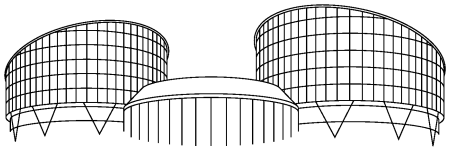

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MARIYA ALEKHINA AND OTHERS v. RUSSIA

(Application no. 38004/12)

JUDGMENT

STRASBOURG

17 July 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mariya Alekhina and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Helena Jäderblom, *President*,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 26 June 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38004/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Russian nationals, Ms Mariya Vladimirovna Alekhina, Ms Nadezhda Andreyevna Tolokonnikova and Ms Yekaterina Stanislavovna Samutsevich ("the applicants"), on 19 June 2012.

2. The applicants were initially represented by Ms V. Volkova, Mr N. Polozov and Mr M. Feygin, lawyers practising in Moscow, and subsequently by Ms I. Khrunova, a lawyer practising in Kazan, Mr D. Gaynutdinov, a lawyer practising in Moscow, and, until February 2015, Mr Y. Grozev, who was then a lawyer practising in Bulgaria. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged, in particular, that there had been breaches of Articles 3, 5 § 3 and 6 of the Convention in the course of their criminal prosecution for their performance in Christ the Saviour Cathedral in Moscow on 21 February 2012 and that their conviction for that performance and the subsequent declaration of videos of their performances as "extremist" had been in breach of Article 10.

4. On 2 December 2013 the complaints under Articles 3, 5 § 3, 6 and 10 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Ms Mariya Vladimirovna Alekhina, was born in 1988. The second applicant, Ms Nadezhda Andreyevna Tolokonnikova, was born in 1989. The third applicant, Ms Yekaterina Stanislavovna Samutsevich, was born in 1982. The applicants live in Moscow.

A. Background of the case

6. The three applicants are members of a Russian feminist punk band, Pussy Riot. The applicants founded Pussy Riot in late 2011. The group carried out a series of impromptu performances of their songs *Release the Cobblestones*, *Kropotkin Vodka*, *Death to Prison, Freedom to Protest* and *Putin Wet Himself* in various public areas in Moscow, such as a subway station, the roof of a tram, on top of a booth and in a shop window.

7. According to the applicants, their actions were a response to the ongoing political process in Russia and the highly critical opinion which representatives of the Russian Orthodox Church, including its leader Patriarch Kirill, had expressed about large-scale street protests in Moscow and many other Russian cities against the results of the parliamentary elections of December 2011. They were also protesting against the participation of Vladimir Putin in the presidential election that was due in early March 2012.

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

9. Following a performance of *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 organising and holding an unauthorised assembly. On 14 December 2011 three members of the group performed on the roof of a building at temporary detention facility no. 1 in Moscow. The performance was allegedly held in support of protesters who had been arrested and placed in that facility for taking part in street protests in Moscow on 5 December 2011. The band performed *Death to Prison, Freedom to Protest* and hung a banner saying "Freedom to Protest" on it from the roof of the building. No attempt to arrest the band was made. A video of the performance was published on the Internet.

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

11. In response to the public support and endorsement provided by Patriarch Kirill to Mr Putin, members of Pussy Riot wrote a protest song called *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 girdle 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."

12. On 18 February 2012 a 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, a microphone and a lamp for better lighting and performed the song while dancing. The performance was recorded on video. No complaint to the police was made in relation to that performance.

B. Performance in Moscow's Christ the Saviour Cathedral

13. On 21 February 2012 five members of the band, including the three applicants, attempted to perform *Punk Prayer – Virgin Mary, Drive Putin Away* from the altar of Moscow's Christ the Saviour Cathedral. No service was taking place, although a number of persons were inside the Cathedral.

The band had invited journalists and media to the performance to gain publicity. The attempt was unsuccessful as cathedral guards quickly forced the band out, with the performance only lasting slightly over a minute.

14. The events unfolded as follows. The five members of the band, dressed in overcoats and carrying bags or backpacks, stepped over a low railing and ran up to the podium in front of the altar (the soleas). After reaching the steps, the band removed their coats, showing their characteristic brightly coloured dresses underneath. 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 and a security guard then ran up the steps to the band. The band member dressed in white, the third applicant, pulled a guitar from her bag and tried to put the strap over her shoulder. Another guard ran up to the second applicant and started pulling her away. Moments 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, including her guitar, 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, kicking their legs in the air 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 kneeled down and started making the sign of the cross and praying. The band continued singing, kneeled down and started crossing themselves and praying.

15. Cathedral staff members escorted the band away from the altar. The video-recording showed that the last band member left the altar one 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 from leaving.

16. 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 YouTube.

C. Criminal proceedings against the applicants

1. Institution of criminal proceedings

17. On 21 February 2012 a deputy director general of private security company Kolokol-A, Mr O., complained to the head of the Khamovniki district police in Moscow of "a violation of public order" by a group of unidentified people in Christ the Saviour Cathedral. Mr O. stated that at 11.20 a.m. that day unidentified individuals had screamed and danced on "the premises of the cathedral", thus "insulting the feelings of members of the church". The individuals had not responded to reprimands by churchgoers, clergymen or guards.

18. 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' conduct disorderly, extremist and insulting to Orthodox churchgoers and the Russian Orthodox Church. Mr P. also stated that the band's actions had been aimed at stirring up religious intolerance and hatred. Printouts of photographs of the band's performances and the full lyrics of *Punk Prayer – Virgin Mary, Drive Putin Away*, downloaded from the group's website, were attached to the complaint.

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

2. Detention matters

20. 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 Irina Vladimirovna Loktina. Her mobile telephone and a computer flash drive were seized and she was released after the interview.

21. On 5 March 2012 the Taganskiy District Court of Moscow issued separate detention orders to remand the first two applicants in custody until 24 April 2012. In terms of the circumstances precluding the application of a 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 live 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. It also cited the fact that certain members of Pussy Riot were still unidentified or on the run.

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

23. 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 communicating with the police on previous occasions. The decision was upheld on appeal by the Moscow City Court on 28 March 2012.

24. 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 need for 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. It also stated that the applicants' arrests had only been possible due to searches conducted by the Russian police as it had not been possible to find them at their places of permanent residence.

25. 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.

26. In a pre-trial hearing on 20 July 2012 the Khamovnicheskiy District Court of Moscow allowed an application by a prosecutor for a further extension of the applicants' detention, finding that the circumstances which had initially called for their being held on remand had not changed. The applicants were to remain in custody until 12 January 2013. The District Court dismissed the arguments the applicants put forward pertaining to their family situation (the first two applicants had young children), the fragile health of the second applicant, the fact that the three applicants had registered their places of residence in Moscow and that the criminal proceedings against them were already at a very advanced stage. The court also refused to accept personal written sureties given by fifty-seven individuals, including famous Russian actors, writers, film producers, journalists, businessmen, singers and politicians.

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

3. Pre-trial investigation and trial

28. 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 had been 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 answered in the negative to those questions. In particular, the experts concluded that the applicants' actions on 21 February 2012 at Christ the Saviour Cathedral had not contained any signs of a call or an intention to incite religious hatred or enmity. The experts concluded that the applicants had not been violent or aggressive, had not called for violence in respect of any social or religious group and had not targeted or insulted any religious group.

29. 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 at 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 had been motivated by religious hatred, in particular hatred and enmity towards Orthodox believers, and had insulted the religious feelings of such believers.

30. On 20 July 2012 the three applicants were committed to stand trial before the Khamovnicheskiy District Court. The trial was closely followed by national and international media.

31. The trial court dismissed numerous complaints by the applicants related to the negative impact of security measures in place at the courthouse on their right to communicate freely with counsel and to prepare their defence. In particular, in applications to the trial court of 23 July 2012 for time for a confidential meeting with their lawyers, they stated that confidential communication was impossible because of the presence of police officers and court ushers around the dock. The applicants raised the issue again in a similar application on 24 July 2012, which was repeated at a hearing on 30 July 2012.

32. The applicants provided the following description of the hearings. Throughout the trial they were held in an enclosed dock with glass walls and a tight-fitting door, which was commonly known as an "aquarium". There was insufficient ventilation inside the glass dock and it was hard to breathe, given the high summer temperatures. A desk for the applicants'

lawyers was installed in front of the dock. There was always high security around the dock, which at times included seven armed police officers and a guard dog. Colour photographs of the courtroom submitted by the applicants show police officers and court ushers surrounding the dock, either behind or close to the defence lawyers' desk. Some photographs show female police officers positioned between the lawyers' desk and the glass dock containing the applicants. The applicants had to use a small window measuring 15 x 60 cm to communicate with their lawyers, which they had to bend down to use as it was only a metre off the ground. The applicants had to take turns to speak to their lawyers as the window was too small for all three to use it simultaneously. According to the applicants, confidential communication with their defence team was impossible as a police officer always stood nearby monitoring their conversations and any documents which were passed between them. Furthermore, a dog was present in the courtroom, which was at times particularly disturbing as it had barked during the hearings and behaved restlessly.

33. According to the applicants, it was virtually impossible to communicate with their lawyers outside the courtroom as they were taken back to the detention facility at night, when it was too late to be allowed visitors.

34. The lawyers applied several times to the District Court for permission to hold confidential meetings with the applicants. The lawyers and applicants also sought an 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, but those requests were fruitless.

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

4. Conditions of transport to and from the trial hearings

(a) The applicants' account

36. According to the applicants, when there were hearings they were transported from the detention facility to court in a prison van: they were usually transported in a small vehicle when being taken to the courthouse in the morning and in a bigger one when being taken back to the detention facility in the evening. The bigger van consisted of two long sections so men and women could be transported separately. The vans had two or three compartments separated by metal partitions, each designed to accommodate one inmate. The common area of the vans was equipped with benches, while the roof was so low detainees could not stand up. The space in the

common compartment of the smaller van was no more than 2 sq. m and was designed for four people, while the space in the bigger van was approximately 5 sq. m.

37. According to the applicants, they were transported in single-person compartments to their custody hearings and in common compartments later on. Most of the time the vans were overcrowded, with detainees sitting directly against each other, with squashed up legs and shoulders. The bigger vans transported between thirty and forty detainees, making a number of stops at various Moscow facilities to pick up detainees. The vans were sometimes so full that there was no place to sit. Smoking was not prohibited but many detainees did do so. The second and third applicant had severe headaches as a result of the conditions of transport.

38. The temperature in Moscow at the time of the trial was as high as 30°C, while inside the vans it reached 40°C. The natural ventilation in the single-person compartments was insufficient and the system of forced ventilation was rarely switched on. When it was switched on, it was only for a very short time because of the noise it made and so it was hardly ever used. A fan was switched on during the summer but did not make the conditions of the cramped space any more bearable.

39. The journey to the courthouse usually took two to three hours, but could sometimes last as long as five hours. Detainees were not allowed to use the toilet unless the police van drove past the Moscow City Court, where inmates were allowed to relieve themselves.

40. On the days of court hearings the applicants were woken up at 5 or 6 a.m. to carry out the necessary procedures for leaving the facility and were only taken back to the detention facility late at night. The applicants missed mealtimes at the detention facility because of such early departures and late returns.

41. On leaving the detention facility in the morning they received a lunch box containing four packets of dry biscuits (for a total of eight each), two packets of dry cereal, one packet of dry soup and two tea bags. However, it was impossible to use the soup and tea bags as hot water was only made available to them five minutes before they were taken out of their cells to the courtroom, which was not enough time to eat.

42. The applicants were forbidden to have drinking water with them during the hearings: requests for short breaks to drink some water and use the toilet were regularly refused, which caused them physical suffering.

43. On 1 August 2012 an ambulance was called twice to the court because the applicants became dizzy and had headaches owing to a lack of food, water, rest and sleep. They were both times found fit for trial.

(b) The Government's account

44. The Government provided the following information concerning the vehicles in which the applicants had been transported to and from the courthouse:

Vehicle	Area and number of compartments	Number of places
KAMAZ-4308-AZ	2 common compartments 2 single-occupancy compartments	32
GAZ-326041-AZ	1 common compartment 3 single compartments	7
GAZ-2705-ZA	2 common compartments (1.35 sq.m each) 1 single compartment (0.375 sq.m)	9
GAZ-3221-AZ	2 common compartments (1.44 sq.m each) 1 single compartment (0.49 sq.m)	9
GAZ-3309-AZ	2 common compartments 1 single compartment (total area 9.12 sq.m)	25
KAMAZ-OTC-577489-AZ	2 common compartments (4.2 sq.m each) 2 single compartments (0.4 sq.m each)	32
KAVZ-3976-AZ	1 common compartment (5 places) 6 single compartments (total area 6.3 sq.m)	11

45. It appears from the information provided by the Government that between 20 July and 17 August 2012 the applicants were transported between Moscow's SIZO-6 remand prison and the Khamovnicheskiy District Court twice a day for fifteen days. The trips lasted between thirty-five minutes and one hour and twenty minutes. The trips back from the court lasted between twenty minutes and four hours and twenty minutes.

46. According to the Government, the daytime temperature in Moscow in July and August 2012 only reached 30ºC on 7 August 2012 and that, furthermore, the mornings and evenings, when the applicants were transported, were cooler than the temperature at midday. All the vehicles underwent a technical check and were cleaned before departure. They were also disinfected once a week. The passenger compartment had natural ventilation through windows and ventilation panes. The vehicles were also equipped with a system of forced ventilation. The passenger compartment had artificial lighting in the roof. The Government provided photographs of

the vehicles and extracts from the vehicle logs to corroborate their assertion that the number of passengers never exceeded the upper limit on places given in the table in paragraph 44 above. People transported in such vehicles could use toilets in courthouses that were on the vehicles' route.

47. The Government submitted that the area at the Khamovnicheskiy District Court where the applicants had been held before the hearings and during breaks consisted of six cells equipped with benches and forced ventilation. A kettle had also been available to them. The Government provided reports by the officers on duty at the Khamovnicheskiy District Court on the dates of the applicants' hearings to corroborate their statement that the applicants had always been provided with a lunch box and boiling water when being transported to court.

5. Conviction and appeal

48. On 17 August 2012 the Khamovnicheskiy District Court found the three applicants guilty under Article 213 § 2 of the Russian Criminal Code of hooliganism for reasons of religious hatred and enmity and for reasons of hatred towards a particular social group. It found that they had committed the crime in a group, acting with premeditation and in concert, and sentenced each of them to two years' imprisonment. The trial court held that the applicants' choice of venue and their apparent disregard for the cathedral's rules of conduct had demonstrated their enmity 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 rather than religiously motivated. It stated that the applicants had not made any political statements during their performance on 21 February 2012.

49. The District Court based its findings on the testimony of a number of witnesses, including the cathedral employees and 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 or had been present at the applicants' performance at the Epiphany Cathedral in Yelokhovo (see paragraph 12 above). The witnesses provided a 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 referred to statements by representatives of various religions about the insulting nature of the applicants' performance.

50. 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 in light of the provisions of Article 282 of the Russian Criminal Code – incitement to hatred, enmity or disparagement, as can be seen from the questions put [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. The 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 a linguistic and psychological analysis of the lyrics of the song performed in Christ the Saviour Cathedral, and the experts did not carry out a sentiment analysis and psychological assessment of the song's 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 a linguistic and psychological analysis of the lyrics of the song performed in Christ the Saviour Cathedral, the experts made an unfounded and poorly reasoned conclusion, which runs counter to the testimony of the eyewitnesses, the victims of the crime, who expressed an extremely negative view of the events in Christ the Saviour Cathedral and of the video-recording."

51. On the other hand, the District Court found the expert report of 23 May 2012 to be "detailed, well founded and scientifically reasoned". The experts' conclusions were seen by the court as substantiated and not open to dispute, given that the information received from the experts corresponded to the information received from other sources, such as the victims and the witness statements. The court also stressed that it would not call the experts or authorise an additional expert examination as it had no doubts about the conclusions made in the report in question.

52. 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 enmity or hatred against a 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 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 a religious theory, its adherents interfere with various areas of social relations such as morality, rules of decency, family relations, sexual relations, including those of a non-traditional nature, 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 the others inferior, that a different ideology, social group

or religion are unacceptable, gives grounds for mutual enmity, hatred and personal conflicts.

The defendants' hatred and enmity 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 can be seen from the statements of the victims, witnesses, defendants and the material evidence that Pussy Riot's performances are carried out by way of a sudden appearance by the group [in public places] with the band dressed in brightly coloured clothes and wearing balaclavas to cover [their] faces. Members of the group make brusque 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 a cathedral or outside its walls. Representatives of other religions and people who do not consider themselves believers also find such behaviour unacceptable. Pussy Riot's 'performances' outside religious buildings, although containing signs of clear disrespect for society motivated by religious hatred and enmity and hatred of a specific social group, are not associated with a specific object and therefore amount to a violation of moral standards or an offence. However, placing such a performance within an Orthodox cathedral changes the object of the crime. It represents in that case a mixture of relations between people, rules of conduct 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 enmity 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 religion, [their actions] incite feelings of hatred and enmity and therefore violate the constitutional basis of the State.

[The applicants'] intention to incite religious hatred and enmity and hatred towards a specific social group in view of its connection with 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 to that performance on the part of society as they had prepared bright, open dresses and balaclavas in advance and on 21 February 2012 publicly and in an organised group carried out their actions, which were motivated by religious hatred and enmity and hatred towards a social group in view of its connection with religion.

...

Given the particular circumstances of the criminal offence, its nature, the division of the roles, the actions of the accomplices, the 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 in premeditated fashion and in concert, and which demonstrated an explicit lack of respect for society motivated by religious hatred and enmity and hatred towards a social group, the court is convinced that [the applicants] were correctly charged with the [offence] and that their guilt in committing [it] has been proven during the trial.

