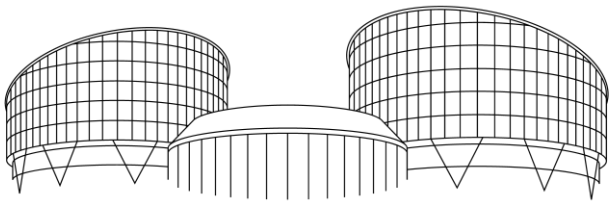

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KASYMAKHUNOV AND SAYBATALOV v. RUSSIA

(Applications nos. 26261/05 and 26377/06)

JUDGMENT

STRASBOURG

14 March 2013

FINAL

14/06/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kasymakhunov and Saybatalov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 February 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 26261/05 and 26377/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Uzbek national, Mr Yusup Salimakhunovich Kasymakhunov ("the first applicant"), and a Russian national, Mr Marat Temerbulatovich Saybatalov ("the second applicant"), on 11 July 2005 and 10 June 2006 respectively.

2. The first applicant was represented by Mr K. Koroteyev, Ms D. Vedernikova, Ms N. Kravchuk, Mr P. Leach and Mr W. Bowring, lawyers with the Human Rights Centre "Memorial", based in Moscow. The second applicant was represented by Mr R. Mukhametov, a lawyer practising in Tyumen. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been convicted on the basis of legal provisions that were neither accessible nor foreseeable in their application. They also complained of a violation of their freedoms of religion, expression and association and of discrimination on account of their religious beliefs.

4. On 11 June 2009 and 17 June 2010 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1964 and 1972 respectively. The first applicant's whereabouts are unknown. The second applicant lives in Tyumen.

6. The applicants are members of Hizb ut-Tahrir al-Islami.

7. Hizb ut-Tahrir al-Islami (The Party of Islamic Liberation – hereinafter "Hizb ut-Tahrir") is an international Islamic organisation with branches in many parts of the world, including the Middle East and Europe. It advocates the overthrow of governments and their replacement by an Islamic State in the form of a recreated Caliphate. Hizb ut-Tahrir first emerged among Palestinians in Jordan in the early 1950s. It 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.

A. Ban on Hizb ut-Tahrir in Russia

8. On 14 February 2003 the Supreme Court of the Russian Federation found fifteen organisations, including Hizb ut-Tahrir, to be terrorist organisations and prohibited their activity in the territory of Russia. It held a hearing in camera which was attended by a representative of the Prosecutor General's office, but not 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 an international scale by reviving a 'Worldwide Islamic Caliphate', in the first place in the regions with a 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 supporters, and 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)."

9. On 18 June 2003 the Supreme Court rejected as out of time the appeal submitted by one of the banned organisations. It found it established, on the basis of the evidence submitted by the Prosecutor General's office, that the information about the decision of 14 February 2003 had been published in the mass media in February 2003. The fact that the organisation had not

learned about that decision until 28 April 2003 was irrelevant. There had therefore been no reason to extend the time-limit for appealing.

10. On 28 July 2006 a list of organisations declared to be terrorist organisations by the Russian courts was for the first time published in the official periodical *Rossiyskaya Gazeta*. The list included, among others, the organisations declared to be terrorist organisations by the Supreme Court's decision of 14 February 2003, such as Hizb ut-Tahrir.

B. Criminal proceedings against the first applicant

11. On 13 February 2004 the first applicant was arrested. On 25 March 2004 criminal proceedings were instituted against him and his partner Ms D. They were accused of being members of Hizb ut-Tahrir and were charged with aiding and abetting terrorism, founding a criminal organisation and using forged documents, offences under Article 205.1 § 1, Article 210 § 1 and Article 327 § 3 of the Criminal Code.

12. When questioned by the investigator, the first applicant admitted to being a member of Hizb ut-Tahrir and living in Russia under a false name and with forged identity documents. According to him, Hizb ut-Tahrir was a political organisation with a strict hierarchical structure and the aim of establishing the Caliphate through "velvet revolutions", first in Muslim lands and then in other traditionally non-Muslim countries. It did not resort to, or call for, violence. Its members viewed Islam as a political ideology rather than a religious belief. The first applicant's main activity consisted in talking to people in an attempt to persuade them to join Hizb ut-Tahrir. He distributed Hizb ut-Tahrir's literature and explained its ideology. He had succeeded in recruiting five or six people who formed the Moscow section of Hizb ut-Tahrir under his leadership. He gave instructions to the members of his section and was also responsible for maintaining contacts with other local sections of Hizb ut-Tahrir. He knew that the organisation had been banned in Russia and therefore the members of his section had pseudonyms.

