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EU top court says German prosecutors can't issue European arrest warrants

According to the Court of Justice of the European Union, German public prosecutors are not independent when prosecuting cases. As a result, they will no longer be allowed to issue European arrest warrants, which could considerably increase the work of German courts.

By Florence Schulz

EURACTIV (29.05.2019) - https://bit.ly/2QMgkV3 - A European arrest warrant may only be issued by a judicial authority that is deemed to be completely independent of the executive.

However, the Court of Justice of the European Union (CJEU) ruled on Monday (27 May) that this is not the case for German public prosecutors as they have to report to the Ministry of Justice before starting investigations.

Therefore, according to the judges in the Luxembourg-based court, it cannot be ruled out that instructions from the minister of justice could influence the work of investigators in some cases.

In other words, when investigations by the respective state governments fall flat, the Ministry of Justice could try to prevent the public prosecutor's office from carrying out investigations. This could be the case in a potential affair where party donations are at play.

In most other EU member states, the public prosecutor's office is independent of the ministries of justice. An inglorious example is Poland, where the rule of law has been weakened by several judicial reforms, severely limiting judicial independence and putting Warsaw on a collision course with Brussels.

But the German system has also been criticised for some time. In 2009, a resolution passed by the Council of Europe's Parliamentary Assembly in response to a report drafted by the Committee on Legal Affairs and Human Rights called on Germany to strengthen the independence of its prosecutors and judges.

The consequence of the CJEU ruling is likely to be that only German courts will be allowed to issue European arrest warrants in the future. Currently, it's public prosecutors who are in charge of issuing European arrest warrants.

For the courts, this would mean a lot more work, even if the public prosecutor's offices did the preparatory work.

According to research conducted by the Legal Tribune Online, additional questions are in need of clarification, including which courts would be responsible for examining and issuing European arrest warrants, and whether existing arrest warrants need to be reissued.

According to the German Federal Police Office, there are currently around 5,600 European arrest warrants, the Legal Tribune Online reported.

The international NGO Transparency International has long been pressing for the reform of the German justice system.

The CJEU ruling now gives another urgent reason for such a reform, according to Reiner Hüper, director of the working group for criminal law.

"The possibility of the executive branch exerting this influence damages the national and international reputation of the German criminal justice system and undermines confidence in the rule of law," he told EURACTIV.

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.

Anti-Islam leader goes on trial for racism

Head of PEGIDA movement is expected to appear in court over inciting racial hatred against refugees.

Aljazeera (19.04.2016) - http://bit.ly/1Nl3c4U - The founder of Germany's anti-Islam movement, PEGIDA, will appear in court on hate speech charges for branding refugees "cattle" and "scum" on social media.

Lutz Bachmann, founder of the far-right "Patriotic Europeans Against the Islamisation of the Occident" movement, was charged in October with inciting racial hatred through a series of widely shared Facebook posts.

The trial on Tuesday will be held under tight security in Dresden in the former communist east, the birthplace of PEGIDA, which bitterly opposes Chancellor Angela Merkel's liberal migration policy that brought more than a million asylum seekers to Germany last year.

The court said the 43-year-old's comments, which date back to 2014, also "disrupted public order" and constituted an "attack on the dignity" of refugees.

If found guilty, Bachmann could face between three months and five years in jail.

The comments were published in September 2014, shortly before PEGIDA started life as a xenophobic Facebook group.

The group initially drew just a few hundred supporters to demonstrations in Dresden before gaining strength, peaking with rallies of up to 25,000 people in early 2015.

Also on Tuesday, police arrested five people near Dresden whom they suspected of forming a far-right militant group, according to Reuters news agency. The public prosecutor's office said they were preparing attacks on asylum seekers using explosives.

'Criminal invaders'

Bachmann has repeatedly labelled the newcomers "criminal invaders" while also railing against "traitor" politicians and the "liar press", whom he blames for jointly promoting multiculturalism.

At PEGIDA's weekly rally in Dresden on Monday evening, Bachmann made no reference to his trial but hurled a barb at the row over a German comedian who has written a satirical poem about Turkish President Recep Tayyip Erdogan.

Popular comic Jan Boehmermann could be convicted under the rarely enforced section 103 of the criminal code - insulting organs or representatives of foreign states.

A trained chef and head of a public relations agency, Bachmann has previously been convicted of drug, theft and assault charges.

In the late 1990s, he left Germany for South Africa to avoid a jail term, but was extradited two years later and served more than 12 months behind bars in Germany.

