European Court of Human Rights: Mariya Alekhina and Others v. Russia

IRIS 2018-8:1/2

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After the international condemnation of the Russian authorities' targeting of the punk band Pussy Riot, the European Court of Human Rights (ECtHR) has found various violations of the band members' rights under the European Convention on Human Rights (ECHR). The ECtHR found violations under Article 3 (prohibition of inhuman or degrading treatment), Article 5 § 3 (the right to liberty and security) and 6 §§ 1 and 3 (c) of the ECHR (the right to a fair trial), in relation to the conditions of their transportation and detention in the courthouse, their pre-trial detention, their treatment during the court hearings and restrictions on the legal assistance afforded to them. Most importantly the ECtHR found that the criminal prosecution of and prison sentence imposed on the Pussy Riot members constituted a breach of their freedom of expression under Article 10 of the ECHR. The ECtHR also found a violation of Article 10 for having declared extremist and banned video material of the Pussy Riot available on the Internet.

The three applicants are members of the feminist punk band, Pussy Riot: Ms Mariya Vladimirovna Alekhina, Ms Nadezhda Andreyevna Tolokonnikova and Ms Yekaterina Stanislavovna Samutsevich. The group carried out a series of impromptu performances of their songs in various public areas in Moscow. According to Pussy Riot, their actions and performances were a response to the ongoing political process in Russia, and their songs contained "clear and strongly worded political messages critical of the government and expressing support for feminism, the rights of minorities and ongoing political protests".

The Pussy Riot members complained to the ECtHR about their conviction and imprisonment for attempting to perform one of their protest songs in a Moscow cathedral in 2012. The performance was meant to express disapproval of the political situation in Russia at the time and of Patriarch Kirill, the leader of the Russian Orthodox Church, who had strongly criticised the large-scale street protests across the country against the recently held elections. No service was taking place, but some people were inside the cathedral, including journalists invited by the band for the purposes of publicity. The performance only lasted slightly over a minute because cathedral guards quickly forced the band out. The band uploaded the video footage of their attempted performance to their website and to YouTube. The three Pussy Riot members were arrested shortly after the performance for "hooliganism motivated by religious hatred" and were held in

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custody and pre-trial detention for just over five months before being convicted as charged. The trial court found that the Pussy Riot action had been offensive and insulting. The court rejected the applicants' arguments that their performance had been politically and not religiously motivated, and they were sentenced to one year and eleven months imprisonment. All appeals against this decision were dismissed. The domestic courts also ruled that the performance had been offensive and banned access to the "extremist" video recordings Pussy Riot had subsequently uploaded onto the Internet.

With regard to the punk band's right to freedom of expression the ECtHR reiterated that this right includes freedom of artistic expression, which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds; the ECtHR considered that such an exchange of ideas by those who create and perform art was essential for a democratic society. The ECtHR also emphasised that opinions or artistic works, apart from being capable of being expressed through the media, can also be expressed through conduct.

In its assessment of the necessity in a democratic society of the interferences at issue, the ECtHR emphasised that Pussy Riot's actions had contributed to the debate about the political situation in Russia and the exercise of parliamentary and presidential powers. The ECtHR reiterated that there is little scope under Article 10 § 2 of the ECHR for restrictions on political speech or debates on questions of public interest, and that very strong reasons are required to justify such restrictions. On the other hand, the ECtHR noted that Article 10 of the ECHR does not bestow any freedom of forum for the exercise of that right and does not create an automatic right of entry to private or publicly owned property. As the Pussy Riot performance had taken place in a cathedral, it could be considered to have violated the accepted rules of conduct in a place of religious worship; this conduct could have justified the imposition of certain sanctions in order to protect the rights of others. However, the applicants were charged with a criminal offence and sentenced to one year and eleven months in prison. The ECtHR noted that the applicants' actions did not disrupt any religious services, and nor did they cause any injury to people inside the cathedral or any damage to church property. It also observed that it was unable to discern any element in the domestic courts' analysis which would allow the applicants' conduct to be deemed to constitute incitement to (religious) hatred. The ECtHR found that the Pussy Riot performance neither contained elements of violence, nor stirred up or justified violence, hatred or intolerance of believers, and it reiterated that, in principle, peaceful and non-violent forms of expression should not be made subject to the threat of the imposition of a custodial sentence. The ECtHR reiterated that interference with freedom of expression in the form of criminal sanctions could have a "chilling effect" on the exercise of that freedom. The ECtHR concluded that the domestic courts had failed to adduce "relevant and sufficient" reasons to justify the

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criminal conviction and prison sentence imposed on the applicants and that the sanctions were not proportionate to the legitimate aim pursued.

With regard to the finding that the Pussy Riot video materials available on the Internet were “extremist” and to the placing of a ban on access to that material, the ECtHR found that the domestic courts had made no attempt to conduct its own analysis of the video materials in question; rather, it had relied solely on a report by linguistic experts, without specifying which particular elements of the videos were problematic under the Suppression of Extremism Act. The ECtHR was also of the view that a domestic court could never be in a position to provide “relevant and sufficient” reasons to justify interference with the rights guaranteed by Article 10 of the ECHR without some form of judicial review based on an assessment of the arguments advanced by the public authority against those of the interested party.

However, the domestic law had not allowed Pussy Riot to participate in the proceedings that led to the finding that their activities and material had been “extremist”; they had thus been deprived of any possibility to contest the allegations made by the public authority. There is no doubt that this kind of state action curtailing the right to freedom of expression is incompatible with Article 10 of the ECHR. The ECtHR thus came to the conclusion that declaring Pussy Riot’s online video materials “extremist” and placing a ban on access to them had not met a “pressing social need” and had accordingly been disproportionate to the legitimate aim invoked. The interference had thus not been “necessary in a democratic society” and had therefore violated Article 10 of the ECHR.

Judgment by the European Court of Human Rights, Third Section, case of Mariya Alekhina and Others v. Russia, Application no. 38004/12, 17 July 2018

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