13. His partner Ms D. gave similar evidence. She affirmed that Hizb ut-Tahrir was not a terrorist organisation.

14. The investigator also obtained statements from several witnesses. The witnesses stated that the first applicant and Ms D. had attempted to persuade them to become members of Hizb ut-Tahrir and had supplied them with Hizb ut-Tahrir's literature. They gave the leaflets and brochures received from the first applicant to the investigator. Some of the witnesses testified that the first applicant had urged them to fight the unfaithful, including with weapons, and they had the impression that he had called for assistance to Chechen guerrillas. One witness also stated that the first applicant had advocated the establishment of sharia on the territory of Russia.

15. The first applicant's flat was searched and guidelines on the use of weapons, explosives and poisons were found there.

16. In September 2004 the case was sent for trial before the Moscow City Court.

17. The first applicant pleaded not guilty. He admitted his membership of Hizb ut-Tahrir al-Islami and confirmed his previous description of its activities and ideology. He insisted that it was not a terrorist organisation and that it condemned any use of violence. He repudiated in part his previous statement, stating that it had been given under pressure, and denied any attempts to persuade people to join Hizb ut-Tahrir. He further stated that the guidelines found in his flat had been planted by the police.

18. The first applicant's partner Ms D. denied being a member of Hizb ut-Tahrir and stated that she had not known about its being banned in Russia.

19. The trial court then questioned witnesses called by the prosecution, who confirmed the statements they had given during the investigation.

20. Finally, the trial court examined the leaflets and brochures distributed by the first applicant.

21. On 11 November 2004 the Moscow City Court found the first applicant guilty of aiding and abetting terrorism, founding a criminal organisation and using forged documents (Article 205.1 § 1, Article 210 § 1 and Article 327 § 3 of the Criminal Code). Referring to the witness testimony, the first applicant's statements to the investigator and documentary evidence, the court found it established that the first applicant, being a member of Hizb ut-Tahrir, had founded a local section of that organisation and, in the period from 1999 to February 2004, had recruited new members and distributed the organisation's literature. The court analysed the contents of the leaflets and brochures distributed by the first applicant and found that they proclaimed the superiority of Islam over other religions and political ideologies, such as communism and capitalism, and advocated intolerance towards non-Muslims. They also rejected democratic principles as incompatible with the rules of sharia. They declared war on governments which were not based on Islam and called for their overthrow, including by violent methods. They urged members of Hizb ut-Tahrir to take part in the sacred war (jihad). By stating that jihad was not a defensive war but a struggle to expand the Islamic State, which had to be carried out even if the "unfaithful" did not attack Muslims, the documents in question openly advocated and glorified warfare in the name of Allah. They also stated that such countries as the United States of America, the United Kingdom, France and Russia were enemy States and that war had to be declared against any State that occupied Muslim lands. Citizens of the above enemy States should not be allowed to enter Muslim states and it should be permitted to kill them and take their property if they were not Muslims. Referring to the contents of the above-mentioned leaflets and

brochures, the contents of the guidelines on the use of weapons, explosives and poisons found in the first applicant's flat and the Supreme Court's decision of 14 February 2003, the court concluded that the local section of Hizb ut-Tahrir founded by the first applicant was a terrorist organisation. The court also found it established that the first applicant had known about the Supreme Court's decision of 14 February 2003. His actions had therefore amounted to incitement to participate in the activities of a terrorist organisation, punishable under Article 205.1 of the Criminal Code, and to founding of a criminal organisation, punishable under Article 210 of the Code.

22. The court sentenced the first applicant to eight years' imprisonment.

23. In his submissions on appeal the first applicant stated that he had never called for or resorted to violence. Nor had he been involved in any terrorist activities. His conviction for spreading Islamic ideology had breached his right to freedom of speech and opinion. He also argued that the trial court had incorrectly interpreted the religious terminology contained in Hizb ut-Tahrir's literature. Given that the trial judge did not have sufficient knowledge of religious matters, an expert opinion should have been ordered. Finally, the first applicant submitted that he had had no knowledge of the decision of the Supreme Court banning Hizb ut-Tahrir as that decision had never been officially published.

