

FREEDOM OF EXPRESSION VERSUS
FREEDOM OF CONSCIENCE AND RELIGION.
IS THE CASE “PUSSY RIOT” POSSIBLE IN
BULGARIA ?

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The main problem

- interdependency and relationship between two fundamental rights and freedoms:
- the freedom of conscience and religion and
- the freedom of expression/the right to express an opinion

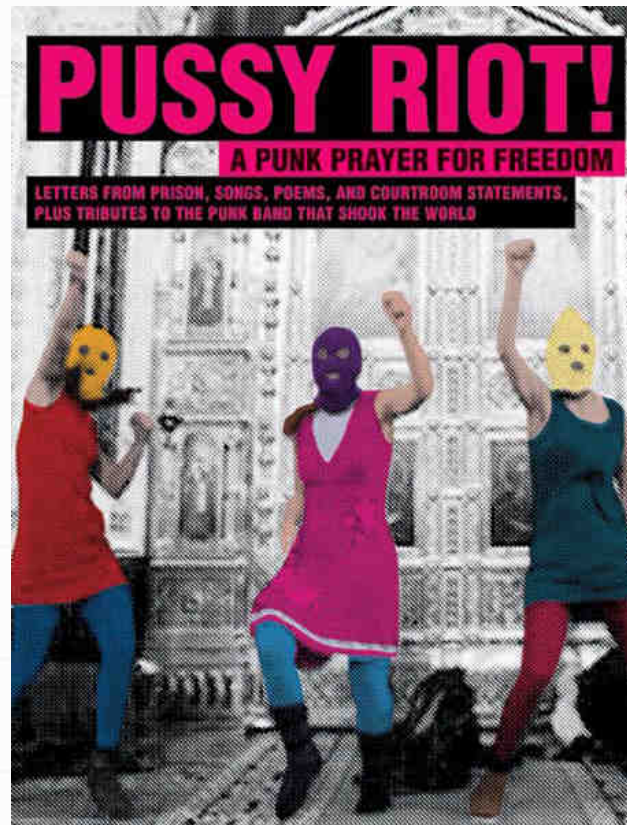


The case “Pussy Riot”

“Pussy Riot” is a Russian feminist punk-rock group based in Moscow.
It is founded in August 2011.



illegal performance on the soleas of Moscow's Cathedral of Christ of Saviour



On the 17 of August 2012 the tree members were convicted of hooliganism motivated by religious hatred.



The defendants pleaded not guilty, insisting that they had not meant their protest to be offensive.



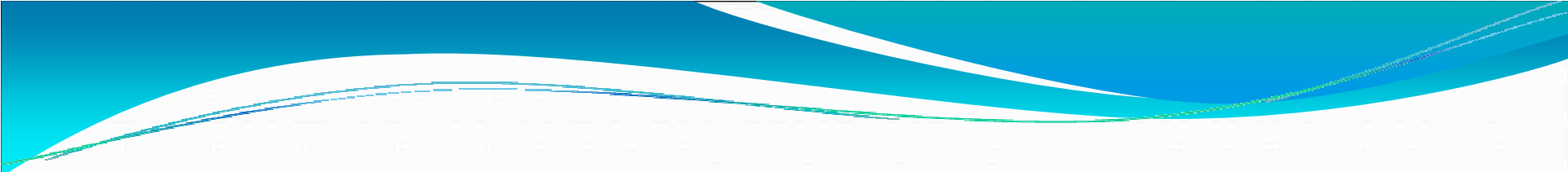
The Russian Orthodox Church condemned the “Pussy Riot” performance as “blasphemy and sacrilege”.





The relevant law provisions

- **The Universal Declaration of Human Rights – 1948**
- **International Covenant on Civil and Political Rights (ICCPR)**
- **The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**
- **The Charter of Fundamental Rights of the European Union**



freedom of thought, conscience and religion

- Article 18 ICCPR
- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Art. 9, Para 1.

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.



Charter of Fundamental Rights of the European Union Art. 10

- 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
- 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Evolution of the freedom of expression

ICCPR

- 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.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

- **Article 10 – Freedom of expression**
- 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.

Charter of Fundamental Rights of the European Union

- **Freedom of expression and information**
- 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.
- 2. The freedom and pluralism of the media shall be respected.



