Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Interacting Rights: An Approach to Protect and Promote the Right of Religious Minorities to Publicly Manifest Their Religious Identity

Question(s) at stake:

Whether the Chekhov Town Council's refusal to allow the pastor of the Evangelical Church to hold religious services in a public area violated the rights to freedom of assembly and freedom of religion protected by the European Convention on Human Rights (ECHR).

Outcome of the ruling:

The Russian authorities' ban on the religious assembly constituted an interference with the applicant's right to freedom of assembly under Article 11 of the Convention, as interpreted in light of Article 9, and was not necessary in a democratic society.

Topic(s):

- Public Space and Institutional Sphere
- State recognition of Groups and Their Practices

Keywords:

- Freedom of association
- Non-discrimination
- Proportionality
- Protection of the rights and freedoms of others
- Public order
- Religious practices and places
- State neutrality

Tag(s):

- Evangelical Church

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Country:

Russia

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Barankevich v Russia, App no 10519/03, 26 July 2007

Link to the decision:

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ECLI:

ECLI:CE:ECHR:2007:0726JUD001051903

Date:

26 July 2007

Jurisdiction / Court / Chamber:

European Court of Human Rights, First Section

Remedy / Procedural stage:

Final Judgement

Previous stages:

- Regional Court Moscow (4 November 2002)
- Chekhov Town Court of the Moscow Region (11 October 2002)

Subsequent stages:

None

Branches / Areas of law:

Human Rights Law; Administrative law

Facts:

On 25 February 2003, the European Court of Human Rights received an application from Mr Petr Ivanovich Barankevich, a Russian national and resident of the town of Chekhov, alleging violations of his rights to freedom of religion and freedom of assembly by the Russian Federation. The applicant, the pastor of the “Christ’s Grace” Church of Evangelical Christians in Chekhov, had been denied permission to hold a religious service in a town park. The Chekhov Town Council rejected the applicant’s request on 20 September, advising him to conduct religious rites at the registered seat of his Church or other venues owned by Church members since it was not possible to hold service in public areas. The applicant challenged the authorities’ denial of his request to hold a religious service in a town park, alleging that it violated his rights to freedom of religion and freedom of assembly. He brought the case before the Chekhov Town Court of the Moscow Region on 26 September 2002. On 11 October 2002, the Chekhov Town Court dismissed the applicant’s complaint on the grounds that, according to domestic law, public worship and other religious rites need the authorization of the Town Council. The Town Court further argued that since the majority of the town’s inhabitants did not share the applicant’s faith, their freedom of conscience and religion was to be protected. In addition, allowing the applicant to conduct his religious services could disrupt the public order in Chekhov by causing turmoil among the more than 20 other religious organizations affiliated with various denominations in the town. Subsequently, according to the Court, the Town Council’s rejection did not violate the applicant's rights, as he and members of the Church of Evangelical Christians were not restricted in their ability to practice their beliefs at designated religious premises.

As an appeal submitted to the Moscow Regional Court against the Chekhov Town Court decision remained inconclusive, the applicant lodged a complaint with the European Court of Human Rights, alleging that his rights to freedom of religion and freedom of assembly, as protected by Articles 9 and 11 of the ECHR, had been violated. According to the applicant, the ban imposed by the authorities was not sufficiently justified and did not satisfy the principle of proportionality. The applicant also complained that he was treated differently from followers of other religious denominations, who were allowed to worship in public places, in violation of Article 14 of the ECHR.

Ruling:

In its decision, the European Court of Human Rights (hereinafter “the Court”) determined that the authorities’ denial of the applicant’s request effectively interfered in a religious assembly and was not necessary in a democratic society. Accordingly, there had been a violation of Article 11 of the ECHR (freedom of assembly and association), as interpreted in conjunction with Article 9 of the ECHR (freedom of thought, conscience and religion). As for the alleged violation of Article 14 of the ECHR (prohibition of discrimination), the Court stated that no separate evaluation under Article 14 was necessary because the case had already been examined under Article 9 and Article 11 of the ECHR.

Considering the applicant’s complaint raised under Articles 9 and 11 of the ECHR, the Court established that in this case, the right to freedom of religion or belief is closely linked to the right to freedom of assembly. In this context, the Court prioritized the specific provisions of Article 11 for assemblies and referred to Article 9 for interpretation.

The Court proceeded by determining whether there had been an interference with the applicant’s right under Article 9 and Article 11 of the ECHR. Since the applicant was denied authorization by the Town Council to hold a religious assembly in a public area, the Court found that the applicant’s right to freedom of religion and assembly, as protected by Articles 9 and 11 of the ECHR, had been infringed upon.

