

European Court: "Hizb ut-Tahrir's aims are clearly contrary to the values of the European Convention"

Kasymakhunov and Saybatalov v. Russia (Applications nos. 26261/05 and 26377/06)^[1]

HRWF (25.02.2015) – In 2013, the European Court released its decision in the case *Kasymakhunov and Saybatalov v. Russia*. This judgment highlights interesting aspects of the political Islamic movement Hizb ut-Tahrir founded in 1953 in Eastern Jerusalem by a Palestinian scholar and judge, Taqiuddin al-Nabhani, 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.

The case *Kasymakhunov and Saybatalov v. Russia* 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.

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 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."

Hizb ut-Tahrir and violence

^[1] 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.

In the same decision of the European Court, the report of the ICG is partly quoted as follows^[2]:

"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...

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)

^[2] 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>

"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 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^[3], 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.

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 Verkhovsky 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

[3] 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/>.

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.

- (1) 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.
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