In the current heated political climate, the right-wing populist Alternative for Germany (AfD) party also made strong gains in recent state elections on the back of a protest vote against Merkel's open-door policy on refugees.

This week, AfD deputy leader and member of the European parliament Beatrix von Storch described Islam as "a political ideology that is incompatible with the German constitution".

Aiman Mazyek, chairman of the Central Council of Muslims in Germany, accused the party of "riding a wave of Islamophobia.

"It is the first time since Hitler's Germany that there is a party which discredits and existentially threatens an entire religious community," he told AFP news agency.

Germany is home to about four million Muslims, and many of the country's most recent arrivals adhere to the faith.

Leading candidate in Cologne's mayoral race stabbed in a politically motivated attack

European Parliament Anti-Racism and Diversity Intergroup (ARDI) ((19/10/2015) - http://bit.ly/1LIdCc6 - Last Saturday, Henriette Reker, who currently heads Cologne's Social Affairs and Integration Department, and is responsible for refugee housing, was stabbed in the neck whilst campaigning to become Cologne's mayor. The attacker told police he stabbed Ms Reker "because of anti-foreigner motives," according to a senior police investigator.

The attack follows recent arson attacks on refugee shelters as well as reports of refugees being greeted by neo-Nazis humming Third Reich songs.

It also comes as the German government deals with the backlash over its open doors policy from conservative allies and the far right. Immigration fears also saw far right parties increase their vote share in Swiss parliamentary and Vienna elections last week.

Gerard Deprez, Co-Preisdent of ARDI and Chair of ARDI's Anti-migrant racism Working Group, said: "I am shocked and repulsed by this attack. I wish such attacks were a thing of the past, but instead they remind us that we must remain vigilante and continue our fight. By giving Ms Reker a majority of the vote in the first round of the election, the Cologne voters clearly rejected the stupidity and racist violence."

Terry Reintke, member of ARDI, concluded: "This incident is a reminder that some people are prepared to do anything to impose their views. This is a wake-up call. All political and community leaders need to stand united to fight against any form of racism and xenophobia"

Hizb ut-Tahrir, a radical political Islamist movement or a religious group?

By Willy Fautré, *Human Rights Without Frontiers Int'l*

HRWF (17.02.2015) - The Islamist movement Hizb ut-Tahrir (1), whose name means 'Liberation Party', was 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 Central Asia, Russia and the Middle East but also in the European Union. It has been banned as an extremist or terrorist organization by many states: Bangladesh (2009), Egypt (1974), Germany (2003), Jordan (1953), Kazakhstan (2005), Kyrgyzstan (2003), Pakistan (2004), Russia (2003), Syria, Tajikistan (2001) and Turkmenistan. Its members have been arrested and sentenced to long prison terms in several of these countries.

"Hizb ut-Tahrir describes itself as a 'global Islamic political party and/or religious society'" (2) but is it a terrorist organization, a political movement or a religious group? The answer to this question is of utmost importance to the human rights community. The German courts and the European Court of Human Rights have addressed this issue.

European Court: Hizb ut-Tahrir and Others v. Germany

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

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

Principal facts

The first applicant, Hizb Ut-Tahrir ("the association"), whose name means "Liberation Party", describes itself as a "global Islamic political party and/or religious society". Established in Jerusalem in 1953 (3), it has followers in a number of Middle Eastern States and among Muslims in Western Europe. Active in Germany since the 1960s, it has around 200 followers there. The second applicant, Shaker Hussein Assem, is an Austrian national who lives in Germany and was the association's representative before the Court. The remaining 15 applicants are members or supporters of the association, most of whom reside in Germany.

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

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

Complaints and procedure

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

Decision of the Court

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

Article 11

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

The Court observed that the German Federal Administrative Court had carefully analysed a substantial number of written public statements made by the association and its representative in the proceedings before the Court. It had found that the association called for the violent destruction of the State of Israel and for the banishment and killing of its inhabitants. In particular, its representative, Mr Assem, had repeatedly justified suicide attacks in which civilians were killed in Israel, and neither he nor the association

had distanced themselves from that position during the proceedings before the Court. In view of those statements, the Court considered that the association attempted to deflect the right to freedom of assembly and association under Article 11 from its real purpose by employing that right for ends which were clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life.

