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

FIRST SECTION

CASE OF BARANKEVICH v. RUSSIA

(Application no. 10519/03)

JUDGMENT

STRASBOURG

26 July 2007

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 Barankevich v. Russia,

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

Mr C.L. ROZAKIS, *President,*
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 5 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 10519/03) 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 a Russian national, Mr Petr Ivanovich Barankevich ("the applicant"), on 25 February 2003.

2. The applicant was represented before the Court by Mr S. Sychev, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained about a violation of his rights to freedom of religion and peaceful assembly.

4. By a decision of 20 October 2005 the Court declared the application admissible.

5. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Court decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1960 and lives in the town of Chekhov in the Moscow region. He is the pastor of the "Christ's Grace" Church of Evangelical Christians (*Церковь евангельских христиан "Благодать Христова"*).

7. On 9 September 2002 the applicant applied to the Chekhov Town Council for permission to hold a service in public between 11 a.m. and 1 p.m. on 22 or 29 September 2002.

8. On 20 September 2002 the deputy head of the Chekhov Town Council refused permission. In particular, he stated that the Chekhov Town Council had on many occasions informed the applicant that it was not possible to hold services in public areas in the town (squares, streets, parks, etc.). The applicant was advised to hold services and other religious rites at the registered seat of the church or on other premises owned or used by the church members.

9. On 26 September 2002 the applicant challenged the refusal of the Town Council before a court. He alleged violations of the rights to freedom of religion and assembly.

10. On 11 October 2002 the Chekhov Town Court of the Moscow Region examined the applicant's claim and dismissed it. The court found that, pursuant to the domestic law, public worship and other religious rites were subject to an authorisation by a municipal authority. It further ruled as follows:

> "The contested refusal is lawful because it is justified. As the Church of Evangelical Christians practices a religion that is different from the religion professed by the majority of the local residents, and having regard to the fact that in the Chekhov district there are more than twenty religious organisations of different denominations, a service of worship in a public area held by one of them may lead to ... the discontent of individuals of other denominations and public disorder.
>
> In these circumstances, the contested acts of the Chekhov Town Council cannot be deemed to impair the rights of the 'Christ's Grace' Church of Evangelical Christians as they do not prevent it from holding services in religious buildings or on other premises intended for that purpose."

11. The applicant appealed. On 4 November 2002 the Moscow Regional Court upheld the judgment of 11 October 2002.

II. RELEVANT DOMESTIC LAW

12. The Freedom of Conscience and Religious Associations Act (no. 125-FZ of 26 September 1997) provided that services and other religious

rites and ceremonies in public were to be performed in accordance with the procedure established for assemblies, marches and demonstrations (section 16).

13. The Decree of the Presidium of the USSR Supreme Council no. 9306-XI of 28 July 1988 (in force at the material time pursuant to Presidential Decree no. 524 of 25 May 1992) provided that organisers of an assembly were to serve written notice on the municipal authorities no later than ten days before the planned assembly (section 2). The authority was to give its response no later than five days before the assembly (section 3). An assembly could be banned if its purpose was contrary to the Constitution or threatened public order or the security of citizens.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 11 OF THE CONVENTION

14. The applicant complained under Articles 9 and 11 of the Convention that he had not been allowed to hold a service of worship in the town park.

15. The Court notes that under Russian law, services of worship in public were to be performed in accordance with the procedure established for assemblies (see paragraph 12 above). The ban was imposed under the rules and procedures governing public assemblies and setting limitations on freedom of assembly. The issue of freedom of belief cannot in this case be separated from that of freedom of assembly. The Court therefore considers that Article 11 takes precedence as the *lex specialis* for assemblies and will deal with the case principally under Article 11, whilst interpreting it in the light of Article 9 (see, for a similar approach, *Pendragon v. the United Kingdom*, no. 31416/96, Commission decision of 19 October 1998; *Rai, Allmond and "Negotiate Now" v. the United Kingdom*, no. 25522/94, Commission decision of 6 April 1995; and *Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, Commission decision of 17 October 1985).

16. Articles 9 and 11 of the Convention provide:

Article 9

"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 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others ..."

A. Whether there has been an interference

17. The applicant submitted that the refusal of permission to organise a service of worship in the town park constituted an interference with his rights under Articles 9 and 11 of the Convention.

