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## **Religions, Violence and Human Rights The European Court and Hizb ut-Tahrir**

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# Religions, Violence and Human Rights

## The European Court and Hizb ut-Tahrir

The Islamist movement Hizb ut-Tahrir, whose name means ‘Liberation Party’, was founded in 1953 in Eastern Jerusalem by a Palestinian scholar and judge, Taqiuddin al-Nabhani<sup>1</sup>, as a Sunni Muslim organisation. Now it is said to be active in 45 countries with an international membership of about one million: mainly in Indonesia, Central Asia, Russia and the Middle East but also in the European Union. It has been banned as an extremist or terrorist organization by many states: Bangladesh (2009), Egypt (1974), Germany (2003), Jordan (1953), Kazakhstan (2005), Kyrgyzstan (2003), Pakistan (2004), Russia (2003), Syria, Tajikistan (2001) and Turkmenistan. Its members have been arrested and sentenced to long prison terms in several of these countries.

“Hizb ut-Tahrir describes itself as a ‘global Islamic political party and/or religious society’”<sup>2</sup> but is it a terrorist organization, a political movement or a religious group? The answer to this question is of utmost importance to the human rights community. The German and Russian courts as well as the European Court of Human Rights have addressed this issue.

### Hizb ut-Tahrir and Others v. Germany

(Application no. 31098/08)

On 19 June 2012, the Registrar of the European Court stated in its press release: “In its decision in the case of **Hizb Ut-Tahrir and Others v. Germany** (application no. 31098/08) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The case concerned the prohibition in Germany of the activities of an Islamic association, which advocates the overthrow of non-Islamic governments and the establishment of an Islamic Caliphate<sup>3</sup>.

The Court held in particular that under **Article 17 (prohibition of abuse of rights)** of the European Convention on Human Rights, it was impossible to derive from the Convention a right to engage in an activity aimed at destroying any of the rights and freedoms set forth in the Convention. The association could therefore not rely on **Article 11 (freedom of assembly and association)** to complain about the ban on its activities.

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<sup>1</sup> Taqiuddin al Nabhani (1909-1977) was born in Ajzim (Haifa).

<sup>2</sup> Hizb ut-Tahrir and others against Germany (Application no. 31098/08)

<sup>3</sup> HRWF Footnote: If implemented, the caliphate regime would abolish democracy and elections, and any other political system in which human beings are entitled to legislate, since Allah is the sole legislator. Women would not have the same rights as men; non-Muslims would not have equal rights either and apostates would be killed (See Members of Hizb ut-Tahrir in Britain, *The Method to Re-Establish the Khilafah and Resume the Islamic Way of Life*. London: Al-Khilafah, 2000, p. 11.)

### *Principal facts*

The first applicant, Hizb Ut-Tahrir (“the association”), whose name means “Liberation Party”, describes itself as a “global Islamic political party and/or religious society”. Established in Jerusalem in 1953, it has followers in a number of Middle Eastern States and among Muslims in Western Europe. Active in Germany since the 1960s, it has around 200 followers there. The second applicant, Shaker Hussein Assem, is an Austrian national who lives in Germany and was the association’s representative before the Court. The remaining 15 applicants are members or supporters of the association, most of whom reside in Germany.

In January 2003, the German Federal Ministry of the Interior issued a decision prohibiting the association’s activities in Germany, relying on the Law on Associations. It also ordered the association’s assets to be confiscated. The Ministry considered that Hizb Ut-Tahrir was a foreign private association operating on an international scale and that there existed no sub-organisation in Germany. According to the Ministry, the association’s activities were directed against the principle of international understanding and it advocated the use of violence as a means to achieve its political goals. Basing its decision on a number of publications attributed to the association, in particular articles published in a magazine, leaflets and information published on the association’s website, the Ministry concluded that the association denied the State of Israel the right to exist and called for its destruction as well as for the killing of Jews. The association advocated an “active Jihad”, targeting Islamic States and their governments, calling for their overthrow. In the Ministry’s view, the association was moreover not a political party, as it did not intend to stand for elections in Germany, and, as it pursued political rather than religious objectives, it was not to be considered a religious or philosophical community.

