the aim underlying the procedural obligations was to ensure that the state whose duty it was to secure the protection of life held its agents accountable for deaths for which its agents were responsible. That appears clearly from the section of the judgment where the Court applies those principles to the facts of the case. The procedural obligation applied to the United Kingdom because it was in occupation and it was under a duty to conduct an effective investigation into acts of its own soldiers: see paragraphs 168 to 177 of the judgment.

37. A similar approach is seen in other Strasbourg cases where the concern is that a state may be in breach of its substantive obligations as the result of its agents. In those circumstances, it must hold an effective investigation to hold its agents to account for deaths for which they are responsible. See, e.g., *Jordan v United Kingdom* (2003) 37 EHRR 2 at paragraph 105, where the obligation on the United Kingdom to conduct an effective investigation arose in the context of the actions of its soldiers in using lethal force in Northern Ireland. There are no instances of the European Court of Human Rights holding that Article 2 of the Convention obliges one state to hold the agents of another state to account for breaches by that other state of that state's substantive obligations.

38. Thirdly, the principle that the purpose underlying the procedural obligations imposed by Article 2 of the Convention is to ensure that a state is held accountable for breaches for which its own agents are responsible is recognised in the domestic case law. In *R (Middleton) v West Somerset Coroner* [2004] 2 A.C. 182, Lord Bingham expressed the position in the following way in paragraph 3 of the opinion of the Appellate Committee:

> "3. The European Court has also interpreted article 2 as imposing on member states a procedural obligation to initiate

> an effective public investigation by an independent official body into any death occurring in circumstances in which it appears that one or other of the foregoing substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated."

39. In other words, Lord Bingham recognised the link between a breach by a state of its substantive obligations under Article 2 of the Convention and the fact that agents of that state are or may be implicated in the breach. The procedural obligations are directed towards the conduct of agents of that state. It is the fact that a state's own agents have caused that state to be in breach of its substantive obligations that gives rise to a need for an effective public investigation.

40. A similar approach emerges in the decision of the Court of Appeal in *R (Maguire) v HM Senior Coroner for Blackpool Fylde and others* [2020] EWCA Civ 738. That case concerned an inquest into the death of a woman with learning disabilities and behavioural difficulties in a care home where she had been placed by the local authority. At paragraph 11 of the judgment the Court of Appeal observed that:

> "The procedural obligation to investigate deaths for which the state might bear responsibility was developed by the Strasbourg Court as an adjunct to the substantive obligations on the state not to take life without justification and, in limited circumstances, to protect life as well as to establish a framework of laws, procedures and means of enforcement that will protect life. The court set out its content in *Jordan v United Kingdom* (2001) 37 EHRR 2 between paragraphs 105 and 109. Critically, this procedural obligation requires the state to initiate an investigation into a death for which it may bear responsibility".

41. The Court of Appeal considered the scope of the duty and the reasons why it might be owed. As it observed at paragraph 72 of its judgment the unifying feature underlying the obligation was "state responsibility".

42. Fourthly, that conclusion accords with the decision of the Divisional Court in *Litvinenko*. That case concerned an inquest into the death of Alexander Litvinenko who was poisoned in London by Russian agents. The Divisional Court considered that the procedural obligations on the United Kingdom that arose in that case arose out of the obligation to put in place effective criminal law provisions, backed by effective enforcement, to deter the commission of offences against the person, that is, the kind of procedural duties recognised in *Menson v United Kingdom* where there was a suspicious death (but no suggestion of involvement by the agents of the state in the death).

43. The Divisional Court did not suggest that Article 2 of the Convention required the United Kingdom authorities to conduct an effective investigation into the actions of the Russian agents who had killed Mr Litvinenko. It is right to note that an argument to that effect had been rejected by the coroner and was not pursued by the Claimant in the Divisional Court (see paragraph 43 of the judgment). The decision of the

Divisional Court does not therefore decide the issue that arises in this case. It is right to note, however, that there was no suggestion in that case that one state, the United Kingdom, was obliged by reason of Article 2 of the Convention to investigate the actions of another state, Russia, whose agents were responsible for the killing of a person in the United Kingdom.

44. Finally, we do not consider that the decision in *Guzelyurtlu v Cyprus and Turkey* (2019) 69 EHRR 12 read properly and in context does support the development or creation of an obligation on one Convention Contracting State to investigate the actions of agents of another state. In that case, three individuals in the Republic of Cyprus were killed. The individuals who were thought to be responsible fled to the Turkish Republic of Northern Cyprus ("TRNC") for which Turkey was considered responsible under international law. Cyprus began a police investigation and requested the extradition of the suspects. Turkey also opened a criminal investigation into the case. One issue was whether Article 2 of the Convention imposed a procedural obligation on Turkey to carry out an investigation into deaths that had occurred in another state. The first of the passages on which the Claimant relies, paragraph 189, comes in a section of the judgment where the Court was considering that issue. The three relevant paragraphs are 188 to 190 where the Court said (footnotes omitted):

> "188. In the light of the above-mentioned case-law it appears that if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of art.1 between that state and the victim's relatives who later bring proceedings before the Court.
>
> 189. The Court would emphasise that this approach is also in line with the nature of the procedural obligation to carry out an effective investigation under art.2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision. In this sense it can be considered to be a detachable obligation arising out of art.2 and capable of binding the state even when the death occurred outside its jurisdiction.
>
> 190. Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by art.2 to come into effect in respect of that state. Although the procedural obligation under art.2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death,

> "special features" in a given case will justify departure from this approach, according to the principles developed in *Rantsev*. However, the Court does not consider that it has to define *in abstracto* which "special features" trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under art.2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other."

