



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

FIRST SECTION

Application no. 38004/12
Mariya Vladimirovna ALEKHINA and others against Russia
lodged on 19 June 2012

STATEMENT OF FACTS

The three applicants, Ms Mariya Vladimirovna Alekhina, Ms Nadezhda Andreyevna Tolokonnikova and Ms Yekaterina Stanislavovna Samutsevich, are Russian nationals who were born in 1988, 1989 and 1982 respectively. The first two applicants are serving prison sentences in correctional colonies. The third applicant lives in Moscow. The three applicants were initially represented by Mr M. Feygin, Mr N. Polozov and Ms V. Volkova, lawyers practising in Moscow. They subsequently appointed Ms I. Khrunova and Mr Y. Grozev, counsel from Moscow and Sofia respectively, to represent their interests before the Court. The first two applicants also issued Mr D. Gaynutdinov with a power of authority in compliance with Rule 36 of the Rules of Court.

The circumstances of the case

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

1. Background of the case

The three applicants are members of a Russian feminist punk band, Pussy Riot. The applicants submitted that their actions described below were a response to the ongoing political process in Russia and the highly critical opinion demonstrated by representatives of the Russian Orthodox Church, including its leader Patriarch Kirill, to large-scale street protests in Moscow and many other Russian cities against the results of the parliamentary elections in December 2011 and the participation of Vladimir Putin in the upcoming presidential election in early March 2012.

The applicants founded Pussy Riot in late 2011. Group members carried out a series of events in Moscow, being impromptu public performances of the group's songs *Release the Cobblestones*, *Kropotkin Vodka*, *Death to*

Prison, Freedom to Protest and *Putin Wet Himself* in public places such as a subway station, roof of a tram, top of a booth and a shop window.

According to the applicants, their songs contained “clear and strongly-worded political messages critical of the government and expressing support for feminism, rights of minorities and the ongoing political protests”. The group performed in disguise, with its members wearing brightly coloured balaclavas and dresses, in different public places selected to enhance their message.

Following a performance of the song *Release the Cobblestones* in October 2011, several Pussy Riot members, including the second and third applicants, were arrested and fined under Article 20.2 of the Code of Administrative Offences for having organised and held an unauthorised assembly. On 14 December 2011 three members of the group performed on the roof of a building at Moscow temporary detention facility no. 1. The performance was allegedly held in support of protesters who had been arrested and placed in that facility for having taken part in street protests in Moscow on 5 December 2011. The band performed the song *Death to Prison, Freedom to Protest* and hung a banner saying “Freedom to Protest” from the roof of the building. No attempt to arrest the band was made. A video of the performance was published on the Internet.

On 20 January 2012 eight members of the band held a performance entitled *Riot in Russia* at Moscow’s Red Square. The group sang the song *Putin Wet Himself*. All eight members of the band were arrested and fined under the same Article 20.2 of the Code of Administrative Offences.

In response to the public support and endorsement provided by Patriarch Kirill to Mr Putin, members of Pussy Riot wrote the protest song *Punk Prayer – Virgin Mary, Drive Putin Away*. A translation of the lyrics is as follows:

“Virgin Mary, Mother of God, drive Putin away
 Drive Putin away, drive Putin away
 Black robe, golden epaulettes
 Parishioners crawl to bow
 The phantom of liberty is in heaven
 Gay pride sent to Siberia in chains
 The head of the KGB, their chief saint,
 Leads protesters to prison under escort
 So as not to offend His Holiness
 Women must give birth and love
 Shit, shit, holy shit!
 Shit, shit, holy shit!
 Virgin Mary, Mother of God, become a feminist
 Become a feminist, become a feminist
 The Church’s praise of rotten dictators
 The cross-bearer procession of black limousines
 A teacher-preacher will meet you at school

Go to class - bring him cash!
 Patriarch Gundyaev believes in Putin
 Bitch, better believe in God instead
 The belt of the Virgin can't replace rallies
 Mary, Mother of God, is with us in protest!
 Virgin Mary, Mother of God, drive Putin away
 Drive Putin away, drive Putin away.”

On 18 February 2012 a mock performance of the song was carried out at the Epiphany Cathedral in the district of Yelokhovo in Moscow. The applicants and two other members of the band wearing brightly coloured balaclavas and dresses entered the cathedral, set up an amplifier, microphone, and lamp for better lighting and performed the song while dancing at the same time. The performance was recorded on video. No complaint to the police was made in relation to that performance.