24. On 13 January 2005 the Supreme Court of the Russian Federation upheld the conviction on appeal.

25. On 2 May 2007 the Udorskiy District Court of the Komy Republic decided to bring the applicant's sentence into conformity with the recent amendments to Article 205.1 of the Criminal Code. It found that incitement to participate in the activities of a terrorist organisation was no longer classified as adding or abetting terrorism in the new version of Article 205.1 (see paragraph 55 below). The court therefore decided to set aside the conviction under Article 205.1 and reduce the first applicant's sentence to seven years and four months' imprisonment. On 3 July 2007 the Supreme Court of the Komy Republic upheld that decision on appeal.

26. On 10 June 2011 the first applicant finished serving his sentence. He is now facing extradition proceedings to Uzbekistan, where criminal proceedings are pending against him in relation to his membership of Hizb ut-Tahrir. On 14 December 2012 he disappeared from Moscow and his current whereabouts are unknown.

C. Criminal proceedings against the second applicant

27. On 18 June 2004 criminal proceedings were instituted against the second applicant and eight other persons by the Tyumen regional prosecutor's office. They were accused of being members of Hizb ut-Tahrir and charged with aiding and abetting terrorism, an offence under

Article 205.1 § 1 of the Criminal Code, and founding and membership of an extremist organisation, an offence under Article 282.2 §§ 1 and 2 of the Criminal Code.

28. When questioned by the investigator, the second applicant admitted to being a member of Hizb ut-Tahrir and, since the beginning of 2003, the leader of its local sections in Tyumen and Tobolsk. Their aim was to establish the Caliphate in the Middle East. He had learned that the organisation had been banned in Russia in the course of his interview with the police in the autumn of 2003. The meetings of the local sections had all been held in secret. He had chaired the meetings, had admitted new members, had distributed Hizb ut-Tahrir's literature and had explained its ideology. He had also been responsible for maintaining contacts with the Moscow section of Hizb ut-Tahrir.

29. His co-defendants gave similar evidence. They confirmed the second applicant's leadership position and his regular contact with other local sections of Hizb ut-Tahrir in Russia. During their regular and secret meetings they had read Hizb ut-Tahrir's literature and discussed its aims, among which had been recruitment of new members and dissemination of Hizb ut-Tahrir's ideology among the population through media publications and distribution of leaflets. The issues they had discussed during the meetings were often political rather than religious. Members of the organisation had to give an oath, pay contributions and obey orders by the leaders. They considered themselves part of the international organisation Hizb ut-Tahrir al-Islami. Some of them stated that they knew that the organisation had been banned in Russia.

30. The investigator also obtained statements from several witnesses. The witnesses stated that the defendants had attempted to persuade them to become members of Hizb ut-Tahrir and had supplied them with the organisation's literature.

31. The defendants' flats were searched and multiple copies of Hizb ut-Tahrir's literature and leaflets were found there. Some of those leaflets criticised the authorities' decision to ban Hizb ut-Tahrir and the ensuing arrests and criminal proceedings against its members. It was also discovered that documents containing Hizb ut-Tahrir's texts and information about its activities were stored on the hard disk of the second applicant's computer and several floppy disks.

32. In June 2005 the case was sent for trial before the Tobolsk Town Court of the Tyumen Region. All defendants, including the second applicant, repudiated their previous statements, stating that they had been given under duress, and pleaded not guilty.

33. They admitted to being followers of Hizb ut-Tahrir's ideology but denied being members of the organisation. They had gathered regularly and openly to read Islamic texts and discuss religious issues. All the texts had been printed out from the Internet and none of them had been banned or

recognised as extremist. They had never planned or participated in any terrorist activities, nor had they incited others to commit terrorist acts. They were opposed to violence and strived to achieve their aim, namely establishment of the Caliphate, through ideological and political struggle.

34. The trial court then questioned witnesses called by the prosecution. Some of them confirmed the evidence they had given during the investigation, while the others repudiated their previous statements.

35. The court also listened to audio recordings and watched video recordings of the defendants' meetings. During the meetings the defendants discussed the ideology and aims of Hizb ut-Tahrir, its structure and the methods employed by it. The second applicant and his assistant had been the principal spokesmen. They had instructed the others that orders should be immediately obeyed and had warned that those who refused to obey would be punished. They had also explained that the local section's main activities were to be proselytism, involvement of new members and establishment of contacts with high-ranking State officials. During one of the meetings the defendants had discussed the possibility of obtaining arms and explosives and committing terrorist acts. During another meeting the second applicant's assistant had stated the following:

> "'I am astonished why you have Jews here, why you have so many of them accumulated?'
>
> 'We have overseers in two towns, I mean our supporters. The criminal world supports us. Hizb supports us. In our town the [criminals] support us.'
>
> 'You should have hate, fury... You should be a wolf, you should attack. You should not be afraid of burying someone in asphalt, when someone is assaulted you should join in, you should make a contribution to violence. You should be like that. Jews are foul people, they act in an underhand way. They will not carry out an attack themselves, they will hire someone. They are sly and rich, they control the town thanks to their money.'"