45. The reference in paragraph 189 to the obligation in Article 2 of the Convention being " separate and autonomous" and a "detachable obligation" does not begin to support the development of an obligation on a state where a death has occurred to investigate the actions of agents of another state thought to be responsible for the death. The context is different. The Strasbourg Court was dealing with the question of whether a state other than the state where the death occurred could be liable to a procedural duty to investigate the death. It held that, in general, a state would not be under any procedural obligation under Article 2 of the Convention in respect of a death occurring outside its territory. In special circumstances, however, there could be a jurisdictional link with that other state giving rise to a procedural obligation under Article 2 of the Convention. Those circumstances include a situation where that other state had opened a criminal investigation or where the individuals concerned had fled to that other state. On the facts of the *Guzelyurtlu* case, those circumstances meant that there was a jurisdictional link with Turkey, a state where the death had not occurred. The case was not concerned with the situation in the present case where the death occurred in one state (here the United Kingdom) and the issue is whether that state was obliged to investigate the actions of agents of another state (Russia) which may have caused the death. The reference to the procedural obligation in Article 2 of the Convention being a "separate and autonomous" or "detachable" obligation was simply not addressed to that situation. Those references do not suggest that a state where a death has occurred must in certain undefined circumstances investigate the actions of another state.

46. The second passage on which the Claimant relies is contained in paragraphs 232 to 234 of the judgment. There the Court was considering the obligation on contracting states to co-operate in cross-border cases, that is where the death occurred in one state but, because of special circumstances, another state was also under a procedural obligation under Article 2 of the Convention. The Court said this (footnotes omitted):

> "231. By contrast, in the present case the two states concerned claimed concurrent jurisdiction to investigate a death and a free-standing obligation to carry out an art.2 -compliant investigation arose in respect of both of them.
>
> 232. The Court has previously held that in interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. This collective character may, in some specific circumstances, imply a duty for Contracting States to act jointly and to co-operate in order to protect the rights and freedoms they have undertaken to secure within their jurisdiction. In cases where an effective investigation into an

> unlawful killing which occurred within the jurisdiction of one Contracting State requires the involvement of more than one Contracting State, the Court finds that the Convention's special character as a collective enforcement treaty entails in principle an obligation on the part of the states concerned to co-operate effectively with each other in order to elucidate the circumstances of the killing and to bring the perpetrators to justice.
>
> 233. The Court accordingly takes the view that art.2 may require from both states a two-way obligation to co-operate with each other, implying at the same time an obligation to seek assistance and an obligation to afford assistance. The nature and scope of these obligations will inevitably depend on the circumstances of each particular case, for instance whether the main items of evidence are located on the territory of the Contracting State concerned or whether the suspects have fled there.
>
> 234. Such a duty is in keeping with the effective protection of the right to life as guaranteed by art.2. Indeed, to find otherwise would sit ill with the state's obligation under art.2 to protect the right to life, read in conjunction with the state's general duty under art.1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", since it would hamper investigations into unlawful killings and necessarily lead to impunity for those responsible. Such a result could frustrate the purpose of the protection under art.2 and render illusory the guarantees in respect of an individual's right to life. The object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective."

47. The reference to the Convention as a treaty for the collective enforcement of human rights again does not begin to suggest that there is a duty on one state where a death occurs to investigate the actions of the agents of another state who may have been responsible for the death. The passages are dealing with the unusual situation where two states have jurisdiction and both are under procedural obligations. They deal with the obligations on those states to co-operate. In the case of Cyprus, the European Court found that it had complied with its duty to co-operate by seeking to use all reasonable means available to it to obtain the extradition of the suspects from Turkey and it was not required to supply the whole investigation file to another state. By contrast, Turkey had not complied with its duty to co-operate, as it had failed to provide an explanation for the refusal to extradite the suspects. Neither the language, nor the facts, of this aspect of the case means that there is a duty on a state where a death has occurred to investigate the actions of agents of another state believed to be implicated in that death.

48. For all those reasons, we conclude that the Senior Coroner was correct in ruling that the requirements of Article 2 of the Convention did not oblige him to carry out an

investigation into the responsibility of Russian agents or the Russian state for the death of Dawn Sturgess.

49. In those circumstances, it is not necessary to consider whether the factual premise underlying this ground of the claim, namely that there could not be an effective investigation in Russia of the death, is made out. We doubt, however, that the problem in this case is that Russia *cannot* investigate the death, particularly given that key evidence on the development of Novichok is in Russia and, it seems, those accused are in Russia or under the authority and control of Russia.