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

Other articles

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

Analysis of the decisions of the German courts

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

The prohibition issued by the German Ministry of the Interior (5)

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

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

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

6. Basing its decision on the book "The inevitability of the battle of cultures", published in 1953 by the organisation's founder, Taqiuddin An-Nabhani, as well as on a number of publications attributed to the first applicant, in particular articles published in the magazine "*Explizit*", leaflets and publications on the organisation's website, the Ministry

considered that the first applicant denied the right of the State of Israel to exist and called for its destruction and for the killing of Jews (6). This constituted an expression of the applicant's basic philosophical position, which included the "active *Jihad*" (7). The applicant agitated in a targeted fashion against Islamic States and the governments, which overthrow it repeatedly called for. It pursued its objectives, which were directed against the concept of international understanding, in a pro-actively aggressive manner. It did not thereby restrict itself to merely criticising existing political or social conditions or rejecting peaceful coexistence between States and peoples but also called for the armed struggle against the State of Israel, Jews and the Governments of Islamic States.

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

Hizb ut-Tahrir defence against the ban before the Federal Administrative Court (8)

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

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

In its submissions dated 8 and 29 November 2004, Hizb ut-Tahrir accepted that it was not to be regarded as a political party within the meaning of the German law. It claimed, however, that all its activities had a religious foundation and that it enjoyed the protection of freedom of religion under the Basic Law. It further submitted that the Government had misconstrued the nature of its ideology, stressing, in particular, that it promoted peaceful dialogue and had never advocated the use of violence. It further pointed out that it did not seek to establish a "caliphate" in any of the Western European democracies. Lastly, it complained of a violation of its rights under Articles 9, 10 and 11 of the Convention.

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

Further proceedings before the Federal Constitutional Court (9)

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

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

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 has very bad relationships with the Salafists, the Muslim Brothers and ISIS, all movements who could potentially try to overthrow Islamic states. If a tactical alliance is not conceivable at this stage, it is not excluded that members of Hizb ut-Tahrir may one day migrate to violent groups. Hizb ut-Tahrir stresses that a caliphate has to be established inside the Arab world 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. It would however be interesting to find out if its hatred towards Israel and its citizens extends to Jews in other countries and anti-Semitism.

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 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.

Footnotes:

(1) Hizb ut-Tahrir was founded in Eastern Jerusalem in 1953.

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

(3) HRWF Footnote : It was founded by Taqiuddin al Nabhani, an Islamic scholar born in 1909 in Ajzim (Haifa).

(4) 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."

(5) Excerpt from the European Court decision Hizb ut-Tahrir v. Germany with footnotes selected by the author from the same court decision.

(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*.) it was stated that the creation of the State of Israel to the detriment of the Palestinian people was accompanied by crimes against humanity and that Israel thus lacked legitimacy. The article closed with the following statement:

"Whoever accepts the State of Israel is against Allah's commands and thus commits a serious sin."

This was followed by a quotation from the Qur'an of a "command by Allah":

"And fight for Allah against those who fight against you, but do not transgress! Truly, Allah loves those who do not transgress. And slay them wherever ye catch them, and turn them out from where they have turned you out."

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

(8) Summary of the section « Proceedings before the Federal Administrative Court » in the decision of the European Court.

(9) Summary of the section « Proceedings before the Federal Constitutional Court » in the decision of the European Court.

Some recommended readings

http://www.sova-center.ru/en/xenophobia/reports-analyses/2006/02/d7187/
http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/1446/11091303.htm
http://en.wikipedia.org/wiki/Maajid_Nawaz
http://news.bbc.co.uk/2/hi/programmes/panorama/7016299.stm
http://www.smh.com.au/comment/banning-hizbut-tahrir-in-australia-20141012-114h98.html
http://www.islam-watch.org/AdrianMorgan/Why-Hizb-ut-Tahrir-not-Banned-in-US.htm
http://news.bbc.co.uk/2/hi/south_asia/8321329.stm
https://thehizbuttahrirwatch.wordpress.com/category/news-about-hizb-ut-tahrir/hut-bangladesh/hut-banned-bangladesh/
http://www.mykhilafah.com/Myk-2014/index.php/hizb-worldwide/2037-a-communique-from-hizb-ut-tahrir-to-the-jordanian-government-1953
http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=38163#.VOM4WUu4klI
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https://books.google.be/books?id=vmKNAgAAQBAJ&pg=PA70&lpg=PA70&dq=Turkmenistan+hizbut-tahrir+ban&source=bl&ots=Gnmkcd-MGt&sig=B4o1I9-dt5FJSt1SdbveQL3YhW0&hl=en&sa=X&ei=j0bjVOq9KI7kaO6BgrgC&ved=0CDEQ6AEwAw#v=onepage&q=Turkmenistan%20hizbut-tahrir%20ban&f=false