

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

Assoc. prof. Irena Ilieva PhD

Institute for the State and the Law

Bulgarian Academy of Sciences

## 1. The main problem

The subject of my actual lecture is the interdependency and relationship between two fundamental rights and freedoms: the freedom of conscience and religion, of the one hand, and the freedom of expression/the right to express an opinion, of the other hand.

I had the idea after the very discussed case “Pussy Riot” in Russia which had implications not only in Bulgaria, but in the world.

## 2. The facts of the case “Pussy Riot”

“Pussy Riot” is a Russian feminist punk-rock group based in Moscow. It is founded in August 2011 and consists of approximately 12 members, who wear brightly colored balaclavas and use only nicknames during interviews. They stage unannounced provocative performances about Russian political life in unusual and unauthorized locations such as Yelokhovo Cathedral. Lobno mesto in Red Square, on the top of trolleybus, or on a scaffold in a Moscow Metro. These performances are edited and posted in internet.

On 21 of February (23 February ?) 2012 five members of the group staged an illegal performance on the soleas of Moscow’s Cathedral of Christ of Saviour. Their actions were stopped by church security officials. By evening they have turned in into a music video which entitled “Punk Prayer – Mother of God, Chase Putin Away”. According to their co-founder, “Pussy Riot” is a “part of a global anti-capitalist movement, which consist of anarchists, Trotskyists, feminists and autonomists”. It is a question of discussion if that is a “dissident art”, or a “political action”.

On the 3 of March, two of the group members, Nadezhda Tolokonnikova and Maria Alyokhina, were arrested and charged with hooliganism. A third member, Yekaterina Samutsevich, was arrested on the 15 of March.

Denied bail, they were held in custody until their trial began in July. On the 4 of June formal charges against the group were presented, the indictment running 2 800 pages. On 4 July they were suddenly informed that they would have to finish preparing their defense by of July. They announced a hunger strike in response, saying that two working days was inadequate time to

prepare a trial defense. On the 21 of July, the court extended their pre-trial detention by a further six months.

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

The trial of the three women started in Moscow 's Khamovniki (Khamovnicheski District Court) on the 30 of July. Charged with "premeditated hooliganism performed by an organized group of people motivated by religious hatred or hostility", they faced possible sentence of up to seven years imprisonment.

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

Each was sentenced to two years imprisonment. Two other members of the group have reportedly left Russia fearing further political reprisals.

### **3. The reactions**

#### **The Russian Orthodox Church**

The Russian Patriarch Kiril had openly supported Putin's 2012 re-election, calling Putin "a miracle from God" who has "rectified the crooked path of history". After the cathedral performance, members of "Pussy Riot" said the church is a "weapon in a dirty election campaign" and called Putin "a man who is as far as can be from God's truth". "Pussy Riot" said their protest was a political statement, but prosecutors said the band was trying to "incite religious hatred" against the Orthodox Church.

The Russian Orthodox Church condemned the "Pussy Riot" performance as "blasphemy and sacrilege". The Russian Protoprietary Dmitrii Smirnov said before the radio "Echo Moskvi" that this is war against the Russian Orthodox Church.

#### **The officials in Moscow**

The minister president Dmitrii Medvedev found that the punishment must be not effective taking into account the time passed in the custody.

The president Putin stated that the authorities failed to take care of the previous actions of the group and the state must protect the believers. He didn't comment the sentence.

#### **The Russian Society**

A series of Levada Centre polls showed that, of 1 600 Russian surveyed in 45 cities nationwide, 42 % believed "Pussy Riot" had been arrested for insulting the shrines and beliefs of the Orthodox Church. Meanwhile, 29 % saw it as case of general hooliganism, while only 19 % saw it as a political protest against Putin. Overall opinion was for the most part negative or indifferent. Only 6 % sympathized with "Pussy Riot", while 41 % felt antipathy toward them. 44 % believed the trial was "fair and impartial", while 17 % believed it was not.

#### **International Reactions**

The trial and conviction have attracted international criticism. the Secretary of State Hilary Clinton and the High representative of the Union for Foreign affairs and Security Policy Catherine Ashton called the sentence “disproportional”. Catherine Ashton expressed before “France Presse” (12 September 2012) her concern of the lack of dialogue between the Russian authorities and the opposition.

The official Bulgarian position, expressed by the Ministry of Foreign Affairs is that the sentence is disproportioned (“Dnes”, 19 August 2012).