GROUND 1 – DOMESTIC LAW

Submissions

50. Henrietta Hill QC, on behalf of the Claimant, submitted that the Senior Coroner's reasoning for why the inquest should not investigate wider Russian responsibility was flawed. Ms Hill submitted that at paragraphs 79 to 82 of his ruling, the Senior Coroner gave three reasons for narrowing the scope in this way: to avoid determining criminal liability of a named person (paragraphs 79); to avoid determining civil liability in respect of individuals and of the Russian state (paragraphs 80 and 81); and because Russian responsibility was too remote from the circumstances surrounding Ms Sturgess' death, given that Ms Sturgess was poisoned four months after the events in Salisbury and was not the intended target of the attack (paragraph 82).

51. Ms Hill made some preliminary points about the provisions of the 2009 Act on which the Senior Coroner based his decision. She submitted that s.1 imposes a continuing investigative duty, notwithstanding the prohibition in s.10(2) against determining criminal liability on the part of a named person or determining civil liability. Ms Hill submitted that the s.10(2) prohibitions apply to determinations at the end of the inquest, so they do not prevent the investigation of criminal or civil liability. To the contrary, the prohibitions in s.10(2) should be interpreted "narrowly" so that the inquest can reach informative conclusions about who is responsible for the death. Ms Hill submitted lastly that the question of "how" the deceased came to her death can include investigating wider Russian responsibility even on the *Jamieson* interpretation of "how" as "by what means". Ms Hill relied on paragraphs 55 to 62 of the Divisional Court's decision in *Litvinenko* where the court rejected the Secretary of State's argument that the inclusion of wider Russian involvement went beyond the proper scope of a *Jamieson* inquest.

52. Ms Hill submitted that the Senior Coroner's reasoning at paragraphs 79 to 82 was flawed in four ways. First, it was inconsistent and irrational of the Coroner to decide that he could not investigate the responsibility of other Russian state agents in Ms Sturgess' death, on the basis that it could involve a determination of civil or criminal liability contrary to s.10(2), whilst deciding that he could investigate the responsibility of Mr Petrov and Mr Boshirov. Michael Mansfield QC, who addressed us on the facts, made the related point that in its current form, the inquest would be precluded from investigating issues which are inextricably connected to the actions of Mr Petrov and Mr Boshirov. If the inquest cannot investigate the directions given to these individuals, it will not be possible to investigate their full movements, purpose and intent. Mr Mansfield submitted that it would be highly artificial to consider their actions in isolation when it is inconceivable that they acted alone. He pointed to some

open source evidence in the bundle alleging that a third man, an officer in the Russian intelligence service GRU, spent the weekend of 3-4 March 2018 in London directing the movements of Mr Petrov and Mr Boshirov. "If you are investigating the movements of Petrov and Boshirov", Mr Mansfield asked, "why stop at Waterloo Bridge?"

53. Secondly, Ms Hill submitted, in deciding not to investigate wider Russian responsibility on the basis that it would contravene the prohibitions in s.10(2), the Coroner failed to take into account two material considerations. The first was that s.10(2) is a narrow prohibition: it should not prevent the inquest from making factual findings about who was responsible for Ms Sturgess' death or a conclusion of unlawful killing. The second consideration was that an equivalent prohibition to that in s.10(2) did not prevent the Litvinenko Inquiry making full findings as to Russian state responsibility; s.2 of the Inquiries Act 2005 prohibits the determination of "any person's civil or criminal liability", yet Sir Robert Owen still reached conclusions about the Russian Federal Security Service's role in directing the killing of Mr Litvinenko.

54. Thirdly, in considering that a determination of state wrongdoing would contravene the prohibition in s.10(2)(b) against determining civil liability, the Coroner misdirected himself in law. Wrongdoing is a broader concept than civil liability: a determination of wrongdoing does not necessarily amount to a finding of civil liability. Moreover, examining and determining state wrongdoing is one of the very objectives which an inquest is designed to achieve. The Coroner was wrong to rely on the very different case of *Coroner for Birmingham Inquests (1974) v Hambleton* [2018] EWCA Civ 2081 in support of his reasoning.

55. Lastly, the Senior Coroner failed to give sufficient weight to other relevant considerations in deciding not to investigate wider Russian responsibility. The first was the significant public interest generated by the killing of an innocent British citizen by foreign state agents using Novichok. The second was the role of an inquest in allaying public suspicion and exposing wrongdoing. At paragraph 91 of his ruling, the Senior Coroner acknowledged "the public interest factor in this case" but, in Ms Hill's submission, he failed to give this factor adequate weight in determining the scope of the inquest.

56. Sir James Eadie QC, on behalf of the Home Secretary, submitted that the Senior Coroner did not misdirect himself in law or fail to take into account a relevant consideration in deciding not to investigate wider Russian responsibility. Sir James first emphasised the wide discretion enjoyed by coroners in determining the scope of an inquest. He relied on paragraphs 47 and 48 of *Hambleton* for the proposition that there is a high threshold for interfering with the exercise of this discretion; the High Court can only intervene if the coroner's decision is *Wednesbury* unreasonable or based on a material error of law, for example. Sir James then drew our attention to paragraphs 53 to 56 of *Hambleton* which, in his submission, show that a coroner does not need to consider even the identity of those responsible for the death in order to discharge the requirement in s.5 to investigate "how" the deceased died when holding a *Jamieson* inquest.

