



## Russia committed multiple violations of the European Convention owing to Pussy Riot punk band convictions and imprisonment

The case [Mariya Alekhina and Others v. Russia](#) (application no. 38004/12) concerned the conviction and imprisonment of three members of the Pussy Riot punk band for attempting to perform one of their protest songs in a Moscow cathedral in 2012. The courts ruled in particular that their performance had been offensive and banned access to video recordings they had subsequently downloaded onto the Internet because they were “extremist”.

In today’s **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held:

by six votes to one, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights because of the overcrowded conditions of the band members’ transportation to and from the courtroom to attend hearings on their cases and because they had had to suffer the humiliation of being permanently exposed in a glass dock during their hearings, surrounded by armed police officers and a guard dog, despite no evident security risk;

unanimously, that there had been a **violation of Article 5 § 3 (right to liberty and security)** of the European Convention because the domestic courts had only given stereotyped reasons for keeping them in detention pending trial for five months;

unanimously, that there had been a **violation of Article 6 § 1 (c) (right to a fair trial / right to legal assistance of own choosing)** because the courtroom security arrangements, namely the glass dock and heavy security, had prevented the band members from communicating with their lawyers without being overheard during their one-month trial;

by six votes to one, that there had been a **violation of Article 10 (freedom of expression)** because of the three band members’ conviction and prison sentences. The Court accepted that a reaction to breaching the rules of conduct in a place of religious worship might have been warranted. However, it found that sentencing them to imprisonment for simply having worn brightly coloured clothes, waved their arms and kicked their legs around and used strong language, without analysing the lyrics of their song or the context of their performance, had been exceptionally severe; and,

unanimously, that there had been a **further violation of Article 10** because of the ban on access to their video recordings on the Internet. The domestic courts had not justified why the ban had been necessary. They had merely endorsed the overall findings of a linguistic expert report without making their own analysis.

### Principal facts

The applicants, Mariya Alekhina, Nadezhda Tolokonnikova, and Yekaterina Samutsevich, are Russian nationals who were born in 1988, 1989, and 1982 respectively and live in Moscow. They are members of the Russian feminist punk band, Pussy Riot, who give impromptu performances of their songs in various public areas dressed in brightly coloured balaclavas and dresses.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 21 February 2012, following a series of performances in the Russian capital, they attempted to perform one of their songs, *"Punk Prayer – Virgin Mary, Drive Putin Away"*, from the altar of Moscow's Christ the Saviour Cathedral. The performance was meant to express disapproval of the political situation in Russia at the time and of Patriarch Kirill, leader of the Russian Orthodox Church, who had strongly criticised the large-scale street protests across the country against the recently held parliamentary elections and the approaching presidential election. No service was taking place, but some people were inside the Cathedral, including journalists and the media invited by the band for publicity. The performance only lasted slightly over a minute because cathedral guards quickly forced the band out.

The band uploaded video footage of their attempted performance to their website and to YouTube. It was seen one and a half million times in the following ten days.

The applicants were arrested shortly after the performance for "hooliganism motivated by religious hatred" and remanded in custody, essentially on account of the gravity of the charge against them. They remained in pre-trial detention on the same grounds for just over five months before being convicted as charged in August 2012. The trial court found that their actions had been offensive and insulting, referring to their brightly coloured clothes and balaclavas, their waving their arms and kicking their legs around and their obscene language. The court rejected the applicants' arguments that their performance had been politically and not religiously motivated. All their appeals against this decision were unsuccessful.

They were sentenced to two years' imprisonment, subsequently reduced by one month. Ms Alekhina and Ms Tolokonnikova served approximately one year and nine months of their sentence before being amnestied, while Ms Samutsevich served about seven months before her sentence was suspended.

In November 2012 the domestic courts also ruled that the video-recordings of the performances available on the Internet were "extremist" and banned access to them. This decision was based on a report by linguistic experts from the Russian Institute for Cultural Research which considered that the videos were of an extremist nature. None of the applicants participated in those proceedings. Ms Alekhina and Ms Tolokonnikova were not informed of the proceedings and Ms Samutsevich's application to join them was dismissed at two levels of jurisdiction.

## Complaints, procedure and composition of the Court

The applicants made a number of complaints under Article 3 (prohibition of inhuman or degrading treatment) and Article 6 §§ 1 and 3 (c) and (d) (right to a fair trial / right to legal assistance of own choosing / right to obtain attendance and examination of witnesses) about the conditions of their transportation to and from their court hearings and at trial, alleging that they had not been only humiliating and intimidating, but had hampered them from consulting their lawyers. In particular, they had been transported to and from their court hearings in overcrowded, poorly ventilated prison vans, with temperatures reaching up to 40 degrees C. Furthermore, they had been kept in a glass dock in the courtroom surrounded by heavy security with a guard dog and had only been able to speak with their lawyers through a small window one metre off the ground. All of that had been in full view of the public, including the national and international media.

They also complained under Article 5 § 3 (right to liberty and security / entitlement to release pending trial) that there had been no valid reasons to warrant remanding them in custody.

Lastly, under Article 10 (freedom of expression), they complained about their detention and conviction, alleging that those measures had been excessive in relation to their conduct. Ms Alekhina and Ms Tolokonnikova also complained about the courts banning access to their videos on the Internet because they were "extremist".

