



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 38891/08  
Petr Nikolayevich VASILYEV and others  
against Russia  
lodged on 25 June 2008

**STATEMENT OF FACTS**

The applicants are five Russian nationals listed in the appendix. They are currently serving various sentences of imprisonment in Cheboksary in the Chuvash Republic. The applicants are represented before the Court by Ms N. Deyeva, Ms E. Davidyan, Ms T. Cherniskova and Mr G. Avetisyan, lawyers of the Memorial Human Rights Centre in Moscow, and Mr Ph. Leach and Mr W. Bowring, lawyers of the European Human Rights Advocacy Centre in London.

The facts of the case, as submitted by the applicants, may be summarised as follows.

**A. Background information about Hizb-ut-Tahrir**

Hizb ut-Tahrir al-Islami (The Party of Islamic Liberation, “Hizb ut-Tahrir”) is an international Islamic organisation with branches in many parts of the world, including the Middle East and Europe. It was founded by Sheikh Taqiuddin al-Nabhani a-Falastini, a religious judge (quadi), in Jerusalem in 1953. The organisation has achieved a small, but highly committed following in a number of Middle Eastern states and has also gained in popularity among Muslims in western Europe and Indonesia. It began working in Central Asia in the mid-1990s and has developed a committed following inside Uzbekistan, and to a lesser extent in neighbouring Kyrgyzstan, Tajikistan and Kazakhstan.

According to the Hizb ut-Tahrir Internet site registered in the United Kingdom, the organisation proclaims the following aims:

“In the Muslim world our political aim is the re-establishment of the Islamic Caliphate. Our vision of the Islamic Caliphate is as an independent state having an elected and accountable ruler, an independent judiciary, political parties, the rule of law and equal rights for minority groups. Citizens of the Caliphate have every right to

be involved in politics and accounting the ruler in which the role of the ruler (Caliph) is to be a servant of the masses governing them with justice”.

On the same site the organisation describes its activities as follows:

“Hizb ut-Tahrir was established in 1953 as a non-violent Islamic political party with the objective of establishing Islam in state and society in the Muslim world underpinned by the support of the masses. This work was not welcomed by the unelected dictators and despots who rule the Muslim world without tolerating dissent. As a result our members have been silenced, imprisoned, tortured and even killed for their beliefs. Throughout all of this and up until the current day our members never resorted to armed struggle or violence as a way of bringing about political change. Resilience in the face of intense oppression comes from the passionate belief of our members that societies do not change through coercion or violence, but through intellectual advancement, debate and dialogue”.

The most comprehensive report on Hizb ut-Tahrir was prepared by the International Crisis Group in 2003. The report, entitled “Radical Islam in Central Asia: Responding to Hizb ut-Tahrir”, reads, as far as relevant, as follows:

“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 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.

Government responses have been contradictory and often ineffective. In much of the Middle East, the organisation is banned from acting openly, and many of its members have been imprisoned. Central Asian governments have taken particularly harsh stances, with Uzbekistan leading the way by arresting and sentencing thousands of members to long prison terms. In some other Muslim countries, such as Indonesia, Hizb ut-Tahrir acts more or less openly, as it does in much of Western Europe ...

The party’s writings elaborate three stages of political struggle, based on its interpretation of the historical mission of the Prophet Mohammed in establishing the first Islamic state:

The First: The stage of culturing; this involves finding and cultivating individuals who are convinced by the thought and method of the party. This is necessary in order to formulate and establish a group capable of carrying the party’s ideas.

The Second: The stage of interaction with the *Ummah* (wider Muslim community) in order to encourage the *Ummah* to work for Islam and to carry the *Da’wah* (message) as if it was its own, and so that it works to establish Islam in life, state and society.

The Third: The stage of taking the government and implementing Islam completely and totally, and carrying its message to the world.

The first stage is the most important in present party activity and one of the keys to its longevity. It is based on finding appropriate members and moulding them to its thinking ...

The second stage involves: ‘Collective culturing of the masses ... through organising lessons in the mosques, conferences, lectures, places of public gathering, newspapers, books and leaflets ...’ Hizb ut-Tahrir is very effective at spreading its views through wide publication of books and leaflets in multiple languages and a network of well-run websites that provide access to most of the party’s literature.

Through these two stages of political work, Hizb ut-Tahrir claims that it can develop mass understanding of its ideas (although not necessarily mass membership), and most importantly that it can persuade influential figures in politics, the military and elsewhere to act in accordance with its program and aims. The party actively attempts to recruit well-educated members of society, particularly those in positions that allow them to influence popular opinion.

Getting from this position – wide acceptance of ideas, and some influence on those who are capable of influencing policy – to establishment of an Islamic state is the essence of the third stage of political struggle. It is this stage, the actual seizure of power, and the establishment of the Islamic state, that is most murky in the literature. 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’ ...