> [The applicants'] actions are an obvious and gross violation of generally accepted standards and rules of conduct, given the content of their actions and the place where they were carried out. The defendants violated the generally accepted rules and standards of conduct accepted as the basis of public order in Christ the Saviour Cathedral. The use of offensive language in public in the vicinity of Orthodox icons and objects of worship can only be characterised as a violation of public order, given the place where those actions were carried out. In fact, there was mockery and humiliation of the people present in the Cathedral, a violation of social tranquillity, unauthorised and wilful entry into the cathedral's ambon and soleas, accompanied by intentional, stubborn and a lengthy period of disobedience to the reprimands and orders of the guards and churchgoers.
>
> ...
>
> The court dismisses [the applicants'] arguments that they had no intention to incite religious hatred or enmity or to offend the dignity of a group of people because 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 uniting of Church and State, their words are refuted by their actions, lyrics and articles found [in the course of the investigation].
>
> The defendants' arguments that their actions in the cathedral were not motivated by hatred or enmity towards Orthodox churchgoers and Christianity, but were governed by political considerations, are also unsubstantiated because, as can be seen from the victims' statements, no political claims were made and no names of political leaders were mentioned during the defendants' acts of disorder in the Cathedral."

53. Citing the results of psychological expert examinations commissioned by investigators, the District Court noted that the three applicants suffered from mixed personality disorders, 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 psychiatric treatment. The psychiatric diagnosis was made on the basis of the applicants' active social position, their reliance on their personal experience when taking decisions, their determination to defend social values, the "peculiarity" of their interests, their stubbornness in defending their opinion, their confidence and their disregard for social rules and standards.

54. As regards the punishment to be imposed on the applicants, the District Court ruled as follows:

> "Taking into account the gravity and social danger of the offence, the circumstances in which it was committed, the object and reasons for committing the offence, and [the applicants'] attitude towards their acts, the court believes that the goals of punishment, such as the restoration of social justice, the correction of people who have been convicted and the prevention of the commission of new offences, can only be achieved by sentencing them to prison and their serving the sentence ..."

55. The two-year prison sentence was to be calculated from the date of arrest of each of the applicants, that is from 3, 4 and 15 March 2012 respectively.

56. On 28 August 2012 the applicants' lawyers lodged an appeal on behalf of the three applicants and on 30 August 2012 the first applicant submitted an additional statement to her appeal. She stated, in particular, that throughout the trial she and the other accused had not been able to have confidential consultations with their lawyers.

57. On 10 October 2012, the Moscow City Court decided on the appeals by upholding the judgment of 17 August 2012 as 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 [of 21 February 2012]", the City Court suspended her sentence, gave her two years' probation and released her in the courtroom. The Moscow City Court did not address the issue of confidential consultations between the applicants and their lawyers.

6. The applicants' amnesty

58. On 23 December 2013 the first and second applicants were released from serving their sentence under a general amnesty issued by the Duma on 18 December 2013, the Amnesty on the Twentieth Anniversary of the Adoption of the Constitution of the Russian Federation.

59. On 9 January 2014 the third applicant was also amnestied.

7. Supervisory review proceedings

60. On 8 February 2013 the Ombudsman, on behalf of the second applicant, applied to the Presidium of the Moscow City Court for supervisory review of the conviction. He argued, in particular, that the applicants' actions had not amounted to hooliganism as they could not be regarded as inciting hatred or enmity. Breaches of the normal functioning of places of worship, insults to religious feelings or the profanation of religious objects were administrative offences punishable under Article 5.26 of the Code of Administrative Offences.

61. On 15 March 2013 Judge B. of the Moscow City Court refused to institute supervisory review proceedings.

62. In a letter of 28 May 2013 the President of the Moscow City Court refused to review the decision of 15 March 2013.

63. On 8 November 2013 the Ombudsman submitted an application for supervisory review to the Supreme Court. As well as the arguments set out in the previous application, he added that public criticism of officials, including heads of State, the government and the heads of religious communities, was a way of exercising the constitutional right to freedom of speech.

64. On unspecified date the first and second applicants' representatives also applied for supervisory review to the Supreme Court on their behalf. They argued, *inter alia*, that the applicants' actions had amounted to

political criticism, not incitement to hatred or enmity on religious grounds or towards any social group. Furthermore, they pointed to a number of alleged breaches of criminal procedure in the course of the trial.

65. On 10 December 2014 the Supreme Court instituted supervisory review proceedings upon the above applications.

66. On unspecified date the third applicant also applied for supervisory review of her conviction.

67. On 17 December 2014 the Supreme Court instituted supervisory review proceedings upon her application.

68. On an unspecified date the case was transferred to the Presidium of the Moscow City Court for supervisory review.

69. On 4 April 2014 the Presidium of the Moscow City Court reviewed the case. It upheld the findings that the applicants' actions had amounted to incitement to religious hatred or enmity and dismissed the arguments concerning breaches of criminal procedure at the trial. At the same time, it removed the reference to "hatred towards a particular social group" from the judgment as it had not been established which social group had been concerned. It reduced each applicant's sentence to one year and eleven months' imprisonment.

D. Proceedings concerning declaring video-recordings of the applicants' performances as "extremist"

70. The group uploaded a video of their performance of *Punk Prayer – Virgin Mary, Drive Putin Away* at the Epiphany Cathedral in Yelokhovo and at Christ the Saviour Cathedral to their website http://pussy-riot.livejournal.com. It was also republished by many websites.

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

72. As a result of that assessment, on 2 November 2012 the Zamoskvoretskiy Inter-District Prosecutor applied to the Zamoskvoretskiy District Court of Moscow for a declaration that the Internet pages 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 were extremist. They contained text posted by Pussy Riot, photographs and videos of their performances, including videos for *Riot in Russia, Putin Wet Himself; Kropotkin Vodka*; *Death to Prison, Freedom to Protest; Release the Cobblestones* and *Punk Prayer – Virgin Mary, Drive Putin Away* (see paragraph 11 above and Appendix for lyrics). The prosecutor also sought to limit access to the material in question

by installing a filter to block the IP addresses of websites where the recordings had been published.

73. After learning of the prosecutor's application through the media, the third applicant lodged an application with the District Court on 12 November 2012, seeking to join the proceedings as an interested party. She argued that her rights as a member of Pussy Riot would be affected by any court decision in the case.

74. On 20 November 2012 the Zamoskvoretskiy District Court dismissed her application, finding as follows:

> " Having considered [the third applicant's] argument that a decision issued in response to the prosecutor's request could affect [her] rights and obligations, 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; [she] was found guilty by that judgment under Article 213 § 2 of the Russian Criminal Code of hooliganism committed in a group acting in premeditated fashion and in concert. That judgment can be appealed against by way of supervisory review in entirely different proceedings.
>
> [The third applicant's] argument that charges related to 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 [.] [T]here is no evidence that [she] owns those websites either.
>
> Therefore the court concludes that an eventual decision on the prosecutor's request for the materials to be declared extremist will not affect [the third applicant's] rights and obligations; and therefore there are no grounds for her to join the proceedings as an interested party."

75. On 28 November 2012 the third applicant appealed against that decision.

76. On 29 November 2012 the Zamoskvoretskiy District Court ruled that video content on http://pussy-riot.livejournal.com was extremist, namely the video-recordings of their performances of *Riot in Russia, Putin Wet Himself; Kropotkin Vodka*; *Death to Prison, Freedom to Protest; Release the Cobblestones* and *Punk Prayer – Virgin Mary, Drive Putin Away*. It also ordered that access to that material be limited by a filter on the website's IP address. Relying on sections 1, 12 and 13 of the Suppression of Extremism Act and section 10(1) and (6) of the Federal Law on Information, Information Technologies and the Protection of Information, the court gave the reasons for its decision and stated as follows:

> "According to section 1 of [the Suppression of Extremism Act], extremist activity is deemed to be constituted by, *inter alia*, the stirring up of social, racial, ethnic or religious discord; propaganda about the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion; violations of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic

affiliation or attitude to religion; public appeals to carry out the above-mentioned acts or the mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination.

...

Results from monitoring the Internet and of a psychological linguistic expert examination performed by experts from the Federal Scientific Research University's 'Russian Institute for Cultural Research' state 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 experts from the Federal Scientific Research University's 'Russian Institute for Cultural Research'.

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

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

...

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

77. The third applicant appealed against the decision of 29 November 2012.

78. On 14 December 2012 the Zamoskvoretskiy District Court rejected the third applicant's appeal against the decision of 20 November 2012 on the grounds that the Code of Civil Procedure did not provide for a possibility to appeal against a decision to deny an application to participate in proceedings.

79. On 30 January 2013 the Moscow City Court dismissed an appeal by the third applicant against the decision of 14 December 2012. It found that under the Code of Civil procedure no appeal lay against a court decision on an application to join proceedings as an interested party. It noted, furthermore, that the applicant would be able to restate her arguments in her appeal against the decision on the merits of the case.

80. On the same date the Moscow City Court left the third applicant's appeal against the decision of 29 November 2012 without examination. The appellate court stated, *inter alia*:

"... the subject in question was the extremist nature of the information placed in the Internet sources indicated by the prosecutor and the necessity to limit access to them[.] [A]t the same time, the question of [the third applicant's] rights and

obligations was not examined, the impugned decision did not limit her rights, and she was not a party to the proceedings begun upon the prosecutor's application.

Taking into account the foregoing, [the third applicant's] allegations contained in her appeal statement concerning alleged breaches of procedural rules on account of the failure to allow her to participate in proceedings which violated her rights and legal interests are unfounded and are based on an incorrect interpretation of the rules of procedural law.

Therefore ... [the third applicant] has no right to appeal against the above decision."

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL MATERIALS

A. Relevant domestic law and practice

1. Constitution

81. Article 2 provides as follows:

"An individual, his rights and freedoms, shall be the supreme value. The recognition, observance and the protection of the rights and freedoms of an individual and citizen shall be an obligation of the State".

82. Article 14 states that The Russian Federation is a secular state and that no state or obligatory religion may be established (§ 1). "Religious associations shall be separate from the State and shall be equal before the law" (§ 2).

83. Article 17 states that human rights and freedoms are recognised and guaranteed according to the generally accepted principles and rules of international law and the Constitution (§ 1). "The basic rights and freedoms are inalienable and belong to every person from birth" (§ 2). However, the exercise of such rights and freedoms must not infringe upon the rights and freedoms of others (§ 3).

84. Under Article 19 § 2, the State guarantees equal human and civil rights and freedoms irrespective of gender, race, ethnicity, language, origin, property or employment status, place of residence, religion, convictions, membership of public associations, or any other circumstances. Any restrictions of rights on the grounds of social status, race, ethnicity, language or religion are prohibited.

85. Article 28 guarantees the right to freedom of conscience and religion to everyone.

86. Article 29 provides as follows:

"1. Freedom of thought and speech is guaranteed to everyone.

2. Propaganda or agitation arousing social, racial, ethnic or religious hatred and enmity and propaganda about social, racial, ethnic, religious or linguistic supremacy is prohibited.

3. Nobody can be forced to express [his or her] thoughts and opinions or to renounce them.

4. Everyone has the right to freely seek, receive, transmit, produce and disseminate information by any lawful means. The list of items which constitute State secrets shall be established by a federal law.

5. Freedom of the mass media is guaranteed. Censorship is forbidden."

2. Criminal Law

87. Article 213 of the Criminal Code, as in force at the material time, provided:

"1. Hooliganism, that is, a gross violation of public order manifested in clear contempt of society and committed:

a) with the use of weapons or articles used as weapons;

b) for reasons of political, ideological, racial, national or religious hatred or enmity or for reasons of hatred or enmity towards a particular social group –

shall be punishable by a fine of three hundred thousand to five hundred thousand roubles or an amount of wages or other income of the convicted person for a period of two to three years, or by obligatory labour for a term of up to four hundred and eighty hours, or by correctional labour for a term of one to two years, or by compulsory labour for a term of up to five years, or by deprivation of liberty for the same term.

2. The same offence committed by a group of persons by previous agreement, or by an organised group, or in connection with resistance to a representative of authority or to any other person who fulfils the duty of protecting the public order or suppressing a violation of public order –

shall be punishable by a fine of five hundred thousand to one million roubles or an amount of wages or other income of the convicted person for a period of three to four years, or by compulsory labour for a term of up to five years, or by deprivation of liberty for a term of up to seven years."

88. In Ruling no. 45 of 15 November 2007 On Judicial Practice in Criminal Cases Concerning Hooliganism and Other Offences, the Supreme Court stated in particular:

"A person manifests clear disrespect for society by a deliberate breach of the generally recognised norms and rules of conduct motivated by the culprit's wish to set himself in opposition to those around him, to demonstrate a disparaging attitude towards them."

3. Administrative Law

89. Article 5.26 of the Code of Administrative Offences, as in force until 29 June 2013, provided:

"1. Hindering the exercise of the right to freedom of conscience and freedom of religion, including acceptance of religious and other convictions and the refusal thereof, joining a religious association or leaving it –

shall be punishable by the imposition of an administrative fine of one hundred to three hundred roubles [and by the imposition of an administrative fine] on officials of three hundred to eight hundred roubles.

2. Insulting religious feelings or the profanation of objects of worship, signs and emblems relating to beliefs –

shall be punishable by the imposition of an administrative fine of five hundred to one thousand roubles."

4. Extremist Activity

(a) Suppression of Extremism Act

90. Section 1(1) of Federal Law no. 114-FZ on Combatting Extremist Activity of 25 July 2002 ("the Suppression of Extremism Act") defines "extremist activity/extremism" as follows:

"– a forcible change of the foundations of the constitutional system and violations of the integrity of the Russian Federation;

– the public justification of terrorism and other terrorist activity;

– the stirring up of social, racial, ethnic or religious discord;

– propaganda about the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion;

– violations of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion;

– obstructing the exercise of citizens' electoral rights and rights to participate in a referendum or a violation of voting in secret, combined with violence or the threat of the use thereof;

– obstructing the lawful activities of state authorities, local authorities, electoral commissions, public and religious associations or other organisations, combined with violence or a threat of the use thereof;

– committing crimes for the motives set out in Article 63 § 1 (e) of the Criminal Code [crimes involving motives of political, ideological, racial, ethnic or religious hatred or enmity or involving motives of hate or enmity towards a social group];

– propaganda for and the public display of Nazi attributes or symbols or of attributes or symbols similar to Nazi attributes or symbols to the point of them becoming undistinguishable;

– public appeals to carry out the above-mentioned acts or the mass dissemination of knowingly extremist materials, and likewise the production or storage thereof with the aim of mass dissemination;

– making a public, knowingly false accusation against individuals holding a state office of the Russian Federation or a state office of a Russian Federation constituent entity of committing actions in the discharge of their official duties that are set down in the present Article and that constitute offences;

– the organisation of and preparation for the aforementioned actions and inciting others to commit them;

– funding the aforementioned actions or any assistance in organising, preparing or carrying them out, including the provision of training, printing and material/technical support, telephonic or other types of communication links or information services".

91. Section 1(3) of the Act defines "extremist materials" as follows:

" ... documents intended for publication or information in other media calling for extremist activity to be carried out or substantiating or justifying the necessity of carrying out such activity, including works by leaders of the National Socialist Workers' Party of Germany, the Fascist Party of Italy, publications substantiating or justifying ethnic and/or racial superiority or justifying the practice of committing war crimes or other crimes aimed at the full or partial destruction of any ethnic, social, racial, national or religious group".

92. Section 3 of the Act outlines the main areas of combatting extremist activity as follows:

"– the taking of precautionary measures aimed at the prevention of extremist activity, including the detection and subsequent elimination of the causes and conditions conducive to carrying out extremist activity;

– the detection, prevention and suppression of terrorist activity carried out by social and religious associations, other organisations and natural persons".

93. Section 12 forbids the use of public communication networks for carrying out extremist activity:

"The use of public communication networks to carry out extremist activity is prohibited. In the event of a public communication network being used to carry out extremist activity, measures provided for in the present Federal law shall be taken with due regard to the specific characteristics of the relations governed by Russian Federation legislation in the sphere of communications."

94. Section 13 of the Act, as in force at the material time, provided for the following responsibility for the distribution of extremist materials:

"The dissemination of extremist materials and the production and storage of such materials with the aim of their dissemination shall be prohibited on the territory of the Russian Federation ...

Information materials shall be declared extremist by the federal court with jurisdiction over the location in which they were discovered or disseminated or in the location of the organisation producing such material on the basis of an application by a prosecutor or in proceedings in an administrative, civil or criminal case.

A decision concerning confiscation shall be taken at the same time as the court decision declaring the information materials extremist.

A copy of the court decision declaring the information materials extremist and which has entered into legal force shall be sent to the federal State registration authority.

A federal list of extremist materials shall be posted on the 'Internet' worldwide computer network on the site of the federal State registration authority. That list shall also be published in the media.

A decision to include information materials in the federal list of extremist material can be appealed against in court under the procedure established by Russian Federation legislation."

(b) Federal Law on Information, Information Technologies and the Protection of Information

95. Section 10(1) and (6) of Federal Law no. 149-FZ on Information, Information Technologies and the Protection of Information of 27 July 2006, as in force at the material time, provided as follows:

"1. The distribution of information shall be carried out freely in the Russian Federation, observing the requirements established by the legislation of the Russian Federation.

...

6. The distribution of information directed towards propaganda for war, the stirring up of national, race or religious hatred and hostility and other information whose distribution is subject to criminal or administrative responsibility shall be banned."

(c) Constitutional Court

96. In Ruling no. 1053-O of 2 July 2013 the Constitutional Court ruled on a complaint lodged by K., who contested the constitutionality of section 1(1) and (3) and section 13(3) of the Suppression of Extremism Act. K. argued that the definitions of "extremist activity" and "extremist materials" were not precise enough and were therefore open to different interpretations and arbitrary application. K. also contested the power of the courts to order the confiscation of material, irrespective of whether the owner had committed an offence.