2. *Performance in Moscow's Christ the Saviour Cathedral*

On 21 February 2012 five members of the band, including the three applicants, attempted to perform the song *Punk Prayer – Virgin Mary, Drive Putin Away* from the altar of Moscow's Christ the Saviour Cathedral. They had invited journalists and media to the performance to gain publicity. The attempt to perform was unsuccessful, as cathedral guards managed to quickly force the band out, with the performance only lasting slightly over a minute.

A video containing footage of the band's performances of the song both at the Epiphany Cathedral in Yelokhovo and at Christ the Saviour Cathedral was uploaded to the website YouTube.

The applicants provided the following description of events, relying on the video recording of the incident. The five band members, dressed in overcoats and carrying bags or backpacks, went through a low railing and ran up to a podium in front of the altar (the soleas). Already on the steps, the band removed their coats, under which they had on their characteristic brightly coloured dresses. They also put on coloured balaclavas. They placed their bags on the floor and started taking things out of them. At that moment the video recorded someone calling out for security. A security guard ran up the steps to the band, at which point the band member dressed in white, the third applicant, pulled out a guitar from her bag and tried to strap it on. At the same moment another guard ran up to the second applicant and started pulling her away. A second later the band started singing the song without any musical accompaniment. The guard let go of the second applicant and grabbed the third applicant by the arm and her guitar, while at the same time calling on his radio for help. The radio fell out of his hand, but he did not let go of the third applicant and pushed her down the steps. While the third applicant was being pushed away by the guard, three of the other band members continued singing and dancing without music. Words such as “holy shit”, “congregation” and “in heaven” were audible on the video recording. At the same time the second applicant was trying to set up a microphone and a music player. She managed to turn the player on and music started playing. A uniformed security guard grabbed

the player and took it away. At the same time four band members, including the first two applicants, continued singing and dancing on the podium, doing high-kicks with their legs and throwing their arms around. Two cathedral employees grabbed the first applicant and another band member dressed in pink. She ran away from the security guard, while the second applicant knelt down and started making a sign of the cross and praying. The band continued signing, knelt down and started crossing themselves and praying.

Cathedral staff members escorted the band away from the altar. As the video recording shows, the last band member left the altar a minute and thirty-five seconds after the beginning of the performance. The guards accompanied the band to the exit of the Cathedral, making no attempt to stop them or the journalists.

3. Criminal proceedings against the applicants

(a) Institution of criminal proceedings

On 21 February 2012 a deputy director general of the private security company Kolokol-A, Mr O., complained to the head of the Khamovniki district police department in Moscow of “a violation of the public order” by a group of unknown individuals in Christ the Saviour Cathedral. Mr O. stated that at 11.20 a.m. the same day, unknown individuals had been screaming loudly and had danced in “the premises of the cathedral”, having thus “insulted the feelings of church members”. The individuals had not responded to reprimands by the churchgoers, clergymen or guards.

A similar complaint was lodged three days later by the acting director of the Christ the Saviour Cathedral Fund, Mr P. He called the applicants’ actions disorderly, extremist and insulting to Orthodox churchgoers and to the Russian Orthodox Church. Mr P. also stated that the band’s actions were directed at inflaming religious intolerance and hatred. Printouts of photographs of the band’s performances and full lyrics of the song *Punk Prayer – Virgin Mary, Drive Putin Away*, downloaded from the group’s website, were attached to the complaint.

On 24 February 2012 the police instituted criminal proceedings. Cathedral staff members and guards were questioned. They stated that their religious feelings had been hurt by the incident and that they could identify three of the band members, as they had taken off their balaclavas during the performance.

(b) Detention matters

On 3 March 2012 the second applicant was arrested. The first applicant was apprehended the following day. They were charged with the aggravated offence of hooliganism motivated by religious hatred.

The third applicant was also stopped by the police in the street and taken in for questioning on 3 March 2012. She had no identification documents and did not provide her real name, instead identifying herself as Ms Loktina Irina Vladimirovna. Her mobile phone and a computer flash drive were seized and she was released after the interview.

On 5 March 2012 the Taganskiy District Court (Moscow), by separate detention orders, remanded the first two applicants in custody until 24 April

2012. In terms of the circumstances precluding the application of another, less stringent measure to the applicants, the court cited the gravity of the charges, the severity of the penalty they faced, the “cynicism and insolence of the crime” the applicants were charged with, their choice not to reside at their places of permanent residence, their lack of permanent “legal” sources of income, the first applicant’s failure to care for her child and the second applicant’s right to move to and reside in Canada, as well as the fact that certain members of Pussy Riot were still unidentified or on the run.