57. Sir James submitted that the *Jamieson* interpretation of "how" as "by what means" should be distinguished from its *Middleton* meaning of "in what circumstances". In

his submission, "by what means" invites a direct question about the immediate or proximate causes of the death, but "in what circumstances" requires broader issues to be investigated. In the light of that distinction, the Senior Coroner was justified in reasoning at paragraph 82 of his ruling that wider Russian involvement in the attack was too remote to be investigated. It related to the circumstances in which Ms Sturgess died, rather than the means by which she died. In Sir James' submission, this was the key reason which the Senior Coroner gave for deciding not to investigate wider Russian responsibility and it was a legitimate exercise of his discretion.

58. Sir James rejected Ms Hill's submission that the Senior Coroner misdirected himself in relation to the prohibitions contained in s.10. Throughout his ruling, the Coroner recognised that the prohibitions applied only to the determination stage of an inquest and not during the investigation. Indeed, why else would the Coroner have decided that the actions of Mr Petrov and Mr Boshirov could be investigated without breaching s.10? Sir James submitted that the Coroner was merely acknowledging at paragraph 79 of his ruling that he should not determine criminal liability on the part of a named person and, similarly, at paragraph 80 that he should not determine civil liability. It does not follow that these acknowledgments constituted reasons for his decision not to investigate wider Russian responsibility. That decision was based on a legitimate exercise of his discretion to narrow the inquest's scope in order to prevent an investigation into excessively remote questions.

59. Sir James sought to distinguish the Divisional Court's decision in *Litvinenko* from the present challenge. He submitted that an inquiry serves a different function to an inquest and is not confined by s.5 CJA 2009 to investigating only the question of "how" the deceased came to his or her death. The Litvinenko Inquiry also differed because it concerned the direct target of the attack as opposed to the unintended target. Lastly, Sir James rejected Ms Hill's argument that the Coroner failed to give sufficient weight to the public interest.

60. Mr Nicholas Moss, for the Senior Coroner, assisted us by drawing attention to particular passages in the ruling and referred us to the applicable law. He accepted, quite rightly, that the ruling, like any judicial decision, has to speak for itself, and that it is not open to the Senior Coroner or counsel on his behalf to explain what he meant to say.

Discussion

61. The purpose of a coronial investigation to which the enhanced duty under s 5(2) of the 2009 Act does not apply is to ascertain the answers to the four questions of who the deceased was, and how, when and where she came by her death. In the present case there is no difficulty about the "who, when and where" questions – the issue is the meaning of "how". The classic authority is the judgment of the Court of Appeal delivered by Sir Thomas Bingham MR in *R v HM Coroner for North Humberside and Scunthorpe ex p Jamieson* [1995] QB 1, one of the (sadly many) cases concerning a prisoner found hanging in his cell. We note that it was submitted to the court by Mr Ian Burnett on behalf of the coroner in that case that "the "how" question must not become equated with a "why" question".

62. Sir Thomas Bingham cited a number of authorities, including the observation of Lord Lane CJ in *R v South London Coroner ex p Thompson* cited above. He then

summarised the law in 14 points (at [1995] QB pages 23G to 26D) of which the relevant ones for present purposes are as follows:

> "(1) An inquest is a fact-finding inquiry conducted by a coroner, with or without a jury, to establish reliable answers to four important but limited factual questions. The first of these relates to the identity of the deceased, the second to the place of his death, the third to the time of death. In most cases these questions are not hard to answer but in a minority of cases the answer may be problematical. The fourth question, and that to which evidence and inquiry are most often and most closely directed, relates to how the deceased came by his death. Rule 36 requires that the proceedings and evidence shall be directed solely to ascertaining these matters and forbids any expression of opinion on any other matter.
>
> (2) Both in section 11(5)(b)(ii) of the Act of 1988 and in rule 36(1)(b) of the Rules of 1984, "how" is to be understood as meaning "by what means." It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but "how … the deceased came by his death," a more limited question directed to the means by which the deceased came by his death.
>
> (3) It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. This principle is expressed in rule 42 of the Rules of 1984. The rule does, however, treat criminal and civil liability differently: whereas a verdict must not be framed so as to appear to determine any question of criminal liability *on the part of a named person*, thereby legitimating a verdict of unlawful killing provided no one is named, the prohibition on returning a verdict so as to appear to determine any question of civil liability is unqualified, applying whether anyone is named or not.
>
> (4) This prohibition in the Rules is fortified by considerations of fairness. Our law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards rightly regarded as essential to the fairness of the proceedings, among them a clear statement in writing of the alleged wrongdoing, a right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact. These rights are not granted, and the last is expressly denied by the Rules, to a party whose conduct may be impugned by evidence given at an inquest.
>
> (5) It may be accepted that in case of conflict the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in rule 42. But the scope for conflict is small. Rule 42 applies, and applies only, to the verdict. Plainly