97. The Constitutional Court noted, firstly, that the provisions of section 1(1) and (3) of the Suppression of Extremism Act were based on the Constitution and could not therefore as such be in breach of constitutional rights. As regards the wording of the provisions, it further stated that laws had to be formulated precisely enough to enable people to adjust their conduct accordingly, but that did not rule out the use of generally accepted notions whose meaning should be clear either from the content of the law itself or with the help, *inter alia*, of judicial interpretation. In that regard the Constitutional Court referred to the Court's case-law (in particular, *Cantoni v. France*, 15 November 1996, *Reports of Judgments and Decisions* 1996-V; *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, ECHR 2000-VII; *Achour v. France* [GC], no. 67335/01, ECHR 2006-IV; and *Huhtamäki v. Finland*, no. 54468/09, 6 March 2012).

98. The Constitutional Court stated that when applying section 1(1) and (3) of the Suppression of Extremism Act, courts had to determine, in view of the specific circumstances of each case, whether the activity or material in question ran counter to the constitutional prohibition on incitement to hatred or enmity or on propaganda relating to superiority on the grounds of

social position, race, ethnic origin, religion or language. At the same time, a restriction on freedom of thought and religion and on freedom of expression should not be taken solely on the grounds that the activity or information in question did not comply with traditional views and opinions or contradict moral and/or religious preferences. In that regard the Constitutional Court referred to the Court's case-law (in particular, *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24; *Otto-Preminger-Institut v. Austria*, 20 September 1994, Series A no. 295-A; and *Wingrove v. the United Kingdom*, 25 November 1996, *Reports* 1996-V).

99. As regards section 13(3), the Constitutional Court found that confiscation of information materials recognised as extremist on the basis of a judicial order was not related to any type of responsibility and did not constitute a punishment, but was a special measure employed by the State to combat extremism and was aimed at the prevention thereof.

100. The Constitutional Court thus held that the contested provisions could not be considered as unconstitutional and dismissed the complaint as inadmissible.

B. Relevant International Materials

1. Council of Europe

(a) Venice Commission

101. The European Commission for Democracy through Law (the Venice Commission) in its Report on the Relationship between Freedom of Expression and Freedom of Religion: the Issue of Regulation and Prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, adopted at its 76th Plenary Session held in Venice on 17-18 October 2008, CDL-AD(2008)026 (Report of the Venice Commission), stated that whereas incitement to religious hatred should be the object of criminal sanctions (§ 89), they were inappropriate in respect of insult to religious feelings and, even more so, in respect of blasphemy (§ 92).

102. Opinion no. 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation adopted by the Venice Commission at its 91st Plenary Session held in Venice on 15-16 June 2012, CDL-AD(2012)016-e (Opinion of the Venice Commission), contained, in particular, the following opinions and conclusions:

> "30. The Venice Commission notes that the definitions in Article 1 of the Law of the "basic notions" of "extremism" ("extremist activity/extremism", "extremist organisation' and "extremist materials") do not set down general characteristics of extremism as a concept. Instead, the Law lists a very diverse array of actions that are deemed to constitute "extremist activity" or "extremism". This should mean that, according to the Law, only activities defined in Article 1.1 are to be considered extremist activities or fall within the scope of extremism and that only organisations defined in Article 1.2 and materials defined in Article 1.3 should be deemed extremist.

31. The Commission however has strong reservations about the inclusion of certain activities under the list of "extremist" activities. Indeed, while some of the definitions in Article 1 refer to notions that are relatively well defined in other legislative acts of the Russian Federation, a number of other definitions listed in Article 1 are too broad, lack clarity and may open the way to different interpretations. In addition, while the definition of "extremism" provided by the Shanghai Convention, as well as the definitions of "terrorism" and "separatism", all require violence as an essential element, certain of the activities defined as "extremist" in the Extremism Law seem not to require an element of violence (see further comments below).

...

35. Extremist activity under point 3 is defined in a less precise manner than in a previous version of the Law (2002). In the 2002 Law the conduct, in order to fall within the definition, had to be "associated with violence or calls to violence". However the current definition ("stirring up of social, racial, ethnic or religious discord") does not require violence as the reference to it has been removed. According to non-governmental reports, this has led in practice to severe anti extremism measures under the Extremism Law and/or the Criminal Code. The Venice Commission recalls that, as stated in its Report devoted to the relation between freedom of expression and freedom of religion, hate speech and incitement may not benefit from the protection afforded by Article 10 ECHR and justify criminal sanctions. The Commission notes that such a conduct is criminalized under Article 282 of the Russian Criminal Code and that, under Article 282.2, the use of violence or the threat of its use in committing this crime is an aggravating circumstance.

36. The Venice Commission is of the opinion that in order to qualify "stirring up of social, racial, ethnic or religious discord" as "extremist activity", the definition should expressly require the element of violence. This would maintain a more consistent approach throughout the various definitions included in article 1.1, bring this definition in line with the Criminal Code, the Guidelines provided by the Plenum of the Supreme Court and more closely follow the general approach of the concept of "extremism" in the Shanghai Convention.

...

41. Extremist activity under point 5 brings together a collection of criteria, the combination of which may or may not be required before establishing that the Law applies to them. Clarification is required of what is intended here. If violating rights and freedoms "in connection with a personal's social, racial, ethnic, religious or linguistic affiliation or attitude to religion", in the absence of any violent element is an extremist activity, it is clearly a too broad category.

42. Similarly, under point 10 incitement to extremist activity is in itself an extremist activity. This provision is problematic to the extent that certain of the activities listed, as pointed out above, should not fall into the category of extremist activities at all.

...

47. [Article 1.3] defines extremist materials not only as documents which have been published but also as documents intended for publication or information, which call for extremist activity (to be understood, most probably, by reference to the definition of such an activity in Article 1.1) or which justify such activity...

...

49. Considering the broad and rather imprecise definition of "extremist documents" (Article1.3), the Venice Commission is concerned about the absence of any criteria and any indication in the Law on how documents may be classified as extremist and believes that this has the potential to open the way to arbitrariness and abuse. The Commission is aware from official sources, that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure. According to non-governmental sources, the Federal List of Extremist Materials has in recent years led to the adoption, in the Russian Federation, of disproportionate anti-extremist measures. Information on how this list is composed and amended would be necessary for the Commission to comment fully.

...

56. The Commission further notes that the Law does not provide for any procedure for the person to whom a warning is addressed to challenge the evidence of the Prosecutor-General upon which it is based at the point when the warning is given, though it is noted that article 6 of the Law provides that the warning may be appealed to a court. It also notes that, according to the law "On the public prosecutor's service in the Russian Federation", a warning about the unacceptability of breaking the law may be appealed against not only in court but also to a superior public prosecutor.

...

61. ... [I]n the Commission's view the Law should be made more specific as to the procedures available in order to guarantee the effective enjoyment of the right to appeal both the warning/the notice issued, and the liquidation or suspension decision before an independent and impartial tribunal, as enshrined in Article 6 ECHR.

...

63. ... It is worrying at the same time that, as a result of the vagueness of the Law and of the wide margin of interpretation left to the enforcement authorities, undue pressure is exerted on civil society organisations, media outlets and individuals, which undoubtedly has a negative impact on the free and effective exercise of human rights and fundamental freedoms.

...

65. ...It is therefore essential, in order for the warnings and notices or any other anti-extremism measures to fully comply with the requirements of Articles 10 and 11 of the ECHR, to ensure that any restrictions that they may introduce to fundamental rights stem from a pressing social need, are proportionate within the meaning of the ECHR and are clearly defined by law. The relevant provisions of the Extremism Law should thus be amended accordingly.

...

73. The Venice Commission is aware of the challenges faced by the Russian authorities in their legitimate efforts to counter extremism and related threats. It recalls that, in its recent recommendation devoted to the fight against extremism, the Parliamentary Assembly of the Council of Europe expressed its concern over the challenge of fighting extremism and its most recent forms and encouraged the member States of the Council of Europe to take resolute action in this field, "while ensuring the strictest respect for human rights and the rule of law".

74. However, the manner in which this aim is pursued in the Extremism Law is problematic. In the Commission's view, the Extremism Law, on account of its broad and imprecise wording, particularly insofar as the "basic notions" defined by the Law - such as the definition of "extremism", "extremist actions", "extremist organisations" or "extremist materials" – are concerned, gives too wide discretion in its interpretation and application, thus leading to arbitrariness.

75. In the view of the Venice Commission, the activities defined by the Law as extremist and enabling the authorities to issue preventive and corrective measures do not all contain an element of violence and are not all defined with sufficient precision to allow an individual to regulate his or her conduct or the activities of an organisation so as to avoid the application of such measures. Where definitions are lacking the necessary precision, a law such as the Extremism Law dealing with very sensitive rights and carrying potential dangers to individuals and NGOs can be interpreted in harmful ways. The assurances of the authorities that the negative effects would be avoided thanks to the guidelines of the Supreme Court, the interpretation of the Russian Institute for Legislation and Comparative Law or good faith are not sufficient to satisfy the relevant international requirements.

76. The specific instruments that the Law provides for in order to counter extremism – the written warnings and notices - and the related punitive measures (liquidation and/or ban on the activities of public religious or other organisations, closure of media outlets) raise problems in the light of the freedom of association and the freedom of expression as protected by the [European Convention on Human Rights] and need to be adequately amended.

77. The Venice Commission recalls that it is of crucial importance that, in a law such as the Extremism Law, which has the capacity of imposing severe restrictions on fundamental freedoms, a consistent and proportionate approach that avoids all arbitrariness be taken. As such, the Extremism Law has the capacity of imposing disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality. In the light of the above comments, the Venice Commission recommends that this fundamental shortcoming be addressed in relation to each of the definitions and instruments provided by the Law in order to bring them in line with the European Convention on Human Rights."

(b) ECRI General Policy Recommendation no. 15 on Combating Hate Speech

103. The relevant parts of General Policy Recommendation no. 15 on Combating Hate Speech adopted by the European Commission against Racism and Intolerance (the ECRI) on 8 December 2015 contains read as follows:

"Considering that hate speech is to be understood for the purpose of the present General Policy Recommendation as the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status;

Recognising that hate speech may take the form of the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred, and of the glorification of persons convicted for having committed such crimes;

Recognising also that forms of expression that offend, shock or disturb will not on that account alone amount to hate speech and that action against the use of hate speech should serve to protect individuals and groups of persons rather than particular beliefs, ideologies or religions;

...

14. The Recommendation further recognises that, in some instances, a particular feature of the use of hate speech is that it may be intended to incite, or can reasonably be expected to have the effect of inciting, others to commit acts of violence, intimidation, hostility or discrimination against those targeted by it. As the definition above makes clear, the element of incitement entails there being either a clear intention to bring about the commission of acts of violence, intimidation, hostility or discrimination or an imminent risk of such acts occurring as a consequence of the particular hate speech used.

...

16. ...[T]he assessment as to whether or not there is a risk of the relevant acts occurring requires account to be taken of the specific circumstances in which the hate speech is used. In particular, there will be a need to consider (a) the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked): (b) the capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders); (c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination); (d) the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate); (e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a "live" event); and (f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination)."

2. United Nations

(a) International Covenant on Civil and Political Rights

104. The relevant provisions of the 1966 International Covenant on Civil and Political Rights (ICCPR) provide:

Article 19

"1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

(b) Human Rights Council

105. The relevant parts of the Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/3, of 20 September 2006 (HRC 2006 Report) read as follows:

"47. The Special Rapporteur notes that article 20 of the Covenant was drafted against the historical background of the horrors committed by the Nazi regime during the Second World War. The threshold of the acts that are referred to in article 20 is relatively high because they have to constitute advocacy of national, racial or religious hatred. Accordingly, the Special Rapporteur is of the opinion that expressions should only be prohibited under article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group ...

50. Domestic and regional judicial bodies - where they exist - have often laboured to strike the delicate balance between competing rights, which is particularly demanding when beliefs and freedom of religion are involved. In situations where there are two competing rights, regional bodies have often extended a margin of appreciation to national authorities and in cases of religious sensitivities, they have generally left a slightly wider margin of appreciation, although any decision to limit a particular human right must comply with the criteria of proportionality. At the global level, there is not sufficient common ground to provide for a margin of appreciation. At the global level, any attempt to lower the threshold of article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance."

106. The relevant parts of the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted in accordance with Human Rights Council resolution 16/4, A/67/357, of 7 September 2012 read as follows:

"46. While some of the above concepts may overlap, the Special Rapporteur considers the following elements to be essential when determining whether an expression constitutes incitement to hatred: real and imminent danger of violence

resulting from the expression; intent of the speaker to incite discrimination, hostility or violence; and careful consideration by the judiciary of the context in which hatred was expressed, given that international law prohibits some forms of speech for their consequences, and not for their content as such, because what is deeply offensive in one community may not be so in another. Accordingly, any contextual assessment must include consideration of various factors, including the existence of patterns of tension between religious or racial communities, discrimination against the targeted group, the tone and content of the speech, the person inciting hatred and the means of disseminating the expression of hate. For example, a statement released by an individual to a small and restricted group of Facebook users does not carry the same weight as a statement published on a mainstream website. Similarly, artistic expression should be considered with reference to its artistic value and context, given that art may be used to provoke strong feelings without the intention of inciting violence, discrimination or hostility.

47. Moreover, while States are required to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence under article 20 (2) of the Covenant, there is no requirement to criminalize such expression. The Special Rapporteur underscores that only serious and extreme instances of incitement to hatred, which would cross the seven-part threshold, should be criminalized."

(c) Human Rights Committee

107. The relevant parts of General Comment No. 34, Article 19: Freedoms of Opinion and Expression, of 12 September 2011 read as follows:

"22. Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality. Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated ...

46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities ...

48. Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor

would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith ...

50. Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3."

(d) Committee on the Elimination of Racial Discrimination

108. The relevant part of General Recommendation No. 35, Combating Racist Hate Speech, of 12 September 2011 reads as follows:

"20. The Committee observes with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention [on the Elimination of All Forms of Racial Discrimination]. States parties should formulate restrictions on speech with sufficient precision, according to the standards in the Convention as elaborated in the present recommendation. The Committee stresses that measures to monitor and combat racist speech should not be used as a pretext to curtail expressions of protest at injustice, social discontent or opposition."

(e) Office of the High Commissioner for Human Rights

109. The joint submission by Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief; Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance of the Office of the High Commissioner for Human Rights (OHCHR) for the expert workshop on the prohibition of incitement to national, racial or religious hatred (Expert workshop on Europe, 9-10 February 2011, Vienna) referred to "objective criteria to prevent arbitrary application of national legal standards pertaining to incitement to racial or religious hatred", one of such criteria being the following:

"The public intent of inciting discrimination, hostility or violence must be present for hate speech to be penalized[.]"

110. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Conclusions and recommendations emanating from the four regional expert workshops organised by the OHCHR, in 2011 ("the Rabat Plan") was adopted by experts in Rabat, Morocco, on 5 October 2012. The relevant parts of the Plan read as follows:

"15. ... [L]egislation that prohibits incitement to hatred uses variable terminology and is often inconsistent with article 20 of the ICCPR. The broader the definition of incitement to hatred is in domestic legislation, the more it opens the door for arbitrary application of these laws. The terminology relating to offences on incitement to national, racial or religious hatred varies in the different countries and is increasingly rather vague while new categories of restrictions or limitations to freedom of

expression are being incorporated in national legislation. This contributes to the risk of a misinterpretation of article 20 of the ICCPR and an addition of limitations to freedom of expression not contained in article 19 of the ICCPR."

3. Other international materials

(a) The Shanghai Convention on Combating Terrorism, Separatism and Extremism of 15 June 2001 ("the Shanghai Convention")

111. Article 1 § 3 of the Shanghai Convention, ratified by the Russian Federation in October 2010, provides the following definition of "Extremism":

> "'Extremism' is an act aimed at seizing or keeping power through the use of violence or at violent change of the constitutional order of the State, as well as a violent encroachment on public security, including the organization, for the above purposes, of illegal armed formations or participation in them and that are subject to criminal prosecution in conformity with the national laws of the Parties."

(b) Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation

112. On 9 December 2008 the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information adopted a joint declaration which reads, in so far as relevant:

Defamation of Religions

"The concept of 'defamation of religions' does not accord with international standards regarding defamation, which refer to the protection of reputation of individuals, while religions, like all beliefs, cannot be said to have a reputation of their own.

Restrictions on freedom of expression should be limited in scope to the protection of overriding individual rights and social interests, and should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.

Restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

International organisations, including the United Nations General Assembly and Human Rights Council, should desist from the further adoption of statements supporting the idea of 'defamation of religions'.

Anti-Terrorism Legislation

The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to

advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.

The criminalisation of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them). Vague notions such as providing communications support to terrorism or extremism, the 'glorification' or 'promotion' of terrorism or extremism, and the mere repetition of statements by terrorists, which does not itself constitute incitement, should not be criminalised.

The role of the media as a key vehicle for realising freedom of expression and for informing the public should be respected in anti-terrorism and anti-extremism laws. The public has a right to know about the perpetration of acts of terrorism, or attempts thereat, and the media should not be penalized for providing such information.

Normal rules on the protection of confidentiality of journalists' sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by other means – should apply in the context of anti-terrorist actions as at other times."