The three detained members of “Pussy Riot” are recognized as political prisoners by the Union of Solidarity with Political Prisoners. Amnesty International named them prisoners of conscience due to the “severity of the response of the Russian authorities”.

The women have attracted high-profile support from other artists including Sir Paul McCartney, Bjork and Madonna, who called for their release while she was on tour in Russia earlier this month. In a statement addressed to "Nadya, Katya and Masha", Sir Paul, 70, said: "I would like you to know that I very much hope the Russian authorities would support the principle of free speech for all their citizens and not feel that they have to punish you for your protest."

Fellow musician Peter Gabriel said supporting the band would send a message to Russia, which he described as a "gangster state" in an article for The Times newspaper.

The band members started to gain noticeable attention, both with Russia and internationally, because of allegations of harsh treatment in custody and the risk of a seven-years jail sentence. In early July, a poll conducted in Moscow found that half of the respondents opposed the trial, while 36 % supported it, the rest being undecided.

### **The European Commission**

#### **The European parliament**

Pussy Riot is among the nominations for the Sakharov Price for Freedom of Thought. The band is nominated by MEP (member of the European parliament) Werner Schult and 45 other MEP. The list will be officially presented on Tuesday, 25 September (today).

### **Additional reactions**

In the disturbing turn of events, on 30 of August 2012 bodies of two murdered women, mother and daughter, were found in Kazan, Tatarstan. A message “Free Pussy Riot” was written in capital letters in English on the wall of the apartment, using the victim’s blood. A few Russian media outlets reported the killing as being either “committed by” or “inspired by” Pussy Riot supporters, despite a statement by a local police expressing skepticism at such theory. The next day, however Igor Danilevsky, a 38-year-old professor at a Kazan I+University, confessed to the killing, saying he wrote the message to distract police.

## **4. The relevant law**

- **The Universal Declaration of Human Rights – 1948**

**Article 18** 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 teaching, practice, worship and observance.

**Article 19** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**International Covenant on Civil and Political Rights (ICCPR) – 1966 into force 1976**

Article 18

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.

3. 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.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

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.

### **The European Convention for Human Rights and Freedoms into force 1953**

#### **Article 9 – Freedom of thought, conscience and religion**

- 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.
- 2 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.

#### **Article 10 – Freedom of expression**

- 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.

### **Charter of Fundamental Rights of the European Union<sup>1</sup> into force 1 December 2007**

#### *Article 10*

##### **Freedom of thought, conscience and religion**

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

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<sup>1</sup> 2007/C 303/01, C 303/4 EN Official Journal of the European Union 14.12.2007

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.

C 303/4 EN Official Journal of the European Union 14.12.2007

*Article 11*

**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.

The Charter introduces some novelties as the freedom of the arts and sciences (Art. 13) and the cultural, religious and linguistic diversity (Art. 22).

*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.

Explanation relating to the Charter of Fundamental Rights<sup>2</sup>

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

*Explanation on Article 10 — Freedom of thought, conscience and religion*

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope.

Limitations must therefore respect Article 9(2) of the Convention, which reads as follows:

‘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.’

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

*Explanation on Article 11 — Freedom of expression and information*

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<sup>2</sup> 2007/C 303/02

1. Article 11 corresponds to Article 10 of the European Convention on Human Rights, 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.’

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which the competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in Case C-288/89 (judgment of 25 July 1991, *Stichting Collectieve Antennevoorziening Gouda and others* [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

*Explanation on Article 13 — Freedom of the arts and sciences*

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to

Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

*Explanation on Article 22 — Cultural, religious and linguistic diversity*

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article 167(1) and (4) of the Treaty on the Functioning of the European Union, concerning culture.

Respect for cultural and linguistic diversity is now also laid down in Article 3(3) of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and nonconfessional organisations, now taken over in Article 17 of the Treaty on the Functioning of the European Union.

## **Terminology**

The comparison between the relevant international instruments shows some terminological distinctions relative to the freedom of expression and opinion: for example the Universal Declaration of Human rights uses the term “**right to freedom of opinion and expression**” (Art. 19). The ICCPR prefers to stipulate in Art. 19, Para. 1 the “**right to hold opinion**” and in Para. 2 regulates “**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 written or in print, in the form of art, or through any other media of his choice”).

The European Convention for Human Rights and Freedoms uses the notion of “**right of 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.