Those detention orders became final on 14 March 2012, when the Moscow City Court upheld them on appeal, fully endorsing the District Court’s reasoning.

The third applicant was placed in custody on 16 March 2012 by the Taganskiy District Court, after finally being identified by the police and charged with the same criminal offence as the first two applicants. The District Court found that the risks of the third applicant absconding, reoffending and perverting the course of justice warranted her detention. Those risks were linked by the court to the following considerations: the gravity of the charges, the severity of the penalty she faced, her unwillingness to identify other members of the band, her lack of a permanent legal source of income, and her use of an assumed identity while corresponding with the police on previous occasions. That decision was upheld on appeal by the Moscow City Court on 28 March 2012.

By three separate detention orders issued on 19 April 2012 the Taganskiy District Court further extended the applicants’ detention until 24 June 2012. Citing the grounds it had used to substantiate the applicants’ placement in custody, the District Court concluded that no new circumstances warranting their release had come to light. It also noted the first applicant’s blanket refusal to confess to the offence with which she had been charged or to any other act prohibited by the Russian Criminal Code, and the fact that the applicants’ arrests had only been possible due to searches conducted by the Russian police as they could not be found at their places of permanent residence.

On 20 June 2012 the Taganskiy District Court once again extended the applicants’ detention, citing the same reasons as in the previous detention orders. On 9 July 2012 the Moscow City Court agreed that it was necessary to continue holding the applicants in custody.

In a pre-trial hearing on 20 July 2012 the Khamovnicheskiy District Court (Moscow) allowed a request by a prosecutor for a further extension of the applicants’ detention, finding that the circumstances which had initially called for their remand had not changed. The applicants were to remain in custody until 12 January 2013. Arguments they put forward pertaining to their family situation (the first two applicants had young children), the vulnerable health of the second applicant, the fact that the three applicants had registered their place of residence in Moscow and that the criminal proceedings against them were already at a very advanced stage did not convince the District Court. Personal written sureties given by fifty-seven individuals, among which figured famous Russian actors, writers, film producers, journalists, businessmen, singers and politicians were also dismissed by the court.

On 22 August 2012 the Moscow City Court upheld the detention order of 20 July 2012, considering it lawful and well-founded.

(c) Pre-trial investigation and trial

In the meantime, investigators ordered expert opinions to determine whether the video recording including the performance of *Punk Prayer – Virgin Mary, Drive Putin Away* downloaded from the Internet was motivated by religious hatred, whether the performance of the song at the cathedral could therefore amount to incitement of religious hatred, and whether it was an attack on the religious feelings of Orthodox believers. In the first two reports commissioned by a State expert bureau and issued on 2 April and 14 May 2012 respectively, five experts gave negative answers to those questions. In particular, the experts concluded that the applicants' actions on 21 February 2012 at Christ the Saviour Cathedral did not contain any signs of a call or an intention to incite religious hatred or animosity. The experts concluded that the applicants had not been violent or aggressive, that they had not called for violence in respect of any social or religious group, and that they had not targeted or insulted any religious group.

A third expert opinion subsequently requested by the investigators from directly appointed individual experts produced an entirely different response. In a report issued on 23 May 2012 three experts, a professor from the Gorky Institute of World Literature, a professor from the Moscow City Psychological Pedagogical University, and the President of a regional NGO, the Institute of State Confessional Relations and Law, concluded that the performance and video were motivated by religious hatred, in particular hatred and animosity towards Orthodox believers, and were an insult to the religious feelings of Orthodox believers.

On 20 July 2012 the three applicants were committed to stand trial before the Khamovnicheskiy District Court.

Numerous complaints by the applicants related to the negative impact of security measures in place in the courthouse on their right to communicate freely with counsel and to prepare their defence were rejected by the trial court.

In particular, the applicants provided the following descriptions of the hearings. Throughout the trial they were held in an enclosed dock with glass walls and a tight-fitting door, commonly known as an "aquarium". A desk for their lawyers was installed in front of the glass dock. Colour photographs of the courtroom submitted by the applicants show that up to seven police officers and court ushers with a guard dog surrounded the glass dock, either behind or close to the defence lawyers' desk. Certain photographs show female police officers positioned between the lawyers' desk and the glass dock containing the applicants. The applicants insisted that confidential communication with their defence team was impossible as a police officer was always standing nearby, monitoring their conversations and any documents which were passed. To communicate with their lawyers the applicants had to use a small window measuring 15 x 60 cm, which they had to bend down to use, as it was only a metre from the floor. The applicants had to take turns in speaking to their lawyers as the window was too small for the three of them to use simultaneously. The lawyers also complained about the dog being present, which on certain occasions was

particularly disturbing when it barked during the hearings and behaved restlessly.