> the coroner and the jury may explore facts bearing on criminal and civil liability. But the verdict may not appear to determine any question of criminal liability on the part of a named person nor any question of civil liability.
>
> (6) There can be no objection to a verdict which incorporates a brief, neutral, factual statement: "the deceased was drowned when his sailing dinghy capsized in heavy seas," "the deceased was killed when his car was run down by an express train on a level crossing," "the deceased died from crush injuries sustained when gates were opened at Hillsborough Stadium." But such verdict must be factual, expressing no judgment or opinion, and it is not the jury's function to prepare detailed factual statements.
>
> …
>
> (14) It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without, to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is bound to recognise the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory. But the responsibility is his. He must set the bounds of the inquiry. He must rule on the procedure to be followed. His decisions, like those of any other judicial officer, must be respected unless and until they are varied or overruled."

63. In *R (Hambleton) v Coroner for the Birmingham Inquests (1974)* [2019] 1 WLR 3417 Lord Burnett of Maldon CJ (as he had by then become) said at [51]:-

> "The scope of an inquest is not determined by looking at the broad circumstances of what occurred and requiring all matters touching those circumstances to be explored."

64. It is well established that the coroner's discretion as to scope is a broad one. This was emphasised by Sir Thomas Bingham in point (14) of his summary of the law in *Jamieson.* It was also succinctly expressed by Simon Brown LJ in *R v Inner West London Coroner ex p Dallaglio* [1994] 4 All ER 139 (a case quite unlike the present one, in that the coroner had demonstrated apparent bias) when he said at paragraph 155:-

> "… the inquiry is almost bound to stretch wider than strictly required for the purposes of a verdict. How much wider is pre-eminently a matter for the coroner whose rulings upon the question will only be exceptionally be susceptible to judicial review."

65. In *Hambleton* the Lord Chief Justice said:-

> "48. A decision on scope represents a coroner's view about what is necessary, desirable and proportionate by way of investigation to enable the statutory functions to be discharged. These are not hard-edged questions. The decision on scope, just as a decision on which witnesses to call, and the breadth of evidence adduced, is for the coroner. A court exercising supervisory jurisdiction can interfere with such a decision only if it is infected with a public law failing. It has long been the case that a court exercising supervisory jurisdiction will be slow to disturb a decision of this sort (see Simon Brown LJ in *Dallaglio* at [155] cited in [21] above) and will do so only on what is described in omnibus terms as *Wednesbury* grounds. That envisages the supervisory jurisdiction of the High Court being exercised when the decision of the coroner can be demonstrated to disable him from performing his statutory function, when the decision is one which no reasonable coroner could have come to on the basis of the information available, involves a material error of law or on a number of other well-established public law failings.
>
> 49. The dichotomy between judgement and discretion identified by the High Court, does not, with respect, assist in determining whether the coroner erred in law in deciding not to investigate the perpetrator issue. It is a false dichotomy in these circumstances which does not find support in authority. The court is not liberated from the ordinary constraints of judicial review on the basis that it considers that the coroner was "wrong".
>
> 50. The authorities speak in terms of a discretion to set the bounds of an inquest. The Chief Coroner's Law Sheet No. 5 sets out references to cases where that principle has been stated. It is sufficient to note the observations of Lord Mance at [208] in *R v Secretary of State for Defence, ex parte Smith* [2011] 1 AC 1 that "[e]veryone agrees that coroners have a considerable discretion as to the scope of their inquiry"; and of Hallett LJ in R *(Sreedharan) v HM Coroner for the County of Greater Manchester* [2013] EWCA Civ 181, at [48] that "the Coroner has a broad discretion as to the nature and extent of the inquiry". The principle was recently restated in *R (Maguire) v Assistant Coroner for West Yorkshire (Eastern Area)* [2018] EWCA Civ 6, at [3] where the context was whether to call certain witnesses….."

The Litvinenko case

66. The Senior Coroner referred at paragraphs 58-59 of his ruling to the case of Alexander Litvinenko which, as he rightly said, involved facts that bore a remarkable similarity to those of the present case. Mr Litvinenko died in a London hospital on 23

November 2006 from radiation poisoning having ingested polonium-210. As we have noted, the allegation was that he died as a result of an attack carried out by two agents of the Russian state. Owen J was appointed as assistant coroner to conduct the inquest and continued (as Sir Robert Owen) in that capacity when he retired from the High Court shortly after accepting the appointment. We need not trace for present purposes the subsequent history of the case and the replacement of the inquest by a public inquiry under s 1 of the Inquiries Act 2005. But we note the extent of the "Provisional List of Issues" which Sir Robert set out at the stage when he was still acting as assistant coroner under the 2009 Act. These were wide-ranging. They went far beyond the immediate circumstances of Mr Litvinenko's death in hospital and the movements of the two men, Andrey Lugovoy and Dmitry Kovtun, who were alleged to have poisoned Mr Litvinenko at a London hotel. They included, for example, the possible involvement of Russian state agencies (and indeed other groups and individuals) in Mr Litvinenko's death.