(c) The Camden Principles

113. The non-governmental organisation ARTICLE 19: Global Campaign for Free Expression ("ARTICLE 19") prepared the Camden Principles on Freedom of Expression and Equality on the basis of discussions involving a group of high-level UN and other officials, civil society and academic experts in international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009 ("the Camden Principles"). They read as follows in so far as relevant:

Principle 12: Incitement to hatred

"12.1. All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech). National legal systems should make it clear, either explicitly or through authoritative interpretation, that:

i. The terms 'hatred' and 'hostility' refer to intense and irrational emotions of opprobrium, enmity and detestation towards the target group.

ii. The term 'advocacy' is to be understood as requiring an intention to promote hatred publicly towards the target group.

iii. The term 'incitement' refers to statements about national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups.

iv. The promotion, by different communities, of a positive sense of group identity does not constitute hate speech.

...

12.3. States should not prohibit criticism directed at, or debate about, particular ideas, beliefs or ideologies, or religions or religious institutions, unless such expression constitutes hate speech as defined by Principle 12.1.

...

12.5. States should review their legal framework to ensure that any hate speech regulations conform to the above."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. Date of application

114. The Government contested the date the present application was lodged. They argued that the introductory letter of 19 June 2012 sent by the applicants' representatives, Ms Volkova, Mr Polozov and Mr Feygin, should not be taken into account as they had failed to provide the Court with all the necessary documents. At the same time, the Government pointed out that the introductory letter to the Court sent by Ms Khrunova on 19 October 2012 had only been on behalf of the third applicant and alleged that it had been the Court that had invited her to act on behalf of all three applicants. In view of the foregoing, they argued that compliance with the six-month time-limit should be examined in respect of each applicant separately.

115. The applicants stated that their representatives had sent the introductory letter of 19 June 2012 on their behalf in accordance with their instructions. The fact that they had later decided to refuse the assistance of those representatives and use different lawyers could not affect the validity of the introductory letter.

116. The Court notes that on 19 June 2012 it received an introductory letter concerning alleged violations of the applicants' rights guaranteed by Articles 3, 5, 6 and 10 of the Convention on account of the criminal prosecution for the performance of 21 February 2012. The introductory letter was sent on behalf of the three applicants by their representatives Ms Volkova, Mr Polozov and Mr Feygin. Authority forms were enclosed with the letter.

117. On 21 August 2012 the Court received an application form of 16 August 2012 sent on behalf of the applicants by their representatives Ms Volkova, Mr Polozov and Mr Feygin. The above complaints were further detailed in the application form.

118. On 29 October 2012 the Court received an introductory letter sent on behalf of the third applicant by Ms Khrunova. In a letter of 31 October 2012 to Ms Khrunova the Court informed her that it had already registered

an application lodged on behalf of the three applicants and asked her to clarify whether she was going to represent them all or only the third applicant. In a letter of 12 December 2012 Ms Khrunova informed the Court that she was going to represent all three applicants. The applicants subsequently provided the Court with authority forms in respect of Ms Khrunova, Mr Y. Grozev and Mr D. Gaynutdinov, who made further submissions to the Court on their behalf. In particular, an additional application form of 6 February 2013 was submitted on behalf of the three applicants by Ms Khrunova and Mr Y. Grozev, which further detailed the complaints under Articles 3, 5, 6 and 10 of the Convention (see paragraph 116 above).

119. The Court observes that the fact that the applicants chose to change their representatives in the course of the proceedings has no bearing on the validity of the submissions made by the first set of representatives. Accordingly, the Court considers 19 June 2012 as the date of the lodging of the complaints under Articles 3, 5, 6 and 10 concerning the criminal prosecution for the performance of 21 February 2012 in respect of the three applicants, in compliance with Rule 47 § 5 of the Rules of Court as it stood at the material time.

120. At the same time, the Court notes that the first and second applicants, in an additional application form of 29 July 2013 submitted by Mr D. Gaynutdinov on their behalf, made a new complaint under Article 10 concerning banning the video-recordings of their performances available on the Internet. Accordingly, the Court considers 29 July 2013 as the date that complaint was lodged by the first and second applicants.

B. Legal representation

121. Having regard to the fact that on 14 June 2014 the third applicant withdrew the authority form in respect of Ms Khrunova and Mr Y. Grozev and herself submitted observations in reply to those of the Government, the latter contested the validity of the observations, having regard to Rule 36 § 2 of the Rules of Court, which provides:

> "Following notification of the application to the respondent Contracting Party under Rule 54 § 2 (b), the applicant should be represented in accordance with paragraph 4 of this Rule, unless the President of the Chamber decides otherwise."

122. The Court notes that on 24 September 2014 the President of the Section to which the case had been allocated granted the third applicant leave to represent herself in the proceeding before the Court, of which the Court informed the Government by letter on 29 September 2014. The Government's objection is therefore dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

123. The applicants complained that the conditions of their transportation to and from their court hearings and the treatment to which they had been subjected on the days of the hearings had been inhuman and degrading. They also complained that they had been kept in a glass dock in the courtroom under heavy security and in full view of the public, which amounted to humiliating conditions which were in breach of Article 3 of the Convention. That provision reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

1. The Government's submissions

124. The Government contested the applicants' argument. They stated that the conditions of their transportation had been in full accordance with Article 33 of Federal Law no. 103-FZ of 15 July 1995 On the Detention of Those Suspected and Accused of Having Committed a Crime. There had been many people in and around the court on the dates of the hearings and some of them had had an aggressive attitude, either towards the applicants or the police, and specially trained dogs had been used during the applicants' transportation to prevent any attempts to disrupt the trial. The Government also pointed out that the applicants had made no complaints concerning either the conditions of their transportation or detention in the courthouse to the domestic authorities. In their view, any discomfort the applicants might have suffered had not attained the minimum level of severity under Article 3 (see *Kalashnikov v. Russia*, no. 47095/99, § 65, ECHR 2002-VI). Furthermore, they noted that the complaint concerning the use of handcuffs in the courtroom had been raised by the third applicant for the first time in her observations of 9 July 2014 (see paragraph 130 below) and should be declared inadmissible on account of a failure to comply with the six-month time-limit.

125. As regards the glass dock in which the applicants had been held during the hearings, the Government noted, firstly, that apart from complaining that the glass had prevented them from communicating freely with counsel, the applicants had failed to substantiate in what way the glass dock could be considered as cruel treatment. They further submitted that metal cages or their replacement, glass docks, had been in use in courts as a security measure for over twenty years and that anyone in pre-trial detention was routinely placed there. Participants in proceedings, including defendants and the public, were therefore used to such conditions and there

was nothing to support any assertion that the measure reflected any sort of prejudice against the applicants.

126. The Government also pointed out that the practice of placing defendants behind special barriers existed in several European countries, such as Armenia, Moldova and Finland. Furthermore, glass docks in particular were in use in Spain, Italy, France, Germany, Ukraine and in some courts in the United Kingdom and Canada. They noted that the Court had found in a number of judgments that the use of metal cages in courtrooms was incompatible with Article 3 (see, among others, *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 96-102, 27 January 2009; *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 123-29, 15 June 2010; and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts)), however, they were unaware of similar findings with respect to glass docks. In the Government's view, a glass dock, unlike handcuffs or other security measures, allowed the accused to choose a comfortable position or to move around inside the dock while feeling safe from possible attack by victims, which was particularly relevant in the applicants' case as many members of the public inside the courtroom had had a hostile and aggressive stance towards them. Furthermore, in contrast to *Ramishvili and Kokhreidze*, (cited above, § 100), the glass dock did not in the least either "humiliate the applicants in their own eyes" or "arouse in them feelings of fear, anguish and inferiority", which was corroborated by the fact that not only did the applicants not shy away from the public, but directly addressed them during the proceedings. Likewise, in contrast with *Ashot Harutyunyan*, (cited above, § 128), there was no evidence that the glass dock had had any "impact on [their] powers of concentration and mental alertness" either. The Government therefore argued that there had been no breach of Article 3 in those circumstances.

2. The applicants' submissions

127. The applicants submitted that both the conditions of their transportation to and from the courthouse and the conditions in which they had been kept during the hearings were standard practice in Russia and that there were no effective domestic remedies with respect to those complaints. They pointed out that the Government had not suggested any remedy that they might have had recourse to.

128. The applicants maintained their complaint concerning the conditions of their transportation and the conditions in which they had been kept in the courthouse on the days of their hearings. They pointed out that the duration of the journey given by the Government was not accurate because it only took into account the vehicle's passing through the remand prison's gates. However, after arrival they had often remained inside the vehicle for one and a half to two hours before being let out.

129. The applicants argued that the glass dock in which they had been paced during the hearings was not much different from a metal cage, which the Court had found incompatible with Article 3 (see *Svinarenko and Slyadnev*, cited above, § 138). They submitted, in particular, that the glass dock had been very small, which had significantly limited their movements inside it. Furthermore, the glass dock conveyed a message to an outside observer that individuals placed in it had to be locked up and were therefore dangerous criminals. That message had not only been reinforced by the small size of the dock and its position in the courtroom, but also by the high level of security and the guard dogs around it. The applicants contested the Government's submission that that had been necessary for their own safety. They argued that there had been no attempts to disrupt the trial and that the presence of such a high number of armed police officers, ushers and guard dogs had only served the purpose of intimidating them and their counsel, to debase them and, given that the trial had been closely followed by the media, to create a negative image of them as dangerous criminals in the eyes of the wide media audience which had followed the trial.

130. Furthermore, according to the applicants, their placement in the glass dock had made it significantly more complicated to communicate with their counsel as, in that respect, it was even more restricting than a metal cage. In the applicants' view, such a measure, as well as creating a negative image of them in the eyes of the media audience, had also undermined the presumption of innocence in their regard. The third applicant also submitted that despite being held in the glass dock, she had also been handcuffed for three hours during the reading out of the judgment. Her hands had become swollen and had ached. Given that the applicants had had no history of violent behaviour, the treatment in question had in their view attained the "minimum level of severity" for the purposes of Article 3.

B. Admissibility

131. The Court observes, firstly, that the third applicant's complaint about being handcuffed at the court hearing of 17 August 2012 was raised for the first time in her observations of 9 July 2014 submitted in reply to those of the Government, which is outside the six-month time-limit provided for by Article 35 § 1. Accordingly, that part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

132. The Court notes that the Government raised a plea of non-exhaustion with regard to the applicants' complaint about the conditions of their transportation to the court and their detention there. The Court observes that in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 100-19, 10 January 2012), it found that the Russian legal system did not provide an effective remedy that could be used to prevent the

alleged violation or its continuation and provide applicants with adequate and sufficient redress in connection with a complaint about inadequate conditions of detention. The Government provided no evidence to enable the Court to reach a different conclusion in the present case. The Government's objection must therefore be dismissed.

133. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. Conditions of transport to and from the trial hearings

(a) General Principles

134. For a summary of the relevant general principles see *Idalov v. Russia* [GC], no. 5826/03, §§ 91-95, 22 May 2012.

(b) Application of those principles to the present case

135. The Court notes that it has relied in previous cases on the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT"), which has considered that individual compartments measuring 0.4, 0.5 or even 0.8 square metres are unsuitable for transporting a person, no matter how short the journey (see *Khudoyorov v. Russia*, no. 6847/02, §§ 117-20, ECHR 2005-X (extracts), and *M.S. v. Russia*, no. 8589/08, § 76, 10 July 2014). It notes that the individual compartments in which the applicants were transported measured from 0.37 to 0.49 sq. m, whereas the common compartments allowed less than one sq. m per person.

136. The Court observes that the applicants had to endure those cramped conditions twice a day, on the way to and from the courthouse, and were transported in such conditions thirty times over one month of detention. As regards the duration of each journey, the Court observes that according to the copies of the time logs submitted by the Government the time in transit varied between thirty-five minutes and one hour twenty minutes on the way to the court and between twenty minutes and four hours and twenty minutes on the way back.

137. The Court notes that it has found a violation of Article 3 of the Convention in a number of cases against Russia on account of cramped conditions when applicants were being transported to and from court (see, for example, *Khudoyorov*, cited above, §§ 118‑120; *Starokadomskiy v. Russia*, no. 42239/02, §§ 53-60, 31 July 2008; *Idalov*, cited above, §§ 103-08; and *M.S. v. Russia*, cited above, §§ 74-77). Having regard to the

material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

138. The above considerations are sufficient to warrant the conclusion that the conditions of the applicants' transport to and from the trial hearings exceeded the minimum level of severity and amounted to inhuman and degrading treatment in breach of Article 3 of the Convention. In view of this finding the Court does not consider it necessary to examine other aspects of the applicants' complaint.

139. There has accordingly been a violation of Article 3 of the Convention in this respect.

2. Treatment during the court hearings

(a) General principles

140. As the Court has repeatedly stated, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

141. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of that minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, for example, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). The public nature of the treatment may be a relevant or an aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 (see, *inter alia*, *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26; *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, 6 March 2007; and *Kummer v. the Czech Republic*, no. 32133/11, § 64, 25 July 2013).

142. In the context of courtroom security arrangements, the Court has stressed that the means chosen for ensuring order and security in those places must not involve measures of restraint which by virtue of their level of severity or by their very nature would bring them within the scope of Article 3 of the Convention, as there can be no justification for torture or inhuman or degrading treatment or punishment (see *Svinarenko and Slyadnev*, cited above, §127). It found, in particular, that confinement in a metal cage was contrary to Article 3, having regard to its objectively degrading nature (ibid., §§ 135-38).

143. The Court has also found that while the placement of defendants behind glass partitions or in glass cabins does not in and of itself involve an element of humiliation sufficient to reach the minimum level of severity,

that level may be attained if the circumstances of the applicants' confinement, taken as a whole, would cause them distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 125, 4 October 2016).

(b) Application of those principles in the present case

144. The Court has first to establish whether the confinement in a glass dock attained the minimum degree of severity to enable it to fall within the ambit of this provision.

145. The Court considers that glass docks do not have the harsh appearance of metal cages, in which merely being exposed to the public eye is capable of undermining the defendants' image and of arousing in them feelings of humiliation, helplessness, fear, anguish and inferiority. It also notes that glass installations are used in courtrooms in other member States (see *Svinarenko and Slyadnev*, cited above, § 76), although their designs vary from glass cubicles to glass partitions, and in the majority of States their use is reserved for high-security hearings (see *Yaroslav Belousov*, cited above, § 124). It appears from the Government's submissions that in Russia all defendants are systematically placed in a metal cage or a glass cabin as long as they are in custody.

146. The Court has to scrutinise the overall circumstances of the applicants' confinement in the glass dock to determine whether the conditions there reached, on the whole, the minimum level of severity required to characterise their treatment as degrading within the meaning of Article 3 of the Convention (see *Yaroslav Belousov*, cited above, § 125).

147. The Court has insufficient evidence that the glass dock did not allow the applicants adequate personal space. It notes, at the same time, that the dock was constantly surrounded by armed police officers and court ushers and that a guard dog was present next to it in the courtroom.

148. The Court takes note of the Government's argument that the glass dock was used as a security measure and that specially trained dogs were used during the applicants' transportation to and from the courthouse to prevent possible attempts to disrupt the hearing owing to the aggressive attitude of certain members of the public, either towards the applicants or the police. The Court observes, firstly, that no allegation was made by the Government that there was any reason to expect that the applicants would attempt to disrupt the hearing, or that the security measures had been put in place owing to their conduct. It also notes that in the photographs submitted by the applicants all the police officers and court ushers surrounding the dock, except one, stand facing the applicants. The Court considers this to constitute sufficient evidence of the fact that they were closely watching the applicants rather than monitoring the courtroom. In the Court's view, the

applicants must have felt intimidation and anxiety at being so closely observed throughout the hearings by armed police officers and court ushers, who, furthermore, separated them from their lawyers' desk on one side of the glass dock. The Court further observes that while the Government submitted that specially trained dogs were used to ensure security during the applicants' transportation, they provided no explanation for the dogs' presence in the courtroom.

149. The Court notes that the applicants' trial was closely followed by national and international media and they were permanently exposed to public view in a glass dock that was surrounded by armed police, with a guard dog next to it. The above elements are sufficient for the Court to conclude that the conditions in the courtroom at the Khamovnicheskiy District Court attained the minimum level of severity and amounted to degrading treatment in breach of Article 3 of the Convention.

150. There has accordingly been a violation of Article 3 of the Convention in this respect as well.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

151. The applicants complained that there were no valid reasons to warrant remanding them in custody, in breach of Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. The parties' submissions

1. The Government's submissions

152. The Government maintained that when deciding on the preventive measure to be applied to the applicants the domestic courts had carefully weighed all the relevant factors, including the applicants' personal characteristics, the gravity of the offences they had been charged with, their family situation, age and state of health. They had also examined the applicants' arguments and found them unconvincing. At the same time, the courts had agreed with the prosecuting authorities that if they had not been remanded in custody the applicants could have absconded from the trial, obstructed the proceedings or continued their criminal activity. In particular, the courts had taken into consideration the fact that the applicants had been charged with an offence committed by a group, while some of its members had not been identified. Furthermore, they had taken into consideration the fact that the first and second applicants had not lived at the address where

they were registered, while the third applicant had misled the investigation by at first having provided a false name. The courts had also taken account of a number of investigative measures that had still to be taken at the time. Therefore, the decisions to remand the applicants in custody and to extend their pre-trial detention had been well-grounded and had complied with Article 5 § 3.

2. The applicants' submissions

153. The applicants maintained their complaint. The third applicant submitted that she had initially given the investigator a false name on advice of her lawyer, who had misled her. However, it had turned out that the investigator had known who she was anyway. Therefore, in her view, her detention on the grounds that she had concealed her identity had been unfounded.

B. Admissibility

154. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

155. The Court notes that the first applicant was arrested on 4 March 2012, the second applicant on 3 March 2012 and the third applicant on 16 March 2012. On 17 August 2012 the Khamovnicheskiy District Court completed the trial and found them guilty. It follows that the period of the applicants' detention to be taken into consideration under Article 5 § 3 of the Convention amounted to five months and fourteen days, five months and fifteen days and five months and two days respectively.