The applicants further pointed out that their options for communicating with their lawyers outside the courtroom were virtually nonexistent, as they were brought back to the facility too late at night to be allowed visitors.

On a number of occasions the lawyers applied to the District Court for permission to hold confidential meetings with the applicants. The lawyers and applicants also sought adjournment of the hearings to give the defence an opportunity to consult their clients in private, either in the courthouse or in the detention facility. Those requests were futile.

Similarly, applications to call the experts who had issued the three aforementioned expert reports or additional experts, including art historians and specialists in the fields of contemporary art and religious studies, who could have provided their opinion on the nature of the performance on 21 February 2012, were dismissed. The defence's challenges to the third expert report issued on 23 May 2012 were also unsuccessful.

(d) Conditions of transport to and from the trial hearings

The applicant provided the following information as to the dates and duration of the trial hearings and the conditions of their transport to and from the courthouse.

Date	Start of the hearing	End of the hearing
20 July	12.20 p.m.	4.35 p.m.
23 July	11.10 a.m.	1.15 a.m.
30 July	11.50 a.m.	9.50 p.m.
31 July	10.30 a.m.	8.30 p.m.
1 August	3.00 p.m.	7.20 p.m.
2 August	1.00 p.m.	9.15 p.m.
3 August	11.55 a.m.	9.50 p.m.
6 August	10.45 a.m.	9.00 p.m.
7 August	12.15 p.m.	5.50 p.m.
8 August	12.10 p.m.	unknown

According to the applicants, on the days of the hearings they were transported from the detention facility to the courthouse in a prison van, usually in a smaller vehicle when taken to the courthouse in the morning and in a bigger vehicle when taken back to the facility in the evening. The bigger van consisted of two long sections, for men and women to be transported separately. The vans had two or three compartments separated from each other by metal partitions, each designed to accommodate an inmate. The common area of the vans was equipped with benches with too low a ceiling for detainees to be able to stand up. The space in the common compartment of the smaller van was no more than 2 sq. m., designed for four people, while in the bigger van it was approximately 5 sq. m.

The applicants were transported in the single-person compartments to their custody hearings and in the common compartments later on. Most of the time the vans were overcrowded, with detainees sitting right next to each other, their legs and shoulders squashed. The bigger vans transported from thirty to forty detainees, making a number of stops at various Moscow

detention facilities to pick up detainees. On certain occasions the vans were so crowded that there was no place to sit. There was no functioning ventilation and heating. In summer a fan was switched on, but it did not make the conditions of the cramped space any more bearable. Smoking was not prohibited in the vans and many detainees smoked. The second applicant complained of severe headaches sustained as a result of the conditions of her transport. The journey to the courthouse usually took two to three hours, with detainees not allowed to use the toilet unless the police van drove past the Moscow City Court, where inmates were taken to use the toilet.

The applicants pointed out that on the days of the court hearings they had been woken up at 5 or 6 a.m. to undergo the necessary exit procedures. The applicants were only brought back to the detention facility late at night. In the morning, on exiting the detention facility, they received a lunch box containing four packets of dry biscuits (eight pieces each), two packets of dry cereal, one packet of dry soup and two bags of black tea. Although soup and tea bags were provided, it was impossible to have them given that there was no access to hot water. Due to their early departure and late arrival, the applicants missed mealtimes at the detention facility.

(e) Conviction and appeal

On 17 August 2012 the Khamovnicheskiy District Court found the three applicants guilty as charged and sentenced them each to two years' imprisonment. The trial court held that the applicants' choice of venue and their apparent disregard for the Cathedral's behavioural rules had demonstrated their animosity towards the feelings of Orthodox believers, and that the religious feelings of those present in the cathedral had therefore been offended. While also taking into account the video recording of the song *Punk Prayer – Virgin Mary, Drive Putin Away*, the District Court rejected the applicants' arguments that their performance had been politically, not religiously motivated, stating that the applicants had not made any political statements during their performance on 21 February 2012.

The District Court based its findings on the testimony given by a large number of witnesses, the cathedral employees, churchgoers present during the performance on 21 February 2012 and others who, while not witnesses to the actual performance, had watched the video of *Punk Prayer – Virgin Mary, Drive Putin Away* on the Internet. The witnesses provided their description of the events on 21 February 2012 or of the video, and attested to having been insulted by the applicants' actions. In addition, the District Court cited statements by representatives of various religions arguing about the insulting nature of the applicants' performance.