Novelties in the Charter of Fundamental Rights of the European Union

- *Article 13* **Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

- *Article 22* **Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

Terminology

- Universal Declaration of Human rights: **“right to freedom of opinion and expression”**
- ICCPR: **“right to hold opinion”/ “right to freedom of expression”**
- ECHR: **“right of freedom of expression”**
- Charter of Fundamental Rights of the European Union: **“freedom of expression and information”**

Restrictions of the right to freedom of thought, conscience and religion

ICCPR

- Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. (Art. 18, Para. 3).



Restrictions of the right to freedom of thought, conscience and religion

- **ECHR**
- Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary **in a democratic society** in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. (Art. 9, Para. 2)



Restrictions of the right to freedom of thought, conscience and religion

The explanatory report to the Charter of Fundamental Rights of the European Union stipulates that the right to freedom of thought, conscience and religion has the same meaning and scope as the right in Article 9 of the ECHR .

Restriction to the right of expression

- **ICCPR**
- The right of expression 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. (Art. 19, Para. 3)



Restriction to the right of expression

- **ECHR**
- 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. (Art. 10, Para. 2).



New elements of the restriction in ECHR

- **Formalities, conditions, restrictions and penalties necessary in a democratic society**
- **In the interests of territorial integrity or public safety**
- **For the prevention of disorder or crime**
- **For prevention the disclosure of information received in confidence**
- **For maintaining the authority and impartiality of the judiciary**

Bulgarian legislation

Constitution of 1991

- Practicing any religion is free (Art. 13, Para.1 of the Constitution)
- The religious institutions shall be separate from the state (Art. 13, Para. 2).
- The Eastern Orthodox Christianity is considered the traditional religion in Bulgaria (Art. 13, Para. 3)
- Religious institutions and communities as well as religious faith shall not be used to political ends (Art. 13, Para. 4 of the Constitution).



Constitution

- The freedom of conscience, the freedom of thought and the choice of religion and religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers of different denominations, and among believers and non-believers (Art. 37, Para. 1).
- The constitutionally proclaimed freedoms may be subject to restrictions. The grounds for that are national security, public order, public health and ethics and the rights of others (Art. 37, Para. 2 of the Constitution).



LAW ON RELIGIONS 2002

- The right of religion and faith has an absolute character
- It is fundamental, absolute, subjective, personal and inviolable.
- “No state interference in the internal organization of the self-administered religious institutions shall be allowed” (Art. 4, Para. 2).



LAW ON RELIGIONS 2002

- Discrimination on the grounds of religion and faith is prohibited. “Nobody shall be persecuted or restricted in their rights because of their religious faith. No restrictions or privileges based on affiliation or rejection of affiliation to a religion are allowed” (Art. 3, Para. 1).
- The religions are free and equal in rights (Art. 4). The Law on Religions reaffirms the historically established position of the Eastern Orthodox Christianity as the traditional religion in Bulgaria.
- The registration of the religious communities is not compulsory.

crimes against the religious denominations Penal Code

- Article 164, paragraph 1: A person who propagates hatred on religious basis by speech, through the press, or other means for mass information, through electronic information systems or in some other way by his/her actions, shall be punished by imprisonment for up to four years or by probation, as well as by penalty of 5 000 up to 10 000 leva.

crimes against the religious denominations Penal Code

- Paragraph 2 incriminates the profanation of religious places: A person who profanates or damages a religious temple (church), prayer place, sanctuary or contiguous building, their symbols or funeral monuments, shall be punished by deprivation of liberty for up to three years or probation , as well as by penalty of 3 000 up to 10 000 leva.

crimes against the religious denominations

- Article 165 (1) A person who, by force or threat hinders the citizens from freely practicing their faith or from performing their religious rituals and services, which do not violate the laws of the country, the public order and morals, shall be punished by imprisonment for up to one year.
- (2) The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services.
- (3) For the acts under Article 163, committed against groups of the population, individual citizens or their property, in connection with their religious affiliation, the punishment provided therein shall be applied.

crimes against the religious denominations

- Article 166: A person who forms a political organization on religious basis or who by speech, through the press, by his/her actions or in some other way, uses the church or religion for propaganda against the rule of the state or its undertakings, shall be punished by imprisonment for up to three years, if he/she is not subject to more severe punishment.



Case law

ORMANNI - Italy (No 30278/04)

Judgment 17.7.2007 [Section II]



Case law

- **PEEV - Bulgaria** (No 64209/01)

Judgment 26.7.2007



Thank you for your attention !
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