The applicants lodged an application against the prohibition order with the Federal Administrative Court. The court separated the association’s application from the remainder of the case and declared it admissible. At the same time, it indicated to the remaining applicants that, under its established case-law, actions by individual members of a prohibited organisation were to be declared inadmissible. In view of that indication, the remaining applicants withdrew their applications. On 25 January 2006, the Federal Administrative Court rejected the association’s application as unfounded. In its judgment, it considered that, even assuming that the association could be regarded as a religious community, it remained subject to prohibition under Article 9 § 2 of the German Basic Law, as its activities were directed against the principle of international understanding. A multitude of public statements attributable to the organisation called for the elimination of the State of Israel through violence and for people to be killed. The association lodged a constitutional complaint against the decision, alleging in particular a violation of its right to assemble freely as a religious community. On 27 December 2007, the Federal Constitutional Court refused to admit the complaint for adjudication, holding that the association was not qualified to file a complaint as it did not have a registered address in Germany.

### *Complaints and procedure*

The application was lodged with the European Court of Human Rights on 25 June 2008. All 17 applicants complained about the ban imposed on the association's activities and about the confiscation of its assets. They relied on Articles 6 (right to a fair trial), 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the European Convention on Human Rights and on Article 1 of Protocol No. 1 (protection of property) to the Convention.

### *Decision of the Court*

As regards the complaints by the second to 17th applicants, the Court observed that they had withdrawn their applications before the Federal Administrative Court and had not lodged a constitutional complaint. The Court did not consider that they had been prevented from pursuing the proceedings before the German courts. In particular, the indication given to them by the Federal Administrative Court to the effect that their applications were inadmissible had only concerned the proceedings before that court and had not prevented them from lodging a constitutional complaint. The Court recalled that a complaint to the German Federal Constitutional Court was an effective remedy capable of providing redress for a violation of Convention rights. It followed that the complaints lodged by those 16 applicants had to be rejected for non-exhaustion of domestic remedies.

### *Article 11*

As regards the association's complaint that the ban on its activities breached its rights under Article 11, the Court referred to its case-law under Article 17 of the Convention (prohibition of abuse of rights). It had found, in particular, that the purpose of Article 17 was to make it impossible for groups or individuals to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention.

The Court observed that the German Federal Administrative Court had carefully analysed a substantial number of written public statements made by the association and its representative in the proceedings before the Court. It had found that the association called for the violent destruction of the State of Israel and for the banishment and killing of its inhabitants. In particular, its representative, Mr Assem, had repeatedly justified suicide attacks in which civilians were killed in Israel, and neither he nor the association had distanced themselves from that position during the proceedings before the Court. In view of those statements, the Court considered that the association attempted to deflect the right to freedom of assembly and association under Article 11 from its real purpose by employing that right for ends which were clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life.

Consequently, the Court found that, by reason of Article 17, the association could not benefit from the protection afforded by Article 11. It followed that the complaint under that article was incompatible with the provisions of the Convention and therefore inadmissible.

### *Other articles*

The Court also declared the association's complaints under the remaining articles inadmissible, as they were incompatible with the provisions of the Convention. It noted in particular that the association had not established that it had raised the complaint concerning the confiscation of its assets (Article 1 of Protocol No. 1) before the German courts. Furthermore, the dispute over the association's right to continue its activities concerned a political, not a civil right. Therefore, Article 6 (right to a fair trial) was not applicable. Finally, since the association could not rely on Article 11 with respect to the prohibition order, it could not claim a violation of Article 13 (right to an effective remedy) or 14 (prohibition of discrimination) in that respect."

### **Analysis of the decisions of the German courts**

The European Court has analysed the decisions of the various German jurisdictions and the arguments justifying the ban<sup>4</sup> of the movement in Germany. In the section "The circumstances of the case" of its decision, the European Court addressed the issue of the prohibition issued by the Germany Ministry of the Interior, the proceedings before the Federal Administrative Court and the Federal Constitutional Court.