The District Court also relied on the expert report issued on 23 May 2012, rejecting the first two expert reports for the following reasons:

“... [the expert reports issued on 2 April and 14 May 2012] cannot be used by the court as the basis for conviction, as those reports were received in violation of the criminal procedural law as they relate to an examination of the circumstances of the case through the provisions of Article 282 of the Russian Criminal Code – incitement of hatred or animosity as well as disparagement – which is seen from the questions posed [to the experts] and the answers given by them.

Moreover, the expert opinions do not fulfil the requirements of Articles 201 and 204 of the Russian Code of Criminal Procedure. Those reports lack any reference to the methods used during the examinations. The experts also exceeded the limits of the questions put before them; they gave answers to questions which were not mentioned in the [investigators'] decisions ordering the expert examinations. The reports do not provide for a linguistic and psychological analysis of the lyrics of the song performed in Christ the Saviour Cathedral, and the experts did not make a sentiment analysis and psychological assessment of the song lyrics in relation to the place where the crime had been committed (an Orthodox church). [The experts] examined the lyrics of the song selectively. Given the lack of linguistic and psychological analysis of the lyrics of the song performed in Christ the Saviour Cathedral, the experts make an unfounded and poorly reasoned conclusion which runs counter to the testimony of the eyewitnesses, victims of the committed crime who had demonstrated an extremely negative perception of the events in Christ the Saviour Cathedral and the video recording.”

As to the expert report of 23 May 2012, the District Court found it to be “detailed, motivated and scientifically reasoned”. The expert conclusions were seen by the court as substantiated and indisputable, given that the information received from the experts corresponded to the information received from other sources, such as the victims and witness statements. The court also stressed that it would not be calling the experts or authorising an additional expert examination as it had no doubts about the conclusions made in the report of 23 May 2012.

The District Court’s main reasons for finding that the applicants had committed hooliganism motivated by religious hatred were as follows:

“The court cannot accept the defence’s argument that the defendants’ actions were not motivated by religious hatred and animosity, or hatred against any social group.

The court finds that the defendants’ actions were motivated by religious hatred for the following reasons.

The defendants present themselves as supporters of feminism, a movement for the equality between women and men.

...

At the present time people belonging to the feminist movement fight for equality of the sexes in political, family and sexual relations. Belonging to the feminist movement is not unlawful and is not a criminal offence in the Russian Federation. A number of religions, such as the Orthodox Church, Catholicism, and Islam, have a religious dogmatic basis incompatible with the ideas of feminism. And while feminism is not religious theory, its adherents interfere with such spheres of social relations as morality, rules of decency, family relations, sexual relations, including those which are untraditional, which were historically constructed on the basis of religious views.

In the modern world, relations between nations and nationalities and between different religions must be built on the principles of mutual respect and equality. The idea that one is superior and others inferior, the unacceptability of another ideology, social group or religion, gives grounds for mutual animosity, hatred and interpersonal conflicts.

The defendants’ hatred and animosity were demonstrated in the court hearings as was seen from their reactions, emotions and responses in the course of the examination of the victims and witnesses.

...

It follows from statements by the victims, witnesses, defendants and material evidence that Pussy Riot’s performances are carried out through the group’s sudden appearance [in public places] with the band dressed in brightly coloured clothes and

wearing balaclavas to cover [their] faces. Members of the group make sharp movements with their heads, arms and legs, accompanying them with obscene language and other words of an insulting nature. That behaviour does not respect the canons of the Orthodox Church, irrespective of whether it takes place in the cathedral or outside its walls. Representatives of other religions, and people who do not consider themselves believers, also find such behaviour unacceptable. Pussy Riots' 'performances' outside religious buildings, although containing signs of a clear disrespect for society on motives of religious hatred and animosity and hatred against a specific social group, do not associate with a specific object and therefore amount to a violation of moral standards or an offence. However, moving such a performance to an Orthodox cathedral changes the object of the crime. In that case it represents a mixture of relations between people, behavioural rules established by legal acts, morality, customs, traditions which guarantee a socially tranquil environment and the protection of individuals in various spheres of their lives, as well as the proper functioning of the State and public institutions. Violating the internal regulations of Christ the Saviour Cathedral was merely a way of showing disrespect for society motivated by religious hatred and animosity and hatred towards a social group.

