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Religion, Violence and Human Rights

The European Court and Hizb ut-Tahrir

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The European Court and Hizb ut-Tahrir

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On two occasions, the European Court of Human Rights has dealt with an application of an Islamic group named Hizb ut-Tahrir which is banned in two European countries on the alleged grounds of advocating the use of violence.

Hizb ut-Tahrir (HT), whose name means 'Liberation Party', is today one of the largest transnational Islamic movements in the world. The supposed failure of secularism and Islamic political parties in numerous countries around the world has led many young Muslims to turn to the more intellectually oriented HT.

HT was founded in 1953 in Eastern Jerusalem by the Sunni Palestinian scholar and judge Taqiuddin al-Nabhani[1], who sought to establish a political party with an Islamic ideology because he felt that that the only way Palestine could be freed and Islam revived was through the restoration of the Islamic Caliphate along with traditional institutions.

By the 1960s, al-Nabhani had formed branches of HT in most countries of the Middle East and North Africa where Palestinians were living. Within two decades of its birth, HT became notoriously prominent in many of these countries due to attempted coups in Jordan (1968), Syria (1969) and Egypt (1974). A common pattern that could be seen in these failed coup attempts was the cooperation of military elements with HT members. This was largely due to HT's strategy of infiltrating the military of various countries[2].

When al-Nabhani died in 1977, he was succeeded by Sheikh Abdul Qaleem Zalloum. Under Zalloum's leadership, HT expanded to other parts of the world, especially to Western countries where HT members would immigrate after facing prosecution in their homelands. There were also instances of members who left the Middle East in search of better employment opportunities. After the collapse of the Soviet Union in 1991, HT members from the UK travelled to Muslim majority countries in Central Asia and the Caucasus to spread their ideology. Some also travelled to Africa, South and South East Asia. In other cases, HT in the West began recruiting students from various Muslim countries as part of its strategy to expand the HT network into these countries. Indeed, it was the process of globalization that led to the internationalization of HT.

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[1] Taqiuddin al Nabhani (1909-1977) was born in Ajzim (Haifa). He received his early education at the Al-Azhar University in 1928. Upon completion of his studies, he worked in the field of sharia education at the Ministry of Education until 1938. Subsequently, he officiated as Head Cleric in the Central Haifa Court and later as a judge at Al-Ramla Court until 1948. He left in the same year after the Arab–Israeli conflict broke out. Later, in 1949, he returned to be appointed as a judge in the Shariah Court of Jerusalem. The experience of the Arab–Israeli conflict shaped much of al-Nabhani's political thinking.

[2] "The Transnational Network of Hizbut Tahrir in Indonesia" (p.3), by Mohamed Nawab Mohamed Osman. See https://www.academia.edu/401256/Transnational_Network_of_Hizbut_Tahrir_Indonesia

Now HT 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.

HT describes itself as a 'global Islamic political party and/or religious society', but in reality is it a terrorist organization, a political movement or a religious group? The answer to this question is of utmost importance to policy makers in our countries and to the international 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)

Hizb ut-Tahrir has been active in Germany since the 1960s and had approximately two hundred followers when along with 16 of its members it filed an application with the European Court on 25 June 2008.

The representative of HT before the Court, Shaker Hussein Assem, was an Austrian national who lived in Germany. The remaining 15 applicants were HT members or supporters, most of whom resided in Germany[3].

All 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.

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 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

[3] The European Court mentions 16 persons of 8 nationalities: 5 Germans, 4 Jordanians, 1 Austrian, 1 Yemeni, I Iraqi, 1 Turk, 1 Palestinian, 1 Israeli and 1 with an unknown nationality.

the Convention[4]. The association could therefore not rely on Article 11 (freedom of assembly and association) to complain about the ban on its activities.

Ban by the Ministry of the Interior

On 10 January 2003, the German Federal Ministry of the Interior issued a decision prohibiting HT activities in Germany, relying on the Law on Associations. It also ordered its assets to be confiscated.

The Ministry considered that HT was a foreign private association operating on an international scale and that there existed no sub-organisation in Germany.

The Ministry considered that HT 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[5].

Basing its decision on the book "The inevitability of the battle of cultures", published in 1953 by the organisation's founder, Taqiuddin al-Nabhani, as well as on a number of publications attributed to HT, in particular articles published in the magazine "*Explizit*", leaflets and publications on the organisation's website, the Ministry considered that **the association denied the right of the State of Israel to exist and called for its destruction and for the**

[4] In the section "Background to the case", the European Court noted that "The first applicant, whose name means 'Liberation Party', describes itself as a 'global Islamic political party and/or religious society'" advocates the overthrow of governments throughout the Muslim world and their replacement by an Islamic State in the form of a recreated Caliphate."

