

Restricting the right to freedom of assembly: the case of Barankevich v Russia

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The European Court of Human Rights (ECtHR) judgment in *Barankevich v Russia* (No. 10519/03, 26/7/2007) was the first concerning freedom of assembly against the Russian Federation.

In this case the local authorities refused permission to the pastor of the Christ's Grace Church of Evangelical Christians to hold a service of worship in a park in the town of Chekhov. The appeal against this decision was ultimately dismissed on the grounds that the church was different from those of the majority of local residents and a service could have led to discontent and public disorder. In its judgment the European Court considered the ban to have been unnecessary in a democratic society and found a violation of Art. 11 (freedom of assembly) interpreted in the light of Art. 9 (freedom of thought, conscience and religion).

Given that the coming year will see Parliamentary and Presidential elections in Russia, this decision from the ECtHR could not be more to the point.

The events considered in the case took place in 2002, prior to the passing of the Federal Law "On Assemblies, Meetings, Demonstrations, Marches and Picketing" (Law No. 54, 19/6/2004 – the Law on Assemblies) – but this in no way diminishes the significance of the decision, which formulates standards that are equally relevant to the situation today. In addition, the decision might be used not only by religious organisations, but also by all those that organise such public events.

For example, the Court stressed that a

"qualified need in a democratic society" to ban public events cannot simply be based on the fact that the event is being conducted by a minority group that could cause disturbance among bystanders. The Court emphasised that the state has a positive obligation to ensure that such events can be conducted, using other means of preserving public order than an outright ban.

With regard to statutory regulation of the conduct of public religious rites and ceremonies, it should be noted that the new Law on Assemblies has not eliminated a failing in the law. In para. 2, Art. 1 of the Law on Assemblies, it provides that the conduct of religious rites and ceremonies is regulated by Federal Law No. 125, promulgated on 26 September 1997, "On Freedom of Conscience and Religious Associations" (the Law on Freedom of Conscience). Yet at para. 5, Art. 16 of the Law on Freedom of Conscience, it states that public worship and other religious rites and ceremonies should be conducted in the manner established for the conduct of meetings, marches and demonstrations – thus producing a vicious circle.

In its memorandum submitted in the *Barankevich* case, the Russian government pointed to the new law as supposedly establishing an official procedure for conducting public events, thus correcting the potential for violation of human rights in this area. However, the Law on Assemblies does not in fact uphold this principle. There are only two principles contained in Article 3 of the Law on Assemblies: the lawful and voluntary nature of participation in public events. Lawfulness in general has no particular meaning in and of itself, because any regulation of public

relationships in a state is based on this principle. This leaves only the principle of voluntary participation.

A perusal of the entire law shows that it has established an official procedure for issuing permits for public events, but two kinds of public action are not covered by this procedure – the assembly and the individual demonstrator.

The law provides the authorities with a combination of measures for regulating the organisation and conduct of public events. The authorities have the right to suggest that the organiser change the place and/or the time of the event. Practice has shown that when the authorities are approving a public event they frequently also change the size and format of the proposed event. And since a request to conduct an event can be filed no more than 15 days in advance, the organisers do not then have time to appeal against adverse decisions made by the local authorities.

In 2007, the so-called 'marches of the disaffected' were effectively banned in a whole series of towns in Russia, and those who tried to participate in them were detained. It is obvious that the present law, in defining the procedure for organising and conducting public events, has not provided effective legal guarantees for the exercise of the right to freedom of assembly, as enunciated in Article 31 of the Russian Constitution and Article 11 of the European Convention on Human Rights.

It is also likely that the upcoming elections will inflame the situation around the right to freedom of assembly. We can therefore expect that the ECtHR will have to return to the subject more than once in the future.