The court concludes that [the applicants'] actions...offend and insult the feelings of a large group of people, in the present case in view of their connection with the religion, [their actions] drive them to feelings of hatred and animosity and therefore they violate the constitutional basis of the State.

[The applicants'] intention to incite religious hatred and animosity as well as hatred towards a specific social group in view of its connection with the religion, in public, is confirmed by the following facts.

A so-called 'punk prayer' was carried out in a public place – Christ the Saviour Cathedral. [The applicants] knowingly envisaged a negative response from a part of society to that performance, as they had in advance prepared bright, open dresses and balaclavas and on 21 February 2012 publicly and within an organised group carried out their actions motivated by religious hatred and animosity, as well as by hatred against a social group in view of its connection with the religion.

...

Given the particular circumstances of the criminal offence, its nature, the division of the roles, actions of the accomplices, time, place and method of committing the offence of hooliganism, that is to say a gross violation of public order committed by a group of people acting with premeditation and in concert, and demonstrated with an explicit disrespect for society motivated by religious hatred and animosity and hatred against a social group, the court is convinced that [the applicants] had been correctly charged with the [offence] and that their guilt in having committed [it] had been proven at the trial.

[The applicants'] actions are an obvious and gross violation of commonly accepted standards and rules of behaviour, given the content of their actions and the place where they had been committed. The defendants violated commonly accepted rules and standards of behaviour accepted as the basis of public order in Christ the Saviour Cathedral. The public use of offensive language in the vicinity of the Orthodox icons and objects of worship, may only be characterised as a violation of public order, given the place where those actions had been carried out. In fact, there was mockery and humiliation of the people present in the Cathedral, a violation of social tranquility, an unauthorised willful entering into the cathedral's ambon and soleas, accompanied by intentional, stubborn and lengthy disobedience of reprimands and orders by the guards and churchgoers.

...

The court dismisses [the applicants'] arguments that they had no intention of inciting religious hatred or animosity or of offending the dignity of a group of people in view of their religious beliefs, as those arguments were refuted by the evidence in the case...

Although the members of Pussy Riot cite political motives for their actions, arguing that they have a positive attitude to the Orthodox religion and that their performance was directed against the splicing of the church and the State, their words are contradicted by their actions and the discovery of their song lyrics and articles.

The defendants' arguments that their actions in the cathedral were not motivated by hatred or animosity towards Orthodox churchgoers and Christianity, but were ruled by political considerations, are also unsubstantiated because, as follows from the victims' statements, no political claims were made and no names of political leaders were mentioned during the defendants' disorderly actions in the Cathedral."

Citing also the results of psychological expert examinations commissioned by the investigators, the District Court noted that the three applicants suffered from mixed personality disorder, which did not affect their understanding of the criminal nature of the act they had carried out in the cathedral and did not call for their psychiatric treatment. The psychiatric diagnosis was made in view of the applicants' active social position, their reliance on personal experience in taking decisions, their determination to defend social values, the "peculiarity" of their interests, their stubbornness in defending their opinion, their confidence, as well as disregard of social rules and standards.

Following the applicants' appeals against the conviction, on 10 October 2012 the Moscow City Court upheld the judgment of 17 August 2012 in so far as it concerned the first two applicants, but amended it in respect of the third applicant. Given the third applicant's "role in the criminal offence [and] her attitude towards the events [on 21 February 2012]", the City Court considered it necessary to suspend her sentence, giving her two years on probation. The third applicant was released from the courtroom.

4. Proceedings concerning a ban on the video recording of the applicants' performance

The video recording containing the compilation of the group's performance of the song *Punk Prayer – Virgin Mary, Drive Putin Away* both at the Epiphany Cathedral in Yelokhovovo and at Christ the Saviour Cathedral was uploaded by the group to their website <http://pussy-riot.livejournal.com> and republished by many web sources.

On 26 September 2012 an MP of the Russian State Duma, Mr S., asked the Prosecutor General of the Russian Federation to study the video recording of the group's performance, to stop its dissemination and to ban the websites which had published it.

As a result of the assessment, on 6 November 2012 the Zamoskvoretskiy Inter-District Prosecutor applied to the Zamoskvoretskiy District Court (Moscow) requesting it to declare extremist four video recordings of the group's performances, including those of the songs *Putin Wet Himself*, *Kropotkin Vodka*, *Death to Prison*, *Freedom to Protest* and *Punk Prayer – Virgin Mary, Drive Putin Away* (see Appendix for lyrics), and to limit access to those materials by installing a filter to block the IP addresses of the websites where the recordings had been published.

