EUROPEAN COURT/GERMANY: Freedom of expression and abortion

Freedom of expression does not give the right to label abortions performed by designated doctors "aggravated murder"

Registrar of the European Court (20.09.2018) – https://bit.ly/2zCSIdu – In today's Chamber judgments1 in the cases of Annen v. Germany (nos. 2 to 5) (application nos. 3682/10, 3687/10, 9765/10 and 70693/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 of the European Convention on Human Rights.

The cases concerned a series of complaints by an anti-abortion activist, Klaus Günter Annen, over civil court injunctions on various actions he had taken as part of an anti-abortion campaign. The plaintiffs in the domestic proceedings were four doctors who performed abortions.

The Court held in particular that the injunctions had interfered with Mr Annen's freedom of expression, but had been necessary in a democratic society. When examining whether there had been a need for such interferences in the interests of the "protection of the reputation or rights of others", namely of the doctors, the Court's role was only to ascertain whether the domestic courts had struck a fair balance when

protecting the freedom of expression guaranteed by Article 10 and the right to respect for private life protected by Article 8 of the Convention.

In sum, the Court considered that the injunctions had not been disproportionate to the legitimate aim pursued and that the reasons given by the domestic courts had been relevant and sufficient. It pointed out that the domestic authorities had carried out a detailed analysis of the leaflets and webpage set up by Mr Annen and that the accusations by Mr Annen against the various abortion doctors had not only been very serious but might also have incited hatred and aggression. In this regard, the Court found the domestic courts' conclusion acceptable that Mr Annen's statements, in particular by using the term "aggravated murder", could be understood as personalised accusations against the doctors of having perpetrated the criminal offence of aggravated murder.

Principal facts

The applicant, Klaus Günter Annen, is a German national who was born in 1951 and lives in Weinheim (Germany). The domestic courts issued four civil injunctions against Mr Annen, prohibiting particular aspects of his anti-abortion campaign.

In the first case (application no. 3682/10) Mr Annen was ordered to refrain from referring on his webpage to abortions performed by a doctor, Dr Q., as "aggravated murder" and

comparing them with the Holocaust.

While the first-instance court in May 2006 rejected Dr Q's application on the grounds that it was a fact that Dr Q. performed abortions and that the remainder of the website's content was covered by Mr Annen's freedom of expression, the Karlsruhe Court of Appeal granted an injunction in February 2007 after Dr Q. appealed. It pointed out that Mr Annen had insinuated, by using the term "aggravated murder" on the website, that Dr Q. had committed criminal offences and had compared abortions with the Holocaust. Furthermore, he had not referred to section 218a of the Criminal Code which exempted abortions as performed by Dr Q. from criminal liability. In sum, it was possible to interpret his statements as a personal accusation against Dr Q. of perpetrating aggravated murder.

At the origin of the second case (application no. 3687/10) was a public statement on a leaflet by Mr Annen that another doctor, Dr. S., had performed unlawful abortions in his practice, outside of which Mr Annen had also distributed various leaflets in November/December 2004 and in September 2005. They contained statements such as "Near you: unlawful abortions … and you are silent about the aggravated murder of our children?"

Subsequently, Dr. S. made a request for a civil injunction which was granted by the Karlsruhe Regional Court on 4 November 2005. It held that the statements had a "pillory effect" and amounted to a serious interference with Dr S.'s personality rights, which was not justified by Mr Annen's freedom of expression. The court underlined that Mr Annen had singled out Dr S. by mentioning him by name and distributing the leaflets in the vicinity of his practice, that he had

implied that Dr S. had committed the criminal offence of aggravated murder and that he had associated Dr S. with the Holocaust.

Both parties appealed. In February 2007 the Karlsruhe Court of Appeal confirmed the reasoning of the Regional Court and held that the wording of Mr Annen's statements showed that he had described the abortions performed by Dr S. as aggravated murder, which could not be tolerated. It reiterated that by singling out Dr S., Mr Annen had created an unacceptable "pillory effect". In that regard, the court noted that Dr S. had not been involved in the public debate about abortions in any way. Since Mr Annen had not clarified that he had only been criticising abortions, which according to the case-law of the Federal Constitutional Court were unlawful but not subject to criminal liability, he had exceeded the limits of justifiable criticism.