### ***The prohibition issued by the German Ministry of the Interior***<sup>5</sup>

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<sup>4</sup> The German Law on Associations (Vereinsgesetz) says in

#### **Section 3/Banning**

"(1) An association can only be treated as being banned (Article 9 § 2 of the Basic Law) if the competent authority established by decree that its aims or its activity contravene the criminal law or that they are directed against the constitutional order or against the idea of international understanding ; the order shall decree the dissolution of the association (ban). As a general rule, such ban shall entail confiscations and seizure of

1. the association's assets,

2...and

3. property of third parties provided that the owner, by handing the items over to the association, has deliberately promoted the association's anti-constitutional activities or if the items were intended to further such activities.

..."

#### **Section 18/ Geographical applicability of bans imposed on associations**

"...If a (foreign) association does not have a sub-organisation within the geographical applicability of this Act, the ban (section 3 paragraph 1) is directed against its activity within that territory."

#### **Section 20**

"Anyone who, within the geographical applicability of this act, by pursuing an activity

(...)

4. contravenes an enforceable prohibition under section 18 sentence 2 (...) will be sentenced to up to one year's imprisonment or to a fine."

<sup>5</sup> Excerpt from the European Court decision *Hizb ut-Tahrir v. Germany* with footnotes selected by the author from the same court decision.

“On 10 January 2003 the German Federal Ministry of the Interior (*Bundesministerium des Innern*) issued a decision by which it proscribed the first applicant’s activities within German territory under sections 3 § 1, 14 § 2 no. 4 in conjunction with sections 15 § 1 and 18 § 2 of the Law on Associations (see relevant domestic law, below). It further ordered the first applicant’s assets to be confiscated. Assets of third parties were confiscated as far as they had been intentionally used or were intended to be used to promote the first applicant’s illegal activities.

4. The Ministry considered that the first applicant was a foreign private association operating on an international scale and that there existed no known sub-organisation in Germany. Its activities in Germany included the distribution of leaflets and brochures and the distribution of information via internet as well as, more recently, the organisation of public events.

5. The Ministry considered that the first applicant’s activities were directed against the principle of international understanding and that the applicant advocated the use of violence as a means to achieve its political goals. The organisation’s mouthpiece and ideological platform in Germany was the quarterly magazine “*Explizit*”.

6. Basing its decision on the book “The inevitability of the battle of cultures”, published in 1953 by the organisation’s founder, Taqiuddin An-Nabhani, as well as on a number of publications attributed to the first applicant, in particular articles published in the magazine “*Explizit*”, leaflets and publications on the organisation’s website, the Ministry considered that the first applicant denied the right of the State of Israel to exist and called for its destruction and for the killing of Jews<sup>6</sup>. This constituted an expression of the applicant’s basic philosophical position, which included the “active *Jihad*”<sup>7</sup>. The applicant agitated in a

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<sup>6</sup> The German Federal Administrative Court quoted the article “*Wie lange noch?*” (How long?; *Explizit*, issue no. 30 March to June 2002, p. 4 *et seqq.*) addressing the political and military situation in Palestine. The article sharply criticised the Saudi Arabian peace deal adopted at the summit meeting of Arab States in Beirut in March 2002. This was followed by criticism of the Palestinian authority, which was accused of not pursuing the goal of “freeing Palestine, but of handing over Palestine in the name of the Palestinian people to the Jews.”

This assessment was followed by the statement:

“As Muslims, we must be clear that the problem of “Israel” is not a border issue but an existential issue. The Zionist foreign body at the heart of the Islamic world can under no circumstances be allowed to continue to exist...We repeat again the unalterable Islamic duty: There can only be one response to the Zionist aggression in Palestine: *Jihad*. Allah, the Exalted, commands: “And slay them wherever ye catch them, and turn them out from where they have turned you out” (*Al Baqarah* 2, *Aya* 191).”

This was followed by the opinion that Israel was to be overcome by military means and that the “*Muslim armies (had) never really fought against the Zionist aggressor*”.