18. The Government argued that the applicant had not been prevented from holding a service of worship in religious buildings or on other premises intended for that purpose. He had only been refused permission to hold a service of worship in a public place.

19. The Court observes that the applicant complained about the refusal of permission to hold a service in the town park on 22 or 29 September 2002 rather than about any restrictions on his right to practise religion in general. In these circumstances, the Government's argument that the applicant could hold services in religious buildings or on other premises intended for that purpose is immaterial to the present case.

20. The applicant attempted to organise a religious assembly in the town park. He applied to the town council for authorisation. However, the town council refused authorisation. The refusal of authorisation to organise an assembly constituted an interference with the applicant's rights under Article 11 interpreted in the light of Article 9.

B. Whether the interference was justified

1. The submissions of the parties

21. The applicant argued that the interference with his freedom of religion and assembly was not prescribed by law because the deputy head of the Chekhov Town Council had not given reasons for the refusal. If the authorities considered that holding an assembly in the place he had

proposed might disturb public order, they could have suggested another place or time. An unqualified ban on services of worship in public places had been disproportionate. He further argued that the authority's apprehension that the peaceful assembly might disturb public order was unsubstantiated. In 1998 the church had held services in public in the town of Chekhov which had not caused any disturbances. Other denominations, such as the Russian Orthodox Church, were allowed to hold services in public and such worship did not provoke any disorder in the town either.

22. The Government argued that at the material time the domestic law provided that a person wishing to hold an assembly or a service of worship in a public place should obtain prior authorisation from the authorities. In the present case, the decision to refuse authorisation was examined by the domestic courts, which found it to have been lawful and justified. In any event, in 2004 a new law on assemblies, meetings, demonstrations, marches and picketing was enacted and the requirement of authorisation was replaced by simple notification.

23. The Government further submitted that services of worship outside religious buildings aimed to influence the beliefs of others. The majority of the population of the Chekhov district professed other religions and the authorities had to protect their freedom of conscience and religion. The Government referred to the *Kokkinakis* case, where the Court held that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom of religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected (see *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A no. 260-A, p.18, § 33). Eighteen religious organisations of different denominations existed in the Chekhov district and a service in a public area held by one of them might have led to the discontent of individuals of other denominations and public disorder.

2. The Court's assessment

(a) General principles

24. The Court has recognised that the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Kokkinakis*, cited above, p. 17, § 31). As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of

Article 9 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a "democratic society" (see *Christian Democratic People's Party v. Moldova*, no. 28793/02, §§ 62-63, ECHR 2006-...).

25. The right to freedom of assembly covers both **private meetings** and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals participants of the assembly and by those organising it (see *Adalı v. Turkey*, no. 38187/97, § 266, 31 March 2005). States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully. In view of the essential nature of freedom of assembly and association and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right (see *Ouranio Toxo v. Greece*, no. 74989/01, § 36, 20 October 2005, with further references).

26. In carrying out its scrutiny of the impugned interference, the Court has to ascertain whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must also look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see, among other authorities, *Christian Democratic People's Party*, cited above, § 70).

27. Furthermore, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights (see *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 41, ECHR 2002-V).

(b) Application of the above principles to the present case

28. The Court welcomes the amendment in 2004 of the law on public assemblies, to which the Government referred, whereby the requirement of prior authorisation was replaced by simple notification of the intended assembly. The Court notes, however, that these developments occurred after the events at issue in the present case. At the material time the conduct of public assemblies was regulated by the 1988 Decree, which gave the authorities power to ban assemblies deemed to be a threat to public order or the security of citizens. In the instant case the Town Council made use of that power and denied permission for the applicant's assembly. The Court accepts that the interference was "prescribed by law" and that it pursued "a legitimate aim" within the meaning of paragraph 2 of Articles 9 and 11, that

of preventing disorder. It remains to be determined whether it was "necessary in a democratic society".

29. The domestic courts justified the necessity of the interference by reference to the fact that the applicant's church practised a religion that was different from the religion professed by the majority of the local residents. They considered that a public religious assembly organised by the Christ's Grace church could cause discontent among adherents of other religious denominations and provoke public disorder. The Court is not convinced by that argument.