In the third case (application no. 9765/10) the application for an injunction was lodged by Dr St. because Mr Annen had approached passers-by and possible patients in the vicinity of Dr St.'s medical practice in April 2005, while distributing leaflets. The leaflets had stated that the abortions performed by Dr St. were unlawful and compared them with the Holocaust.

The injunction was granted in October 2005 by the Mannheim Regional Court whose decision was upheld by the Karlsruhe Court of Appeal in February 2007. Both courts referred to a previous decision of the Federal Court of Justice in which it had confirmed a civil injunction against similar conduct by Mr Annen. Mr Annen had attacked Dr St.'s legal professional activities by implying that he had committed criminal acts and had interfered with the relationship of trust between doctor

and patient. The injunction order was justified in view of the massive “pillory effect” he had created by singling out Dr St. and criticising him in a harsh way in the immediate vicinity of his practice.

The fourth case (application no. 70693/11) dealt with a civil injunction and an order to pay damages against Mr Annen because of statements which he had made on an anti-abortion website. The website had implied that abortions amounted to aggravated murder, compared doctors performing abortions to concentration camp commanders and in general had equated abortions with the Holocaust. A link on the website directed readers to a list of doctors who performed abortions, mentioning, among others, Dr F., the plaintiff in this case.

The complaints by Mr Annen against the injunctions in all four cases were ultimately dismissed by the Federal Constitutional Court.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) Mr Annen complained that the injunctions had interfered with his freedom of expression, without being justified by the protection of the doctors’ personality rights. His website and leaflets contributed to a public debate and he had not personally accused the doctors of perpetrating aggravated murder; rather he had criticised the legal framework in Germany regarding abortions.

The applications were lodged with the European Court of Human Rights on 15 January 2010, 8 February 2010 and 26 October 2011.

The judgments were given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), President,

Angelika **Nußberger** (Germany),

André **Potocki** (France),

Síofra **O'Leary** (Ireland),

Mārtiņš **Mits** (Latvia),

Lətif **Hüseynov** (Azerbaijan),

Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, Section Registrar.

Decision of the Court

Article 10

The Court underlined that its task under Article 10 was to look at the interference complained of in the light of the case as a whole and determine whether it had been "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it had been "relevant and sufficient". Where a balancing exercise had been undertaken by the national authorities in conformity with the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.

Turning to the first case (application no. 3682/10), the Court accepted the domestic Court of Appeal's conclusion that Mr Annen's statements had been ambiguous and could be understood as an accusation that Dr Q. had perpetrated the criminal offence of aggravated murder. Distinguishing the present case from the case of its previous judgment Annen v. Germany (no. 3690/10, 26 November 2015), it noted that Mr Annen had not provided the additional information that the abortions performed by Dr Q. had not been subject to criminal liability. Furthermore, there had been no factual foundation for the very serious criminal allegations made by Mr Annen. Lastly, the Court observed that Mr Annen had not been ordered to pay damages or convicted but had only had to refrain from calling the abortions "aggravated murder".

Having regard to the second case (application no. 3687/10), the Court agreed with the domestic courts observations that while – strictly speaking – calling abortions unlawful was correct, the statement by Mr Annen read in conjunction with the rest of the leaflet could be understood as an allegation that Dr S.'s professional activities constituted aggravated

murder. It had to be noted that in this case too Mr Annen's accusations against Dr S. were very serious and that he, nonetheless, was not per se prohibited from campaigning against abortions or criticising doctors that performed abortions. Since the domestic courts had thoroughly discussed various possibilities of interpreting the statements in light of the freedom of expression, the Court found no violation of Article 10.

In the third case (application no. 9765/10) the Court firstly agreed with the domestic court's finding that the applicant had vilified Dr St. by implying that he had committed criminal acts. It secondly observed that Mr Annen had singled out Dr St. from all the doctors that had performed abortions and had thereby created a "pillory effect". Even though Dr St. had been involved in various legal disputes in the past, the domestic courts had concluded that this did not have any substantial effects on Dr St.`s profile and could not redound to his disadvantage. Having regard to their direct contact with their societies, the Court found that it was primarily for the domestic courts to assess how well-known a person was. In conclusion, the Court saw no reason to call the domestic courts' reasoning into question. It thirdly held that Mr Annen's "pavement counselling" had severely disrupted the relationship of trust between Dr St. and his patients.