In this case, 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.)

[5] 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 handling 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."

killing of Jews[6]. This constituted an expression of the association's basic philosophical position, which included the "active *Jihad*"[7]. **The association agitated and targeted Islamic States and their governments, whose overthrow it called for repeatedly.** 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 criticizing 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.**

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

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[6] 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 Baquarah 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".*

[7] 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 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*.) in which it was stated:

"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.

The applicants lodged a complaint against the prohibition order with the Federal Administrative Court.

Proceedings before the Federal Administrative Court

On 10 February 2003, HT members 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 HT 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, HT 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 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 complaint as unfounded. Relying on the so-called "organisational law" submitted by the applicants, the court considered that HT did not fulfil the requirements of a religious community, as its activities did not include the exercise of a common religious practice. Furthermore, the association could not be regarded as a philosophical community, as its existence and activities were based on Islam.

On 25 January 2006, the Federal Administrative Court rejected the 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.

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.

Decision of the European Court

The European Court analyzed the relevance of the parts of the complaint referring to alleged violations of 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) of the Convention.

As freedom of association and assembly was at the heart of the application, the Court mainly focused on Article 11. With regards to 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.

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. The Court also dismissed the claim that HT was a religious association (Article 9), confirming hereby the decisions of the German courts. 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."

For these reasons, the Court declared the application inadmissible.

Kasymakhunov and Saybatalov v. Russia

(Applications nos. 26261/05 and 26377/06)[8]

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

The case originated with 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 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.

The European judges dealt with the nature of Hizb ut-Tahrir, analyzed its teachings concerning the use of violence and human rights, took a 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 14th 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."

[8] 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.

Hizb ut-Tahrir and violence

In the same decision of the European Court, the report of the ICG is partly quoted as follows[9]:

"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. (…)

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

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 *kufr* [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 al-Nabhani argued that a regime could be brought down through acts of civil disobedience such as strikes, non-cooperation 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)

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[9] 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) financed by the European Commission: "Hizb ut Tahrir al Islami (Islamic Party of Liberation)", (pp 14-16).

"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 14th 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 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, it cannot be said to be a terrorist organization.

At this stage, it is not a violent movement in its deeds, however, it calls for the violent destruction of the state of Israel and for the banishment and killing of its inhabitants. Its

radical discourse also 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[10], 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.

In his analysis "Is Hizb ut-Tahrir an extremist organization?", Alexander Verkhovsky writes[11]:

> Firstly, the Russian Hizb groups are part of an international extremist organization. Secondly, it is obvious that Hizb's propaganda is dangerous for society, because it can contribute to hate crime while the party or some of its activists may potentially engage in direct promotion of violence and hatred in the future. However, a potential danger does not automatically warrant sanctions. (For example, the obviously unconstitutional goal of establishing 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).

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.

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

The jurisprudence of the European Convention (Hizb ut-Tahrir and Others v. Germany - Kasymakhunov and Saybatalov v. Russia) provides an essential tool for the international human rights community, international and national courts, political decision-makers, as well as civil societies to determine the nature of other like-minded Islamic movements.

Hizb ut-Tahrir is one of those religiously-rooted political movements threatening the current world order with an Islamic socio-political totalitarian ideology. Its teachings and agenda lie

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[10] 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/.

[11] See http://www.sova-center.ru/en/xenophobia/reports-analyses/2006/02/d7187/

in a grey area where politics, religion and the use or advocacy of violence are difficult to disentangle. Under cover of religious freedom, it aims

- to undermine the foundations of democracy, the rule of law, and human rights, including the equality of citizens
- to promote some form of theocracy or a legal system imposed by a dominant religion
- to overthrow political regimes
- to weaken and destroy, in the short or long term, the international order based on the United Nations

Brutal state repression is not the right answer because it fuels anger and increased opposition, but criminal activities must be prosecuted. Banning Hizb ut-Tahrir is not a solution either as it can pursue its activities underground. Whether it does not use or promote violence is not a sufficient argument to justify passivity and inaction. Hizb ut-Tahrir shares the same global totalitarian ideology and the same objectives as other violent religiously-rooted political movements. That political ideology directly threatens the international human rights system on which democracy and the rule of law are based.

Other political totalitarian ideologies such as fascism, neo-nazism or communism have been and are still fought against. There is no reason for states not to combat Islamic totalitarian ideologies because it is both their right and their duty to defend their values and citizens, to anticipate possible future danger and to combat these ideologies. Yet, they must fight with democratic means and the weapon of law if they do not want their policies to be inefficient or even counter-productive.

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