67. We asked Sir James whether it would have been a lawful exercise of discretion by Sir Robert Owen to confine the scope of the Litvinenko inquest to the immediate circumstances of Mr Litvinenko's death in hospital, his encounter with Mr Lugovoy and Mr Kovtun at the hotel and the movements of those two individuals at or around that time. Sir James' reply was that it would. Turning to the present case, we asked Sir James whether it would have been a lawful exercise of discretion for the Senior Coroner to rule that the scope of the inquest would be even narrower than is at present proposed, by being limited to the discovery by Mr Rowley of the perfume bottle containing Novichok, its opening and the fatal consequences for Ms Sturgess. Again, Sir James replied that it would.

68. It might seem surprising to members of the public, and certainly to a widow or other bereaved relative in the position of Mrs Litvinenko, to learn that the question of whether the coronial investigation of her husband's death should be as broad-ranging as Sir Robert Owen's proved to be or as narrow as Sir James submitted it could have been, or somewhere in between, can depend on the largely unreviewable discretion of the individual coroner appointed to hear the case.

The Coroner's reasons for his ruling on scope

69. The Senior Coroner stated at paragraph 78 that his investigation of the question of who was responsible for Ms Sturgess' death would be "limited to the acts and omissions of the two suspects, Mr Petrov and Mr Boshirov and of course Mr Rowley, who gave her the bottle of what he believed was perfume." He then explained in paragraphs 79-82 why he did not consider that the question of whether members of the Russian state were responsible for the death should come within the scope of the inquest. His first concern, the prohibition from determining criminal liability on behalf of a named person, is set out at paragraph 79; his second, the prohibition on determining matters of civil liability at paragraphs 80 and 81; and his third, (which we will summarise for the moment as "remoteness") at paragraph 82.

70. We cannot agree with Sir James Eadie's submission that paragraphs 79, 80 and 81 are not reasons for the decision but merely concerns set out as background or preliminaries to the ruling in paragraph 82. The four paragraphs 79 to 82 begin with the statement that including the issue of whether members of the Russian state were responsible "causes a problem on three fronts" and end by saying that "as a

consequence of the above three concerns, I rule that they [ie those issues] fall outside the scope of the inquest". Similarly, when the Senior Coroner went on to rule in paragraph 83 that the source of the Novichok that killed Ms Sturgess was to be outside scope, he said that he did so "for the same reasons I have given in the previous paragraphs numbered 79-82" before going on to emphasise both remoteness and the civil liability issue. It is clear to us that the decision as to scope was reached on the basis of three cumulative reasons. The Senior Coroner did *not* say that any one of the three would have been enough in itself to justify limiting the scope of the inquest in the way in which he ruled it should be limited.

71. We turn to considering each of the three reasons.

The prohibition on determining criminal liability of a named person

72. Ms Hill QC criticises paragraph 79 for two reasons. Firstly, *investigating* whether Russian state actors (even specific individuals) were responsible for the death would not contravene the prohibition in s 10(2)(a) of the 2009 Act on determining criminal liability on the part of a named person: in so holding the coroner made a material error of law. Secondly, if it would, then so too would investigation of the activities of Mr Petrov and Mr Boshirov; and the distinction drawn between them and others under this heading is irrational.

73. As to the nature of the s 10(2)(a) prohibition, both Mr Moss and Sir James drew our attention to the use in paragraph 79 of the phrase "I am prohibited from *determining*" rather than "I am prohibited from *investigating*"; it was submitted that this wording demonstrated that this experienced Senior Coroner was well aware of the distinction between investigation and determination, and made no error of law. But it seems to us, with respect to the Coroner, that paragraph 79 is flawed however one looks at it. If, as we interpret that paragraph, it elides the distinction between investigating and determining, that is a material error of law. But if the Senior Coroner really was focussing on the distinction, then he has given no reason why the prohibition on determining criminal liability on the part of a named person is a reason for excluding the issue of Russian state agents' responsibility; still less why, if it were a valid reason for limiting the scope of the inquest, it would not apply *a fortiori* to investigating the activities of Mr Petrov and Mr Boshirov. Nor does the reference to the use of a nerve agent prohibited under domestic and international law which "undoubtedly involved the commission of a criminal offence" take the matter any further; again, this applies *a fortiori* to Mr Petrov and Mr Boshirov.

74. The Senior Coroner referred to, and Sir James relied on, the observation of the Lord Chief Justice in *Hambleton* that "it is difficult to criticise the coroner, still less to stigmatise as unlawful, a decision to refuse to explore a distinct question which the jury is prohibited by statute from answering". The crucial word in that sentence, in our view, is "distinct", as can be seen from examining the facts of *Hambleton*.

75. In November 1974 the IRA had planted bombs in two crowded public houses in Birmingham and thereby caused the deaths of 21 people. The inquests into their deaths were adjourned when a prosecution of six men ("the Birmingham Six") for murder began. The Birmingham Six were convicted of murder in 1975 but their convictions were eventually quashed in 1991. The inquests were resumed in 2015. The Senior Coroner for Birmingham ruled that they could consider whether the state

had advance notice of the bombings and failed to take all reasonable steps to prevent loss of life.