156. The Court has already examined many applications against Russia raising similar complaints under Article 5 § 3 of the Convention. It has found a violation of that Article on the grounds that the domestic courts extended an applicant's detention by relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive measures (see, among many other authorities, *Mamedova v. Russia*, no. 7064/05, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, 28 June 2007; *Belov v. Russia*, no. 22053/02, 3 July 2008; *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009; *Logvinenko v. Russia*, no. 44511/04, 17 June 2010; and *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012).

157. The Court also notes that it has consistently found authorities' failure to justify even relatively short periods of detention, amounting, for example, to several months, to be in contravention of Article 5 § 3 (see, for example, *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004, where the applicant's pre-trial detention lasted four months and fourteen days, and *Sarban v. Moldova*, no. 3456/05, §§ 95-104, 4 October 2005, where the applicant's pre-trial detention was slightly more than three months).

158. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court considers that by failing to address the specific facts or consider alternative preventive measures, the authorities extended the applicants' detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify the applicants' being remanded in custody for over five months.

159. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

160. The applicants complained that their right to defend themselves effectively had been circumvented given that they were unable to communicate freely and privately with their lawyers during the trial. They also argued that they had been unable to effectively challenge the expert reports ordered by the investigators as the trial court had refused to call rebuttal experts or the experts who had drafted the reports. The applicants relied on Article 6 §§ 1 and 3 (c) and (d) of the Convention, which reads, in so far as relevant:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

A. The parties' submissions

1. The Government's submissions

161. The Government argued that the applicants had fully used their right to have confidential consultations with counsel, as guaranteed by domestic law. All of them had had numerous meetings with their lawyers and neither the applicants nor their representatives had made any complaints in that regard. The Government provided a copy of the register of visits by the applicants' lawyers to the remand prison. They further pointed out that the applicants had likewise made no complaints to the trial court concerning the alleged impossibility to have confidential talks with their lawyers during the hearings. The State could also not be held accountable if the applicants had been unhappy with the quality of the legal assistance provided by counsel of their choice. In particular, the third applicant had filed a complaint to the Moscow Regional Bar Association concerning one of the lawyers that had represented her and had asked the court for time to find a different representative. The court had granted that request. The first and second applicants had also eventually refused the services of the lawyers who had represented them initially. The Government pointed out that only the first applicant had raised the issue of an alleged failure to secure her right to confidential meetings with her counsel on appeal. They argued therefore that the second and third applicants had failed to exhaust the available domestic remedies and that the complaint was manifestly ill-founded in respect of the first applicant.

162. The Government further argued that the trial court had acted within its discretionary powers when deciding on the applicants' request to exclude the expert report as evidence or to carry out another expert examination. The trial court had dismissed the applicants' application to question certain experts at the hearing as it had found that the questions were irrelevant for the proceedings. Furthermore, the applicants had not asked the court to order another expert examination by a different expert institution, nor had they sought to complement the list of questions put to the experts examined during the trial. The Government pointed out that the trial court had carefully studied all the expert opinions and had set out its assessment thereof in detail in the judgment. In their view therefore there had been no violation of Article 6 § 1 in that regard.

2. The applicants' submissions

163. The applicants submitted that they had raised all the complaints in question before the trial court and on appeal. They maintained their complaints concerning a violation of their rights under Article 6. They contended that the register of the applicants' lawyers' visits to the remand prison provided by the Government was misleading as it related to visits

before the trial. However, the relevant aspect of their complaint concerned their inability to communicate freely and privately with their lawyers during the trial, in particular, on account of the glass dock where they had been held during the hearings and because the timing of the hearings and the conditions of their transportation to and from court had left them exhausted.

B. Admissibility

164. As regards the plea of non-exhaustion raised by the Government with respect to the complaint concerning the lack of confidential consultations between the applicants and their lawyers during the trial, the Court notes that it was raised by the applicants before the trial court (see paragraph 31 above). Furthermore, it was raised by the first applicant in her appeal statement, where she submitted that none of the accused could have confidential consultations with their lawyers (see paragraph 55 above). However, it was not examined by the appeal court (see paragraph 57 above). In the light of the foregoing the Court does not see how there could have been a different outcome if the second and third applicants had raised the complaint on appeal. It therefore dismisses the Government's objection.

165. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

166. The Court notes that the applicants raised two distinct issues, relying on specific guarantees of Article 6 § 3 of the Convention as well as on the general right to a fair hearing provided for by Article 6 § 1. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 of the Convention (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 49, *Reports* 1997-III), each of the complaints should be examined under those two provisions taken together.

167. The Court will first examine the complaint under Article 6 § 3 (c) concerning the applicants' inability to communicate freely and privately with their lawyers during the trial. The applicants contended that the courtroom arrangement, involving a glass dock in which they sat throughout the trial, had not only constituted degrading treatment but had also hampered them in consulting their lawyers. The Court notes that in the present case the glass dock was a permanent courtroom installation, a place designated for defendants in criminal proceedings. In the applicants' case it was surrounded throughout the hearing by police officers and court ushers who kept the applicants under close observation. On one side, they also

separated the glass dock from the desk where the applicants' lawyers sat during the trial.

168. The Court reiterates that a measure of confinement in a courtroom may affect the fairness of a trial, as guaranteed by Article 6 of the Convention. In particular, it may have an impact on the exercise of an accused's rights to participate effectively in the proceedings and to receive practical and effective legal assistance (see *Yaroslav Belousov*, cited above, § 149, and *Svinarenko and Slyadnev*, cited above, § 134, and the cases cited therein). It has stressed that an accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society; otherwise legal assistance would lose much of its usefulness (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 97, 2 November 2010, with further references).

169. The Court is mindful of the security issues a criminal court hearing may involve, especially in a large-scale or sensitive case. It has previously emphasised the importance of courtroom order for a sober judicial examination, a prerequisite of a fair hearing (see *Ramishvili and Kokhreidze* cited above, § 131). However, given the importance attached to the rights of the defence, any measures restricting the defendant's participation in the proceedings or imposing limitations on his or her relations with lawyers should only be imposed in so far as is necessary, and should be proportionate to the risks in a specific case (see *Van Mechelen and Others*, cited above, § 58; *Sakhnovskiy*, cited above, § 102; and *Yaroslav Belousov*, cited above, § 150).

170. In the present case, the applicants were separated from the rest of the hearing room by glass, a physical barrier which to some extent reduced their direct involvement in the hearing. Moreover, that arrangement made it impossible for the applicants to have confidential exchanges with their legal counsel, to whom they could only speak through a small window measuring 15 x 60 cm, which was only a metre off the ground and which was in close proximity to the police officers and court ushers.

171. The Court considers that it is incumbent on the domestic courts to choose the most appropriate security arrangement for a given case, taking into account the interests of administration of justice, the appearance of the proceedings as fair, and the presumption of innocence; they must at the same time secure the rights of the accused to participate effectively in the proceedings and to receive practical and effective legal assistance (see *Yaroslav Belousov*, cited above, § 152). In the present case, the use of the security installation was not warranted by any specific security risks or courtroom order issues but was a matter of routine. The trial court did not seem to recognise the impact of the courtroom arrangements on the applicants' defence rights and did not take any measures to compensate for those limitations. Such circumstances prevailed for the duration of the

first-instance hearing, which lasted for over one month, and must have adversely affected the fairness of the proceedings as a whole.

172. It follows that the applicants' rights to participate effectively in the trial court proceedings and to receive practical and effective legal assistance were restricted and that those restrictions were neither necessary nor proportionate. The Court concludes that the criminal proceedings against the applicants were conducted in violation of Article 6 §§ 1 and 3 (c) of the Convention.

173. In view of that finding, the Court does not consider it necessary to address the remainder of the applicants' complaints under Article 6 §§ 1 and 3 (d) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION ON ACCOUNT OF CRIMINAL PROSECUTION FOR THE PERFORMANCE OF 21 FEBRUARY 2012

174. The applicants complained that the institution of criminal proceedings against them, entailing their detention and conviction, for the performance of 21 February 2012 had amounted to a gross, unjustifiable and disproportionate interference with their freedom of expression, in breach of Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

1. The Government's submissions

175. The Government contested that argument. They submitted, firstly, that the applicants had not been convicted of hooliganism for their expressing their opinions but because they had committed an offence punishable by the Criminal Code. The fact that while committing the offence the applicants had believed that they were expressing their views or had given a performance was not sufficient to conclude that the conviction had actually constituted an interference with their freedom of expression.

Any such interference had been of an indirect and secondary nature and had not fallen under the protection of Article 10. The Government referred in that regard to *Kosiek v. Germany* (28 August 1986, Series A no. 105) and *Glasenapp v. Germany* (28 August 1986, Series A no. 104).

176. The Government further argued that if the Court considered that there had been an interference with the applicants' right under Article 10 then it had been "in accordance with the law". In particular, Article 213 of the Criminal Code clearly set out what constituted hooliganism, which had been further elaborated by the Supreme Court in Ruling no. 45 of 15 November 2007 (see paragraph 88 above). The legislation in question was therefore clear and foreseeable. The applicants had been bound to realise that an Orthodox church was not a concert venue and that their actions would be liable to sanctions.

177. As regards the legitimate aim of the interference, the Government submitted that it had sought to protect Orthodox Christians' right to freedom of religion. As for the proportionality of the interference, in the Government's view it had been "necessary in a democratic society" in order to safeguard the rights guaranteed by Article 9 of the Convention. They referred in that regard to *Otto-Preminger-Institut* (cited above, §§ 47 and 49), where the Court had stated that "whoever exercises the rights and freedoms enshrined in the first paragraph of [Article 10] undertakes 'duties and responsibilities'. Amongst them ... an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs." The Government also endorsed the relevant part of the submissions of the Alliance Defending Freedom (see paragraphs 185-186 below).

178. The Government argued that the applicants' manifestly provocative behaviour in a place of religious worship, which, furthermore, was one of the symbols of the Russian Orthodox community and had been chosen specifically by the applicants to amplify the provocative nature of their actions, had targeted the Christians working in and visiting the cathedral as the audience, had undermined tolerance and could not be regarded as a normal exercise of Convention rights. Furthermore, the applicants had made a video of their performance and uploaded it to the Internet, where it had been viewed several thousand times a day, which had thereby made their performance even more public.

179. The Government emphasised that the applicants had not been punished for the ideas or opinions that they might have been seeking to impart, whether political or religious, but for the form in which that had been done. They stated that the Court should consider the context and not the content of their speech. In their view, the applicants' conduct could not "contribute to any form of public debate capable of furthering progress in human affairs" and had merely been a provocative act and a public

disturbance, which had constituted an unjustified encroachment on others' freedom of religion. They also pointed out that while Article 213 § 2 of the Criminal Code provided for imprisonment of up to seven years, the applicants had only been sentenced to two years in jail and that the third applicant had been exempted from serving her sentence.

180. The Government argued that in the given circumstances the State had been called upon to take measures in order to protect Article 9 rights and to punish those responsible for violating places of religious worship and expressing opinions incompatible with the exercise of those rights. Accordingly, in the Government's view there had been no violation of Article 10 in the present case.

2. The applicants' submissions

181. The applicants maintained that the criminal proceedings against them had constituted an interference with their right to freedom of expression as they had been prosecuted for their performance. In their view, the Government's argument to the contrary and, in particular the reference to *Kosiek* (cited above) was misconceived. They also argued that the cases of *Otto-Preminger-Institut* (cited above) and *İ.A. v. Turkey* (no. 42571/98, ECHR 2005-VIII) had concerned entirely different situations. In any event, in both those cases the punishment had been much milder than that imposed on the applicants, being a ban on showing the film in question in the former case and a fine in the latter. The applicants further argued that the domestic courts had failed either to recognise that their song had an explicit political message or to assess the proportionality of the interference. Furthermore, the conclusion that their actions had been motivated by religious hatred was arbitrary and based on an incomplete assessment of the evidence owing to the refusal of their applications for additional evidence and to question additional witnesses.

182. The applicants submitted that they had chosen Christ the Saviour Cathedral for their performance because the Patriarch of the Russian Orthodox Church had used that venue for a political speech. In particular, he had criticised demonstrations against President Putin in the cathedral and had announced that he supported him for a third term as President. The applicants pointed out that they had criticised public and religious officials in their song for the manner in which they exercised their official functions, and argued that political speech enjoyed the highest level of protection under the Convention as being of paramount importance in a democratic society.

183. The applicants further argued that the domestic courts' findings that their actions had been offensive to Orthodox believers had also been unsubstantiated because their performance had only lasted about a minute and a half and had been witnessed by about six people who had been working in the cathedral. The extremely short duration of the incident, the

fact that it had not interrupted any religious service and had been witnessed by a very limited number of people should have led to the incident being classified as an administrative offence rather than a criminal one. In the applicants' view, the courts' analysis had not in the main been built on the incident as such, but on the video of it that had been posted on the Internet, which had been seen one and a half million times in ten days. Finally, the applicants contended that sentencing them to one year and eleven months in jail had been grossly disproportionate.

B. Submissions by third-party interveners

1. Submissions from the Alliance Defending Freedom (ADF)

184. The ADF noted that there was growing intolerance against Christians throughout Council of Europe member States, which had been addressed by a number of international organisations, in particular by the Parliamentary Assembly of the Council of Europe in Resolution 1928 (2013) on Safeguarding Human Rights in Relation to Religion and Belief, and Protecting Religious Communities from Violence.

185. They further submitted that Christians, like any other group in society, did not have the right not to be offended. On the contrary, they had to be prepared to be "offended, shocked and disturbed" within the meaning of the Court's case-law (see *Handyside*, cited above, § 49). They argued, however, that Christians had the right to worship freely without fear of obscene, hostile or even violent protests taking place within their church buildings.

186. The ADF pointed out that when State authorities had to take action against activists who invaded a church and protested during a religious service they would necessarily be restricting those activists' freedom of speech. In the ADF's view, the Court should look at the context of events rather than the particular content of the speech when determining whether such a restriction had been proportionate. In that regard, the ADF referred to several cases where the Court had found a restriction on the manner and form of expression to be proportionate as long as the expression itself had not been prohibited from taking place (they referred, *inter alia*, to *Rai, Allmond and "Negotiate Now" v. The United Kingdom* (dec.), no. 25522/94, 6 April 1995, and *Barraco v. France*, no. 31684/05, 5 March 2009, both cases examined under Article 11). The ADF argued that a content-based approach to determining acceptable limitations on speech lacked clarity, was open to abuse and ran the risk of decisions being influenced by personal and political convictions rather than objective standards (they referred, *inter alia*, to *Féret v. Belgium*, no. 15615/07, 16 July 2009, and *Vejdeland v. Sweden*, no. 1813/07, 9 February 2012). At the same time, a context-based approach was preferable as it did not require an assessment of

whether the speech in question had been "insulting", "hateful" or "disrespectful" and was therefore beyond the protection of Article 10, or whether it had been "offensive", "shocking" or "disturbing" but had amounted to a fundamental right under the Convention.

2. Submissions by Amnesty International and Human Rights Watch

187. Amnesty International and Human Rights Watch ("the interveners") noted that while freedom of expression was one of the foundations of a democratic society, States were permitted, and in certain circumstances, even obligated to restrict it in order to protect the rights of others. However, when applying such restrictions States had to choose to that end the least restrictive instrument, with criminal sanctions rarely meeting that requirement. In that regard, the interveners referred in particular to the Rabat Plan of Action and the Committee on the Elimination of Racial Discrimination General Recommendation no. 35: Combating Racist Hate Speech (see paragraphs 110 and 108 above).

188. The interveners argued that criminal sanctions should only be applied to offences that concerned advocacy of hatred that constituted incitement to violence, hostility or discrimination on the grounds of nationality, race, religion, ethnicity, gender or sexual orientation. Punitive laws should be formulated with sufficient precision and have a narrow scope of operation as otherwise they would have a chilling effect on other types of speech.

189. In so far as religious hatred might be at issue, the interveners' view was that there should be a clear distinction between expression that constituted incitement to religious discrimination, hostility and violence on the one hand, and expression that criticised or even insulted religions in a manner that shocked or offended the religion's adherents. They noted in that regard that States Parties to the ICCPR were required to prohibit the former, but were not permitted to punish the latter (see paragraph 104 above). It had therefore to be clearly defined what constituted the offence of incitement to religious discrimination, hostility and violence.

190. The interveners further observed that laws restricting freedom of expression in the interests of protecting religions or their adherents from offences such as blasphemy, religious insult and defamation were often vague, subject to abuse and punished expression that fell short of the threshold of advocacy of hatred and were therefore detrimental to other human rights. In that regard the interveners referred, in particular, to the Report of the Venice Commission, the Human Rights Committee's General Comment no. 34 and the Rabat Plan of Action (see paragraphs 101, 107 and 110 above).

3. Submissions by ARTICLE 19

191. ARTICLE 19 sought to outline the context of the present case. They noted a number of domestic legal instruments, which they argued constituted impediments to political speech in Russia. Apart from the Suppression of Extremism Act (see paragraph 239 below), those included Article 282 of the Criminal Code prohibiting the incitement of hatred on the grounds, *inter alia*, of sex, race, nationality or religion which, according to ARTICLE 19, did not meet the standards of the Rabat Plan of Action (see paragraph 110 above) and was used to stifle voices critical of the Government. They likewise criticised Law no. 139-FZ on Amending the Federal Law on the Protection of Children from Information Harmful to their Health and Development, which had increased the executive authorities' power to block certain websites.