The application was lodged with the European Court of Human Rights on 19 June 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),  
María **Elósegui** (Spain),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 3 \(conditions of transport to and from hearings and at trial\)](#)

The Court noted that it had already found a violation of Article 3 in a number of other cases because of cramped conditions of transportation to and from court hearings. The Russian Government had not provided the Court with any fact or argument to persuade it to reach a different conclusion in the applicants' case. The Court thus concluded that the cramped conditions, at times involving the applicants being transported in compartments measuring as low as 0.37 sq m., twice a day over a period of one month, had amounted to inhuman and degrading treatment, in violation of Article 3.

As concerned the glass docks in which the applicants had been kept during their trial, the Court noted that they were not as harsh as metal cages and were used in other member States, usually for high-security hearings. However, in the photographs of the trial submitted by the applicants, all the armed police officers and court ushers, except one, surrounding the dock had been facing the applicants. That contradicted the Government's argument that the dock had been used to prevent any attempt by the public, which was aggressive during the hearing, from disrupting the proceedings. In the Court's view, the security measures had therefore been aimed at closely watching the applicants rather than monitoring the courtroom, which must have made them feel intimidated and anxious. Moreover, they had been exposed to the full view of the public and the national and international media who were closely following the trial. The Court therefore concluded that the conditions in the courtroom had been degrading, a further violation of Article 3.

### [Article 5 § 3 \(detention pending trial\)](#)

As in many other applications already brought before it against Russia, the Court found that the domestic courts had extended the applicants' detention by relying essentially on the gravity of the charges, without addressing their specific situation or considering alternative measures. The applicants' detention for over five months had not therefore been sufficiently justified, in violation of Article 5 § 3.

### [Article 6 §§ 1 and 3 \(c\) \(hampering of communication with lawyers\)](#)

The Court stressed that an accused's right to communicate with his or her lawyer without being overheard was one of the basic requirements of a fair trial in a democratic society.

Although mindful of security issues in a large-scale or sensitive case, the Court found that the courtroom arrangements in the applicants' case had been more a matter of routine rather than because of any specific security risk. Indeed, the trial court had not seemed to recognise the impact that such arrangements had had on the applicants' defence rights and nothing had been done to compensate for them. The applicants' right to participate effectively and to receive legal assistance

had therefore been restricted for the duration of the trial, that is over one month, without good reason. The fairness of the trial had therefore been adversely affected, in breach of Article 6 §§ 1 and 3 (c).

Given that finding, the Court did not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (d).

#### Article 10 (applicants' criminal prosecution and banning of their video-recordings)

The Court accepted that a reaction to the applicants' performance on account of their breaching the rules of conduct in a place of religious worship might have been warranted.

However, the domestic courts had failed to justify why it had been necessary to convict and sentence the applicants to terms of imprisonment. In particular, the courts had not at all examined the lyrics of the song "*Punk Prayer – Virgin Mary, Drive Putin Away*", basing the applicants' conviction primarily on their conduct, namely the clothes and balaclavas they had worn, the way they had moved their bodies and their strong language, without analysing in any way the context of their performance. Nor had the courts examined whether the applicants' conduct could be interpreted as a call for violence or as a justification of violence, hatred or intolerance, which would have been the only acceptable reason, according to international standards, for restricting the applicants' right to freedom of expression in the form of a criminal sanction.

Moreover, the performance had not disrupted any religious services, caused injury to anyone inside the cathedral or damaged church property. The applicants' conviction and prison sentences had therefore been exceptionally severe in relation to their conduct and must have had a deterrent effect on the exercise of their freedom of expression.

The Court therefore concluded that the applicants' convictions and sentences had not been "necessary in a democratic society", in violation of Article 10.

Similarly, the domestic courts had failed to justify banning access to the applicants' video-recordings on the Internet. Merely endorsing the linguistic experts' conclusions, the courts had made no attempt to conduct their own analysis of the videos in question. They had not specified which parts of the videos had been problematic, and had only referred to the overall findings of the expert report. Moreover, the report had gone far beyond language issues and had provided, in essence, a legal classification of the videos. Such a situation was unacceptable as all legal matters should be resolved exclusively by the courts.

Furthermore, the applicants had not been able to contest the findings of the report because they had not been given the possibility to participate in the proceedings. That shortcoming had been because the relevant domestic law used to ban access to the video-recordings, namely the Suppression of Extremism Act, did not provide for concerned parties to participate in proceedings. In the Court's view, a domestic court could never be in a position to properly justify interfering with the right to freedom of expression without some form of judicial review, based on a weighing up of the public authority's arguments against those of the interest party.

Therefore, finding the applicants' video-recordings "extremist" and banning access to them on the Internet, had not met a "pressing social need" and had not been "necessary in a democratic society", in violation of Article 10 in respect of Ms Alekhina and Ms Tolokonnikova.

#### Article 41 (just satisfaction)

In respect of non-pecuniary damage, the Court held that Russia was to pay 16,000 euros (EUR) each to Ms Alekhina and Ms Tolokonnikova and EUR 5,000 to Ms Samutsevich. It also awarded EUR 11,760 in respect of costs and expenses.

## Separate opinion

Judge Elósegui expressed a partly dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.