36. The court further examined the contents of the Internet site maintained by Hizb ut-Tahrir and the literature found in the defendants' flats.

37. Finally, the court examined expert reports submitted by the prosecutor. A panel composed of experts in religious, political and linguistic matters examined the literature found during the search of the defendants' flats and the audio and video recordings. The experts concluded that the documents and recordings contained religious and political propaganda on behalf of Hizb ut-Tahrir. Some of them contained radical fundamentalist statements accepting and advocating the use of violence and armed struggle in the form of jihad. Therefore, there were reasons to consider that Hizb ut-Tahrir's literature was extremist in nature and that its dissemination amounted to pro-terrorism propaganda. The documents under examination advocated the idea that all existing States and governments were illegitimate

as they were not based on Islam and called for their overthrow, including by violent methods, for the universal Islamisation of mankind and for the establishment of a "Worldwide Islamic Caliphate"; in other words, they called for a *coup d'état* and the forcible taking over of the government in all countries. The experts noted that although the documents did not indicate clearly the methods by which the organisation's aims were to be achieved and did not openly call for the commission of terrorist acts, they unambiguously rejected any possibility of the organisation's participation in the democratic political process. It followed, in the experts' opinion, that its aim of taking over governments could only be achieved through the use of violence. The documents also contained ideas promoting the superiority of Muslims over adherents of other religions and consistent calls for confrontation between Islamic fundamentalists and all others. They were capable of creating hostility and disunity in society. Finally, the linguistic experts found that the documents under examination were highly manipulative and capable of influencing the mind and the will of the reader. They employed professional manipulation techniques. Thus, they twisted the meanings of some words, for example interpreting "terrorism" as acts of violence against Muslims only, while the same acts against adherents of other religions were described as sacred war against non-believers (jihad).

38. The trial court questioned one of the experts, who confirmed his findings. He added that Hizb ut-Tahrir was an extremist organisation that was intolerant towards other religions. It called for violence against non-believers, which might be interpreted as incitement to terrorism.

39. The experts called by the defence disputed the above findings. One of the experts, a co-president of the Council of Muftis of Russia, stated to the court that Hizb ut-Tahrir was not a terrorist organisation and was not involved in the commission of any terrorist acts. Its ideology was utopian and unrealistic. Its main activity was Islamic proselytism. According to its texts, the Caliphate was to be established by peaceful methods. Another expert also testified that the members of Hizb ut-Tahrir were not violent and did not present any danger to national security.

40. On 3 October 2005 the Tobolsk Town Court found the second applicant and his co-defendants guilty as charged. Referring to the witness testimony, the defendants' statements to the investigator, the audio and video recordings of the defendants' meetings and the expert opinions, the court found it established that since the beginning of 2003 the defendants had been members of Hizb ut-Tahrir. That organisation had been declared to be a terrorist and extremist organisation and banned by the Supreme Court. Given that the Supreme Court's decision had been duly published, that the second applicant had been informed about its contents in December 2003 in the course of his interview with the police in connection with a similar criminal case and that leaflets criticising that decision and the ensuing arrests and criminal proceedings against members of Hizb ut-Tahrir had

been found in the defendants' flats, the Town Court found it established that the defendants knew about the Supreme Court's decision banning Hizb ut-Tahrir. Despite that fact, they had not stopped their activities as members of Hizb ut-Tahrir and had continued to hold secret meetings, recruit new members and distribute the organisation's literature. The documents distributed by the defendants were extremist as they advocated violence, rejected the rule of law and encouraged hatred towards adherents of other religions. Their actions had therefore amounted to founding and membership of a banned extremist organisation, punishable under Article 282.2 of the Criminal Code, and to incitement to participate in the activities of a terrorist organisation, punishable under Article 205.1 of the Code.

41. The court sentenced the second applicant to five years and six months' imprisonment for the offence under Article 205.1 and to two years' imprisonment for the offence under Article 282.2. The aggregate sentence was fixed at six years' imprisonment.

42. In his submissions on appeal the second applicant stated that he had never committed any terrorist acts or been involved in any terrorist activities. He and his co-defendants had gathered to read Islamic literature and to discuss religious issues. His conviction had therefore violated his rights under Articles 9, 10 and 11 of the Convention.