76. Sir Peter Thornton QC, former Chief Coroner, was appointed as coroner to conduct the resumed inquests. He was asked to include within scope "the perpetrator issue", that is to say "the identities of those who planned, planted, procured and authorised the bombs used on 21 November 1974". In paragraphs 87 and 89 of his ruling, cited in the judgment of the Court of Appeal ([2019] 1 WLR 3417 at [29]), he said:

> "87. To permit the identity of perpetrators to be within scope, would be seen to be taking on the role, as one counsel put it, of a proxy criminal trial. If this were to result in a determination identifying those responsible for the attacks that would in my judgment be unlawful. It would contravene both the prohibition in section 10(2)(a) and in the case of the Birmingham 6 the additional prohibition in paragraph 8(5). It would also offend against the decision and explanation of Sir Thomas Bingham in *Jamieson* above.………….
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> 89. There are also practical difficulties which make the submissions on behalf of the families untenable. One cannot ignore the sheer size and complexity were the inquests to commence an investigation into the guilt of any named individuals. Years of police investigations, inquiries and reviews have yielded no clear result. It would be invidious for the inquests to attempt to do so now, 43 years on, with a fresh search. The approach would inevitably be piecemeal and incomplete, mostly reliant upon persons named in books and the press, mostly by journalists. It would be a task entirely unsuited to the inquest process and its limited resources; the Coroner's team does not have the resource of an independent police force. It would be disproportionate to the real goal in hand, which is important enough, namely to answer the four statutory questions."

77. *Hambleton* is an authoritative decision in that it emphasises, in terms consistent with the previous leading cases such as *Jamieson* and *Middleton*, the breadth of the coroner's discretion in deciding on the scope of the inquest. But the decision on the facts is plainly distinguishable from the present case on several grounds. The 1974 Birmingham pub bombs were planted as part of an IRA campaign: no one ever suggested otherwise. There had been a long murder trial in 1975 during which the facts had been examined in public at considerable length. In more than 40 years since the events in question, in Sir Peter Thornton's words, "years of police investigations, inquiries and reviews have yielded no clear result". Any finding at the resumed inquest that any of the Birmingham Six was among the perpetrators would clearly breach the prohibition on determinations inconsistent with the outcome of anterior criminal proceedings. Any attempt to identify other individual perpetrators in the

determination would contravene s 10(2)(a). In those circumstances it is unsurprising that the decision of this court to grant judicial review was reversed by the Court of Appeal who restored Sir Peter's ruling, observing at paragraph 32 that it was correct "essentially for the reasons he gave".

78. In the present case, by contrast, there has been no lapse of time of anything like 40 years, and no criminal trial of the alleged perpetrators. Investigating the source of the Novichok, and whether Messrs Petrov and Boshirov were acting under the direction of others either in London or in Russia, would not be a process designed to lead to a determination of a question which s 10(2)(a) prohibits the inquest from determining.

The prohibition on determining civil liability

79. Paragraph 80 begins by saying that "this issue", that is to say the possible responsibility of members of the Russian state, "not only refers to potentially identifying individuals but also linking them to a foreign state"; and that "the determination of such a link" would be a direct violation of s 10(2)(b). The rest of that paragraph considers the possibility of a civil claim against Russia by Mr Rowley or a Fatal Accidents Act claim by Ms Sturgess' family; paragraph 81 develops a similar theme in relation to possible claims against Russia before the European Court of Human Rights.

80. We bear in mind that, as Sir Thomas Bingham MR pointed out in *Jamieson,*, in contrast with s 10(2)(a), s 10(2)(b) prohibits the determination at an inquest from being framed in such a way as to appear to determine *any* question of civil liability, not merely the question of civil liability of a named person. Nevertheless we find this part of the Coroner's reasoning very puzzling. As Mr Moss accepted, the Inquest Rules permit a conclusion of unlawful killing, and such conclusions are returned by coroners or inquest juries in many cases every year. In some of these cases there will be only one possible candidate for blame, so that he, she or it is clearly identifiable, but that does not prevent a determination of unlawful killing from being made.

81. In the recent inquest into the Hillsborough Stadium disaster Sir John Goldring, the assistant coroner, left the question of unlawful killing (among many others) to the jury. In his directions to them about what they could add to their answers to questions, he included the following, which we consider plainly correct as a statement of what s 10(2) does and does not prohibit:

> "(f) You should not say anything to the effect that a crime or a breach of civil law duty of any kind has been committed. Note that this rule does not affect your answer to question 6 [whether those who died in the disaster were unlawfully killed]. Because of this rule, when writing any explanations, you should avoid using words and phrases such as "crime / criminal", "illegal / unlawful", "negligence / negligent", "breach of duty", "duty of care", "careless", "reckless", "liability", "guilt / guilty".
>
> (g) However, you may use ordinary and non-technical words which express factual judgments. So, you may say that errors or mistakes were made and you may use words such as "failure", "inappropriate", "inadequate", "unsuitable", "unsatisfactory",

> "insufficient", "omit / omission", "unacceptable" or "lacking". Equally, you may indicate in your answer if you consider that particular errors or mistakes were not made. You may add adjectives, such as "serious" or "important", to indicate the strength of your findings."