192. ARTICLE 19 also noted the following legal provisions passed after 2012 which, in their view, restricted freedom of expression. Firstly, it referred to Federal Law no. 433-FZ of 28 December 2013 on Amendments to the Criminal Code of the Russian Federation, which had added Article 280[1] to the Code, criminalising public incitement to actions aimed at breaching Russian territorial integrity. ARTICLE 19 noted that the provision did not specify that it only applied to calls for territorial changes by means of violent action. Secondly, it cited Federal Law no. 135-FZ of 29 June 2013 on an Amendment to Article 148 of the Criminal Code and Other Legislative Acts of the Russian Federation with the Aim to Counter Insults to the Religious Convictions and Feelings of Citizens, which had criminalised insulting religious feelings. Thirdly, it noted that libel, which had been decriminalised in 2011, had again been made a criminal offence by Federal Law no. 141-FZ of 28 July 2012 on Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation. ARTICLE 19 referred to a number of convictions for libel under Article 128.1 where the statements at issue had been directed against State officials. Fourthly, it referred to Federal Law no. 190-FZ of 12 November 2012 on Amendments to the Criminal Code of the Russian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation. It had broadened the definition of the crime of "high treason" contained in Article 275 of the Criminal Code by including "assistance ... to a foreign State, an international or foreign organisation or their representatives in activity directed against the security of the Russian Federation". The definition of "espionage" contained in Article 276 of the Criminal Code had also been broadened to add international organisations to the list of entities cooperation with which could be considered as espionage.

193. Furthermore, ARTICLE 19 noted the following legal acts passed after 2012, which it submitted had restricted freedom of assembly and association. Firstly, it cited Federal Law no. 121-FZ of 20 July 2012 on

Amendments to Certain Legislative Acts of the Russian Federation in the Part Related to the Regulation of the Activity of Non-Commercial Organisations Acting as Foreign Agents, which required non-governmental organisations (NGOs) that received foreign funding and engaged in political activity to register as "foreign agents". Secondly, it referred to Federal Law no. 272-FZ of 28 December 2012 on Measures in respect of Persons Involved in a Breach of Fundamental Human Rights and Freedoms, Rights and the Freedoms of Nationals of the Russian Federation. Apart from imposing sanctions on a number of United States officials on account of violations of the human rights of Russian citizens and banning the adoption of Russian children by US nationals, the law had also banned Russian NGOs that either engaged in political activity and received funding from the United States or engaged in activities that threatened Russia's interests. Thirdly, it mentioned Federal law no. 65-FZ of 8 June 2010 on Amendments to the Code of Administrative Offences of the Russian Federation and the Federal Law on Assemblies, Meetings, Demonstrations, Marches and Picketing, which had introduced numerous restrictions on the right of assembly. In particular, entire categories of people had been forbidden to organise public events on account of having a criminal record or of having committed administrative offences; the law provided for broad liability for an organiser for possible damage caused during an event; maximum penalties for a breach of the law in question had been increased and a new administrative offence of organising the simultaneous presence and/or movement of citizens in public places which entailed a breach of public order had been introduced in Article 20.2.2 of the Code of Administrative Offences.

194. Finally, ARTICLE 19 submitted that the repression of civil society activists in Russia had increased significantly in 2012. They referred to a number of examples in 2012-13 where such activists had been subjected to physical attacks, administrative penalties for online publications, fabricated criminal charges and even kidnapping.

4. The Government's comments on the third-party interventions

195. The Government referred to their position stated in their observations concerning the applicants' complaint (see paragraphs 175 to 180 above).

C. Admissibility

196. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

D. Merits

1. General principles

197. According to the Court's well-established case-law, freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". Moreover, Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see, among many other authorities, *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204, and *Women On Waves and Others v. Portugal*, no. 31276/05, §§ 29 and 30, 3 February 2009).

198. As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-V).

199. In order for an interference to be justified under Article 10, it must be "prescribed by law", pursue one or more of the legitimate aims listed in the second paragraph of that provision and be "necessary in a democratic society" – that is to say, proportionate to the aim pursued (see, for example, *Steel and Others v. the United Kingdom*, 23 September 1998, § 89, *Reports* 1998-VII).

200. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those delivered by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V; *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII; and *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 88, ECHR 2004-XI).

201. In assessing the proportionality of the interference, the nature and severity of the penalty imposed are among the factors to be taken into account (see *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; and *Skałka v. Poland*, no. 43425/98, § 38, 27 May 2003).

2. Application of the above principles to the present case

(a) Existence of act of "expression"

202. The first question for the Court is whether the actions for which the applicants were prosecuted in criminal proceedings and subsequently imprisoned were covered by the notion of "expression" under Article 10 of the Convention.

203. The Court notes in that connection that it has examined various forms of expression to which Article 10 applies. In particular, it was held to include freedom of artistic expression – notably within the scope of freedom to receive and impart information and ideas – which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence there is an obligation on States not to encroach unduly on an author's freedom of expression (see *Müller and Others v. Switzerland*, 24 May 1988, §§ 27 and 33, Series A no. 133).

204. The Court has also held that opinions, apart from being capable of being expressed through the media of artistic work, can also be expressed through conduct. For example, it has considered that the public display of several items of dirty clothing for a short time near Parliament, which had been meant to represent the "dirty laundry of the nation", amounted to a form of political expression (see *Tatár and Fáber v. Hungary*, no. 26005/08 and 26160/08, § 36, 12 June 2012). Likewise, it has found that pouring paint on statues of Ataturk was an expressive act performed as a protest against the political regime at the time (see *Murat Vural v. Turkey*, no. 9540/07, §§ 54-56, 21 October 2014). Detaching a ribbon from a wreath laid by the President of Ukraine at a monument to a famous Ukrainian poet on Independence Day has also been regarded by the Court as a form of political expression (see *Shvydka v. Ukraine*, no. 17888/12, §§ 37-38, 30 October 2014).

205. In the case at hand, the applicants, members of a punk band, attempted to perform their song *Punk Prayer – Virgin Mary, Drive Putin Away* from the altar of Moscow's Christ the Saviour Cathedral as a response to the ongoing political process in Russia (see paragraphs 7-8 above). They invited journalists and the media to the performance to gain publicity.

206. For the Court, that action, described by the applicants as a "performance", constitutes a mix of conduct and verbal expression and amounts to a form of artistic and political expression covered by Article 10.

(b) Existence of an interference

207. Having regard to the foregoing, the Court considers that criminal proceedings against the applicants on account of the above actions, which

resulted in a prison sentence, amounted to an interference with their right to freedom of expression.

(c) Compliance with Article 10 of the Convention

(i) "Prescribed by law"

208. According to the Government, the interference was "in accordance with the law" as the applicants had been convicted of hooliganism under Article 213 of the Criminal Code, which was clear and foreseeable. The applicants contested the applicability of that provision to their actions.

209. Although there may be a question as to whether the interference was "prescribed by law" within the meaning of Article 10, the Court does not consider that, in the present case, it is called upon to examine whether Article 213 of the Criminal Code constituted adequate legal basis for the interference as, in its view, the applicants' grievances fall to be examined from the point of view of the proportionality of the interference. The Court therefore decides to leave the question open and will address the applicants' arguments below when examining whether the interference was "necessary in a democratic society".

(ii) Legitimate aim

210. Given that the applicants' performance took place in a cathedral, which is a place of religious worship, the Court considers that the interference can be seen as having pursued the legitimate aim of protecting the rights of others.

(iii) "Necessary in a democratic society"

211. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI) and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, *inter alia*, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). Furthermore, the Court must examine with particular scrutiny cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko v. Russia*, no. 19554/05, § 87, 15 May 2014).

212. It notes that the applicants wished to draw the attention of their fellow citizens and the Russian Orthodox Church to their disapproval of the political situation in Russia and the stance of Patriarch Kirill and some other clerics towards street protests in a number of Russian cities, which had been caused by recent parliamentary elections and the approaching presidential election (see paragraphs 7-8 above). Those were topics of public interest.

The applicants' actions addressed these topics and contributed to the debate about the political situation in Russia and the exercise of parliamentary and presidential powers. The Court reiterates in that connection that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debates on questions of public interest. It has been the Court's consistent approach to require very strong reasons for justifying restrictions on political debate, for broad restrictions imposed in individual cases would undoubtedly affect respect for the freedom of expression in general in the State concerned (see *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV).

213. That being said, the Court reiterates that notwithstanding the acknowledged importance of freedom of expression, Article 10 does not bestow any freedom of forum for the exercise of that right. In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI, and *Taranenko*, cited above, § 78). Furthermore, the Court considers that holding an artistic performance or giving a political speech in a type of property to which the public enjoys free entry may, depending on the nature and function of the place, require respect for certain prescribed rules of conduct.

214. In the present case the applicants' performance took place in Moscow's Christ the Saviour Cathedral. It can be considered as having violated the accepted rules of conduct in a place of religious worship. Therefore, the imposition of certain sanctions might in principle be justified by the demands of protecting the rights of others, although the Court notes that no proceedings were instituted against the applicants following their mock performance of the same song at the Epiphany Cathedral in the district of Yelokhovo in Moscow on 18 February 2012 in similar circumstances (see paragraph 12 above).

215. However, in the case at hand the applicants were subsequently charged with a criminal offence and sentenced to one year and eleven months in prison. The first and second applicants served approximately one year and nine months of that term before being amnestied while the third applicant served approximately seven months before her sentence was suspended. The Court notes that the applicants' actions did not disrupt any religious services, nor did they cause any injures to people inside the cathedral or any damage to church property. In those circumstances the Court finds that the punishment imposed on the applicants was very severe in relation to the actions in question. It will further examine whether the domestic courts put forward "relevant and sufficient" reasons to justify it.

216. The Court notes that the domestic courts convicted the applicants of hooliganism motivated by religious hatred and enmity, committed in a group acting with premeditation and in concert, under Article 213 § 2 of the Criminal Code. It is significant that the courts did not examine the lyrics of the song *Punk Prayer – Virgin Mary, Drive Putin Away* performed by the applicants, but based the conviction primarily on the applicants' particular conduct. The trial court emphasised the applicants' being "dressed in brightly coloured clothes and wearing balaclavas", making "brusque movements with their heads, arms and legs, accompanying them with obscene language and other words of an insulting nature" to find that such behaviour did not "respect the canons of the Orthodox Church", and that "representatives of other religions, and people who do not consider themselves believers, also [found] such behaviour unacceptable" (see paragraph 52 above). The trial court concluded that the applicants' actions had "offend[ed] and insult[ed] the feelings of a large group of people" and had been "motivated by religious hatred and enmity" (ibid.).

217. The Court reiterates that it has had regard to several factors in a number of cases concerning statements, verbal or non-verbal, alleged to have stirred up or justified violence, hatred or intolerance where it was called upon to decide whether the interferences with the exercise of the right to freedom of expression of the authors of such statements had been "necessary in a democratic society" in the light of the general principles formulated in its case-law.

218. One of them has been whether the statements were made against a tense political or social background; the presence of such a background has generally led the Court to accept that some form of interference with such statements was justified. Examples include the tense climate surrounding the armed clashes between the PKK (the Workers' Party of Kurdistan, an illegal armed organisation) and the Turkish security forces in south-east Turkey in the 1980s and 1990s (see *Zana v. Turkey*, 25 November 1997, §§ 57-60, *Reports* 1997-VII; *Sürek (no. 1)*, cited above, §§ 52 and 62; and *Sürek v. Turkey (no. 3)* [GC], no. 24735/94, § 40, 8 July 1999); the atmosphere engendered by deadly prison riots in Turkey in December 2000 (see *Falakaoğlu and Saygılı v. Turkey*, nos. 22147/02 and 24972/03, § 33, 23 January 2007, and *Saygılı and Falakaoğlu v. Turkey (no. 2)*, no. 38991/02, § 28, 17 February 2009); problems relating to the integration of non-European immigrants in France, especially Muslims (see *Soulas and Others v. France*, no. 15948/03, §§ 38-39, 10 July 2008, and *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010); and relations with national minorities in Lithuania shortly after the re-establishment of its independence in 1990 (see *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, § 78, 4 November 2008).

219. Another factor has been whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or

indirect call for violence or as a justification of violence, hatred or intolerance (see, among other authorities, *Incal v. Turkey*, 9 June 1998, § 50, *Reports* 1998-IV; *Sürek (no. 1)*, cited above, § 62; *Özgür Gündem v. Turkey*, no. 23144/93, § 64, ECHR 2000-III; *Gündüz v. Turkey*, no. 35071/97, §§ 48 and 51, ECHR 2003-XI; *Soulas and Others*, cited above, §§ 39-41 and 43; *Balsytė-Lideikienė*, cited above, §§ 79-80; *Féret*, cited above, §§ 69-73 and 78; *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, § 73, 12 June 2012; *Kasymakhunov and Saybatalov*, cited above, §§ 107-12; *Fáber v. Hungary*, no. 40721/08, §§ 52 and 56-58, 24 July 2012; and *Vona v. Hungary*, no. 35943/10, §§ 64-67, ECHR 2013). In assessing that point, the Court has been particularly sensitive towards sweeping statements attacking entire ethnic, religious or other groups or casting them in a negative light (see *Seurot v. France* (dec.), no. 57383/00, 18 May 2004, *Soulas and Others*, cited above, §§ 40 and 43; and *Le Pen*, cited above, all of which concerned generalised negative statements about non-European immigrants in France, in particular Muslims; *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI, which concerned statements linking all Muslims in the United Kingdom with the terrorist acts in the United States of America on 11 September 2001; *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004; *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007; *M'Bala M'Bala v. France* (dec.), no. 25239/13, 20 October 2015, which concerned vehement anti-Semitic statements; *Féret*, cited above, § 71, which concerned statements portraying non-European immigrant communities in Belgium as criminally minded; *Hizb ut-Tahrir and Others*, § 73, and *Kasymakhunov and Saybatalov*, § 107, both cited above, which concerned direct calls for violence against Jews, the State of Israel, and the West in general; and *Vejdeland and Others*, cited above, § 54, which concerned allegations that homosexuals were attempting to play down paedophilia and were responsible for the spread of HIV and Aids).

220. The Court has also paid attention to the manner in which statements were made, and their capacity – direct or indirect – to lead to harmful consequences. Examples include *Karataş v. Turkey* ([GC], no. 23168/94, §§ 51-52, ECHR 1999-IV), where the fact that the statements in question had been made through poetry rather than in the media led to the conclusion that the interference could not be justified by the special security context otherwise existing in the case; *Féret* (cited above, § 76), where the medium was electoral leaflets, which had enhanced the effect of the discriminatory and hateful message that they were conveying; *Gündüz* (cited above, §§ 43-44), which involved statements made in the course of a deliberately pluralistic televised debate, which had reduced their negative effect; *Fáber* (cited above, §§ 44-45), where the statement had consisted in the mere peaceful holding of a flag next to a rally, which had had a very limited effect, if any at all, on the course of the rally; *Vona* (cited above, §§ 64-69),

where the statement had involved military-style marches in villages with large Roma populations, which, given the historical context in Hungary, had carried sinister connotations; and *Vejdeland and Others* (cited above, § 56), where the statements had been made on leaflets left in the lockers of secondary school students.

221. In all of the above cases, it was the interplay between the various factors involved rather than any one of them taken in isolation that determined the outcome of the case. The Court's approach to that type of case can thus be described as highly context-specific (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 208, ECHR 2015 (extracts)).

222. In similar vein, the Court notes that the ECRI General Policy Recommendation no. 15 on Combating Hate Speech states that, when determining whether an expression constituted incitement to hatred, the following elements are essential for assessment of whether or not there is a risk of acts of violence, intimidation, hostility or discrimination: (i) "the context in which the hate speech concerned is being used"; (ii) "the capacity of the person using the hate speech to exercise influence over others"; (iii) "the nature and strength of the language used"; (iv) "the context of the specific remarks"; (v) "the medium used"; and (vi) "the nature of the audience" (see paragraph 103 above). It further notes that, with regard to artistic expression, Frank La Rue, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his Report of 7 September 2012 specifically noted that it "should be considered with reference to its artistic value and context, given that art may be used to provoke strong feelings without the intention of inciting violence, discrimination or hostility" (see paragraph 106 above).

223. The Court further observes that according to international standards for the protection of freedom of expression, restrictions on such freedom in the form of criminal sanctions are only acceptable in cases of incitement to hatred (see Report of the Venice Commission, paragraph 101 above; HRC Report 2006, paragraph 105 above; and the joint submission made at the OHCHR expert workshops on the prohibition of incitement to national, racial or religious hatred, paragraph 109 above).

224. In that regard the Court also takes note of the UN Human Rights Committee's General Comment No. 34, Article 19: Freedoms of Opinion and Expression, of 12 September 2011, which states in paragraph 48 that "[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the [ICCPR], except in the specific circumstances envisaged in article 20, paragraph 2, of the [ICCPR]" (see paragraph 107 above).

225. The Court observes that in the case at hand the applicants were convicted of hooliganism motivated by religious hatred on account of the clothes and balaclavas they wore, their bodily movements and strong language. The Court accepts that as the conduct in question took place in a

cathedral it could have been found offensive by a number of people, which might include churchgoers, however, having regard to its case-law and the above-mentioned international standards for the protection of freedom of expression, it is unable to discern any element in the domestic courts' analysis which would allow a description of the applicants' conduct as incitement to religious hatred (see *Sürek (no. 1)*, cited above, § 62; *Féret*, cited above, § 78; and *Le Pen*, cited above).

226. In particular, the domestic courts stated that the applicants' manner of dress and behaviour had not respected the canons of the Orthodox Church, which might have appeared unacceptable to certain people (see paragraph 216 above), but no analysis was made of the context of their performance (see *Erbakan v. Turkey*, no. 59405/00, §§ 58-60, 6 July 2006). The domestic courts did not examine whether the applicants' actions could be interpreted as a call for violence or as a justification of violence, hatred or intolerance. Nor did they examine whether the actions in question could have led to harmful consequences (ibid., § 68).