<sup>7</sup> The German Federal Administrative Court considered that the call to *Jihad* in the article “*Wie lange noch?*” represented a summons to violently eliminate the State of Israel. “It conceded that the term “*Jihad*” was multilayered in Islamic usage, referring to more than just the “Holy War”. The term described every endeavour, effort and strengthening of Islam. What was decisive in the present context, however, was how the term was to be understood by readers in the context of the article. It was embedded in the statement that Israel could on no

targeted fashion against Islamic States and the governments, which overthrow it repeatedly called for. It pursued its objectives, which were directed against the concept of international understanding, in a pro-actively aggressive manner. It did not thereby restrict itself to merely criticising existing political or social conditions or rejecting peaceful coexistence between States and peoples but also called for the armed struggle against the State of Israel, Jews and the Governments of Islamic States.

7. The Ministry further considered that the first applicant was not a political party, as it did not intend to stand for elections in Germany. It further held that the first applicant was not to be regarded as a religious or philosophical community (*Religions- oder Weltanschauungsgesellschaft*), as it did not pursue religious, but political objectives.”

### ***Hizb ut-Tahrir defence against the ban before the Federal Administrative Court***<sup>8</sup>

On 10 February 2003 members of Hizb ut-Tahrir, represented by counsel, lodged an application against the prohibition order with the Federal Administrative Court (*Bundesverwaltungsgericht*) and alleged, in particular, that the prohibition violated their right to freedom of religion under Article 4 of the Basic Law. They denied that they advocated the use of violence.

On 24 November 2003 the Federal Administrative Court ordered Hizb ut-Tahrir to submit evidence as to where the organisation was based. On 7 January 2004 it answered that their organisation was prohibited in all Arab states, they were thus forced to work clandestinely and were unable to reveal the organisation’s address.

In its submissions dated 8 and 29 November 2004, Hizb ut-Tahrir accepted that it was not to be regarded as a political party within the meaning of the German law. It claimed, however, that all its activities had a religious foundation and that it enjoyed the protection of freedom of religion under the Basic Law. It further submitted that the Government had misconstrued the

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account be allowed to continue to exist and the summons to eliminate the State by military means. In this context there could be no doubt that the call to *Jihad* was aimed at the violent destruction of Israel as a solution to the Israeli-Palestinian conflict.”

The German court further referred to another article of *Explizit* “*Fünfzig Jahre – Happy Birthday Israel?*” (Fifty years – Happy birthday Israel?, *Explizit*, issue no. 5, April to June 1998, p. 2 *et seqq.*) it was stated that the creation of the State of Israel to the detriment of the Palestinian people was accompanied by crimes against humanity and that Israel thus lacked legitimacy. The article closed with the following statement:

*“Whoever accepts the State of Israel is against Allah’s commands and thus commits a serious sin.”*

This was followed by a quotation from the Qur’an of a “command by Allah”: *“And fight for Allah against those who fight against you, but do not transgress! Truly, Allah loves those who do not transgress. And slay them wherever ye catch them, and turn them out from where they have turned you out.”*

More references to other sources by the German court are reproduced in the decision of the European Court.

<sup>8</sup> Summary of the section « Proceedings before the Federal Administrative Court » in the decision of the European Court.

nature of its ideology, stressing, in particular, that it promoted peaceful dialogue and had never advocated the use of violence. It further pointed out that it did not seek to establish a “caliphate” in any of the Western European democracies. Lastly, it complained of a violation of its rights under Articles 9, 10 and 11 of the Convention.

On 8 August 2005 the Federal Administrative Court declared the applicant’s application as unfounded. Relying on the so-called “organisational law” submitted by the applicants, the court considered that Hizb ut-Tahrir did not fulfil the requirements of a religious community, as its activities did not include the exercise of a common religious practice. Furthermore, the first applicant could not be regarded as a philosophical community, as its existence and activities were based on Islam.

### ***Further proceedings before the Federal Constitutional Court<sup>9</sup>***

On 3 April 2006 Hizb ut-Tahrir lodged a constitutional complaint, alleging, in particular, that the prohibition was disproportionate and violated its right freely to assemble as a religious community (*religiöse Vereinigungsfreiheit*) under Article 4 § 1 of the Basic Law.