Lastly, since Mr Annen had not been convicted for slander or ordered to pay damages, the Court held that the level of interference with his freedom of expression had been relatively low and had been "proportionate to the legitimate aims pursued". Therefore, in the Court's view, the national courts had thoroughly assessed the conflicting interests by referring to the previous judgment of the Federal Court of Justice and considering the factual and legal differences of

the cases.

The Court also found no violation of Article 10 of the Convention in the fourth case (application no. 70693/11). It found that there was not a sufficient factual basis for calling abortions as performed by Dr F. “aggravated murder”. Furthermore, distinguishing the present case from the case of its previous judgment Annen v. Germany (no. 3690/10, 26 November 2015), the Court observed that Mr Annen had equated the medical activities of Dr F. with the unjustifiable atrocities inflicted on Jews under the Nazi regime and had even stated that “Equating the Babycaust with the Holocaust would mean relativising today’s abortion murders”. These accusations were very serious and had severely undermined Dr F.’s reputation. Based on the national courts’ detailed reasoning, the Court considered therefore that both the injunction and the order to pay damages against Mr Annen had not fallen outside their margin of appreciation and had not been disproportionate. Accordingly, there had been no violation of Article 10 of the Convention in any of the four cases.

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List of hundreds of documented cases of believers of various faiths in 20 countries: http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/

EUROPEAN COURT/AUSTRIA: Conviction for calling Muhammad a paedophile is not in breach of Article 10

E.S. v. Austria (no. 38450/12) – Fifth Section Chamber Judgment 25 October 2018

HRWF (30.10.2018) – E.S., the applicant, is Elisabeth Sabaditsch-Wolff, the daughter of an Austrian diplomat, and was partly educated in Iran, where she was present during the Islamic revolution of 1979. She worked at the Austrian embassy in Kuwait during the Iraqi invasion in 1990. She subsequently worked as assistant to the Vice Chancellor of the Republic of Austria, Mr. Wolfgang Schüssel (1995-1997), at the Austrian Embassy Kuwait, Visa Section (1997-2000) and the Austrian Embassy Tripoli, Libya (2000-2001). Since 2001, she has been an ESL and TOEFL teacher at an English language institute in Vienna.[1] In 2010 Sabaditsch-Wolff was a speaker at a conference sponsored by the Freedom Defense Initiative at the Conservative Political Action Conference in Washington, DC, entitled: "Jihad: The Political Third Rail – What They Are Not Telling You." (Source: https://wikispooks.com/wiki/Elisabeth_Sabaditsch-Wolff)

Registrar of the Court (25.10.2018) – https://bit.ly/2Sh7DCx – In today's **Chamber** judgment1 in the case of **E.S. v. Austria** (application no. 38450/12) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

The case concerned the applicant's conviction for disparaging religious doctrines; she had made statements suggesting that Muhammad had had paedophilic tendencies. The Court found in particular that the domestic courts comprehensively assessed the wider context of the applicant's statements and carefully balanced her right to freedom of expression with the right of others to have their religious feelings protected, and served the legitimate aim of preserving religious peace in Austria. It held that by considering the impugned statements as going beyond the permissible limits of an objective debate, and by classifying them as an abusive attack on the Prophet of Islam which could stir up prejudice and threaten religious peace, the domestic courts put forward relevant and sufficient reasons.

Principal facts

The applicant, E.S., is an Austrian national who was born in 1971 and lives in Vienna (Austria).

In October and November 2009, Mrs S. held two seminars entitled "Basic Information on Islam", in which she discussed the marriage between the Prophet Muhammad and a six-year old

girl, Aisha, which allegedly was consummated when she was nine. *Inter alia*, the applicant stated that Muhammad "liked to do it with children" and "… A 56-year-old and a six-year-old? … What do we call it, if it is not paedophilia?".

On 15 February 2011 the Vienna Regional Criminal Court found that these statements implied that Muhammad had had paedophilic tendencies, and convicted Mrs S. for disparaging religious doctrines. She was ordered to pay a fine of 480 euros and the costs of the proceedings. Mrs S. appealed but the Vienna Court of Appeal upheld the decision in December 2011, confirming in essence the lower court's findings.

A request for the renewal of the proceedings was dismissed by the Supreme Court on 11 December 2013.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mrs S. complained that the domestic courts failed to address the substance of the impugned statements in the light of her right to freedom of expression.