The Charter of Fundamental Rights of the European Union prefers the term **freedom of expression and information**. 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.

### **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).

#### **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)

**The explanatory report to the Charter of Fundamental Rights of the European Union** stipulates that the right to freedom of thought, conscience and religion guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: ‘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.’

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

### **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)

## 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**

### **The explanatory report to the Charter of Fundamental Rights of the European Union**

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which the competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in Case C-288/89 (judgment of 25 July 1991, *Stichting Collectieve Antennevoorziening Gouda and others* [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

### **The Bulgarian relevant legislation**

Pursuant to Art. 7, Para. 1 of the Law on Religions, the religious freedom cannot be directed against the national security, the public peace, the health of the nation and ethics or against the rights and freedoms of anybody else. The provisions of Art. 18, Para. 3 of the International Covenant on Civil and Political Rights (ICCPR) and of Art. 9, Para. 2 of the European Convention on Human Rights allow for the restriction of the religious freedom under certain preconditions. The Human Rights Committee has accepted General Comments on Art. 18 of the ICCPR, which have been reproduced in a document of the United Nations HR1/1/Rev.5. They explicitly comment on the limits for exercising the freedom of religion or religious beliefs only if the limitation is allowed by law and if it is necessary with a view to the protection of national security, public peace, health and ethics or the basic rights and freedoms of others.

### **RELIGIOUS RIGHTS AND FREEDOMS**

The religious rights and freedoms are proclaimed in the basic law: the Constitution of the Republic of Bulgaria. The main principles in the regulation of this matter are the following:

- 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). Prof. G. Cimbalo pointed out that the secularization is a very important feature of the constitutions of the East European states, nevertheless the relationship between the state and the confessions is realised by different instruments<sup>3</sup>.
- The Eastern Orthodox Christianity is considered the traditional religion in Bulgaria (Art. 13, Para. 3)

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<sup>3</sup> **GIOVANNI CIMBALO**, Tutela individuale e collettiva della libertà di coscienza e modelli di relazione tra stato e confessioni religiose nei paesi dell' Est Europa, Libertà di coscienza e diversità di appartenenza religiosa nell' Est Europa, a cura di Giovanni Cimbalo e Federica Botti, Bononia University Press, 2008, p. 16.

- Religious institutions and communities as well as religious faith shall not be used to political ends (Art. 13, Para. 4 of the Constitution).

### 9.3.1. FREEDOM OF RELIGION AND FAITH

The freedom of conscience, the freedom of thought and the choice of religion or religious or atheistic views are proclaimed and guaranteed as fundamental individual rights of the Bulgarian citizens.

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. The listed grounds are compatible with the internationally accepted restrictions, especially with the provision of Art. 9, Para. 2 of the European Convention of Fundamental Rights and Freedoms.

The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and ethics, or the rights and freedoms of others (Art. 37, Para. 2 of the Constitution).

### 9.3.2. LAW ON RELIGIONS

The Law on Religions is relatively new, it was adopted by the National Assembly of the Republic of Bulgaria on 20 December 2002<sup>4</sup> and abrogates the Law on Religions of 1949.

The provisions of the Law specify the constitutional rights of religion and faith and provide the legal status for the religious communities and institutions and their relations with

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<sup>4</sup> State Gazette, No. 120 as of 2002, last amend. SG No. 74 as of 15<sup>th</sup> September 2009.

the state (Art. 1). The main principles proclaimed in the Constitution are specified in detailed by the Law:

The right of religion and faith has an absolute character, including the right of free choice of religion and free practicing of religion. It is fundamental, absolute, subjective, personal and inviolable.

The obligations, established by the Constitution and the Law shall not be defaulted upon on grounds of religion or other convictions.

The principle of secularization means that the religious institutions shall be separated from the state. "No state interference in the internal organization of the self-administered religious institutions shall be allowed" (Art. 4, Para. 2).

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. The right of religion and faith can be practised through associations without registration<sup>5</sup>.

**The crimes against the religious denominations are as follows:**

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

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<sup>5</sup> For a detailed analysis of the Law on Religion, see, **IRENA ILIEVA**, op. cit. In *Liberta di coscienza e diversita di appartenenza religiosa nell'Est Europa*, p. 84 – 92.

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.

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.

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.

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.