On 27 December 2007 the Federal Constitutional Court, sitting as a panel of three judges, refused to admit the applicant’s complaint for adjudication. According to that court, the complaint was inadmissible because the applicant was not qualified to file a complaint as it did not have a registered address in Germany.

## **Kasymakhunov and Saybatalov v. Russia**

**(Applications nos. 26261/05 and 26377/06)<sup>10</sup>**

The case Kasymakhunov and Saybatalov v. Russia highlights interesting aspects of Hizb ut-Tahrir

It originated in two applications (nos. 26261/05 and 26377/06) 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 an Uzbek national, Mr Yusup Salimakhunovich Kasymakhunov (“the first applicant”), and a Russian national, Mr Marat Temerbulatovich Saybatalov (“the second applicant”), on 11 July 2005 and 10 June 2006 respectively.

The applicants alleged, in particular, that they had been convicted on the basis of legal provisions that were neither accessible nor foreseeable in their application. They also complained of a violation of their freedoms of religion, expression and association and of discrimination on account of their religious beliefs.

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<sup>9</sup> Summary of the section « Proceedings before the Federal Constitutional Court » in the decision of the European Court.

<sup>10</sup> See full judgment at <http://www.strasbourgconsortium.org/common/document.view.php?docId=6208> . The full quotation of the ICG report is to be found on pages 9-12.

The European judges dealt with the nature of Hizb ut-Tahrir, analyzed its teachings concerning the use of violence and human rights, took a clear stance about the movement and published its decision with regard to the complaints of the applicants.

### **International Crisis Group: “Hizb ut-Tahrir is not a religious organization”**

In 2003, the International Crisis Group (ICG) published a report, entitled “Radical Islam in Central Asia: Responding to Hizb ut-Tahrir”. The European Court of Human Rights quoted parts of it in its 14<sup>th</sup> June 2013 decision concerning the case Kasymakhunov and Saybatalov v. Russia (Applications nos. 26261/05 and 26377/06):

“Hizb ut-Tahrir is not a religious organisation, but rather a political party whose ideology is based on Islam. It aims to re-establish the historical Caliphate in order to bring together all Muslim lands under Islamic rule and establish a state capable of counterbalancing the West. It rejects contemporary efforts to establish Islamic states, asserting that Saudi Arabia and Iran do not meet the necessary criteria. According to Hizb ut-Tahrir, the Islamic state is one in which Islamic law – *Sharia* – is applied to all walks of life, and there is no compromise with other forms of legislation.”

### **Hizb ut-Tahrir and violence**

In the same decision of the European Court, the report of the ICG is partly quoted as follows<sup>11</sup>:

“Hizb ut-Tahrir claims to reject violence as a form of political struggle, and most of its activities are peaceful. In theory, the group rejects terrorism, considering the killing of innocents to be against Islamic law. However, behind this rhetoric, there is some ideological justification for violence in its literature, and it admits participation in a number of failed coup attempts in the Middle East. It also has contacts with some groups much less scrupulous about violence. But despite the allegations of governments, there is no proof of its involvement in terrorist activities in Central Asia or elsewhere. (...)

In most of its writings Hizb ut-Tahrir rejects participation in parliamentary democracy, or any alliances with other political parties to gain power...

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<sup>11</sup> Other reports were also quoted:

Human Rights Watch (2004): “Creating Enemies of the State. Religious Persecution in Uzbekistan” (pp 12-13).

See <http://www.hrw.org/sites/default/files/reports/uzbekistan0304.pdf>

SOVA Centre for Information and Analysis (2005): “Is Hizb ut-Tahrir an extremist organisation?” (pp 13-14).

See <http://www.sova-center.ru/en/xenophobia/reports-analyses/2006/02/d7187/>

European research project Transnational Terrorism, Security, and the Rule of Law (2007): “Hizb ut Tahrir al Islami (Islamic Party of Liberation)”, (pp 14-16), financed by the European Commission.