If they had done so, they would not have qualified them as mere value judgments but as value judgments based on facts. Furthermore, her criticism of Islam occurred in the framework of an objective and lively discussion which contributed to a public debate, and had not been aimed at defaming the Prophet of Islam. Lastly, Mrs S. submitted that religious groups had to tolerate even severe criticism.

The application was lodged with the European Court of Human Rights on 6 June 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,

André **Potocki** (France),

Síofra **O'Leary** (Ireland),

Mārtiņš **Mits** (Latvia),

Gabriele **Kucsko-Stadlmayer** (Austria),

Lətif **Hüseynov** (Azerbaijan),

Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 10
The Court noted that those who choose to exercise the freedom to manifest their religion under Article 9 of the Convention could not expect to be exempt from criticism. They must tolerate and accept the denial by others of their religious beliefs. Only where expressions under Article 10 went beyond the limits of a critical denial, and certainly where they were likely to incite religious intolerance, might a State legitimately consider them to be incompatible with respect for the freedom of thought, conscience and religion and take proportionate restrictive measures.

The Court observed also that the subject matter of the instant case was of a particularly sensitive nature, and that the (potential) effects of the impugned statements, to a certain degree, depended on the situation in the respective country where the statements were made, at the time and in the context they were made. Accordingly, it considered that the domestic authorities had a wide margin of appreciation in the instant case, as they were in a better position to evaluate which statements were likely to disturb the religious peace in their country.

The Court reiterated that it has distinguished in its case-law between statements of fact and value judgments. It emphasised that the truth of value judgments was not susceptible to proof. However, a value judgment without any factual basis to support it might be excessive.

The Court noted that the domestic courts comprehensively explained why they considered that the applicant's statements had been capable of arousing justified indignation; specifically, they had not been made in an objective manner contributing to a debate of public interest (*e.g.* on child marriage), but could only be understood as having been aimed at demonstrating that Muhammad was not worthy of worship. It agreed with the domestic courts that Mrs S. must have been aware that her statements were partly based on untrue facts and apt to arouse indignation in others. The national courts found that Mrs S. had subjectively labelled Muhammad with paedophilia as his general sexual preference, and that she failed to neutrally inform her audience of the historical background, which consequently did not allow for a serious debate on that issue. Hence, the Court saw no reason to depart from the domestic courts' qualification of the impugned statements as value judgments which they had based on a

detailed analysis of the statements made.

The Court found in conclusion that in the instant case the domestic courts carefully balanced the applicant's right to freedom of expression with the rights of others to have their religious feelings protected, and to have religious peace preserved in Austrian society.

The Court held further that even in a lively discussion it was not compatible with Article 10 of the Convention to pack incriminating statements into the wrapping of an otherwise acceptable expression of opinion and claim that this rendered passable those statements exceeding the permissible limits of freedom of expression.

Lastly, since Mrs S. was ordered to pay a moderate fine and that fine was on the lower end of the statutory range of punishment, the criminal sanction could not to be considered as disproportionate.

Under these circumstances, and given the fact that Mrs S. made several incriminating statements, the Court considered that the Austrian courts did not overstep their wide margin of appreciation in the instant case when convicting Mrs S. of disparaging religious doctrines. Overall, there had been no violation of Article 10.

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EUROPEAN COURT/AUSTRIA: Subjugating free speech to blasphemy laws?

ECHR upholds ruling that criminalizes Islam-critique

The European Court of Human Rights is an international

court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

Vienna, 29.10.2018 (FOREF) – The Forum for Religious Freedom Europe (FOREF Europe), an independent nongovernmental organization based in Vienna, today voiced its strong disagreement with the latest decision of the European Court of Human Rights (ECHR). The ECHR upheld the conviction of an Austrian citizen for her remarks about the Prophet Mohammad's marriage to a young child. Will this case move Europe one step closer towards subjugating free speech to blasphemy laws?

In seminars about Islam, the defendant had suggested that the Prophet Mohammad was a pedophile for having married a six-year old girl when he was 56 years old. On October 25, 2018, the ECHR upheld Vienna Regional Criminal Court's decision (2011) on her conviction for "disparaging religious doctrines." The local court ruled that the woman's speech was not protected as freedom of expression under Article 10 of the European Convention on Human Rights.