227. The Court finds that the applicants' actions neither contained elements of violence, nor stirred up or justified violence, hatred or intolerance of believers (see, *mutatis mutandis*, *Aydın Tatlav v. Turkey*, no. 50692/99, § 28, 2 May 2006). It reiterates that, in principle, peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence (see *Murat Vural*, cited above, § 66), and that interference with freedom of expression in the form of criminal sanctions may have a chilling effect on the exercise of that freedom, which is an element to be taken into account when assessing the proportionality of the interference in question (see *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298; *Brasilier v. France*, no. 71343/01, § 43, 11 April 2006; *Morice v. France* [GC], no. 29369/10, § 176, ECHR 2015; and *Reichman v. France*, no. 50147/11, § 73, 12 July 2016).

228. The Court therefore concludes that certain reactions to the applicants' actions might have been warranted by the demands of protecting the rights of others on account of the breach of the rules of conduct in a religious institution (see 214 paragraph above). However, the domestic courts failed to adduce "relevant and sufficient" reasons to justify the criminal conviction and prison sentence imposed on the applicants and the sanctions were not proportionate to the legitimate aim pursued.

229. In view of the above, and bearing in mind the exceptional seriousness of the sanctions involved, the Court finds that the interference in question was not necessary in a democratic society.

230. There has therefore been a violation of Article 10 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION ON ACCOUNT OF BANNING VIDEO-RECORDINGS OF THE APPLICANTS' PERFORMANCES

231. The first two applicants complained that the Russian courts had violated their freedom of expression, as protected by Article 10 of the Convention, by declaring that the video materials available on the Internet were extremist and placing a ban on access to that material.

A. The parties' submissions

1. The Government's submissions

232. The Government pointed out that the complaint had been raised for the first time in the application form of 29 July 2013 on behalf of the first and second applicants, but not on behalf of the third applicant. They argued that it had been open to the applicants to appeal against the decision of the Zamoskvoretskiy District Court of 29 November 2012, but they had failed to do so. In support of their argument that that would have been an effective remedy, the Government provided a judgment on appeal delivered by the Moscow City Court on 26 September 2013 in unrelated proceedings which had concerned a decision to declare a certain book extremist. The author of the book, who was not a party to the proceedings, had appealed and his appeal statement had been examined by the court in the enclosed judgment. In the Government's view, any complaints made by the third applicant at the domestic level should not be taken into consideration for the purposes of the present complaint as she had not brought them before the Court.

233. The Government further argued that if the first and second applicants considered that they had had no effective domestic remedies against the decision of 29 November 2012, they should have lodged their application within six months of that date. However, it had not been lodged until 29 July 2013, that is, outside the six-month time-limit.

234. As regards the merits of the applicants' complaint, the Government conceded that declaring the applicants' video as extremist had constituted an interference with their rights under Article 10. However, the interference had been in accordance with the law, in particular section 1(1) and (3) and section 3 of the Suppression of Extremism Act, which the Constitutional Court had found to be accessible and foreseeable in Ruling no. 1053-O of 2 July 2013. At the same time, the interference had pursued the legitimate aim of protecting the morals and rights of others and had been necessary in a democratic society. With regard to the latter point the Government referred to the cases of *Handyside* (cited above); *Müller and Others* (cited above); *Wingrove* (cited above); and *Otto-Preminger-Institut* (cited above).

2. The applicants' submissions

235. The first and second applicants maintained their complaint. They submitted, firstly, that the Government's suggestion that there had been no appeal against the decision of 29 November 2012 was not true as the third applicant had appealed against it. However, by a decision of 30 January 2013 the Moscow City Court had left her appeal without examination on the grounds that she was not a party to the proceedings. In the first and second applicants' view, the third applicant, being in an identical position, had effectively exhausted the available domestic remedies on behalf of the whole group as a separate appeal by them would only have led to the same result. They also pointed out that they had never been officially informed of the proceedings in question as the domestic courts had considered that the rights of the authors of the videos had not been affected. Being in prison serving their sentence, they had also had no possibility to learn of the proceedings while they were underway. In their opinion, the matter of exhaustion was closely linked to the merits of the complaint.

236. The first and second applicant further argued that the applicable domestic legislation was too vague and the proceedings in their case had been flawed as they had not been able to participate in them. In their view the definitions of "extremism", "extremist activity" and "extremist materials" contained in the Suppression of Extremism Act were too broad. As regards the procedure involved, it neither provided for the participation of the authors of the materials in question, nor provided guarantees of the independence of the expert upon whose opinion the judicial decision in the case would be based. Hence, the procedure provided no safeguards against arbitrariness. The applicants also relied on the submissions by ARTICLE 19 concerning examples of political speech being declared extremist in 2012, although they had posed no threat to national security, public order or the rights of others (see paragraph 239 below). Finally, the applicants contended that their right to freedom of expression had been violated because the domestic courts had declared their performances, which had contained political speech protected by Article 10 of the Convention, as extremist.

B. Submissions of the third-party interveners

1. Submissions from Amnesty International and Human Rights Watch

237. The interveners noted that according to their research there had been a global increase in the adoption of laws against extremism. Those laws purported to combat criminal acts such as terrorism and other violent crimes, including those carried out ostensibly in the name of religion or on the basis of religious hatred. As with laws on incitement to religious hatred (see paragraph 190 above), the laws in question could, in the interveners' view, violate freedom of expression if they gave too broad a definition of

such terms as "extremism" or "extremist materials", which might lead to their arbitrary application. Therefore, such laws should provide precise definitions of such terms so as to ensure legal certainty and compliance with the obligation of States to respect such fundamental rights as freedom of expression, the right to hold opinions and the freedom of association and assembly.

238. The interveners pointed out, in particular, that the Russian Suppression of Extremism Act qualified certain forms of defamation of public officials as "extremist" and allowed any politically or ideologically motivated offences to be classified as extremist. Therefore, non-governmental organisations or activists criticising Government policy, or which were perceived by the Government as being supporters of the political opposition, ran the risk of being targeted under the law. That issue had been discussed in 2009 by the UN Human Rights Council, in the light of which Russia had undertaken to review its legislation on extremism, which it had not done so far.

2. Submissions by ARTICLE 19

239. ARTICLE 19 submitted that the Suppression of Extremism Act had been criticised by the Venice Commission and the Council of Europe Parliamentary Assembly for failing to meet international human rights standards (see paragraphs 101 above and the Parliamentary Assembly's Resolution 1896 (2012) on the Honouring of Obligations and Commitments by the Russian Federation of 2 October 2012). They also noted a number of instances where political speech had been classified as extremist under the law, although it had posed no threat to national security, public order or the rights of others. They referred, in particular, to (i) a Kaluga Regional Court decision of February 2012 declaring a painting by A.S., "The Sermon on the Mount", from a cycle of works entitled "Mickey Mouse's Travels through Art History", as extremist; (ii) a criminal investigation instituted in April 2012 against M.E., a blogger and the director of the Karelian regional branch of the regional Youth Human Rights Group, on account of an article headlined "Karelia is Tired of Priests" in which he had denounced corruption in the Russian Orthodox Church; (iii) a criminal investigation instituted in October 2012 into the activities of the website orlec.ru in connection with material that the prosecutor had regarded as undermining the public image of local administrations and the authorities in general; and (iv) a decision by the District Court of Omsk of October 2012 to classify an article by Yu.A., a public figure and liberal academic, headlined "Is the Liberal Mission Possible in Russia Today?", as extremist.

3. The Government's comments on the third-party interventions

240. The Government referred to their position stated in their observations concerning the applicants' complaint (see paragraph 234 above).

C. Admissibility

241. The Court notes at the outset that on 29 November 2012 the District Court issued an order banning a series of videos featuring performances in which all three applicants had played a part. The ban affected all of them in equal measure. However, at the time it was pronounced, only the third applicant was at liberty, while the first two applicants had been sent to serve custodial sentences to, respectively, the Perm Region and the Mordoviya Republic. According to the latter, they were not notified of the pending proceedings, which is not contested by the Government, and had no possibility to become aware of them until their completion (see paragraph 235 above). The Court reiterates in this connection that in the matter of domestic remedies it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

242. The Court further notes that neither the Suppression of Extremism Act nor the applicable procedural rules made a provision for any form of notification to authors, publishers or owners of the material in respect of which a banning order was sought about the institution of such proceedings. Unlike the first and second applicants whose access to printed media and television was curtailed in custody, the third applicant immediately learned of the prosecutor's application from the news and sought to join them as an interested party (see paragraph 73 above). Her attempt proved to be unsuccessful. In its final decision refusing her application to join the proceedings, the Moscow City Court indicated that she should be able to raise her arguments in an appeal against the decision on the merits of the case (see paragraph 79 above).

243. Subsequently, the third applicant sought to have the ban overturned by filing substantive grounds of appeal against the District Court's order of 29 November 2012. The first and second applicants were still in custody and took no part in her endeavour. After the final decision denying the third applicant the right to appeal was issued on 30 January 2013 (see paragraph 80 above), she did not pursue her legal challenge by lodging an application with this Court while the first and second applicants did. They filed the complaint on 29 July 2013, that is to say, within six months of the rejection of the third applicant's substantive appeal but more than six months after

the banning order of 29 November 2012. It follows that, in the particular circumstances of the present case, the Court may only deal with the merits of the present complaint if the six-month time-limit were to be counted from the date of rejection of the third applicant's substantive appeal against the banning order.

244. The Court reiterates the relevant general principles: as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. In any event, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it would be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 136, ECHR 2012).

245. In the light of these principles, the Court will consider, first, whether the substantive appeal could be considered a remedy capable of providing adequate redress or whether the circumstances rendering this remedy ineffective should have been apparent from the outset. Secondly, the Court will address the Government's objections to the admissibility of the complaint by the first and second applicants who had not filed any appeals of their own.

246. On the issue whether the substantive appeal offered sufficient prospects of success so as not to be obviously futile, the Court notes that the prosecutor's application for a banning order was considered in accordance with the rules of civil procedure. Articles 42 and 43 of the Code of Civil Procedure established, in principle, the right of persons whose interests were affected by the proceedings to join them as interested parties. In raising the non-exhaustion objection against the first and second applicants, the Government cited the example of similar proceedings conducted under the Suppression of Extremism Act in which a Moscow court had accepted a substantive appeal from the author of the book which had been subject to a banning order (see paragraph 232 above). In the same vein, a court in the Krasnodar Region allowed a substantive appeal against the banning order submitted by two followers of a Chinese spiritual movement who had not been informed of the proceedings in which the foundational book of the movement had been pronounced extremist (see *Sinitsyn and Others v. Russia*, nos. 39879/12 and 5956/13, communicated on 30 August 2017). Likewise, the Krasnoyarsk Regional Court allowed a substantive appeal by

the Krasondar Muftiate against the order banning the book "The Tenth Word: The Resurrection and the Hereafter" as extremist (see *Yedinoe Dukhovnoye Upravleniye Musulman Krasnoyarskogo Kraya v. Russia*, no. 28621/11, communicated on 27 November 2013). The stance adopted by the Moscow City Court also appeared to indicate that the third applicant's substantive appeal would be considered on the merits (see paragraph 79 above). In light of these elements, the Court finds that the third applicant could reasonably and legitimately expect that the court would seriously examine her arguments in favour of setting aside the banning order. Neither she nor her counsel could have expected that on the same day the same City Court would reject her substantive appeal for a lack of *locus standi* (see paragraph 80 above). In these circumstances, where the third applicant made use of an existing remedy which was prima facie accessible and available but turned out to be ineffective, the six-month period would have started, in accordance with the Court's case-law cited above, on the date of the Moscow City Court's judgment rejecting her substantive appeal.

247. The Government argued that it was not sufficient that the third applicant had availed herself of that remedy. Since she was not the one who brought this complaint to the Court, the first and second applicants should have either complained within the six months of the banning order or made use of the same remedy independently of her. The Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism, taking realistic account of, in particular, the applicant's personal circumstances (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 116, ECHR 2007-IV). As noted above, the third applicant was the only one who was given a suspended sentence and retained her freedom. Unrestricted in her contacts with the outside world and her legal team, she took it upon herself to challenge the banning order in the proceedings which appeared to offer a prospect of success, at least in the initial stage. All three applicants being members of the same band whose recorded performances had been declared extremist, they were in the same situation in relation to the challenge to the banning order she had mounted. The Court sees no reason to assume that the proceedings would have taken any different course had they filed separate appeals against the banning order. It considers that the first and second applicant were not required to attempt the same remedy after the ineffectiveness of a substantive appeal had become apparent with the Moscow City Court's decision of 30 January 2013 (compare *Bagdonavicius and Others v. Russia*, no. 19841/06, § 62, 11 October 2016). The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them and the proceedings instituted by the third applicant had provided the Russian authorities with ample opportunity to remedy the violation alleged (see *Oliari and Others v. Italy*,

nos. 18766/11 and 36030/11, § 77, 21 July 2015). The fact that the third applicant chose not to pursue her application to the Court under this head is immaterial after the matter had already been dealt with at domestic level (see *M.S. v. Croatia*, no. 36337/10, § 69, 25 April 2013, and *Bilbija and Blažević v. Croatia*, no. 62870/13, § 94, 12 January 2016, in both cases it was not the applicant, but a member of their family who was not an applicant before the Court who had already pursued the same remedy without success, and also *D.H. and Others*, cited above, § 122, in which only five out of twelve applicants had lodged a constitutional complaint concerning the same grievance).

248. In sum, the Court finds that the rule of exhaustion of domestic remedies did not call for a repetition of proceedings, whether concurrently or consecutively to those issued by the third applicant. In the absence of any prior indication that the remedy would turn out to be inefficient, the Court finds that having lodged the application within the six months from the Moscow City Court's decision 30 January 2013, that is after their position in connection with the matter had been finally settled at domestic level, the first and second applicants complied with the requirements of Article 35 § 1.

249. The Court therefore dismisses the Government's objections and finds that the complaint is not belated. Since it is not manifestly ill-founded or inadmissible on any other grounds, it must therefore be declared admissible.

D. Merits

250. The applicable general principles are stated in paragraphs 197-201 above.

(a) Existence of an interference

251. The Court observes that the video materials in question contained recordings of Pussy Riot's performances, were owned by the group Pussy Riot of which the applicants were members, and were posted on internet pages managed by the group. It further notes that there is no dispute between the parties that declaring the video-recordings of the applicants' performances available on the Internet as "extremist" and banning them amounted to "interference by a public authority" with the first and second applicants' right to freedom of expression. Having regard to the general principles set out in paragraphs 197-201 above, the Court reiterates that such an interference will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. It must therefore be determined whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve those aims.

(b) "Prescribed by law"

252. The Court notes that the domestic courts declared that the video materials in question were extremist under sections 1, 12 and 13 of the Suppression of Extremism Act and section 10(1) and (6) of the Federal Law on Information, Information Technologies and the Protection of Information (see paragraph 76 above). It observes, however, that whereas the provisions of the latter Law may have provided an additional legal basis for limiting access to those materials, it was the former Act that provided for the measures available to the authorities for combatting and punishing extremism. Accordingly, the Court considers that sections 1, 12 and 13 of the Suppression of Extremism Act constituted the statutory basis for the interference at issue.

253. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, § 52, ECHR 2001-VI; *Gawęda v. Poland*, no. 26229/95, § 39, ECHR 2002-II; *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I; and *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015). However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012; *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A; and *Kopp v. Switzerland*, 25 March 1998, § 59, *Reports* 1998-II).

254. One of the requirements flowing from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable people to regulate their conduct; they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see, for example, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 141; and *Delfi AS*, cited above, § 121).

255. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 142; and *Delfi AS*, cited above, § 122).

256. In the present case the parties' opinions differed as to whether the interference with the first and second applicants' freedom of expression was "prescribed by law". The applicants argued that the applicable domestic legislation was vague to the point of making the legal rule in question unforeseeable. In particular, the definitions of "extremism", "extremist activity" and "extremist materials" contained in the Suppression of Extremism Act were, in their view, too broad. The Government referred to Ruling no. 1053-O of 2 July 2013, where the Constitutional Court had refused to find section 1(1) and (3) and section 13(3) unconstitutional for allegedly lacking precision in the definitions of "extremist activity" and "extremist materials".

257. The Court notes that the Venice Commission expressed reservations in its Opinion about the inclusion of certain activities in the list of those that were "extremist", considering their definitions to be too broad, lacking clarity and open to different interpretations (see § 31 of the Opinion of the Venice Commission, paragraph 102 above). The Venice Commission also deplored the absence of "violence" as a qualifying element of "extremism" or "extremist activity" (see §§ 31, 35 and 36 of the Opinion of the Venice Commission, paragraph 102 above). Furthermore, it expressed concerns regarding the definition of "extremist materials", which it described as "broad and rather imprecise" (see § 49 of the Opinion of the Venice Commission, paragraph 102 above).

258. Although there may be a question as to whether the interference was "prescribed by law" within the meaning of Article 10, the Court does not consider that, in the present case, it is called upon to examine the corresponding provisions of the Suppression of Extremism Act as, in its view, the applicants' grievances fall to be examined from the point of view of the proportionality of the interference. The Court therefore decides to leave the question open and will address the applicants' arguments below when examining whether the interference was "necessary in a democratic society".

(c) Legitimate aim

259. Having regard to the Government's submissions (see paragraph 234 above), the Court accepts that the interference could be considered as having pursued the legitimate aims of protecting the morals and rights of others.

(d) Necessary in a democratic society

260. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest (see *Wingrove*, cited above, § 58, and *Seher Karataş v. Turkey*, no. 33179/96, § 37, 9 July 2002). Where the views expressed do not comprise incitements to violence – in other words, unless they advocate

recourse to violent actions or bloody revenge, justify the commission of terrorist offences in pursuit of their supporter's goals or can be interpreted as likely to encourage violence by expressing deep-seated and irrational hatred towards identified persons – Contracting States must not restrict the right of the general public to be informed of them, even on the basis of the aims set out in Article 10 § 2 (see *Dilipak v. Turkey*, no. 29680/05, § 62, 15 September 2015).