See <http://www.transnationalterrorism.eu/tekst/publications/WP3%20Del%205.pdf>

There is little doubt about Hizb ut-Tahrir's disregard for democracy. It rejects the concept as a Western, anti-Islamic invention and is not interested in acting as a party within an open political system. A recent publication claims: 'Democracy ... is considered a *kufir* [unbelievers] system, it is in clear contradiction with the Qu'ran and Sunnah' ... (...)

Yet the view that Hizb ut-Tahrir is opposed to political violence *per se* is mistaken. The situation is much more nuanced than most researchers allow ... One scholar explains:

'... in practical terms an-Nabhani argued that a regime could be brought down through acts of civil disobedience such as strikes, noncooperation with the authorities or demonstrations, or through a procession to the palace or presidential residence, provided that the movement enjoys exclusive control and leadership ... Alternatively, it could be toppled through a military coup executed by forces that have agreed to hand over power to the movement.' (...)

### **Hizb ut-Tahrir and human rights**

In the case *Kasymakhunov and Saybatalov v. Russia*, the European Court mentions from Hizb ut-Tahrir Draft Constitution (pp 16-20) its position on a number of issues:

#### *Basic principles and structures*

"The State implements the *aHkaam Sharia* [divine rules] on all citizens who hold citizenship of the Islamic State, whether Muslims or not" (Article 7)

"The *aHkaam Sharia* is implemented in its entirety, without exception, on all Muslims." (Article 7a)

"Non-Muslims are allowed to follow their own beliefs and worships." (Article 7b)

"Those who are guilty of apostasy (*murtadd*) from Islam are to be executed according to the rule of apostasy, provided they have by themselves renounced Islam." (Article 7c)

"The application of transactions, punishments and evidences (at court), the system of ruling and economics are implemented by the State upon everyone, Muslim and non-Muslim alike. This includes the people of treaties (*mu'aahid*), the protected subjects (*ahludh dhimmah*) and all who submit to the authority of Islam." (Article 18f)

"No one is permitted to take charge of ruling, or any action considered to be of the nature of ruling, except a male who is free (*Hurr*), i.e. not a slave, mature (*baaligh*), sane (*'aaqil*), trustworthy (*'adl*), competent; and he must [be a Muslim]." (Article 19)

"Every mature male and female Muslim, who is sane, has the right to participate in the election of the *Khaleefah* and in giving him the pledge (*ba'iah*). Non-Muslims have no right in this regard." (Article 26)

### *Jihad and the army*

“*Jihad* is a compulsory duty (*farD*) on all Muslims. Military training is therefore compulsory. Thus, every male Muslim, fifteen years and over, is obliged to undergo military training in readiness for *jihad*...” (Article 56)

### *Legal status of women*

“All highest Government officials, the chief judge and the judges of the Court of the Unjust Acts (the court which settles disputes between the citizens and the State) must be male and Muslims. Muslim women are allowed to become lower-level officials and judges.” (Articles 42, 49, 67, 69, 87).

“Segregation of the sexes is fundamental, they should not meet together except for a need that the *Sharia* allows or for a purpose the *Sharia* allows men and women to meet for, such as trading or pilgrimage (*Hajj*).” (Article 109)

“Women have the same rights and obligations as men, except for those specified by the *Sharia* evidences to be for him or her. Thus, she has the right to practice in trading, farming, and industry; to partake in contracts and transactions; to possess all form of property; to invest her funds by herself (or by others); and to conduct all of life’s affairs by her.” (Article 110)

“A woman can participate in elections ... and elect, and be a member of the *Majlis al-Ummah*, and can be appointed as an official of the State in a non-ruling position.” (Article 111)

“Women live within a public and private life. Within their public life, they are allowed to live with other women, *maHram* males [males forbidden to them in marriage] and foreign men (whom they can marry) on condition that nothing of the women’s body is revealed, apart from her face and hands, and that the clothing is not revealing nor her charms displayed. Within the private life she is not allowed to live except with women or her *maHram* males and she is not allowed to live together with foreign men. In both cases she has to restrict herself with the rules of *Sharia*.” (Article 113)