To ascertain whether the interference in question was justified, the Court reaffirmed the general principles associated with Article 11 of the ECHR. It established that the right to peaceful assembly, protected by this provision, represents an essential right in a democratic society and is one of its foundational elements. Accordingly, the state is to refrain from interfering with the right to peaceful assembly on arbitrary grounds. Exceptions may only be justified if the state exercises discretion reasonably, carefully, and in good faith. Furthermore, the Court had to consider whether the interference was “proportionate to the legitimate aim pursued” and whether the reasoning deployed by the authorities to justify the interference was “relevant and sufficient”.

The Court examined whether the interference satisfied the requirements of paragraph 2 of Articles 9 and Article of the 11 ECHR, namely whether it was prescribed by law, pursued a legitimate aim, and was necessary in a democratic society. If one of the requirements is not met, the interference amounts to a violation of said provisions. Taking into consideration that the authorities’ decision to ban the assembly was based on the 1988 Decree, which provided the government with the necessary tools to disallow assemblies based on concerns for the public order or the security of residents, the Court accepted that the interference was legal and pursued a legitimate aim within the meaning of paragraph 2 of Article 9 and Article 11 of the ECHR.

To determine whether the interference was necessary for a democratic society, the Court first recalled the foundations of a democratic society, highlighting the importance of pluralism, tolerance, and broadmindedness. The Court further considered that although individual interests are occasionally subordinate to those of a group, the views of the majority do not always prevail by default. Instead, a democratic society may need to strike a balance between recognizing minority interests and exercising its regulatory powers. The Court ruled that to ensure the diversity of beliefs, religions, and denominations within a democratic society, the state may need to impose restrictions on the freedom to practice one’s religion or belief. However, in this respect, the state has a duty not only to remain neutral and impartial but also to refrain from eliminating the source of

tension at the expense of pluralism and to promote tolerance among competing parties. Accordingly, the Court determined that the mere fact that Evangelical Christians are a minority religion did not justify an interference with the rights of their followers. The Court further emphasized that for the rights enshrined in the Convention to be practical and effective, their enjoyment by a minority group must not be predicated on those rights being accepted by the majority. The state, therefore, is obliged to ensure that peaceful assemblies can be held. The Court, however, found that the authorities, in this case, did not adequately prepare nor implement measures to maintain public order in the face of potentially violent opposition to the applicant's assembly. Additionally, the Court rejected the government's argument that the interference was justified due to the freedom of conscience and religion of others, stating that the freedom to change one's religion or belief is also protected by Article 9. This pertained to the government's argument that restrictions were necessary to protect "those whom [the applicant] was allegedly trying to convert." However, according to the Court, the evidence did not show that there was a likelihood of unlawful means of conversion, nor was this an argument raised by the domestic authorities.

The Court concluded that the interference with the applicant's right to freedom of assembly was not necessary in a democratic society and amounted to a violation of Article 11 of the ECHR, read in conjunction with Article 9.

Lastly, the Court found the applicant's complaint that he was treated differently from members of other religious groups was unnecessary to examine separately under Article 14 of the ECHR given how the Court had already determined a violation of Article 11 of the ECHR in conjunction with Article 9.

Main quotations on cultural or religious diversity:

- "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. 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'." (para. 24)

- "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 individual participants of the assembly and by those organising it [...] 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." (para. 25)
- "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'." (para. 26)
- "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." (para. 27)
- "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 [...] 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." (para. 30)

- "In the light of the above principles, the Court emphasizes that the mere fact that the Evangelical Christian religion was practiced by a minority of the town residents was not capable of justifying an interference with the rights of followers of that religion. 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." (para. 31)
- "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 [...] 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.” (para. 32)

Main legal texts quoted in the decision:

Domestic Law

- Freedom of Conscience and Religious Associations Act 1997 No 125-FZ
- Decree of the Presidium of the USSR Supreme Council 1988 No 9306-XI

International Law

- Articles 9, 11, 14, 34, 41, and 44 of the European Convention on Human Rights

Cases cited in the decision:

- *Adalı v Turkey*, App no 38187/97, 31 March 2005
- *Artico v Italy*, App no 6694/74, 13 May 1980
- *Christian Democratic People’s Party v Moldova*, App no 28793/02, 14 February 2006
- *Djavit An v Turkey*, App no 20652/92, 9 July 2003
- *Gorzelik and Others v Poland*, App no 44158/98, 17 February 2004
- *Kokkinakis v Greece,* App no 14307/88, 25 May 1993
- *Metropolitan Church of Bessarabia and Others v Moldova*, App no 45701/99, 13 December 2001
- *Ouranio Toxo v Greece,* App no 74989/01, 20 January 2006
- *Pendragon v UK*, App no 31416/96, 19 October 1998
- *Plattform “Ärzte für das Leben” v Austria*, App no 10126/82, 21 June 1988
- *Rai, Allmond and “Negotiate Now” v UK*, App no 25522/94, 6 April 1995
- *Sidiropoulos and Others v Greece*, App no 57/1997/841/1047, 10 July 1998
- *Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, App nos 29221/95, 29225/95, 2 October 2001
- *The Moscow Branch of the Salvation Army v Russia*, App no 72881/01, 5 January 2007

- *Wilson, National Union of Journalists and Others v UK*, App no 30668/96, 30671/96, 30678/96, 2 October 2002

Commentary

Interacting Rights: An Approach to Protect and Promote the Right of Religious Minorities to Publicly Manifest Their Religious Identity

Although not a landmark case, *Barankevich v Russia* is nevertheless a significant one, as it sheds light on the intersection between Articles 9 and 11 of the European Convention on Human Rights (ECHR) and its importance for the protection of religious minority communities and their right to the collective, public manifestation of faith.

In its analysis, the European Court of Human Rights (ECtHR) focuses on the intersection of rights using a dynamic, context-dependent approach. This approach emphasizes the protection of new or non-dominant religious communities, particularly in cases from former Communist countries. In these cases, religious communities not belonging to the dominant Church often seek recognition and protection for the public expression of their religious identity*.* Therefore, the socio-historic context of Russia, where the Orthodox religion is the dominant faith and there are informal ties between the political elite and the Orthodox Church, should be considered when analyzing the judgement in *Barankevich v Russia* (Cismas 2019: 271).

Before examining the details of the case, the Court emphasized the importance of democracy as the only political system compatible with the European Convention on Human Rights (ECHR). The ECHR was designed to uphold and defend the values and principles of a democratic society (para. 24). In referring to Kokkinakis (*Kokkinakis v Greece,* App no 14307/88, 25 May 1993), the Court once again recognizes the importance of the rights to freedom of thought, conscience, and religion as protected under Article 9 of the European Convention on Human Rights (ECHR), as well as the right to peaceful assembly and association outlined in Article 11 of ECHR, in maintaining a democratic society. Interferences in these fundamental guarantees must not be arbitrary but need to be based on

convincing and compelling reasons and must be necessary and proportionate to a legitimate aim in a democratic society. (paras. 25–26). Similar to Article 9, the right to freedom of assembly not only requires states to refrain from interfering in this right but also imposes a duty on states to ensure that individuals can effectively exercise this right, especially those belonging to minority groups or those who are particularly vulnerable. (*Bączkowski and Others v Poland* App no 1543/06, 3 May 2007, para. 64; *Kudrevičius and Others v Lithuania [GC],* App no 37553/05, 26 November 2013, para. 158; *Djavit An v Turkey,* App no 20652/92, 20 February 2002, para. 57).

Given the religious nature of the planned assembly of the Evangelical Church and the fact that it was to be held in a public place, the 1988 Decree, which establishes the rules for public assemblies, was to be applied in this case. Therefore, the Court set out to examine the case by interpreting Article 11 of the ECHR in relation to Article 9 of the ECHR. It accepted that the refusal to grant the pastor of the Evangelical Church permission to hold a public service was based on domestic laws and intended to serve the legitimate aim of preventing disorder. Yet the ECtHR was not convinced that prohibiting a public assembly of a religious community solely because it is a minority religion and has the potential "to cause discontent among adherents of other religious denominations and provoke public disorder" was necessary (para. 29).

The Court emphasized that the ECHR's underlying values do not allow for minority rights to be exercised only when they are acceptable to the majority, and that the state has a duty to remain neutral and impartial. In the words of the judgment, "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" (para. 31 and *Artico v Italy,* judgment of 13 May 1980, Series A no. 37, pp. 15–16, para. 33). Rather, states have a positive obligation to protect and promote different lifestyles of minorities, and thereby "to preserve a cultural diversity of value to the whole community" (*Chapman v the United Kingdom*, App no 27238/95, 18 January 2001; *Sidiropoulos and Others v Greece*, App no 26695/95, 10 July 1998).