Пр. в делото Стефанов срещу България се визира нарушение на чл. 9 от Конвенцията-на правото на свобода на религия и съвестта. Стефанов отказал да изпълни редовната военна служба поради религиозни съображения-през 1993 г. се присъединил към религиозната общност "Свидетелите на Йехова". Предложено му било да служи в строителни войски, във военна болница или

във военно подразделение като готвач. Той отказал, т. к. това било свързано с военни тренировни и носене на оръжие. На 23. 03.1995 г. районният съд в Шумен го осъдил на 1г. ½ затвор на основание чл. 361, ал. 1 от НК. Чл. 59, ал. 2 от К предвижда да се приеме Закон за алтернативната военна служба, но това става едва през ноември 1998 г., влезе в сила на 1.01.1999 г. В постигнатото споразумение отказът от носене на военна служба поради религиозни съображения и съвест се декриминализира и се предвижда амнистиране на вече осъдените по този текст на НК. Освен това правителството се задължава да плати 2 500 лв. разноски.

You have the right to hold your own opinions and to express them freely without government interference.

This includes the right to express your views aloud or through:

- published articles, books or leaflets
- television or radio broadcasting
- works of art
- communication on the internet.

## **Example**

The right to freedom of expression is particularly important for journalists and other people working in the media. They must be free to criticise the state without fear of prosecution – this is an important feature of a democratic society. However, the media does have to bear in mind other human rights, such as a person's [right to respect for their private life](#).

The law also protects your freedom to receive information from other people by, for example, being part of an audience or reading a magazine.

## **Restrictions**

Although you have the freedom to express your views and beliefs, you have a duty to behave responsibly and to respect other people's rights.

Public authorities may restrict your right to freedom of expression if they can show that their action has a proper basis in law, and is necessary and 'proportionate' in order to:

- protect national security, territorial integrity or public safety
- prevent disorder or crime
- protect health or morals
- protect the rights and reputations of other people
- prevent the disclosure of information received in confidence
- maintain the authority and impartiality of the judiciary.

It may be permissible to restrict your freedom of expression if, for example, you express views that encourage racial or religious hatred.

However, the relevant public authority must show that the restriction is 'proportionate', in other words the restriction must be no more than is necessary, appropriate and not excessive in the circumstances.

## **What the law says**

## **Article 10: Freedom of expression**

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 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.

### **Example case**

#### **Observer and The Guardian v United Kingdom (1991)**

*The Guardian* and *The Observer* newspapers published some excerpts from Peter Wright's book *Spycatcher*, which contained material alleging that MI5 had conducted unlawful activities. The government succeeded in obtaining an injunction preventing further publication until proceedings relating to a breach of confidence had been concluded. Subsequently the book was published in other countries and then in the UK. *The Guardian* complained that the continuation of the injunction infringed the right to freedom of expression in Article 10.

The European Court of Human Rights held that although the injunction was lawful, as it was in the interests of national security, once the book had been published, there was insufficient reason for continuing the publication ban. The injunction should have been discharged once the information was no longer confidential.

(Case summary taken from *Human rights, human lives*, Department for Constitutional Affairs, 2006.)

### **Case Law of the ECHR**

#### **FREEDOM OF EXPRESSION**

Criticism of an author's work in a local newspaper, and refusal of the newspaper to publish the reply of the author: *inadmissible*.

**MELNYCHUK – Ukraine** (N° 28743/03)

Decision 5.7.2005 [Section II]

The applicant is an author whose works were criticised by a local newspaper in two articles which underlined, *inter alia*, the dubious literary and linguistic quality of his books. The applicant sent a reply to the newspaper harshly criticising the person that had written the reviews, who was also a writer. The newspaper rejected to publish his reply. The applicant then instituted proceedings claiming compensation for the material and moral damage caused by the publication of the articles. The courts, at three instances, found against the applicant as the articles had been written in the form of a book review in which the

author expressed his personal opinion about the quality of the applicant's literary work. Moreover, the newspaper's refusal to publish the applicant's objections had been justified because the applicant's reply had contained obscene and abusive remarks on the reviewer. The applicant complained that the newspaper's refusal to publish his reply raised an issue under Article 10.