It is widely reported that Hizb ut-Tahrir, both in Central Asia and beyond, eschews violence to achieve its ends. Some human rights activists have argued that it is essentially a peaceful group that operates only in the realm of ideas and propaganda. It has never been proven to have been involved in any violence in Central Asia, and in its other global activities it has generally pursued its aims through peaceful propaganda. It is strongly opposed to U.S. policy in the Middle East, but does not call for terrorist actions against America. Indeed, it claims to be opposed to terrorist activity and asserts that the killing of innocent civilians is against Islamic law. Its literature is straightforward, claiming that ‘... military struggle is not the method of re-establishing the Khilafah’ ...

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.’

However, Hizb ut-Tahrir argues that as a political party it does not undertake any physical or violent actions. So how can it justify involvement in a military coup?

‘Hizb ut-Tahrir itself eschews the use of force [but] ... internal sources argue that groups pledging the party their back-up can use arms ... if society stands against the regime its removal even by military force does not constitute an act of violence: this would be the case only if the party were to kill its opponents to arrive in power, for example.’...

What this means in practice is not certain, but it could clearly be interpreted as seeking military assistance from other groups, should members be experiencing considerable harm, or in the broadest sense to establish the Caliphate. In this way, the party remains committed to its intellectual and political struggle but does not rule out seeking assistance from other groups, including some that will take military action on its behalf ...

The party's interpretation of *jihad* is also somewhat confused at first glance... A member in Kazakhstan explained: 'There are two types of *jihad*: the physical and the spiritual. The physical *jihad* will come after the establishment of the Caliphate. The spiritual is for now' ...

Although the main *jihad* is not expected until the Caliphate is introduced, this does not mean that Muslims should not fight defensive wars. Thus, Muslims, Hizb ut-Tahrir members included, are enjoined to fight against an invader if attacked ...

There is much loose rhetoric about *jihad* in party leaflets, which does not always underline these distinctions. And there is clearly some potential for a defensive *jihad* to be interpreted in a very broad fashion. But the main thrust of Hizb ut-Tahrir thinking seems to have remained intact: the *jihad* will come when the Caliphate is established...

Historically, the party's record provides no evidence of it being involved in terrorist activity against civilians, or in military actions against U.S. or Western interests. But there is good evidence of its involvement in a series of failed coups and attempts to overthrow governments in the Middle East. Some of the evidence for these incidents is disputed, but it seems clear that Hizb ut-Tahrir was involved in an attempted coup d'état in Jordan on several occasions in the late 1960s and early 1970s. It was also accused of involvement in an attack on the military academy in Egypt in 1974, interpreted by the government as preparation for a coup. Far from denying involvement, party representatives admit that, 'It is no secret that Hizb ut-Tahrir has been involved in a number of failed coup attempts in the Middle East' ...

Thus while it seems clear that ideologically and practically Hizb ut-Tahrir cannot be classified as a terrorist group, it is willing to persuade militaries to overthrow their governments, and in certain cases be involved in such military coups itself. Should it ever come to power, its willingness to use violence as an Islamic state would be more certain: it consistently emphasises that the duty of the Islamic state is to carry out military campaigns to free Muslim lands from the rule of 'unbelievers' and to wage war against Israel..."

The report goes on to describe the position of Hizb ut-Tahrir in western Europe:

"According to the Hizb ut-Tahrir leader in Sweden, Fadi Abdullatif, the party is growing by actively recruiting second-generation Muslim immigrants... The party's popularity among Muslims in the West has continued to grow, providing it a strong organisational, and possibly financial, base.

Germany became the first Western state to ban Hizb ut-Tahrir in January 2003, citing its anti-Semitic and anti-Israeli propaganda. However, the German authorities did not provide any evidence of links between it and terrorist groups. German security forces carried out further raids on known activists, now working illegally, in May 2003.

In Denmark the party has also garnered support among immigrants. In March 2003 its leader, Fadi Abdullatif, was convicted of breaking anti-racism laws, after he handed out leaflets allegedly calling for Jews to be killed. The group claims the quotes were taken out of context. The government has apparently considered banning the party, which according to media reports has about 100 members.

In the UK Hizb ut-Tahrir remains very active, particularly in London and in towns with major Muslim populations such as Birmingham, Bradford and Sheffield. It has been notably successful in recruiting students, although it has been banned from many university campuses, because of its anti-Semitism, alleged threatening behaviour towards students of other faiths, and public objections to homosexuality ...”