Having learned of the prosecutor's request through the media, on 12 November 2012 the third applicant lodged an application before the District Court seeking to join the proceedings as an interested party. She

argued that her rights as a member of Pussy Riot would be affected by the court's decision in the case.

On 20 November 2012 the Zamoskvoretskiy District Court dismissed that application, finding as follows:

“Having considered [the third applicant's] argument that a decision issued in response to the prosecutor's request could affect the rights and obligations of [the third applicant], the court finds this argument unsubstantiated, because the judgment of 17 August 2012 issued by the Khamovnicheskiy District Court in respect of the third applicant became final on 10 October 2012; by that judgment [she] was found guilty under Article 213 § 2 of the Russian Criminal Code of hooliganism, committed in a group acting with premeditation and in concert. That judgment can be appealed against by way of a supervisory review in an entirely different procedure.

[The third applicant's] argument that charges related to information about a criminal offence under Article 282 § 2 (c) of the Russian Criminal Code were severed from [the first] criminal case cannot, in the court's opinion, show that [her] rights and obligations would be influenced by the court's decision issued in respect of the prosecutor's request because there is no evidence that [she] took any part in disseminating the materials published on the Internet sites identified by the prosecutor, and there is no evidence that [she] owns those websites.

Therefore the court concludes that its future decision in respect of the prosecutor's request for the materials to be declared extremist will not affect [the third applicant's] rights and obligations; [she] cannot therefore be invited to the proceedings as an interested party.”

On 14 December 2012 the District Court rejected the applicant's appeal against the decision of 20 November 2012, reasoning that the Russian Code of Civil Procedure did not provide for the possibility to appeal against a decision by which an application for participation in the proceedings was denied. That ruling was endorsed on 30 January 2013 by the Moscow City Court.

On 29 November 2012 the Zamoskvoretskiy District Court declared extremist video content on the website <http://pussy-riot.livejournal.com>, namely the video recordings of their performances of *Kropotkin Vodka*, *Release the Cobblestones*, *Riot in Russia*, *Putin Wet Himself*, *Death to Prison*, *Freedom to Protest*, and *Punk Prayer – Virgin Mary*, *Drive Putin Away*. It also ordered that access to the video materials be limited by way of filtering the website's IP address. Citing provisions from Federal Laws on combating extremist activity and on information and technology, the court proceeded to the reasons for its decision and stated as follows:

“Results of the Internet monitoring and those of a psychological linguistic expert examination performed by specialists from the Federal Scientific Research University ‘Russian Institute for Cultural Research’ attest that the Internet sites <http://www.pussy-riot.livejournal.com/8459.html>, <http://www.pussy-riot.livejournal.com/5164.html>, <http://www.pussy-riot.livejournal.com/5763.html> and <http://pussy-riot.livejournal.com/5497.html> contain video materials of an extremist nature.

That conclusion is confirmed by report no. 55/13 of 26 March 2012 on the results of the psychological linguistic expert examination performed by specialists from the Federal Scientific Research University's ‘Russian Institute of Cultural Research’.

The court concludes that free access to video materials of an extremist nature may assist in the incitement of hatred and animosity on national and religious grounds, and that it violates the rights of a specific circle of individuals – consumers of information services in the Russian Federation.

The court accepts the prosecutor's argument that dissemination of materials of an extremist nature disrupts social stability in society and creates a threat of damage to the life, health and dignity of individuals, to the personal security of an unidentified circle of individuals and disrupts the basis of the constitutional order of the State. Accordingly, the activities mentioned are against the public interest of the Russian Federation.

...

Taking into account the above-mentioned circumstances, the court finds that the prosecutor's request is substantiated and should be allowed in full."

The third applicant attempted to appeal against the judgment of 29 November 2012; however, given her lack of standing in the proceedings, the appeal was left without any response.

COMPLAINTS

1. The three applicants complained:

- under Article 3 of the Convention that the conditions of their transport to and from court hearings, as well as the treatment they had sustained on the days of the hearings, had been inhuman and degrading. They also complained under the same Convention provision that they had been kept in a glass dock in the courtroom under heavy security and in full view of the public, in humiliating conditions;
- under Article 5 § 3 of the Convention that there were no valid reasons warranting their remand in custody;
- under Article 6 of the Convention that they had been unable to effectively challenge the expert reports ordered by the investigators, the trial court having refused to call "rebuttal" experts or the experts who had drafted the reports. They also argued that their right to defend themselves effectively had been circumvented, given their inability to communicate freely and privately with their lawyers before, during or after the hearings;
- under Article 10 of the Convention that their detention and conviction for the performance on 21 February 2012 had amounted to a gross, unjustifiable and disproportionate interference with their freedom of expression.