43. On 12 January 2006 the Tyumen Regional Court upheld the conviction on appeal.

D. Reports on Hizb ut-Tahrir

44. Information on the nature and activities of Hizb ut-Tahrir is scarce and contradictory. The most comprehensive report 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 *kufr* [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 ..."

45. 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 ..."

46. 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 ..."

47. Another report on Hizb ut-Tahrir's activities, entitled "Whether Hizb ut-Tahrir is an extremist organisation?", was published on 20 October 2005 by SOVA Centre for Information and Analysis, a Russian non-governmental organisation. The report states, in particular, that following the Supreme Court's decision of 14 February 2003 banning Hizb ut-Tahrir, many of its members were charged with aiding and abetting terrorism, membership of a criminal organisation, membership of an extremist organisation or unlawful possession of arms. The first applicant was the first to be convicted at final instance. Many other convictions followed thereafter.

48. The report further states that the analysis of Hizb ut-Tahrir's literature reveals that that organisation openly and unequivocally rejects democratic principles and political freedoms, such as freedom of religion and freedom of thought, declaring that they are contrary to Islam. Moreover, the literature declares that it is justified to use violence to fight democracy. However, it affirms that such violence will be used only after the establishment of the Caliphate and the commencement of jihad. Although there are two commonly accepted meanings of this term in Islam, Hizb ut-Tahrir's literature almost always means holy war when speaking of jihad. Many countries, such as Israel and the United States of America, are declared to be enemy States which should be fought against already, including by violent methods. Hizb ut-Tahrir, however, does not directly call upon its members to participate in that fight. Hizb ut-Tahrir expresses its support to Chechen separatists, even though it condemns terrorist acts against the civil population committed on Russian territory, at the same time denying the possibility of involvement of Chechen separatists in such acts. It should be also noted that Hizb ut-Tahrir does not use the term "terrorism" in its common meaning, considering any violent acts against enemy States, including those that would be normally classified as terrorist acts, to

constitute part of holy war. The report cites Hizb ut-Tahrir's document entitled "The Islamic rule on hijacking aeroplanes", which states that it is justified to hijack civil aeroplanes of enemy States and kill their passengers because the citizens of such States and their property constitute legitimate war targets. That document was deleted from Hizb ut-Tahrir's website several years ago, but no statements disavowing its contents have ever been made by the organisation's leadership, which gives cause to believe that it has been deleted for the purposes of secrecy. As regards the means for the establishment of the Caliphate, Hizb ut-Tahrir's literature is not clear on this point. It is certain that the organisation rejects the possibility of participation in parliamentary elections or any other democratic process in order to come to power. There remains the possibility of a *coup d'état* committed by more or less violent methods. The Caliphate must, however, first be established on traditionally Muslim territories, which do not include Russia. Accordingly, the report concludes that Hizb ut-Tahrir is not planning any *coup d'état* in Russia and its activities there are limited to proselytism.

49. Finally, the report notes that some of Hizb ut-Tahrir's documents, including those that can still be found on the organisation's Russian website, contain anti-Semitic propaganda, glorification of suicide bombers in Israel and calls for violence against Jews and for the destruction of Israel. It thus concludes that Hizb ut-Tahrir is an extremist organisation stirring anti-Semitic hatred and advocating violence. The report recommends, however, that the Supreme Court's decision banning Hizb ut-Tahrir should be annulled and that prosecution of individuals on the mere ground of their membership of that organisation should be stopped. It considers it advisable that only those of the organisation's members who have made statements advocating hatred or violence should face criminal or other proceedings.

50. A report entitled "Hizb ut Tahrir al Islami (Islamic Party of Liberation)", published on 15 April 2007 by the European research project Transnational Terrorism, Security, and the Rule of Law (TTSRL), financed by the European Commission, reads as follows:

> "Hizb ut Tahrir al Islami (Islamic Party of Liberation) presents itself as 'a political party whose ideology is Islam, so politics is its work and Islam is its ideology ...' ... In their own eyes, Hizb ut Tahrir (for short) is a political group and not a priestly one ... It is a trans-national party or movement that claims to try to achieve its political goals without the use of violence and has branches in about forty countries, including both Islamic and Western countries. In the Islamic world they are, for instance, active not only in the Middle East, but also in Bangladesh, Malaysia, Indonesia, and the former Soviet republics in Central Asia. In almost all of these countries, Hizb ut Tahrir is perceived as a threat to the state or even as a terrorist organisation. In the Western world, Hizb ut Tahrir has a presence in, among others, the United Kingdom, the Netherlands, Germany, Australia, the United States and Canada. To these countries, Hizb ut Tahrir presents a particularly difficult challenge since it holds radical Islamist views, but openly only advocates peaceful change. Nonetheless, in a number of EU member states, the party is regarded as one that secretly does support the idea of a violent jihad and/or has been involved in anti-Semitic incidents ...