Human Rights Watch notes in its 2004 report “Creating Enemies of the State. Religious Persecution in Uzbekistan”:

“Hizb ut-Tahrir renounces violence as a means to achieve reestablishment of the Caliphate. However, it does not reject the use of violence during armed conflicts already under way and in which the group regards Muslims as struggling against oppressors, such as Palestinian violence against Israeli occupation. Its literature denounces secularism and Western-style democracy. Its anti-Semitic and anti-Israel statements have led the government of Germany to ban it... Some in the diplomatic community, in particular the U.S. government, consider Hizb ut-Tahrir to be a political organization and therefore argue that imprisoned Hizb ut-Tahrir members are not victims of religious persecution. But religion and politics are inseparable in Hizb ut-Tahrir’s ideology and activities ... Even if one accepts that there is a political component to Hizb ut-Tahrir’s ideology, methods, and goals, this does not vitiate the right of that group’s members to be protected from religion-based persecution ...

Hizb ut-Tahrir’s designation as a nonviolent organization has been contested. Hizb ut-Tahrir literature does not renounce violence in armed struggles already under way – in Israel and the Occupied Territories, Chechnya, and Kashmir – in which it views Muslims as the victims of persecution. But Hizb ut-Tahrir members have consistently rejected the use of violence to achieve the aim of reestablishing the Caliphate, which they believe will only be legitimate if created the same way they believe the Prophet Muhammad created the original Caliphate, and which can occur only as a result of gradual ‘awakening’ among Muslims...”

## **B. Hizb ut-Tahrir in Russia**

On 14 February 2003 the Supreme Court of Russia, sitting in a single judge formation composed of judge R., on the Russian Prosecutor General’s request, found fifteen organisations, including Hizb ut-Tahrir, to be terrorist ones and banned their activity within the territory of Russia. It held a hearing in camera with the participation of a representative of the Russian Prosecutor General, but in the absence of the organisations’ representatives. The part concerning Hizb ut-Tahrir reads in its entirety as follows:

“The Party of Islamic Liberation (‘Hizb ut-Tahrir al-Islami’) is an organisation that pursues the aims of overthrowing non-Islamic governments and of establishing Islamic rule on a worldwide scale by reviving a ‘Worldwide Islamic Caliphate’, in the first place in the regions with predominantly Muslim population, including Russia and other members of the Commonwealth of Independent States. Its main methods and activities include Islamic militant propaganda, combined with intolerance towards other religions, active recruitment of followers, activities aimed at promoting schism and disunity in society (primarily proselytism with massive financial support). It is banned in several Middle East and Commonwealth of Independent States countries (Uzbekistan).”

According to the applicants, the judgment was not officially published, therefore none of the organisations found to be terrorist by that judgment were unable to appeal against it before it became final.

In April 2003 a lawyer of one of the organisations banned by the judgment of 14 February 2003 found out about that judgment and lodged with the Supreme Court of Russia an application for extension of the time-

limit for filing an appeal against it. He pointed out, in particular, that he was unaware of the judgment in question given that it was not made publicly available.

On 18 June 2003 the Supreme Court of Russia rejected that lawyer's application stating that the reasons he advanced in justification of his failure to file an appeal in time were invalid, given that the information on the judgment of 14 February 2003 was imparted by the mass-media, including news agencies ITAR-TASS, Interfax, the "Rossiyskaya Gazeta" newspaper, and the Internet news portal "Utro".

The list of the organisations banned by the judgment of 14 February 2003 was not officially published until 14 July 2006.

### **C. The applicants' background**

The applicants, who are all acquainted, are practicing Muslims. The first and fourth applicants are cousins.

According to the first applicant, in late 2004 and early 2005 he went to Kazan in the Republic of Tatarstan, where he met a certain Mr A. On several occasions they discussed various aspects of the Islamic religion. Mr A. furnished the first applicant with several books and magazines, including a book entitled "System of Islam" and a magazine entitled "Al Waie", which contained the information about Hizb ut-Tahrir. In the first applicant's submission, he became interested in the ideas of Hizb ut-Tahrir and discussed them with Mr A.

According to the first applicant, Mr A. never informed him that Hizb ut-Tahrir's activities were illegal in Russia, or that the literature they discussed was of an extremist nature. He merely warned the first applicant not to show the literature to anyone, stating that people were usually biased as regards Islamic literature. Mr A. never invited the first applicant to join Hizb ut-Tahrir.

In the first applicant's submission, he discussed some of the books provided by Mr A. with the second, third and fourth applicants and a number of other people.

In October 2006 the first applicant met with Mr A. again, the latter having provided him with a new portion of magazines and some materials of a file of a criminal investigation into Hizb ut-Tahrir's activities.