*Inadmissible* under Article 10: The Court considered that the right of reply, being an important element of freedom of expression, fell within the scope of this provision. However, this article gave no unfettered right to have access to the media. Whilst as a general principle private media should be free to exercise editorial discretion in deciding whether to publish or not letters of private individuals, there could be exceptional circumstances in which a newspaper could legitimately be required to publish a retraction or apology. In the present case, the applicant was able to submit his reply to the newspaper but he went beyond simply replying to the criticism by making obscene and abusive remarks about the critic. Moreover, it appeared that the applicant had been invited to modify his reply but had failed to do so. The applicant also had the opportunity of establishing his right of reply before the domestic courts. The Court had not found any element of arbitrariness in the decisions of the domestic courts. Accordingly, there had been no failure on the part of the authorities to comply with its positive obligation to protect the applicant's freedom of expression and the exercise of his right of reply: manifestly ill-founded.

#### **GORELISHVILI - Georgia (No 12979/04)**

Judgment 5.6.2007 [Section II]

*Facts:* The applicant, a journalist, published a newspaper article criticising various politicians and government officials. In the context of the general problem of corruption in the public sector the article was part of a regular column which informed the public about the financial situation of political figures in the light of their property declarations. The article gave an overview of the financial situation of an exiled parliamentarian from the Abkhazian legislature in the light of his official property declaration. It included the following extracts: "The son in law probably gave a hand to his father-in-law [the parliamentarian], otherwise the latter could hardly have finished ... the construction of the summer house ..." and "One can only wonder whether [the parliamentarian] and people like him feed on air, without ever spending their earnings. Otherwise, how else could they manage to save so much?!" The parliamentarian brought defamation proceedings. These ended in the Supreme Court, which found that the applicant's criticism was unfounded and that she had been negligent. She and the editor were ordered to pay jointly EUR 46 and to retract the two sentences.

***Law:* Article 10 – The sole issue was whether the interference with the applicant's right to freedom of**

**expression, which pursued the legitimate aim of protecting the reputation of others, was "necessary in a**

**democratic society". The following elements were taken into account: the parties' positions, the subject**

**matter of the publication and the domestic courts' qualification of the contested statements.**

**(a) *The respective positions of the parties:* The applicant was a journalist. Her duty was to provide information and ideas on matters of public interest and, although she was obliged to take account of the**

**rights and reputation of others, she was allowed a certain amount of journalistic freedom which could**

**involve exaggeration or even provocation. The other party to the proceedings was an exiled parliamentarian from the Abkhazian legislature. Politicians, by the very nature of their work had to accept**

**public scrutiny and show a greater degree of tolerance when criticised.**

**(b) *The subject matter of the publication:* The article had not referred to anything confidential and**

**contributed to a matter of important and ongoing public interest: corruption in the public sector.**

**Its**

**specific concern with this particular parliamentarian's assets had been intensified by his association with**

**the sensitive issue of Abkhazia.**

(c) *The domestic courts' qualification of the contested statements:* The interference was limited to the two sentences which cast doubt over how the parliamentarian could have constructed his summer house. The domestic law on defamation at the time made no distinction between value judgments and statements of fact and had led the Supreme Court to conclude that the comments concerned were statements of fact without even examining the possibility that they might be value judgments. That incomplete analysis represented an indiscriminate approach to the assessment of speech and was incompatible with freedom of opinion.

In the Court's view, the sentences expressed the applicant's opinion on the credibility of the property declaration, and did not constitute a gratuitous, personal attack. The applicant had not distorted or recklessly disregarded information which was publicly available and, as a journalist, was entitled to rely on an official document without having to undertake independent research. To find otherwise would undermine the vital role of the press as a public-watchdog in a democratic society. Accordingly, the Supreme Court had not given relevant and sufficient reasons to justify the interference with her right to impart information and ideas on matters of public concern and the interference had therefore not been necessary in a democratic society.

*Conclusion:* violation (unanimously).

Article 41 – EUR 1,500 in respect of non-pecuniary damage.

## **FREEDOM OF EXPRESSION**

Order requiring a magazine to issue a statement explaining that a photograph of a murdered prefect had been published without the family's consent: *no violation*.

**HACHETTE FILIPACCHI ASSOCIES - France** (No 71111/01)

Judgment 14.6.2007 [Section I]

*Facts:* A few days after the murder of a French Prefect, the weekly magazine *Paris-Match* published an article entitled “*La République assassinée*” (The Murdered Republic). A two-page colour photograph taken moments after the murder showed the Prefect's lifeless body lying on the ground in a pool of blood, facing the camera. To defend their right to private life the Prefect's widow and children sought injunctions, *inter alia* against the applicant company, which published *Paris-Match*, to have the copies of the magazine in which the photo appeared seized and to enforce the prohibition of their sale by means of coercive fines.