The organizational structure of Hizb ut Tahrir is rather complex ... The identities of Hizb ut Tahrir's current leader and senior officers have not been mentioned in reliable open sources.

Concrete issues at the level of different national branches are in the hands of national leaders, where the scope and content of the activities within the branches greatly differ. A general distinction can be made between countries in which the party is permitted to operate freely, and countries in which Hizb ut Tahrir is prosecuted. In Uzbekistan, for instance, [Hizb ut Tahrir] is organized in a secretive and hierarchical pyramid structure made up of many five-person cells whose members, after they have completed training averaging about two months, form their own groups or 'halka' - also of five to six members. Other sources speak of three-person cells... In EU member states, the branches of Hizb ut Tahrir are organized like most political parties and have a hierarchical structure with a national leader, local groups and the possibility of membership for anyone who supports the party's ideas. In addition, the European branches of the party also consist of study groups, the above-mentioned 'halkas.'...

From the beginning, Hizb ut Tahrir's leadership decreed that members should not participate in terrorist activities. This message has been continuously reverberated. There are, however, many allegations of links between the party and terrorist organisations. It should be stressed that none of these allegations are backed by concrete evidence ...

There are, nonetheless, possible indirect links between Hizb ut Tahrir and terrorist groups and individuals. In Britain, three men, who in 1995 were arrested and charged with conspiring to assassinate the Israeli ambassador, were reported to have been in possession of Hizb ut Tahrir literature and to have helped organize Hizb ut Tahrir meetings in Manchester ... Another man, Muhammad Babar – who is linked to the seven men currently on trial in London on charges of planning terrorist attacks between January 2003 and April 2004 – has stated that he became a member of Hizb ut Tahrir and another radical group, Al Muhajiroun, while at the university, when he became angered by the Gulf War ... In the above mentioned cases, as well as in most cases, those behind the allegations only point at involvement in Hizb ut Tahrir activities while studying, the possession of Hizb ut Tahrir materials, and other rather indirect relations between suspects of terrorism and the party. More serious are the allegations that connect the party to the other radical group mentioned above, Al-Muhajiroun, established in 1995 as a splinter group that broke off from Hizb ut-Tahrir. According to leader Omar Bakri Muhammad, the two groups initially split because Hizb ut Tahrir was 'too soft' ... His group has been accused of recruiting young Muslims in Britain to fight abroad in places such as Kashmir, Afghanistan and Chechnya ...

Despite the above-mentioned allegations, authorities in the EU have not yet formally accused Hizb ut Tahrir for having links with terrorist organisations. In addition, there are no official reports that members have joined or become involved in the global jihad movement. However, it should be noted that some counties do see the organisation as a possible or potential threat to democracy and the rule of law ...

Unlike more traditional Islamic parties, Hizb ut Tahrir refuses to be involved in local politics, making it impossible for regional leaders to co-opt the group. Although Hizb ut Tahrir describes itself as a political party, it does not want to participate in elections or want to be part of coalition governments ... The process towards the

utopian Islamic Caliphate is viewed more as a social or intellectual process rather than a political one.

For the above-mentioned intellectual struggle and intellectual transformation, Hizb ut Tahrir focuses primarily on highly educated Muslims. The method is the so-called Islamic da'wah through which society can be transformed into an Islamic one. Within the EU, the concrete translation of this concept is distributing leaflets at universities and near mosques, or to organise meetings on current political and social issues, such as the situation in Iraq, the cartoon issue in Denmark and Guantanamo Bay ... Although the method of da'wah seems very theoretical and impractical in relation to the stated goal, it cannot be denied that the party has managed to attract tens of thousands of Muslims in Europe who believe in its method ...

As mentioned above, Hizb ut Tahrir has branches in some forty countries, in a number of which the party is considered a terrorist organisation. Within the EU, where religiously inspired political parties enjoy relatively greater freedom than they do anywhere else, only Germany has outlawed Hizb ut Tahrir ...