Provocative remarks about religious doctrines or objects of worship "capable of hurting the feelings of the followers of that religion could be conceived as a malicious violation of the spirit of tolerance," according to the ruling.The European Court concluded that the Austrian courts "carefully balanced the applicant's right to freedom of expression with the rights of others to have their religious feelings protected." It also claimed that the ruling was meant to preserve "religious peace" in Austrian society.

However, FOREF stresses that there is no human right not to have one’s feelings hurt through spoken words. Instead, all members of a society are responsible for civil reactions to things they find objectionable.

“This is yet another legal encroachment on the freedom of Europeans to discuss facts and express opinions,” **stated Dr. Aaron Rhodes, President of FOREF.** ***“The ruling confirms that our freedoms have been limited in deference to those who threaten violent reactions. But it is those threats that are a danger to social peace, not discussions of historical and moral issues,”*** **he added. Peter Zoehrer, Executive Director of FOREF, called the judgment an “outrage.”*****“This ruling upholds what is basically a blasphemy law, the kind of legislation known to threaten the freedom of speech and suppress the freedom of belief and conscience of others,”*** **he said.** ***“It should be possible to openly discuss any religious doctrine and practice in Austria. But now it is clear that the national criminal code and European law forbid the evaluation of moral standards, which is the essence of religious life itself,”*** **he observed.**

Defending human rights means defending principles that are universal. This entails respect for everyone’s freedom of expression. Restrictions on free speech must be carefully enforced only to protect other individuals from violence, not to protect abstract ideas, doctrines, or belief systems. If restrictions are applied disproportionally under the vague pretense of protecting “religious peace” or “religious feelings,” we allow human rights to be abused for the sake of political agendas. **The ECHR judgment defends those who threaten violence, not those who engage in debate.**

Europe has come a long way to establish fundamental freedoms. Today, FOREF calls on European leaders not to allow arbitrary blasphemy laws determine again the boundaries of free speech.

For more information:

Dr. Aaron Rhodes (aaronarhodes@gmail.com)
Peter Zoehrer (foref.office@gmail.com)

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‘Freedom of expression or criminal blasphemy? E.S. v. Austria’

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RUSSIA: Sova Center: Misuse of anti-extremism laws in August

Sova Center / HRWF (18.09.2018) – https://bit.ly/2RfV21T – Every month Sova Center publishes a review of the misuse of anti-extremist laws in Russia. Here are a few cases related to freedom of religion:

Ibragim Ibragimov and Others v. Russia

On August 28, the European Court issued a ruling regarding the prohibition against the works of the Turkish theologian Said Nursi, banned in Russia as extremist. The court unanimously decided to uphold the relevant complaints, which were combined into one case – "Ibragim Ibragimov and Others v. Russia." The first complaint concerned the prohibition of fourteen works by Nursi from the *Risale-i Nur* collection. The corresponding decision was made by the Koptevsky District Court of Moscow in 2007. The complaint was filed on behalf of Nuru Badi Cultural Educational Fund, which published the books, and its head Ibragim Ibragimov. The Fund was a party to the process as a third party; so was the Council of Muftis of Russia. The second complaint, United Religious Board of Muslims of the Krasnoyarsk Region v. Russia," challenged the ban on "The

Tenth Word: The Resurrection and the Hereafter," a brochure also included in *Risale-I Nur*. The decision to recognize the brochure as extremist was made by the Zhelezhnodorozhny District Court of Krasnoyarsk in 2010. The printing of the brochure was commissioned by the United Religious Board of Muslims of the Krasnoyarsk Region, which participated in the proceedings as a third party.

The European Court noted that Said Nursi was a well-known Turkish Muslim theologian and commentator of the Qur'an, and that Muslim authorities both in Russia and abroad, as well as Islamic studies scholars, all affirmed that his texts were moderate, belonged to mainstream Islam, advocated open and tolerant relationships and cooperation between religions, and opposed any use of violence. The Russian side submitted no evidence that dissemination of these works had caused inter-religious tensions or led to any harmful consequences, let alone violence. Cultural, historical, religious and other local features, which provide ample opportunities for national legislations to regulate inter-religious relations, do not, however, allow one individual country to prohibit its citizens from accessing authoritative religious literature that is universally accessible throughout the world.