2. The first two applicants complained under Article 10 of the Convention that by declaring extremist the video materials from their website and placed a ban on access to those materials, the Russian court violated their freedom of expression.

QUESTIONS TO THE PARTIES

1. Given the conditions of the applicants' transport to and from the courthouse, as well as the treatment they sustained on the days of the court hearings, have the applicants been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?
2. Has the applicants' placement in a glass compartment during the court hearings, accompanied by high security measures and exposure to extensive public attention, amounted to a breach of Article 3 of the Convention?
3. Was the length of the applicants' pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? Were the grounds relied on by the domestic courts for the applicant's continued detention "relevant" and "sufficient"?
4. Did the applicants have a fair hearing in the determination of the criminal charge against them, in accordance with Article 6 § 1 of the Convention? In particular,
 - (a) given their claims about inability to have the confidential communication with their lawyers at the hearings and about the lack of private meetings with the legal team during the trial, were the applicants able to defend themselves, as required by Article 6 § 3 (c) of the Convention?
 - (b) were the applicants able to effectively challenge the expert reports summoned by the investigation? Were they able to freely put questions to the experts when their opinion was commissioned? Were the applicants able to obtain the attendance of the experts who had issued the three reports and to interview them at the trial? Were the applicants able to obtain attendance of "rebuttal" experts or summon an expert opinion, under the same conditions as the prosecution, as required by Article 6 § 3 (d) of the Convention?
5. Given the State's response to the applicants' performance in the Christ the Saviour Cathedral on 21 February 2012, in particular, their criminal prosecution and sentence, has there been a violation of the applicants' right to freedom of expression, contrary to Article 10 of the Convention?
6. In view of the decision taken on 29 November 2012 by the Zamoskvoretskiy District Court of Moscow declaring extremist the video recordings of the Pussy Riot band's performances, has there been a violation of Article 10 of the Convention?
7. The Government are asked to provide the Court with copies of video recordings declared extremist by the Zamoskvoretskiy District Court of Moscow.

APPENDIX

Release the Cobblestones

“Egyptian air is good for your lungs
Turn Red Square into Tahrir
Spend the day with wild strong women
Look for a wrench on your balcony, release the cobblestones

It’s never too late to become a mistress
Batons at the ready, screaming louder and louder
Warm up arm and leg muscles
The cop is licking you between your legs

Toilet bowls have been polished, chicks are in plainclothes
Zizek’s ghosts have been flushed down the drain
Khimki forest has been cleaned up, Chirikova got a ‘no pass’ to vote,
Feminists are sent on maternity leave.”

Kropotkin Vodka

“Occupy the city with a frying pan
Go out with a vacuum, get off on it
Police battalions seduce virgins
Naked cops rejoice at the new reforms.”

Death to Prison, Freedom to Protest

“The joyful science of occupying squares
The will to power, without these damn leaders
Direct action - the future of mankind!
LGBT, feminists, defend the nation!

Death to prison, freedom to protest

Make the cops serve freedom.
Protests bring on good weather
Occupy the square, do a peaceful takeover
Take away the guns from all the cops

Death to prison, freedom to protest

Fill the city, all the squares and streets.

There are many in Russia, put aside oysters

Open all the doors, take off the epaulettes

Taste the smell of freedom together with us

Death to prison, freedom to protest.”

Putin Wet Himself

“A group of insurgents moves toward the Kremlin

Windows shatter at FSB headquarters

Bitches piss themselves behind red walls

Pussy Riot is here to abort the system

An attack at dawn? Don’t mind if I do

When we are whipped for our freedom

The Mother of God will learn how to fight

Mary-Magdalene the feminist will join the demonstration.

Riot in Russia – the charm of protest

Riot in Russia - Putin wet himself

Riot in Russia - we exist

Riot in Russia - riot, riot

Take to the streets

Occupy Red Square.

Show them your freedom

A citizen’s anger

Dissatisfied with the culture of male hysteria

Gangster management devours the brain

Orthodox religion is a hard penis

Patients get a prescription of conformity

The regime is going to censor the dream

The time has come for a subversive clash

The pack of bitches from the sexist regime

Begs forgiveness from the phalanx of feminists

Riot in Russia – the charm of protest

Riot in Russia - Putin wet himself

Riot in Russia - we exist

Riot in Russia - riot, riot

Take to the streets

Occupy Red Square.

Show them your freedom

A citizen's rage.”