... [Many] questions remain open with regard to the nature of this party and its impact on society and how to deal with its spreading of anti-Semitic, anti-Western and non-democratic ideas and sentiments ...

A case-study on an organisation such as Hizb ut Tahrir as part of an overall large research project on counter-terrorism might suggest prematurely that Hizb ut-Tahrir falls in the category of labelled terrorist organisations, or at least belongs to a group of organisations that pose a serious threat to our democratic society. However, such qualifications cannot be given to Hizb ut-Tahrir without serious reservations. The question can even be raised whether such qualification is fit for this organisation at all. Although, in its philosophy Hizb ut-Tahrir has anti-democratic tendencies, it also rejects the idea of violent jihad to achieve their goal of a caliphate. Most allegations on the terrorist connection of the organisation or some of its members point at rather indirect links, are not based on solid sources, or should by their numbers be assessed as mere coincidences.

On the other hand, experience shows that organisations such as Hizb ut-Tahrir are 'very smart in walking the very fine line between propaganda and incitement to terrorism', according to Paul Wilkinson, director of the Centre for the Study of Terrorism and Political Violence at the University of St Andrews ... However, outlawing this organisation without a proper cause might have the opposite effect. It is therefore important to monitor with prudence and to act on facts instead of allegations."

E. Hizb ut-Tahrir's literature

51. Hizb ut-Tahrir's aims and principles, as well as the details of what an Islamic state would look like, are outlined in a range of literature produced by the organisation. In particular, it has prepared a Draft Constitution which sketches the major provisions of an Islamic State (wording as in the original):

1. Basic principles and government structure

Article 1

"The Islamic *'Aqeedah* [creed] constitutes the foundation of the State. Nothing is permitted to exist in the government's structure, accountability, or any other aspect connected with the government, that does not take the *'Aqeedah* as its source. The *'Aqeedah* is also the source for the State's constitution and *Sharia* canons. Nothing connected to the constitution or canons is permitted to exist unless it emanates from the Islamic *'Aqeedah*."

Article 7

"The State implements the *aHkaam Sharia* [divine rules] on all citizens who hold citizenship of the Islamic State, whether Muslims or not, in the following manner:

a. The *aHkaam Sharia* is implemented in its entirety, without exception, on all Muslims.

b. Non-Muslims are allowed to follow their own beliefs and worships.

c. Those who are guilty of apostasy (*murtadd*) from Islam are to be executed according to the rule of apostasy, provided they have by themselves renounced Islam. If they are born as non-Muslims, i.e., if they are the sons of apostates, then they are treated as non-Muslims according to their status as being either polytheists (*mushriks*) or People of the Book.

d. In matters of food and clothing the non-Muslims are treated according to their religions within the limits allowed by *aHkaam Sharia.*

e. Marital affairs (including divorce) among non-Muslims are settled in accordance with their religions, but between non-Muslims and Muslims they are settled according to the *aHkaam Sharia*.

f. All the remaining *Sharia* matters and rules, such as: the application of transactions, punishments and evidences (at court), the system of ruling and economics are implemented by the State upon everyone, Muslim and non-Muslim alike. This includes the people of treaties (*mu'aahid*), the protected subjects (*ahludh dhimmah*) and all who submit to the authority of Islam. The implementation on these people is the same as the implementation on the subjects of the State. Ambassadors and envoys enjoy diplomatic immunity."

Article 19

"No one is permitted to take charge of ruling, or any action considered to be of the nature of ruling, except a male who is free (*Hurr*), i.e. not a slave, mature (*baaligh*), sane (*'aaqil*), trustworthy (*'adl*), competent; and he must [be a Muslim]."

Article 21

"Muslims are entitled to establish political parties to question the rulers and to access the positions of ruling through the *Ummah* [Muslim community] on condition that the parties are based on the *'Aqeedah* of Islam and their adopted rules are *aHkaam Sharia* [divine rules]; the establishment of such a party does not require a license by the State. Any party not established on the basis of Islam is prohibited."

Article 24

"The *Khaleefah* is deputised by the *Ummah* with authority to implement the *Sharia*."

Article 26

"Every mature male and female Muslim, who is sane, has the right to participate in the election of the *Khaleefah* and in giving him the pledge (*ba'iah*). Non-Muslims have no right in this regard."

Article 31

"There are seven conditions needed in the *Khaleefah*... They are to be a male, Muslim, free (*Hurr*), mature (*baaligh*), sane (*'aaqil*), trustworthy (*'adl*) and able (*qaadir*)."