The ECHR indicated that the judges had essentially relied on expert opinions. The decisions to ban fourteen brochures included no references to any specific problematic passages from them; the court didn't take into account the context of distribution of Nursi's books and the possible negative consequences. Expert opinions submitted by the applicants were rejected by the courts, as were the opinions of the heads of Muslim organizations and experts on Islam. With regard to the process of recognizing the "The Tenth Word: The Resurrection and the Hereafter" as extremist, the ECHR noted that some of

the offending words, used in the book to characterize followers of other faiths, as well as positive characterization of the Muslims, did not cross boundaries of permissible criticism of other religions; they were not accompanied by calls for violence and can not be interpreted as inciting hatred and intolerance. The mere fact, emphasized by the Russian court, that the author's intention was to convince the readers to adopt his religious beliefs is insufficient to justify the ban of a religious book, since the book did not advocate any illegal methods for achieving this goal.

Thus, the ECHR came to the conclusion that, when examining the cases on the recognition of Nursi's books as extremist and their prohibition, the Russian courts failed to provide relevant and sufficient reasons for interfering with the applicants' right to freedom of expression guaranteed by Article 10 of the European Convention, and the interference in this case can not be considered necessary in a democratic society. The court ruled that Russia should pay Ibragim Ibragimov EUR 7,500 in compensation for non-pecuniary damage.

Meanwhile, the Federal List of Extremist Materials came to include four more editions of Nursi's works in August; the decision to ban them was made by the Sverdlovsky District Court of Krasnoyarsk in March and confirmed by the Krasnoyarsk Regional Court in June 2018.

Prosecutions against Religious Organizations and Believers

In mid-August, the Sovetsky District Court of Krasnoyarsk issued a two-year suspended sentence to Sabirzhon Kabirzoda, 27, having found him guilty of involvement in the activities of the extremist organization Nurcular (Article 282.2 Part 2 of the Criminal Code). We regard banning both books by Turkish theologian Said Nursi and Nurcular (which has never existed in Russia at all) as inappropriate. In our opinion, there are

only individual believers, who study the heritage of Nursi and face unreasonable persecution.

At the same time, Privolzhsky District Military Court sentenced Rinat Galiullin to eight years of imprisonment under Article 205.5 part 2 of the Criminal Code (participation in the activities of a terrorist organization). Galiullin was found guilty of continuing the activity of Hizb ut-Tahrir, a radical Islamic party banned in Russia. For his involvement in the organization Galiullin was already sentenced to six and a half years in a penal colony in 2013; his term was reduced to five years in 2015. Galiullin was charged for having conducted "collective and individual conversations with prisoners and attempted to involve them in the activities of Hizb ut-Tahrir", while in prison.

Almaz Usmanov, the owner of a halal butcher shop was arrested in Ufa in mid-August. He was named a defendant in a criminal case under Article 205.5 initiated in connection with the activities of a Hizb ut-Tahrir cell. Usmanov became the fourteenth person to be arrested in this case. In March 2018, the defendants' relatives reported that the defendants were being tortured.

We view charges of terrorism against Hizb ut-Tahrir followers made solely on the basis of their party activities (holding meetings, reading literature, etc.) as inappropriate.

In August, at least two new cases under Article 282.2 of the Criminal Code were initiated for continuing the activities of the Jehovah's Witnesses communities, banned in Russia as local branches of an extremist organization.

The Federal Security Service of Russia in the Khabarovsk Region conducted searches in at least four houses of Jehovah's Witnesses in Khabarovsk in early August. 51-year-old Valery Moskalenko was detained and then, on the following day, put under arrest by the court as a defendant under Article 282.2

Part 2 of the Criminal Code (participation in the activities of an extremist organization).

In the second half of August, the case under Article 282.2 Part 1 of the Criminal Code (organizing activities of an extremist organization) was initiated against three Jehovah's Witnesses from the city of Elizovo (the Kamchatka Region) – spouses Konstantin and Snezhana Bazhenov and their acquaintance Vera Zolotova, 72. The women were released under travel restrictions and the pledge of proper behavior; the court placed the man under arrest, but then released him without specifying any further pre-trial restrictions.

The Russian Supreme Court recognized the Jehovah's Witnesses Administrative Center in Russia and 395 local organizations of Jehovah's Witnesses as extremist in April 2017. We regard this decision, which became the basis for the criminal prosecution of believers, as lacking any legitimate grounds.