Referring to established case law, the Court emphasized the need for a balancing act that allows for fair treatment of minorities and avoids abuse by a dominant majority position (see *Gorzelik and Others v Poland,* App no 44158/98, 17 February 2004, para. 90*)*. In fact, adequate protection of minorities relies on two foundational principles, namely the right to express and promote identity and to substantive equality (Marko 2019: 307). Furthermore, asymmetrical power relations between minority communities and the majority need to be considered. The ideology of a state, as well as a state religion, are key factors for determining said power relations (Ghanea 2012: 75). Minority religious communities, like the Evangelical Christian Community in this case, are often seen as potential threats to the stability and identity of a society that is not yet fully accustomed to democratic pluralism (Cismas 2019: 271). The local Russian Court cited the idea that minority religious communities, such as the Evangelical Christian Community in this case, are often seen as potential threats to a society's stability and identity. These threats are therefore used to justify the legitimacy and necessity of refusing permission for a religious assembly in a public area.

The Strasburg Court, however, rejected this line of argumentation and recalled the duty of a state to enable peaceful demonstrations without participants having to fear threats or violence, even if they may disturb or offend persons opposed to the ideas or claims they are seeking to promote (*Stankov and the United Macedonian Organisation Ilinden v Bulgaria,* App nos 29221/95 and 29225/95, 2 October 2001, para. 90; *Plattform "Ärzte für das Leben" v Austria*, judgment of 21 June 1988, Series A no. 139, p. 12, paras. 32 and 34*).* In this regard, the Court ruled that it is not enough for states to passively care for peaceful assemblies or demonstrations. They ought to actively protect participants from physical and verbal attacks and homophobic insults, particularly if participants belong to a minority community holding unpopular views in the country. (*Berkmann v Russia*, App no 46712/15, 1 December 2020, paras. 55–58).

Further, the Court noted the indisputably peaceful character of the planned assembly, stating that any potential violence would only come from members of the town who were prepared to use threats or violence to force members of the

religious minority out of the public area. (para. 32). The risk of violence alone does not justify a complete ban on the assembly in question; only if there is a genuine risk of disorder that cannot be prevented by less stringent measures, or if the assembly incites violence or rejection of democratic principles, would such a ban be justified. (*Christians against Racism and Fascism v the United Kingdom,* App no 8440/78, 16 July 1980; *Kudrevičius and Others v Lithuania [GC],* App no 37553/05, 26 November 2013, para. 145*; Stankov and the United Macedonian Organisation Ilinden v Bulgaria*, App nos 29221/95 and 29225/95, 2 October 2001, para. 97). However, states are only granted a narrow margin of appreciation for interference with the right to freedom of assembly as protected by Article 11 of the ECHR when there are serious threats of violent counter-demonstrations that cannot be prevented by less stringent measures. In such cases, authorities enjoy wide discretion in the choice of means to enable assemblies to take place without disturbance, but their margin of appreciation for interference with the right to freedom of assembly under Article 11 of the ECHR is narrow. *(Alekseyev v Russia,* App nos 4916/07, 25924/08 and 14599/09, 11 April 2011, para. 75) The state, therefore, has a responsibility to protect organizers and participants of assemblies from interference and disturbance by third parties who aim to undermine fundamental rights (European Commission for Democracy Through Law and OSCE/ODIHR 2019: 9–11). Although according to Article 11 of the ECHR, the right to freedom of assembly may be limited to prevent public disorder, the Court held here that domestic authorities imposed the most extreme measure by denying the Evangelical Church their rights without conducting a thorough risk assessment or considering less intrusive measures. Therefore, a comprehensive ban cannot be considered justified. Consequently, the ban on religious assembly in public proved not to be necessary in a democratic society. The Court found that the State also has a duty to protect the organizers and participants of assemblies from interference and disturbance by third parties who seek to undermine fundamental rights.

Literature related to the main issue(s) at stake:

General legal literature on the topic

- Cismas, Ioana. 2019. “Freedom of Religion or Belief and Freedom of Association: Intersecting Rights in the Jurisprudence of the European Convention Mechanisms”. In Jeroen Temperman, T. Jeremy Gunn and Malcolm D. Evans (eds), *The European Court of Human Rights and the Freedom of Religion or Belief*, 260–281. Leiden: Brill.
- Ghanea, Nazila. 2012. “Are Religious Minorities Really Minorities?”. *Oxford Journal of Law and Religion* 1 (1): 57–79.
- Marko, Joseph and Sergiu Constantin. 2019. *Human and Minority Rights Protection by Multiple Diversity Governance: History, Law, Ideology and Politics in European Perspective.* Abingdon: Routledge.

Materials relevant to the case

- European Commission for Democracy Through Law and OSCE/ODIHR. 2019. “Guidelines on Freedom of Peaceful Assembly”. Warsaw.

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