### **D. Criminal proceedings against the applicants**

#### *1. Preliminary investigation*

On 6 December 2006 the Russian Federal Security Service instituted criminal proceedings on suspicion of the first and third applicants' involvement in the activity of a terrorist organisation and incitement of hatred and humiliation of dignity on ethnic and religious grounds.

In the context of those proceedings, on 7 December 2006 searches were carried out in the flats of the applicants and several other persons. As a result of the searches, certain Hizb ut-Tahrir literature was found among the applicants' belongings. On the third and fifth applicants' computers, several

files downloaded from Internet which contained information on Islam and Hizb ut-Tahrir were also found.

On the same day the first and third applicants as well as some other persons were interviewed. One of those latter, in the applicants' submission, was forced to make statements incriminating the first and third applicants.

On 16 January 2007 the first and third applicants were summoned to appear to the Cheboksary prosecutor's office, where they were identified by two witnesses, Mr D. and Mr E., as persons who had distributed leaflets of Hizb ut-Tahrir near a mosque.

On the same date a separate set of criminal proceedings was brought against the second, fourth and fifth applicants on suspicion of their involvement in the activity of a terrorist organisation and incitement of hatred and humiliation of dignity on ethnic and religious grounds.

On 17 January 2007 both sets of the criminal proceedings were joined.

On the same day the first and third applicants were arrested and placed in detention.

On 18 January 2007 the first and third applicants were interviewed as suspects. They denied their membership of Hizb ut-Tahrir and insisted that witness statements to the effect that they had distributed the Hizb ut-Tahrir leaflets were false.

On 25 January 2007 the first and third applicants were formally charged with being members of and actively participating in the activities of Hizb ut-Tahrir, a banned religious extremist organisation.

On 28 February 2007 the second, fourth and fifth applicants were arrested and placed in detention on remand.

On 1 March 2007 the second applicant was interviewed as a suspect. According to him, he confirmed that he was aware of the fact that Hizb ut-Tahrir's activities were prohibited in Russia. When he was asked whether he was a member of that organisation, the second applicant availed of his right to remain silent secured by Article 51 of the Russian Constitution.

According to the applicants, throughout the preliminary investigation the authorities exercised pressure on them and several witnesses in an attempt to obtain necessary oral evidence.

## *2. Proceedings before the trial court*

At some point the applicants' case was sent for trial before the Leninskiy District Court of Cheboksary ("the District Court"). The first hearing was scheduled for 17 July 2007. The applicants were tried on charges of having committed an offence punishable under Articles 282 § 2 (c) (incitement of hatred or enmity and humiliation of human dignity committed by an organised group) and 282.2 (2) (participation in activity of an organisation banned by the final court decision on account of its extremist activity) of the Russian Criminal Code.

### **(a) The applicants' statements**

During the trial the applicants pleaded not guilty. They denied being members of Hizb ut-Tahrir and disseminating its leaflets. They argued that the witnesses had slandered them and that physical and psychological pressure had been exercised by the investigating authorities on some of

those witnesses. The applicants insisted that they had only kept and studied religious literature, sharing some or other views on Islam.

**(b) Witness statements**

The District Court called and examined more than thirty witnesses both on behalf of the prosecution and defence. A number of the witnesses confirmed that the applicants had talked to them about Hizb ut-Tahrir, explaining its aims and methods of achieving those aims and supplied them with Hizb ut-Tahrir literature. The witnesses also stated such discussions had been carried out during regular secret meetings and that the applicants had warned them that Hizb ut-Tahrir was banned in Russia and that they should not show anyone the literature provided to them by the applicants.

In particular, witness E. confirmed at the trial that the first and third applicants had given him Hizb ut-Tahrir leaflets near a mosque. Witness D. gave similar testimony with regard to the first applicant. Mr D. also stated that he had talked to the first applicant, who had told him that it was necessary to create Caliphate which would solve all problems of the Muslims. According to Mr D., the other applicants had expressed similar ideas. Witness under a nickname “Makarov”, who was cross-examined at the hearing remaining unseen by the applicants and their lawyers, testified that during one of his visits to a mosque, the second applicant had given him Hizb ut-Tahrir leaflets, and that he had seen the fourth and fifth applicants distributing leaflets among other believers. Witness under a nickname “Medvedev”, who was cross-examined whilst remaining unseen by the applicants and their lawyers, made similar submissions with regard to the second applicant. The second applicant’s lawyer then requested the trial court to order that the identity of witnesses “Makarov” and “Medvedev” be disclosed, as he doubted the accuracy of their statements. The District Court rejected that request stating that the lawyer had not advanced any convincing arguments for disclosure of those witnesses’ identity and that it had no grounds to question the accuracy of their statements made at the hearing.