The urgent applications judge acknowledged that the publication had trespassed on the family's private life. Considering that the requested seizure order would be difficult to enforce in practice, he preferred to issue an injunction requiring the applicant company to publish a statement at its own expense in the following issue of *Paris-Match*, under the heading “Court injunction”, informing readers that the photograph had been judged deeply distressing for the victim's widow and her children. The Court of Appeal upheld the decision, considering that publication of the photograph, while Prefect Erignac's close family were still mourning his loss, and given the fact that they had not given their consent, constituted a gross disturbance of their grief, and accordingly of the intimacy of their private life. It added that publication of a statement was legally justified under Article 9 § 2 of the Civil Code when its purpose was to cause the intrusion into the intimacy of the family's private life to cease. The Court of Appeal modified the content of the statement accordingly and combined it with a coercive fine.

The statement the applicant company was required to publish in its magazine and finally did publish was to inform readers that the photograph had been published without the consent of the Erignac family, who

considered its publication an intrusion into the intimacy of their private life. The Court of Cassation dismissed an appeal on points of law by the applicant company.

*Law:* The obligation to publish a statement amounted to interference under Article 10 and the interference was “prescribed by law”. Article 9 of the Civil Code gave judges the precisely circumscribed power to prevent or cause to cease an intrusion into the intimacy of private life. Although all the measures they could take under that Article were not listed expressly and exhaustively, they were not unknown to the publishing profession. There was established case-law which sanctioned the impugned measure and satisfied the conditions of accessibility and foreseeability. The interference had also pursued a legitimate aim – to protect the rights of others.

As to whether the interference had been “necessary in a democratic society”, the Court took into account first of all the duties and responsibilities inherent in the exercise of freedom of expression. For example, the death of a close relative and the ensuing mourning must sometimes lead the authorities to take the necessary measures to ensure respect for the private and family lives of the persons concerned. In the present case, the photograph had been published in *Paris-Match* only 13 days after the murder and ten days after the funeral. The distress of the victim's close relatives should have led journalists to exercise prudence and caution, given that he had died in violent circumstances which were traumatic for his family, who had expressly opposed publication of the photograph. The result of publication, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim's close relatives, so they were justified in arguing that there had been an infringement of their right to respect for their private life.

The Court then examined to what extent the punishment might have a dissuasive effect on exercise of freedom of the press. The French courts had refused to order the seizure of the offending publications. The wording of the statement, which was different from the text in the first-instance proceedings, revealed

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the care the French courts had taken to respect the editorial freedom of *Paris-Match*, which was characterised in particular by the policy of illustrating stories with hard-hitting photographs. That being so, of all the sanctions permitted, the order to publish the statement was that which, both in principle and as regards its content, least restricted the exercise of the applicant company's rights. The applicant company had not shown in what way the order to publish the statement had actually had a dissuasive effect on the way the magazine had exercised and continued to exercise its right to freedom of expression. *Conclusion:* no violation (five votes to two).

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## **FREEDOM OF EXPRESSION**

Dismissal of municipal employee for issuing a press release that appeared to vindicate the attacks on the World Trade Centre and the Pentagon: *inadmissible*.

**KERN - Germany (No 26870/04)**

**Decision 29.5.2007 [Section V]**

Under the Law on Contracts for Federal Employees persons in the employ of federal, state or municipal bodies were required to recognise, and act in accordance with, the free democratic order within the meaning of the Basic Law. **The applicant was dismissed from his job as an environmental engineer with the Lübeck municipality after issuing a press release on behalf of a right-wing extremist group on the day following the terrorist attacks on the World Trade Centre and the Pentagon on 11 September 2001.** In the press release the United States were accused of terrorism, “one-eyed idiocy” and of acting “in the interest of a Zionist oligarchy”. **The 11 September attacks were described as “an act of liberation ... which had been overdue for a long time”**. The release ended with a general condemnation of terrorist attacks. Infinding the applicant's dismissal to have been lawful, the court of appeal noted that municipal employees were required, when publicly commenting on current political affairs, to do so in a careful manner in order not to damage public confidence in their impartial, just and welfare-oriented performance and that it would not be possible for the municipality to continue the employment as it could

not rely on the applicant respecting the free democratic order in the future. The applicant was refused leave to appeal on points of law and the Federal Constitutional Court declined to accept his constitutional complaint for adjudication.