30. Referring to the hallmarks of a "democratic society", the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 90, 17 February 2004). The Court further reiterates that in a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on the "freedom to manifest one's religion or belief" in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected. However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial. What is at stake here is the preservation of pluralism and the proper functioning of democracy, and the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, §§ 115 and 116, ECHR 2001-XII, with further references).

31. In the light of the above principles, the Court emphasises that the mere fact that the Evangelical Christian religion was practised by a minority of the town residents was not capable of justifying an interference with the rights of followers of that religion (see, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 89, ECHR 2001-IX). It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. Were it so a minority group's rights to freedom of religion, expression and assembly would become merely theoretical rather than practical and effective as required by the Convention (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33).

32. The Court further notes the indisputably peaceful character of the religious assembly planned by the applicant. There was no evidence that any

of the participants would incite or resort to violence. Public disorder could thus only be caused by those members of the town population who were prepared to oppose forcefully the meeting of the Evangelical Christians in the town park and to force the followers of that religion out of the public arena by means of threats and violence. The Court stresses in this connection that freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote (see *Stankov*, cited above, § 90). The participants must be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents. It is thus the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully (see *Plattform "Ärzte für das Leben" v. Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, §§ 32 and 34).

33. Assuming that there existed a threat of a violent counter-demonstration, the Court observes that the domestic authorities had a wide discretion in the choice of means which would have enabled the religious assembly planned by the applicant to take place without disturbance (see *Plattform, loc. cit.*). However, there is no indication that an evaluation of the resources necessary for neutralising the threat was part of the domestic authorities' decision-making process. Instead of considering measures which could have allowed the applicant's religious assembly to proceed peacefully, the authorities imposed a ban on it. They resorted to the most radical measure, denying the applicant the possibility of exercising his rights to freedom of religion and assembly. It moreover appears from the wording of the refusal that the applicant's requests for permission to hold a service of worship in public had already been rejected on many occasions without detailed reasons (see paragraph 8 above). Such a comprehensive ban cannot be considered justified.

34. Finally, the Court is not convinced by the Government's argument that it was necessary to restrict the applicant's right to freedom of assembly and religion for the protection of those whom he was allegedly trying to convert. Under Article 9, freedom to manifest one's religion includes the right to try to convince one's neighbour, failing which, moreover, "freedom to change one's religion or belief", enshrined in that Article, would be likely to remain a dead letter (see *Kokkinakis*, cited above, p. 17, § 31). It has not been shown that unlawful means of conversion, infringing the rights of others, have been or were likely to be employed by the applicant (compare *Stankov*, cited above, § 105). In any event, that argument was never relied upon by the domestic authorities.

35. The Court concludes that the ban on the religious assembly planned by the applicant was not "necessary in a democratic society". There has accordingly been a violation of Article 11 of the Convention interpreted in the light of Article 9.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLES 9 AND 11

36. The applicant complains that he was treated differently from members of other religious denominations. The Court considers that this complaint falls to be examined under Article 14 of the Convention, in conjunction with Articles 9 and 11. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

37. The Government submitted that the applicant's argument that other denominations enjoyed unrestricted freedom to hold services of worship in public was speculation not supported by any evidence. No service of worship had been held in public by any religious denomination in the Chekhov district in 2002.

38. The applicant argued that other denominations, such as the Russian Orthodox Church, enjoyed unrestricted freedom to hold services of worship in public.

39. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also (see *The Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 100, ECHR 2006-..., with further references).

40. In view of the Court's conclusion that there has been a violation of Article 11 of the Convention in the light of Article 9, no separate examination under Article 14 is required (see, for example, *Metropolitan Church of Bessarabia*, cited above, § 134, and *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1619, § 52).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered that the claim was "far-fetched", unsubstantiated and "undoubtedly fabulous". The finding of a violation would in itself constitute sufficient just satisfaction.

44. The Court accepts that the applicant has suffered non-pecuniary damage – such as distress and frustration resulting from a ban on a religious assembly imposed in breach of Article 11 interpreted in the light of Article 9 – which is not sufficiently compensated for by the finding of a violation of the Convention. However, it finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

45. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

46. The Court considers it appropriate that the default interest 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 UNANIMOUSLY

1. *Holds* that there has been a violation of Article 11 of the Convention interpreted in the light of Article 9;

2. *Holds* that it is not necessary to examine the applicant's complaint under Article 14;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President