Witness P. stated that all the applicants had said to him that they were members of Hizb ut-Tahrir. The third applicant had informed him that the organisation was banned. The first applicant had provided him with Hizb ut-Tahrir literature and leaflets and warned him that those were prohibited. The first and third applicants had also told Mr P. that it was necessary to create the Caliphate and that they should prepare the people in Russia for that, persuade them to adopt the Islamic ideology so that Russia could become a part of the Caliphate. When the people were ready, it would be necessary to sow disunity between them and the State, and to lead *jihad* against those who would not accept the Caliphate.

Witness K. stated at the hearing that the first and third applicants had provided him with Hizb ut-Tahrir literature and leaflets and invited him to try to persuade others to share ideas of Hizb ut-Tahrir. After the institution of criminal proceedings and the first interrogations, the first and third applicants came to Mr K. and destroyed all literature they had previously given to him. Following their arrest, the fourth applicant had met with Mr K. and insisted that Mr K. should continue trying to persuade others to share ideas of Hizb ut-Tahrir. The court also read out Mr K.’s statements

which had been made during the preliminary investigation and which he confirmed at the trial. As followed from those statements, the first and third applicants had confirmed that they were members of Hizb ut-Tahrir and had said to him that the main goal of their organisation was to create an Islamic State – the Caliphate – in particular, by spreading among people ideas of Hizb ut-Tahrir, by ensuring that as many public offices as possible be occupied by the organisation’s members and, once this latter aim was achieved, by destroying the Constitution and adopting a life on the basis of Koran and Sharia laws.

Witnesses F. stated at the trial that he was acquainted with the first, third, fourth and fifth applicants and that he had seen the second applicant on several occasions. According to Mr F., he had talked about Islam with all the applicants in an attempt to obtain more information about this religion. The applicants had not given him any literature; however, somebody put into his mailbox a book entitled “System of Islam” and a magazine entitled “Al Waie”. Mr F. then discussed that literature with the applicants. He also saw the same book and magazine in a cover from some other books in the third applicant’s flat. Mr F. also testified that the first, third, fourth and fifth applicants had said to him that they were aware of Hizb ut-Tahrir and knew that the organisation was persecuted in Russia.

Mr F. further repudiated his statements incriminating the applicants given at the pre-trial stage, arguing that those had been made under duress. The District Court then read out those statements. According to Mr F.’s pre-trial statements, the fifth applicant had given him Hizb ut-Tahrir literature. He also submitted that he had met the applicants on several occasions and discussed with them the ideas of Hizb ut-Tahrir.

Witness O. repudiated his pre-trial statements incriminating the applicants, stating that those had been made under duress. The District Court then read out those statements. According to Mr O.’s pre-trial statements, the first and third applicants had discussed with him ideas of Hizb ut-Tahrir, had informed him that in Russia the organisation was banned as a terrorist one, although it had never committed any terrorist acts. Mr O. had also seen Hizb ut-Tahrir literature at the first and third applicants’ flats. After the first and third applicants’ arrest, Mr O. met with the fourth applicant who also talked to him about Hizb ut-Tahrir. They had read out extracts from the “System of Islam” book and had then discussed them.

A number of witnesses, the applicants’ relatives, testified that the literature found during the searches at the applicants’ flats belonged to the applicants.

A number of witnesses called on the applicants’ behalf gave them positive references, stating that they had never seen the applicants distributing leaflets nor had heard them leading any religious or extremist conversations.

### (c) Expert reports

The District Court also had regard to a number of reports on expert examinations performed by specialists in political sciences in respect of the literature found as a result of searches at the applicants’ flats. The

examinations were carried out at various times in the period from 2 April to 8 May 2007 and resulted in very similar reports.

In particular, the reports stated that the major part of the materials found at the applicants' flats, those printed out from computer systems units being amongst their number, contained information on Hizb ut-Tahrir, including its history, doctrine, structural particularities and spheres of activities, and described in detail the methods of active recruitment of followers to that organisation. The experts also stated that the materials in question contained aggressive Islamist propaganda combined with intolerance towards other religions and declared the organisation's aim to sow discord in the society.

According to the reports, the found materials were aimed at inciting hatred and enmity, humiliation of the dignity of a person, people, country, a group of countries on the grounds of ethnicity, religion, ethno-religious and political-ideological self-identification and origin; they called the Muslims to violence and physical extermination of people, to disobedience to the laws of the existing States, including Russia, and to breach of territorial integrity of Russia.

Lastly, the reports stated that those materials contained no political programs of any other parties or organisations.

During the hearing the third applicant requested the District Court to order another expert examination of the found materials to be carried out by specialists in oriental studies and Islam. The prosecuting party objected stating that, when studying the reports on the expert examinations carried out at the pre-trial stage, neither the applicants nor their lawyers had challenged the expert conclusions or requested additional expert examinations. The District Court then rejected the third applicant's request.