“The custody of children is both a right and duty of the mother, whether Muslim or not, so long as the child is in need of this care. When children, girls or boys, are no longer in need of care, they are to choose which parent they wish to live with, whether the child is male or female. If only one of the parents is Muslim, there is no choice for the child is to join the Muslim parent.” (Article 118)

### *Taxes*

“*Jizyah* (head-tax) is collected from the non-Muslims (*dhimmis*). It is to be taken from the mature men if they are financially capable of paying it. It is not taken from women or children.” (Article 140)

### *Education*

“The purpose of education is to form the Islamic personality in thought and behaviour. Therefore, all subjects in the curriculum must be chosen on this basis.” (Article 166)

“The state’s curriculum is only one, and no curriculum other than that of the state is allowed to be taught. Private schools provided they are not foreign, are allowed as long as they adopt the state’s curriculum and establish themselves on the State’s educational policy and accomplish the goal of education set by the State. Teaching in such schools should not be mixed between males and females, whether the students or the teachers; and they should not be specific for certain *deen* [religion], *madhab* [schools of Muslim law], race or colour.” (Article 172)

### *Relations with other states*

“States with whom we do not have treaties, the actual imperialist states, like Britain, America and France and those states that have designs on the State, like Russia, are considered to be potentially belligerent states. All precautions must be taken towards them and it would be wrong to establish diplomatic relations with them. Their subjects may enter the Islamic State only with a passport and a visa specific to every individual and for every visit, unless it became a real belligerent country.” (Article 184.3)

“With states that are actually belligerent states, like Israel, a state of war must be taken as the basis for all measures and dealings with them. They must be dealt with as if a real war existed between us – whether an armistice exists or not – and all their subjects are prevented from entering the State.” (Article 184.4)

### *Relations with international organizations*

“The State is forbidden to belong to any organisation that is based on something other than Islam or which applies non-Islamic rules. This includes international organisations like the United Nations, the International Court of Justice, the International Monetary Fund and the World Bank, and regional organisations like the Arab League.” (Article 186)

### **The Court’s assessment**

The European Court examined Article 17 of the Convention which states:

Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

The Court held that “Hizb ut-Tahrir’s aims are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life (see *Hizb ut-Tahrir and Others*, cited above, §§ 73-75 and 78).”

The Court stated “Nor are the changes in the legal and constitutional structures of the State proposed by Hizb ut-Tahrir compatible with the fundamental democratic principles underlying the Convention. The Court notes that the regime which Hizb ut-Tahrir plans to set up after gaining power is described in detail in its documents. An analysis of these documents reveals that Hizb ut-Tahrir proposes to establish a regime which rejects political freedoms, such as, in particular, freedoms of religion, expression and association, declaring that they are contrary to Islam.”

### **The Court’s decision**

On 14<sup>th</sup> March 2013, the Court declared admissible the complaint of the applicants concerning their conviction on the basis of legal provisions that were allegedly neither accessible nor foreseeable in their application admissible but it declared inadmissible the alleged violation of their freedoms of religion, expression and association and of discrimination on account of their religious beliefs.

### **Conclusions**

Hizb ut-Tahrir propaganda calls the governments of Islamic states evil and illegitimate, and can hereby provide a convincing argument for those who want to overthrow them. However, Hizb ut-Tahrir is not a terrorist organization. At this stage, it is not a violent movement in its deeds. Though, its radical discourse inspires other Islamic groups using violence to overthrow the current governments of states with Muslim majorities.

Hizb ut-Tahrir has very bad relationships with the Salafists, the Muslim Brothers and ISIS<sup>12</sup>, all movements who could potentially overthrow Islamic states. Although a tactical alliance is therefore not conceivable, (former) followers of Hizb ut-Tahrir occasionally migrate to violent groups. Hizb ut-Tahrir stresses that a caliphate has to be established inside the existing Muslim world, starting with Arab and then non-Arab countries, but the jihad is only legal if it is announced by the proper caliph.

Hizb ut-Tahrir calls for the violent destruction of the state of Israel and for the banishment and killing of its inhabitants. In this regard, it is not different from many Muslim and Arab movements which deny its right to exist and view war against it as a defence, not an aggression.