261. The Court notes that in its decision of 29 November 2012 to declare the video material in question as "extremist", the Zamoskvoretskiy District Court referred to four types of such actions listed in section 1(1) of the Suppression of Extremism Act: (1) "the stirring up of social, racial, ethnic or religious discord"; (2) "propaganda about the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion"; (3) "violations of human and civil rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion"; and (4) "public appeals to carry out the above-mentioned acts or the mass dissemination of knowingly extremist materials, and likewise the production or storage thereof with the aim of mass dissemination" (see paragraph 76 above). It subsequently relied on the results of report no. 55/13 of 26 March 2012 of the psychological linguistic expert examination performed by experts from the Federal Scientific Research University 'The Russian Institute for Cultural Research', according to which the video materials in question were of an extremist nature (see paragraph 76 above). In the Court's view, the domestic court's decision in the applicants' case was deficient for the following reasons.

262. In the first place, it is evident from the Zamoskvoretskiy District Court's decision that it was not the court which made the crucial legal findings at to the extremist nature of the video material but linguistic experts. The court failed to assess the expert report and merely endorsed the linguistic experts' conclusions. The relevant expert examination clearly went far beyond resolving merely language issues, such as, for instance, defining the meaning of particular words and expressions, and provided, in essence, a legal qualification of the video materials. The Court finds that situation unacceptable and stresses that all legal matters must be resolved exclusively by the courts (see *Dmitriyevskiy v. Russia*, no. 42168/06, § 113, 3 October 2017).

263. Secondly, the domestic court made no attempt to conduct its own analysis of the video materials in question. It did not specify which particular elements of the videos were problematic so as to bring them within the scope of the provisions of section 1(1) of the Suppression of Extremism Act it referred to in the decision (see *Kommersant Moldovy v. Moldova*, no. 41827/02, § 36, 9 January 2007, and *Terentyev v. Russia*, no. 25147/09, § 22, 26 January 2017). Moreover, the court did not so much

as quote the relevant parts of the expert report, referring only briefly to its overall findings. The virtual absence of reasoning by the domestic court makes it impossible for the Court to grasp the rationale behind the interference.

264. In the light of the lack of reasons given by the domestic court, the Court is not satisfied that it "applied standards which were in conformity with the principles embodied in Article 10" or to have "based themselves on an acceptable assessment of the relevant facts" (see *Jersild*, cited above, § 31, and *Kommersant Moldovy*, cited above, § 38.) The domestic court consequently failed to provide "relevant and sufficient" reasons for the interference in question.

265. Furthermore, the Court takes note of the first and second applicants' argument that the proceedings in the case at hand were flawed as they could not participate in them. In fact, the applicants were unable to contest the findings of the expert report relied upon by the domestic court as none of them were able to participate in the proceedings. Not only were they not even informed of the proceedings in question, but the application to join the proceedings lodged by the third applicant was dismissed at three levels of jurisdiction (see paragraphs 74, 78 and 79 above). Furthermore, it was precisely on the grounds that she was not a party to the proceedings that her appeal against the decision of 29 November 2012 was left without examination (see paragraph 80 above).

266. The Court observes that it was not a particular shortcoming in their case which meant that the applicants were unable to participate in the proceedings, but because of the state of the domestic law, which does not provide for concerned parties to participate in proceedings under the Suppression of Extremism Act. The Court notes that it has found a breach of Article 10 of the Convention in a number of cases in situations where under the domestic law an applicant was unable effectively to contest criminal charges brought against him, as he was either not allowed to adduce evidence of the truth of his statements, or to plead a defence of justification, or due to the special protection afforded to the party having the status of the victim in the criminal proceedings (see *Castells v. Spain*, 23 April 1992, § 48, Series A no. 236; *Colombani and Others v. France*, no. 51279/99, § 66, ECHR 2002-V; *Pakdemirli v. Turkey*, no. 35839/97, § 52, 22 February 2005; and *Otegi Mondragon v. Spain*, no. 2034/07, § 55, ECHR 2011). It further notes that it has likewise found a violation of Article 10 on account of a breach of equality of arms in civil defamation proceedings (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II).

267. The Court considers that similar considerations apply to proceedings instituted under the Suppression of Extremism Act. In the Court's view, a domestic court can never be in a position to provide "relevant and sufficient" reasons for an interference with the rights

guaranteed by Article 10 of the Convention without some form of judicial review based on a weighing up of the arguments put forward by the public authority against those of the interested party. Therefore, the proceedings instituted in order to recognise the first and second applicants' activity or materials belonging to them as "extremist", in which the domestic law did not allow their participation, thereby depriving them of any possibility to contest the allegations made by the public authority that brought the proceedings before the courts, cannot be found compatible with Article 10 of the Convention.

268. The foregoing considerations are sufficient to enable the Court to conclude that declaring that the applicants' video materials available on the Internet were extremist and placing a ban on access to them did not meet a "pressing social need" and was disproportionate to the legitimate aim invoked. The interference was thus not "necessary in a democratic society".

269. Accordingly, there has been a violation of Article 10 of the Convention in respect of the first and second applicants.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

270. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

271. The first and second applicants claimed 120,000 euros (EUR) in respect of non-pecuniary damage. The third applicant claimed EUR 5,000. They submitted that they had suffered and were still suffering from anxiety and frustration on account of the numerous violations of their rights, including the inhuman and degrading treatment they had been subjected to, the uncertainty they had endured in pre-trial detention, the denial of a fair trial and the prison term they had served following their conviction.

272. The Government found the amounts claimed to be excessive and unfounded.

273. The Court considers that on account of the violations it has found the applicants sustained non-pecuniary damage that cannot be compensated for by the mere finding of a violation. Ruling on an equitable basis as required by Article 41 of the Convention, it awards the first and second applicants the amount of EUR 16,000 each and the third applicant the amount claimed in respect of non-pecuniary damage.

B. Costs and expenses

274. The first and second applicants also claimed also EUR 11,760 for the costs and expenses incurred before the Court. They submitted an agreement on legal services of 11 June 2014 concluded between the first applicant and Mr Grozev. The agreement contains a reference to their earlier agreement that Mr Grozev would represent the three applicants in the present case. According to the agreement, the first applicant undertook to pay for Mr Grozev's services at the hourly rate of EUR 120, with the final amount to be transferred to Mr Grozev's account if the application before the Court was successful. The applicants also provided an invoice for 98 hours of work by Mr Grozev at the rate of EUR 120 an hour, which includes studying the case material and preparing the application form and observations in reply to those of the Government.

275. The Government contested the applicants' claims for legal expenses. They argued that the reference to an "earlier agreement" should be deemed invalid as no such agreement had been provided to the Court. It argued that compensation should only be provided for costs and expenses incurred after the date of the agreement, that is 11 June 2014. In any event, they considered the amount claimed to be excessive.

276. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed for the proceedings before the Court.

C. Default interest

277. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Article 3 about the conditions of the applicants' transportation and detention in the courthouse and their treatment during the court hearings, under Article 5 § 3, Article 6 and Article 10 about the applicants' criminal prosecution for the performance of 21 February 2012, and about declaring the video-recordings of their performances as "extremist" in

respect of the first two applicants, admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention;

3. *Hold*, unanimously, that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*, unanimously, that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

5. *Holds*, unanimously, that there is no need to examine the complaint under Article 6 §§ 1 and 3 (d) of the Convention;

6. *Holds*, by six votes to one, that there has been a violation of Article 10 of the Convention on account of the applicants' criminal prosecution;

7. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention in respect of the first and second applicants on account of declaring the video material available on the Internet as extremist and banning it;

8. *Holds*, unanimously,
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, to the first and second applicants each in respect of non-pecuniary damage;
(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to the third applicant in respect of non-pecuniary damage;
(iii) EUR 11,760 (eleven thousand seven hundred and sixty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Helena Jäderblom
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Elósegui is annexed to this judgment.

H.J.
J.S.P.

PARTLY DISSENTING OPINION OF JUDGE ELÓSEGUI

1. I agree with the majority that in the present case there has been a violation of Articles 5 § 3, 6 § 1 and 6 § 3, as well as a violation of Article 10 of the Convention on account of the fact that the video material available on the Internet was declared extremist and was banned.

2. However, I dissent with regard to the finding of a violation of Article 3 of the Convention on account of the special control measures adopted during the trial, and the finding of a violation of Article 10 on account of the applicants' criminal prosecution and punishment. As I will explain, I share the opinion that the applicants' conduct should not have been classified as criminal. But I consider that the Court should have emphasised that these facts could have been punished by means of an administrative or civil sanction.

3. Starting with the analysis of the violation of Article 3 of the Convention, I dissent from the conclusions of the majority in paragraphs 145, 148, 149 and 150. The applicants complain that during the trial their public image was tarnished and they felt humiliated. On this point the judgment states as follows (paragraph 149):

> "The Court notes that the applicants' trial was closely followed by national and international media and they were permanently exposed to public view in a glass dock that was surrounded by armed police, with a guard dog next to it."

4. According to the judgment in *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 111, ECHR 2012, one criterion by which to measure the interference with the right to private life is the previous conduct of the applicants in relation to the media. In the present case the applicants performed inside a church, inviting several media outlets to attend their performance. At several other previous events, the applicants had expressly sought publicity. The previous conduct of the applicants at several events had sought to interfere with private property, museums and shops in a disruptive manner. It was foreseeable that the applicants would take the opportunity of disturbing the court hearing if they were given the possibility. Hence, the authorities were fulfilling their legal obligations by taking special control measures during the proceedings in the courtroom, including the presence of a glass dock and of armed police.

5. As regards the feelings of humiliation, it is beyond dispute that this is a subjective concept which is undetermined from a legal point of view. However, the Court has used criteria such as previous behaviour, context and the applicants' circumstances to assess these feelings. In the present case the applicants exposed themselves voluntarily to publicity and even posted images on the Internet showing their faces and their naked bodies in public places.

6. In consequence, I subscribe to the statement of the judgment in paragraph 148, according to which:

> "The Court considers this to constitute sufficient evidence of the fact that they were closely watching the applicants rather than monitoring the courtroom."

However, I do not arrive at the same conclusion, because the special kind of control of the courtroom was justified and proportionate to the risk of disturbance posed by the applicants. Thus, I do not consider that there has been a violation of Article 3 of the Convention.

7. The next major analysis in my dissenting opinion is related to the limits of Article 10 § 2 of the Convention, which provides:

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

As I have said above, I share the majority opinion that the applicants' conduct should not have been classified as criminal. But I consider that the Court should have emphasised that these facts could have been punished by means of an administrative or civil sanction. In sum, I do not share completely the conclusion of paragraph 230, which states that there has been a violation of Article 10 of the Convention, because, in my view, Article 10 does not protect the invasion of churches and other religious buildings and property. In fact, as Judge Pinto de Albuquerque stated in his concurring opinion in *Krupko and Others v. Russia*, no. 26587/07, 26 June 2014, § 12:

> "... the State has a positive obligation to protect believers' freedom of assembly, namely by ensuring that they and their places of worship are fully respected by State and non-State actors and when attacks against them occur, to investigate and punish them."

8. In my view, the Court should have added to the sentence in paragraph 207 ("*Having regard to the foregoing, the Court considers that criminal proceedings against the applicants on account of the above actions, which resulted in a prison sentence, amounted to a disproportionate interference with their right to freedom of expression*") some words to the effect that it might have been proportionate in the circumstances of the present case to apply an administrative or civil sanction to the applicants, taking into account the fact that they had invaded a church and that Christians have the right to worship freely without fear of obscene, hostile or even violent protest taking place within the church[1].

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[1] United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, A/RES/36/55, 25 November 1981 (the 1981 UNGA Declaration), Article 6 (a); General Assembly Resolution 55/97, A/RES//55/97, 1 March 2001, paragraph 8.

9. Freedom of expression allows for political criticism, but it does not protect, as stated in paragraph 177 of the majority judgment:

> "... expressions that are gratuitously offensive to others and thus an infringement of their rights and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs."

According to the principle of proportionality, the aim of the applicants (to express their political criticism) does not justify the means that they used. The means used by the applicants to express their political beliefs were clearly disproportionate.

10. In paragraph 225 of the judgment, the majority should have taken into account the fact that Article 10 of the Convention does not protect a right to insult or to humiliate individuals. This obligation is a direct obligation for the State, but also an indirect obligation for all individuals according to the doctrine of the "horizontal effect" of fundamental rights (*Drittwirkung*), which is also applicable to Convention rights. Freedom of expression does not protect deliberate calumny or a discourse with the aim of provoking discrimination (see *Jersild v. Denmark*, 23 September 1994, Series A no. 298, and *Gündüz v. Turkey*, no. 35071/97, ECHR 2003-XI). Even value judgments of an offensive nature require a minimum of factual basis, otherwise they are considered excessive (see *Paturel v. France*, 54968/00, § 36, 22 December 2005)[2].

11. According to the Explanatory Memorandum to ECRI General Policy Recommendation No. 15 on Combating Hate Speech, the criteria by which to identify hate speech include the following:

> "... (c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination) ..."

In the present case the Court accepted that, since the conduct in question took place in a cathedral, it could have been found offensive by a number of people. In my opinion, having regard to the international standards (including ECRI standards), the applicants' conduct cannot be seen as incitement to religious hatred, but it can be seen as "provocative" and directly involving "negative stereotyping" of Christian Orthodox believers. This is enough to harm the dignity of Orthodox believers by despising and insulting them as well as treating them as inferiors[3].

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[2] See also Voorhoof, Dirk, "The European Convention on Human Rights: The Rights to Freedom of Expression and Information restricted by Duties and Responsibilities in a Democratic Society", available at https//biblio.urgent.be, on the subject of defamation without sufficient factual basis, p. 20.

[3] It is not a justification for invoking the principle of protection of critical ideas which offend, shock or disturb. See the Council of Europe's Compilation of Council of Europe Standards relating to the principles of freedom of thought, conscience and religion and links to other human rights, Strasbourg, Council of Europe, 2015, pp. 103-105.

12. I agree with the conclusion of the majority in paragraph 227:

> "The Court finds that the applicants' actions neither contained elements of violence, nor stirred up or justified violence, hatred or intolerance of believers ..."

This is well-established case law, which the Court also invoked in the case of *Stomakhin v. Russia* (no. 52273/07, § 90, 9 May 2018):

> "In its assessment of the interference with freedom of expression in cases concerning expressions alleged to stir up or justify violence, hatred or intolerance, the Court takes into account a number of factors ... the context in which the impugned statements were published, their nature and wording, their potential to lead to harmful consequences and the reason adduced by Russian courts to justify the interference in question."

However, I consider it necessary to emphasise that the conduct and the content of the song could have justified an administrative sanction or a finding of civil liability instead of a criminal penalty. According to the Explanatory Memorandum to ECRI General Policy Recommendation No. 15, mentioned above, the criminal law may be used only when no other, less restrictive measure would be effective, namely when speech is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it.

13. My conclusions are reinforced by the following two criteria set out in ECRI's Explanatory Memorandum (cited above, § 16):

> "... (e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a 'live' event); and (f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination) ..."

In the circumstances of this case, it could be concluded that the applicants' actions had a large audience via the Internet because they recorded their performance and made it available on a digital platform. As stated in paragraph 16:

> "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 YouTube."

The applicants also invited journalists to be present (see paragraph 13 of the judgment). All these circumstances warrant characterisation as unlawful conduct under civil or administrative law (see paragraph 89 of the judgment concerning the relevant Russian administrative law, namely Article 5.26 of the Code of Administrative Offences, as in force until 29 June 2013).

14. My conclusions are also strengthened by the Report of the United Nations High Commissioner for Human Rights on the prohibition of

incitement to national, racial or religious hatred, which includes the Rabat Action Plan[4]. It recommends that a clear distinction be made between:

> "(a) forms of expression that should constitute a criminal offence; (b) forms of expression that are not criminally punishable, but may justify a civil suit; and (c) forms of expression that do not give rise to criminal or civil sanctions, but still raise concerns in terms of tolerance, civility and respect for the convictions of others.[5]"

In this sense, a test has been prepared consisting of six parts, in order to define a threshold that makes it possible to establish adequately what types of expression constitute a criminal offence: the context, the speaker, the speaker's intention, the content and form of the speech act, its scope and magnitude, and the possibility of damage occurring as well as its imminence[6].

15. I can agree with the majority finding in paragraph 228:

> "The Court therefore concludes that certain sanctions for the applicants' actions might have been warranted by the demands of protecting the rights of others on account of the breach of the rules of conduct in a religious institution (see paragraph 214 above)."

Precisely on the basis of this argument I maintain that, although the domestic courts failed to adduce relevant and sufficient reasons to justify the criminal conviction and prison sentence imposed on the applicants, the latter's conduct goes beyond the scope of Article 10. In consequence, this conduct could have been punished by means of administrative or civil sanctions. Although "*in the concrete case the criminal conviction and prison sentence imposed were not proportionate to the legitimate aim pursued*", this is not a reason to consider that the applicant's conduct deserves protection under Article 10[7].

16. In conclusion, I do not agree that there has been a violation of Article 10 of the Convention, because Article 10 does not protect conduct consisting of invading churches and other religious buildings or property for political purposes, nor does it protect conduct comprising intimidation and hostility against Christian Orthodox believers.

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[4] Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, which includes the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence, 5 October 2012.

[5] Ibid., § 12.

[6] The Rabat Plan of Action, § 29.

[7] Tulkens, F., "When to say is to do. Freedom of expression and hate speech in the case-law of European Court of Human Rights", European Court of Human Rights – European Judicial Training Network. Seminar on Human Rights for European Judicial Trainers, Strasbourg, 9 October 2012, pp. 1-15.

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 your 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, carry out 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."