#### (d) Other evidence

The District Court also examined reports on the applicants' identification, as persons who had distributed Hizb ut-Tahrir's leaflets, by Mr E. as regards the first and third applicants, by Mr D. as regards the first applicant, by Mr "Makarov" as regards the second, fourth and fifth applicants and by Mr "Medvedev" as regards the second applicant.

In addition, the trial court had regard to reports on the searches carried out at the applicants' homes and reports on inspection of objects, in particular, documents and computer system units, seized as a result of the searches. According to those latter reports, an access to a number of computer files was secured by passwords.

The District Court then examined audio and video records of the meetings of the applicants among themselves and with a number of witnesses in their case, during which they had discussed questions related to Hizb ut-Tahrir's activities.

### *3. Judgment of 19 September 2007*

In a judgment of 19 September 2007 the District Court, having assessed the evidence in its possession, found it established that the applicants had committed criminal offences imputed to them.

The court rejected the applicants' arguments concerning their innocence as untenable, stating that all pieces of evidence submitted by the prosecution were admissible, relevant and coherent, that they supplemented each other

and proved the applicants' guilt. The court further stated that it had no grounds to doubt the truthfulness of the pre-trial statements made by witnesses F. and O. as those statements were corroborated by the other evidence in the case. Moreover, their allegations concerning the alleged use by the investigating authorities of illegal methods in their respect had been investigated and rejected as unsubstantiated. The court also noted that it had no grounds to question the conclusions of the expert examinations, as they had been carried out by highly competent specialists who had thoroughly studied the materials in question and reached founded and reasoned conclusions. The District Court further stated that it had no doubts that it was the applicants who were represented at the audio and video records of the meeting which they had held among themselves and some of the witnesses. The court stated that, indeed, one report on a phonetic expert examination in respect of two video records only stated that the voices might belong, rather than definitely stating that the voices did belong, to the applicants; however, the court had had an opportunity to examine all the other records and to satisfy itself that they showed the applicants. The records were of an uninterrupted nature and reflected free discussions of the applicants among themselves and with some of the witnesses, the latter having confirmed that such discussions had taken place.

The District Court stated that in its judgment of 14 February 2003 the Supreme Court of Russia had found the Party of Islamic Liberation ('Hizb ut-Tahrir al-Islami') to be a terrorist organisation and had banned its activities within the territory of Russia. Being aware thereof and acting deliberately, the applicants had joined that organisation and had become its active members, implementing its goals in the Chuvash Republic. In particular, as early as in 2004 the applicants had created an organised group with an intention to commit criminal offences relating to their participation in an extremist religious organisation and directed against the fundamental aspects of Russia's constitutional system and its security.

The trial court found it established that each of the applicants had kept at home and studied literature relating to Hizb ut-Tahrir, and that in the period of 2004-2006 they had met with each other and the witnesses in the case in order to study that literature and to promote that extremist organisation's ideas. Thereby, in the trial court's opinion, the applicants had imposed those extremist ideas on the witnesses and instigated them to search for new followers.

The District Court also observed that the applicants had complied with the discipline and organised the meetings in a regular and strictly confidential manner; they had advised the witnesses on rules to be followed in case their activities were disclosed; they had collected money to support relatives of convicted members of Hizb ut-Tahrir. According to the court, from the witness statements and video records it was clear that the applicants had not only openly expressed their support to the Hizb ut-Tahrir's ideas but also confirmed their membership of that organisation. They had also stated that they had been aware of the ban imposed on the organisation. In view of these findings, the court came to a conclusion that the applicants had not only shared the ideas of Hizb ut-Tahrir, which they had confirmed, but had also actively participated in the activities of that banned organisation by keeping and studying its literature among

themselves and with the others and by public dissemination of that extremist organisation's leaflets. The trial court further confirmed that those actions constituted an offence punishable under Article 282.2 (2) of the Russian Criminal Code.

The court went on to note that the applicants had also distributed leaflets of that organisation, including those which contents had aimed at inciting hatred and enmity, humiliation of the dignity or a person and a group of persons on the grounds of their attitude towards religion. The court noted that the applicants had distributed the leaflets near or inside mosques, that is at places with high concentration of people, which confirmed their intention to ensure that the contents of the leaflet become known to indefinite number of persons. It held that the distribution by the applicants, who had acted as an organised group, of Hizb ut-Tahrir's leaflets had constituted actions aimed at inciting hatred and enmity and humiliating the dignity of a person or a group of persons on the grounds of their attitude towards religion committed publicly by an organised group, which was an offence punishable under Articles 282 § 2 (c) of the Russian Criminal Code.