*Inadmissible:* It had to be determined whether a fair balance had been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that public servants complied with their duty of discretion and obligation to respect the free democratic order. The court of appeal had reasoned that the press release issued by the applicant breached his obligation to recognise the free democratic order and that the applicant had approved of the attacks and tried to minimise their importance. It had also found that the municipality's interest in terminating the employment prevailed over the applicant's difficulty in finding alternative employment. That decision had been approved by both the Federal Labour Court and the Federal Constitutional Court. Having regard to all the circumstances, the court of appeal's assessment could not be said to have been arbitrary or to have failed to take the applicant's interests into account adequately. Its judgment was carefully reasoned. It had correctly comprehended the content and the consequences of the applicant's statements. By addressing the media, the applicant had failed to take the adverse effects of such activities on the integrity of the public service sufficiently into account. Therefore, the court of appeal's assessment of the duty of discretion incumbent on the applicant, even though he was employed in a technical sector at the municipal level, had not unduly restricted the freedom of expression of civil service employees. Having regard to the domestic courts' margin of appreciation the interference was not disproportionate to the legitimate aim pursued: *manifestly ill-founded*.

## **FREEDOM OF EXPRESSION**

Conviction of a journalist for defamation in respect of an article setting out allegations by a man on trial who sought to use the press to persuade the public of his innocence: *violation*.

**ORMANNI - Italy** (No 30278/04)

Judgment 17.7.2007 [Section II]

*Facts:* The applicant, a journalist at the weekly magazine *Oggi*, had written an article about M.G., a dancer and choreographer who ran a dance academy and stood accused of rape and abuse of young pupils at the academy. The article reported M.G.'s fears that the accusations against him were the result of his professional activities and his opposition to what he called a "powerful local business committee". The article explained that M.G. had submitted an application for subsidies, but that his application had disappeared and the complaint for theft he had subsequently lodged had not been followed up. The article went on to explain that the brother-in-law of the manager of a rival dance academy, who had been awarded the subsidies M.G. had applied for, was the head of the town's prosecution service, and mentioned his name. The following issue of *Oggi* published a different version of the story: that of the principal public prosecutor, M.S., who had lodged a complaint for libel. He claimed that the article gave the reader the impression that he had taken advantage of his position to dismiss M.G.'s complaint for theft, helped the rival dance academy and trumped up charges to remove M.G. from the scene. The applicant was found guilty of defamation through the medium of the press, aggravated by the fact that he had insulted the State legal service. He was fined and ordered to pay interim compensation, but the conviction was not entered in a criminal record. M.G. was acquitted. Before the Court of Cassation the applicant pleaded, to no avail, that he had done nothing but report M.G.'s version of events, without endorsing it or supplying any false information.

*Law:* The accuracy of the main facts reported in the article was not at issue. The applicant had based the story on a video tape recorded by M.G. and on the documents in the criminal proceedings against M.G. The journalist had discharged his obligation to verify the accuracy of the facts reported in his article. True, he had omitted to mention that M.S. had had no power to have M.G.'s complaint of theft dropped, but a journalist writing for a widely read magazine could not be expected to explain all the technical details of the judicial proceedings he referred to.

The article was presented as an account of an interview with M.G., in which M.G. set out his arguments, which were by their very nature subjective, in an attempt to persuade the readers of his innocence. While the applicant had endorsed M.G.'s allegations, at least in part, and had not formally distanced himself from them, he had expressed no value judgment concerning the human or professional qualities of Principal Public Prosecutor M.S., whose name had been mentioned only once in the article, without any suggestion that he was responsible for the bringing of proceedings against M.G. or that he was a member of the "business committee" which had allegedly sought to harm him, and he had clearly stated that the public prosecutor in charge of the proceedings was not M.S. So while it did contain an element of provocation, the article could not be regarded as a gratuitous personal attack on M.S., and it stuck fairly closely to the facts. In addressing such topics as the administration of justice, judicial institutions, the world of politics and private interests, the article had addressed matters of general interest.

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M.S. had promptly been given the opportunity to present his version of events, to dispel any suspicions and give the public the opportunity to compare the two accounts. The interim compensation the applicant had been ordered to pay (EUR 12,911 together with the director of the magazine) had been immediately enforceable. This sum was a down-payment pending the total compensation that might be awarded in separate proceedings the injured party might wish to bring, which could substantially increase the court costs and compensation the applicant might have to pay.