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RUSSIA/EUROPEAN COURT: Controversial dissolution of the Russian Orthodox Free Church

The Russian Orthodox Free Church argues the authorities take sides with the official Orthodox Church (Application no. 32895/13).

HRWF (23.10.2017) – In the case Bryansk-Tula Diocese of the Russian Orthodox Free Church against Russia lodged on 19 April 2013, the European Court addressed a number of questions to the parties in May of this year. The case concerns the decision of the Russian Supreme Court to dissolve the church for allegedly failing to bring its founding documents into conformity with The Religious Act of 1997. The applicant complained under Article 9 and 11 of the Convention, taken on their own and in conjunction with Article 14, about its dissolution which was prompted, in its submission, by the Russian authorities' determination to eradicate any competition with the Moscow Patriarchate of the Russian Orthodox Church.

Excerpt of the Communication of the European Court on 15 May 2017

"On 28 August 1995 the applicant church was officially registered as a religious association having legal-entity status under the RSFSR Religions Act of 25 October 1990.

On 1 October 1997 a new Religions Act entered into force. It required all religious associations that had previously been granted legal-entity status to bring their articles of association into conformity with the Act and obtain re-registration from the competent Justice Department (section

27(4)). The time-limit for doing so expired on 31 December 2000.

In 2004, the Ministry of Justice brought an action for the dissolution of the applicant church, claiming that it had failed, firstly, to submit information demonstrating continuity of its operation and, secondly, to secure re-registration under the new Religions Act.

On 17 May 2004 the Trubchevskiy District Court in the Bryansk Region rejected the claim. It held that the Ministry of Justice did not produce any evidence showing that the applicant church had committed any repetitive or gross breaches of the legislation or had wound up its operations. In the court's view, its articles of association did not contain any provisions incompatible with the effective revision of the Religions Act. It further referred to the Constitutional Court's ruling of 7 February 2002 to the effect that the dissolution was not an automatic sanction for failure to secure re-registration in the absence of evidence that the religious organisation had ceased its operations or had engaged in unlawful activities.

The Ministry of Justice did not appeal against the judgment. Nevertheless, the applicant church inquired the Ministry about the conditions and procedure for obtaining re-registration. By letter of 20 September 2004, the Ministry replied that re-registration was no longer possible since the time-limit had expired on 31 December 2000.

On 30 June 2010 the Ministry of Justice informed the applicant church that it had studied its file and uncovered a number of irregularities, such as a failure to bring its founding documents into conformity with the Religions Act, a failure to specify "the aims, purposes and main forms of operations" of the religious organisation, the procedure for electing the Diocesan Assembly and Council and the rights and obligations of parishioners, as well as to change its name from "Russian

Orthodox Free Church" to "Russian Orthodox Autonomous Church" to reflect the change in the name of the affiliated church that occurred in 1998. The Ministry listed further failings, including non-inclusion in the State Register of Legal Entities, non-submission of an authority form for the bishop Mr Nonchin, failure to submit annual reports on the continuation of operations and the closing down of local parishes of the Bryansk and Tula region.

The applicant organisation unsuccessfully sought to challenge the Ministry's demands before a court.

On 24 June 2011 the bishop submitted a proof of his appointment to the Ministry of Justice and asked it to provide a copy of the founding documents from their archives because the originals had been misplaced.

By letter of 8 August 2011, the Ministry replied that the appointment letter had not been properly certified and that the provision of copies of the founding documents was outside the Ministry's mandate.

The Ministry brought a new action for the dissolution of the applicant church on the ground that it had committed gross and repetitive breaches of the laws it had outlined in its warning letter of 30 June 2010.

The applicant organisation submitted in its defence that all the irregularities could be remedied by way of registering amendments to the founding documents. However, it could not apply for registration of amendments because the procedure required the presentation of the founding documents or their certified copies which it did not have.

On 4 July 2012 the Supreme Court of the Russian Federation allowed the Ministry's action for the dissolution. It held that the applicant church had failed to bring its founding documents into conformity with the law and that there was "no credible evidence that the Ministry of Justice had prevented

it from obtaining re-registration". The Supreme Court restated the grounds contained in the Ministry's letter of 30 June 2010 and declared them to amount to "gross and repetitive" violations of the law which warranted its dissolution.

On 23 October 2012 the Appeals Panel of the Supreme Court upheld that judgment."

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