As regards the punishment to be imposed on the applicants, the District Court had regard to the fact that the offences in question had been being committed during a prolonged period of time and had been directed against the fundamental aspects of Russia's constitutional system and its security. In the trial court's opinion, in view of the fact that Russia was a multiethnic and multiconfessional State, criminal offences of that kind posed an increased danger to the people of Russia, as a whole, and to the population of the Chuvash Republic, in particular, as they threatened to a tolerant attitude toward religion – a principle which was very important for the State's security. According to the court, such offences were aimed at sowing discord not only among representatives of different faiths but also among adherents of the same religion with a view to destabilizing the situation inside the State, increasing tension in the society, provoking dissatisfaction by the existing constitutional system for its subsequent violent overthrow. The court further reiterated that all the applicants had actively participated in the offences imputed to them, and that therefore their punishment could not be ensured other than a real sentence of imprisonment being imposed on each of them.

The court thus sentenced the first applicant to four years and four months' imprisonment, the second applicant to four years six months' imprisonment, the third applicant to four years five months' imprisonment, the fourth applicant to four years three months' imprisonment and the fifth applicant to four years four months' imprisonment.

#### *4. Appeal proceedings*

On 28 December 2007 the Supreme Court of the Chuvash Republic ("the Republican Supreme Court") upheld the first-instance judgment on appeal.

It confirmed that the trial court's findings were well-reasoned and based on the adduced evidence. It also rejected the applicants' lawyer's complaint that the identity of witnesses nicknamed "Makarov" and "Medvedev" had not been disclosed at the trial hearing and that during their cross-examination they had remained unseen by the other participants to the criminal proceedings. The appellate court stated that such an arrangement

had been necessary to secure those two witnesses' safety and that the trial court had provided detailed reasons for its decision to that end.

The Republican Supreme Court also stated that the expert examinations of the literature found at the applicants' domicile had been carried out by competent experts who had thoroughly examined the adduced materials. In such circumstances, the appellate court stated that it had no reasons to doubt the expert conclusions and that there had been no need to carry out any additional expert examinations, as was suggested by the applicants. The Republican Supreme Court thus rejected the applicants' complaint concerning the trial court's refusal to order any such expert examination upon their request.

## COMPLAINTS

The applicants complain under Articles 9, 10 and 11 of the Convention that their criminal conviction constitutes a violation of their right to freedom of religion, freedom of expression and freedom of association and/or assembly. They allege, in particular, that they were convicted on the basis of a judgment of the Supreme Court of Russia which had not been duly published and did not therefore meet the Convention's "quality of law" requirements. The applicants also insist that their conviction cannot be said to have been necessary in democratic society as it was primarily based on the domestic courts' finding that they were members of Hizb ut-Tahrir, the domestic courts having failed to assess duly the contents of the information dissemination of which was imputed to them. They also complain that the severe penalty imposed on them was clearly disproportionate to any legitimate aim pursued.

The applicants further allege that the ban of the activities of Hizb ut-Tahrir in Russia cannot be regarded as a measure necessary in a democratic society, given that its activities are legal in the vast majority of the European democracies and that it never advocates the use of violence for achievement of its goals. Therefore, according to the applicants, the ban imposed on the activities of that organisation also violates their right to freedom of assembly under Article 11 of the Convention.

The applicants complain under Article 14, taken in conjunction with Articles 9 and 10 of the Convention, that they suffer different treatment as Muslims as compared with non-Muslims. They allege, in particular, that because of their religious beliefs they were insulted by the investigating authorities at the investigation stage and also suffer from harassment from the authorities in the penitentiary institution where they are serving their sentence of imprisonment.

Lastly, the applicants complain under Article 6 § 1 of the Convention about various irregularities in the criminal proceedings against them. In particular, they allege that a principle of equality of arms was violated because the trial court rejected their motion to order an alternative expert examination of the literature found at their domicile. They further complain under this head that the trial court failed to give reasons to explain why it accepted some pieces of evidence while rejected the other pieces of

evidence. The applicants also insist that the overall fairness of the proceedings was undermined because of the intimidation of a number of witnesses during the preliminary investigation; those witnesses, in the applicants' submission made very important statements whereas the domestic courts failed to give them due consideration.

The applicants also complain under Article 6 § 3 (d) that the charges against them were based on statements of witnesses whose identity remained undisclosed to them, which, according to them, made it impossible for them to prepare adequately their defence or to challenge evidence adduced by the prosecution.

### **QUESTIONS TO THE PARTIES**

1. Were the acts of the applicants in the present case aimed at the destruction or limitation of rights and freedoms provided for in the Convention, within the meaning of Article 17? If so, may they claim to enjoy the protection of Articles 9, 10 and 11 of the Convention (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 97 to 99 and 117 to 125, ECHR 2003-II; *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004; and *Norwood v. the United Kingdom* (dec.), no. 23131/03, 16 November 2004, with further references)?