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<sup>12</sup> In November 2014, ISIS executed a senior member of Hizb ut-Tahrir in Syria without trial. According to *Halab Revolution TV*, Mustafa Khayal was shot to death in Aleppo on Tuesday for questioning the legitimacy of ISIS’ self-proclaimed Caliphate. See <http://5pillarsuk.com/2014/11/21/isis-executes-senior-hizb-ut-tahrir-member-in-syria-without-trial/>.

Hizb ut-Tahrir is an international organization with an extremist ideology. Its propaganda is dangerous because it can contribute to hate crimes and some of its activists may potentially engage in direct promotion and practice of violence in the future.

However, a potential danger does not automatically warrant sanctions. For example, the objective to establish a caliphate in the world does not, in and of itself, justify prosecution - in the same way as ideas of restoration of the monarchy or of the proletariat dictatorship, Alexander Verkhovskiy writes in his article "Is Hizb ut-Tahrir an extremist organization" on Sova-Center website.

And in the Russian context, he states:

Eradicating Hizb ut-Tahrir is a utopist idea doomed to failure - just as any ideology, it cannot be eradicated. Moreover, excessive and unfair repression is counterproductive and can actually increase the number of Hizb followers. Of course, this potentially dangerous organization and its followers will have to be continuously monitored; increased attention by the law enforcement is well-justified and legitimate in this case. Rather than broad arrests, targeted administrative sanctions and criminal prosecutions in cases of oral or written calls to violence and/or hatred will be more effective.

Though, some countries in post-Soviet and other states arrest and imprison Hizb ut-Tahrir members.

Hizb ut-Tahrir is obviously a political organization with a political agenda. It is not a religious group and consequently not a religious minority. Therefore it cannot claim the benefits of Article 9 of the European Convention on Human Rights or Article 18 of the ICCPR. As such, it should not be on the agenda of international institutions and NGOs defending freedom of religion or belief; and its members, when detained, should not be considered religious prisoners but political prisoners.

### **Some recommended readings**

<http://www.sova-center.ru/en/xenophobia/reports-analyses/2006/02/d7187/>

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/1446/11091303.htm>

[http://en.wikipedia.org/wiki/Maajid\\_Nawaz](http://en.wikipedia.org/wiki/Maajid_Nawaz)

<http://news.bbc.co.uk/2/hi/programmes/panorama/7016299.stm>

<http://www.smh.com.au/comment/banning-hizbut-tahrir-in-australia-20141012-114h98.html>

<http://www.islam-watch.org/AdrianMorgan/Why-Hizb-ut-Tahrir-not-Banned-in-US.htm>

[http://news.bbc.co.uk/2/hi/south\\_asia/8321329.stm](http://news.bbc.co.uk/2/hi/south_asia/8321329.stm)

<https://thehizbuttahrirwatch.wordpress.com/category/news-about-hizb-ut-tahrir/hut-bangladesh/hut-banned-bangladesh/>

<http://www.mykhilafah.com/Myk-2014/index.php/hizb-worldwide/2037-a-communicue-from-hizb-ut-tahrir-to-the-jordanian-government-1953>

[http://www.jamestown.org/single/?tx\\_ttnews%5Btt\\_news%5D=38163#.VOM4WUu4kII](http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=38163#.VOM4WUu4kII)

[http://www.jamestown.org/single/?tx\\_ttnews%5Btt\\_news%5D=39632&no\\_cache=1#.VOM950u4kII](http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=39632&no_cache=1#.VOM950u4kII)

<https://books.google.be/books?id=vmKNAgAAQBAJ&pg=PA70&lpg=PA70&dq=Turkmenistan+hizbut-tahrir+ban&source=bl&ots=Gnmkcd-MGt&sig=B4o1I9-dt5FJSt1SdbveQL3YhW0&hl=en&sa=X&ei=j0bjVOq9KI7kaO6BgrgC&ved=0CDEQ6AEwAw#v=onepage&q=Turkmenistan%20hizbut-tahrir%20ban&f=false>