82. On the "determination of civil liability" issue in the present case, again there is the curious contrast between the position of Mr Petrov and Mr Boshirov and that of those who may have directed them or conspired with them. It is not suggested that the Senior Coroner is prohibited by s 10(2)(b) from investigating whether Mr Petrov and Mr Boshirov used Novichok in an attack on the Skripals in Salisbury, or that they discarded the perfume bottle containing more Novichok which, it seems, was picked up unwittingly by Mr Rowley and led to the death of Ms Sturgess. Yet those facts, if proved, would be more than sufficient to establish civil liability in a Fatal Accidents Act claim which could, at least in theory, be brought against Mr Petrov and Mr Boshirov. Similarly, if the evidence showed that Mr Petrov and Mr Boshirov were acting as agents of the Russian intelligence services, or of the Russian Federation itself, then this might support a civil claim based on vicarious liability in the English courts, and possibly also a claim in the European Court of Human Rights against the Russian Federation. (No party to this case asked us to rule on whether State liability at Strasbourg is included in the reference to civil liability under s 10(2)(b): we will assume, without deciding, that it does, or at least may do so).

83. But none of these possibilities means that if the inquest were to investigate who was responsible for the death of Ms Sturgess – whether Mr Petrov and Mr Boshirov, their alleged co-conspirators, directors or employers, or officials so senior that they could be said to embody the Russian Federation itself – the Senior Coroner would be infringing the prohibition in s 10(2)(b). No doubt in his determination he would be careful, as Sir John Goldring advised the Hillsborough jury to be, to avoid using inappropriate legal terminology. But s 10(2)(b) is not a valid reason for limiting the scope of the investigation in the manner suggested.

84. We therefore conclude that the Coroner's second reason (paragraphs 80-81), like the first (paragraph 79), involves a material error of law. Since the three reasons given were cumulative, that means that the claim for judicial review must succeed, the ruling must be quashed and the case remitted to the Senior Coroner. But Mr Moss understandably submitted that if we did take that view, the Senior Coroner "needs to know where he stands" in relation to the remoteness issue and would welcome guidance from this court. With that in mind, we turn to paragraph 82 of his ruling.

Remoteness

85. The crucial sentence in paragraph 82 is the finding that "issues to do with the possible involvement of a foreign state and members of that state relative to conducting a *Jamieson* inquest are too remote in circumstances where my focus should be on matters that are directly causative [of] or contributory to the deaths". Two specific points are made leading up to that conclusion.

86. One is that the incident involving Ms Sturgess "occurred nearly four months after the attack on 4 March 2018". We cannot see, with respect, why it makes any difference whether the lapse of time was four days, four weeks or four months. The evidence is

that both incidents involved Novichok and the second was a consequence of the first. Indeed, if they were not linked, the case would give rise to even greater public concern than it does already.

87. The other point, made with greater emphasis, is that the intended target of the attack was Mr Skripal rather than Ms Sturgess, whose death is described as collateral damage. This is, as we see it, the one (or at least the main) material distinction between this case and that of Mr Litvinenko. It would justify any coroner in, for example, ruling in the exercise of his discretion that the inquest need not extend to the investigation of the career history of Mr Skripal or his alleged links with intelligence agencies in the same way as Sir Robert Owen investigated the career history and intelligence links of Mr Litvinenko. But we very much doubt whether the "collateral damage" point is a sufficient basis for excluding evidence of the activities of *every* Russian state actor other than Mr Petrov and Mr Boshirov (including the "third man" allegedly operating in London), still less for excluding evidence about the source of the Novichok, on the basis of remoteness.

88. Ms Hill reminded us of Sir Thomas Bingham's reference (point (3) in *Jamieson)* to the "acute public concern" caused by deaths in custody. In the present case the Senior Coroner stated in paragraph 91 that he did "acknowledge the public interest factor" in the case, but this is something of an understatement. There is acute and obvious public concern not merely at the *prima facie* evidence that an attempt was made on British soil by Russian agents to assassinate Mr Skripal and that it led to the death of Ms Sturgess, but also at the fact that it involved the use of a prohibited nerve agent exposing the population of Salisbury and Amesbury to lethal risk. There has been, and (to be realistic) there will be, no criminal trial in which the details of how this appalling event came to occur can be publicly examined.

89. We are not saying that the broad discretion given to the Coroner can only be exercised in a way which leads to an inquest or public inquiry as broad and as lengthy as in the Litvinenko case: that is not for a court to say. We can do no more than express our doubts that the remoteness issues raised by the Senior Coroner in paragraph 82 (and referred to in paragraph 85) can properly justify an investigation as narrow as that which he has proposed.

Conclusion

90. We allow the claim on Ground 1 only and dismiss it on Ground 2.