2. Did the applicants' conviction constitute:

(a) an interference with their right to freedom of religion under Article 9 § 1 of the Convention?

(b) an interference with their right to freedom of expression under Article 10 § 1 of the Convention?

3. Can the applicants claim to be "victims", within the meaning of Article 34 of the Convention, in relation to their complaint about a breach of their right to freedom of assembly and/or association under Article 11 § 1 of the Convention, as a result of:

(a) their conviction, and

(b) the ban imposed on Hizb ut-Tahrir by the Supreme Court of Russia in its judgment of 14 February 2003?

4. Regard being had to the applicants' allegation that the judgment of the Supreme Court of Russia of 14 February 2003 has never been officially published and to the fact that in its judgment of 19 September 2007 the Leninskiy District Court of Cheboksary directly referred to the aforementioned judgment, was the applicants' complaint about a violation of their right to freedom of assembly and/or association under Article 11 § 1

of the Convention lodged within the six-month time-limit, as required by Article 35 § 1 of the Convention?

5. If there was an interference with the applicants' right freedom of religion under Article 9 § 1, and/or their right to freedom of expression under Article 10 § 1, and/or their right to freedom of assembly and/or association under Article 11 § 1 of the Convention, and if they may claim to be "victims" of a violation of their right to freedom of assembly and/or association under Article 11 § 1 of the Convention, as a result of their conviction, was that interference justified within the meaning of paragraph 2 of respectively each of the aforementioned Articles? In particular,

(a) Was it prescribed by law? In particular, was the judgment of the Supreme Court of Russia of 14 February 2003 officially published at any moment of the period during which the applicants committed their acts of which they were convicted, and/or at the moment when the applicants were convicted? If it was published, the Government are invited to produce a copy of the *official* publication of the full text or, at least, the operative part of the judgment. If it was not published, can the law on the basis of which the applicants were convicted be considered sufficiently accessible and foreseeable? In particular, were the applicants at any moment of the aforementioned period able to foresee that the membership of Hizb ut-Tahrir was an offence punishable under Article 282.2 of the Russian Criminal Code?

(b) Did the measure complained of pursue a legitimate aim, and what was that aim?

(c) Was the measure complained of necessary in a democratic society? In particular, did the domestic courts duly assess the contents of the literature (leaflets) public distribution of which was found by the domestic courts to constitute an offence punishable under Article 282 § 2 (c) of the Russian Criminal Code? In particular, did the domestic courts examine the contents of that literature and make a legal qualification of the applicants' act, or did they merely refer to findings made in expert reports concerning the contents of that literature? If the domestic courts merely referred to the findings of the expert reports, can they be said to have provided in their decisions "relevant and sufficient" reasons to justify the measure complained of?

(d) Regard being had to the sanction imposed on the applicants, was the measure complained of proportionate to the legitimate aim pursued?

6. Was Hizb ut-Tahrir officially registered in Russia prior to its prohibition? The Government are requested to provide relevant documents or details in this respect.

7. In case of positive answers to questions 3 (b) and 4, was there an interference with the applicants' right to freedom of assembly and/or association under Article 11 § 1 of the Convention, as a result of the ban

imposed on Hizb ut-Tahrir in Russia? If so, was that interference justified within the meaning of Article 11 § 2 of the Convention? In particular,

(a) Was it prescribed by law? In particular, what was the legal basis for that interference? Did it meet the Convention “quality-of-law” requirement?

(b) Did it pursue a legitimate aim?

(c) Was it necessary in a democratic society and proportionate to the aim pursued?

8. Were the criminal proceedings against the applicants fair within the meaning of Article 6 § 1 of the Convention? In particular, were the applicants right secured by Article 6 § 1 of the Convention respected in so far as the trial court refused to order an additional expert examination of the texts found at their flats? Also, were the second, fourth and fifth applicants rights secured by Article 6 § 1 of the Convention, including the principle of equality of arms, and by Article 6 § 3 (d) of the Convention respected in so far as the identity of witnesses “Makarov” and “Medvedev” remained undisclosed at the trial and those witnesses were cross-examined whilst remaining unseen by the aforementioned applicants?

**APPENDIX**

1. Petr Nikolayevich VASILYEV, born in 1981, lives in Cheboksary;
2. Rustem Firkatovich SALIMZYANOV, born in 1970, lives in Kanash;
3. Sergey Anatolyevich BESPALOV, born in 1985, lives in Cheboksary;
4. Mikhail Alekseyevich ANDREYEV, born in 1979, lives in Kanash;
5. Amir Ferkislamovich VALIULLOV, born in 1974, lives in Kanash.