The sentence had not been "necessary" to protect the reputation or rights of the complainant.

*Conclusion:* violation (five to two).

Article 41 – Pecuniary damage: monetary award commensurate with the compensation, fine and court costs incurred by the applicant in the trial for defamation. Non-pecuniary damage: finding of a violation sufficient.

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## **FREEDOM OF EXPRESSION**

Unlawful dismissal of a civil servant following a search of his office in apparent retaliation for a letter he had published in the press criticising the chief prosecutor: *violation*.

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

Judgment 26.7.2007 [Section V]

*Facts:* The applicant was employed as an expert by the Supreme Cassation Prosecutor's Office (SCPO). Following the death by suicide of a prosecutor colleague who had alleged that the chief prosecutor and his entourage were harassing and exerting improper pressure on him, the applicant considered resigning and to that end prepared two draft letters which he kept in a drawer of his office desk. However, he eventually decided not to resign and sent a letter to two daily newspapers and the Supreme Judicial Council making a number of grave accusations against the chief prosecutor and urging the authorities to investigate. One of the newspapers published the letter. On the evening preceding publication, a prosecutor from the SCPO sealed off the applicant's office and ordered the duty police officer not to allow the applicant to enter the building as he had been dismissed. The applicant was subsequently informed that his resignation letter had been brought to the attention of the chief prosecutor and that his resignation had been accepted. Some days later, the applicant was allowed into the office to collect his personal belongings. He discovered that it had been searched and that certain items, including the draft resignation letters, were missing. The prosecuting authorities refused to open criminal proceedings. However, the applicant brought a civil action for unlawful dismissal and obtained an order for his reinstatement and an award of compensation. Although he was not in fact reinstated in his former position as the department for which he had worked had been abolished in the interim, he did succeed in obtaining a post with a similar body.

*Law:* Article 10 – *Admissibility* – On the question whether the quashing of the applicant's dismissal, accompanied by an award of compensation and his appointment to another post, had deprived him of victim status within the meaning of Article 34, the Court noted that the termination of his employment was only part of the alleged interference with his freedom of expression. Further, the purpose of the domestic proceedings had been to give effect to the applicant's labour rights, not to protect his freedom of

expression as such. Therefore, even if the judgments in his favour had provided some redress, they had not acknowledged expressly or in substance the alleged violation of Article 10. Likewise, while the applicant's appointment to a similar position about three years after the termination of his employment had no doubt mitigated the damage, there was no indication that it had been intended as an acknowledgment of and redress for his Article 10 grievance: *victim status upheld*.

*Compliance* – The sequence of events appeared significant, with the applicant's office being sealed off shortly after the publication of his letter containing the accusations against the chief prosecutor and his dismissal being engineered on the basis of material obtained during the search. The string of measures taken against him thus appeared to have been a result of that publication and so an interference with his  
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freedom of expression. Since the Court had already found the search to be unlawful and the domestic courts had ruled his dismissal unlawful, that interference had not been "prescribed by law".

*Conclusion*: violation (unanimously).

Article 8 – The applicant had a "reasonable expectation of privacy", if not in respect of his entire office, at

least in respect of his desk and filing cabinets. In view of the national courts' finding that the person who had carried out the search had had access to the Courts of Justice building and was apparently connected to the chief prosecutor before whom the material obtained during the search was later brought, there was no reason to assume that the search was carried out by persons in their private capacity. The search thus amounted to interference by a public authority with the applicant's private life. The Government had not sought to argue that there were any provisions in domestic law at the relevant time to regulate the circumstances in which the SCPO could search the offices of its employees outside the context of a criminal investigation. The interference was therefore not "in accordance with the law".

*Conclusion*: violation (unanimously).

Article 13 (in conjunction with Articles 8 and 10) – The Government had failed to show that any remedies existed in respect of the unlawful search. The domestic proceedings in which the applicant had challenged his dismissal had concentrated on the resignation issue and had not discussed the substance of his freedom-of-expression grievance. Those proceedings therefore did not amount to an avenue whereby he could vindicate his freedom of expression as such and no other remedy had been suggested by the Government.

*Conclusion*: violation (unanimously).

Article 41 – EUR 5,000 for non-pecuniary damage.

## **Some conclusions**