52. The Draft Constitution further indicates that all highest Government officials, the chief judge and the judges of the Court of the Unjust Acts (the court which settles disputes between the citizens and the State) must be male and Muslims. Muslim women are allowed to become lower-level officials and judges (Articles 42, 49, 67, 69, 87). Non-Muslims may be appointed only to technical and administrative official positions (Article 97).

53. The Draft Constitution further continues:

Article 101

"The members of the *Majlis al-Ummah* [people's assembly] are those people who represent the Muslims in respect of expressing their views to the *Khaleefah* when consulted. Non-Muslims are allowed to be members of the *Majlis al-Ummah* so that they can voice their complaints in respect to unjust acts performed by the rulers or the misapplication of the Islamic laws."

Article 102

"The members of the *Majlis al-Ummah* are elected by the people."

Article 104

"Consultation (*Shoora*) and the *mashoora* are the seeking of views in absolute terms. These views are not binding in legislation, definitions, intellectual matters such as discovering the facts and the technical and scientific matters. However they are binding when the *Khaleefah* consults in other practical matters and actions that do not need scrutiny or research."

Article 105

"All citizens, Muslim or not, may express their views, but *Shoora* is a right for the Muslims only."

2. Jihad and the army

Article 56

"Jihad is a compulsory duty (*farD*) on all Muslims. Military training is therefore compulsory. Thus, every male Muslim, fifteen years and over, is obliged to undergo military training in readiness for *jihad*..."

3. Legal status of women

Article 109

"Segregation of the sexes is fundamental, they should not meet together except for a need that the *Sharia* allows or for a purpose the *Sharia* allows men and women to meet for, such as trading or pilgrimage (*Hajj*)."

Article 110

"Women have the same rights and obligations as men, except for those specified by the *Sharia* evidences to be for him or her. Thus, she has the right to practice in trading, farming, and industry; to partake in contracts and transactions; to possess all form of property; to invest her funds by herself (or by others); and to conduct all of life's affairs by her."

Article 111

"A woman can participate in elections ... and elect, and be a member of the *Majlis al-Ummah*, and can be appointed as an official of the State in a non-ruling position."

Article 113

"Women live within a public and private life. Within their public life, they are allowed to live with other women, *maHram* males [males forbidden to them in marriage] and foreign men (whom they can marry) on condition that nothing of the

women's body is revealed, apart from her face and hands, and that the clothing is not revealing nor her charms displayed. Within the private life she is not allowed to live except with women or her *maHram* males and she is not allowed to live together with foreign men. In both cases she has to restrict herself with the rules of *Sharia*."

Article 118

"The custody of children is both a right and duty of the mother, whether Muslim or not, so long as the child is in need of this care. When children, girls or boys, are no longer in need of care, they are to choose which parent they wish to live with, whether the child is male or female. If only one of the parents is Muslim, there is no choice for the child is to join the Muslim parent."

4. Taxes

Article 139

"Zakaah [property tax] is collected from Muslims on their properties..."

Article 140

"Jizyah (head-tax) is collected from the non-Muslims (*dhimmis*). It is to be taken from the mature men if they are financially capable of paying it. It is not taken from women or children."

5. Education

Article 165

"The Islamic creed constitutes the basis upon which the education policy is built. The syllabi and methods of teaching are designed to prevent a departure from this basis."

Article 166

"The purpose of education is to form the Islamic personality in thought and behaviour. Therefore, all subjects in the curriculum must be chosen on this basis."

Article 170

"Arts and crafts may be related to science, such as commerce, navigation and agriculture. In such cases, they are studied without restriction or conditions. Sometimes, however, arts and crafts are connected to culture and influenced by a particular viewpoint of life, such as painting and sculpting. If this viewpoint of life contradicts the Islamic viewpoint of life, these arts and crafts are not taken."

Article 172

"The state's curriculum is only one, and no curriculum other than that of the state is allowed to be taught. Private schools provided they are not foreign, are allowed as long as they adopt the state's curriculum and establish themselves on the State's educational policy and accomplish the goal of education set by the State. Teaching in such schools should not be mixed between males and females, whether the students or the teachers; and they should not be specific for certain *deen* [religion], *madhab* [schools of Muslim law], race or colour."

6. Relations with other States

Article 177

"It is absolutely forbidden for any individual, party, group or association to have relations with a foreign state..."

Article 184

"The state's relations with other states are built upon four considerations. These are:

...

3. States with whom we do not have treaties, the actual imperialist states, like Britain, America and France and those states that have designs on the State, like Russia, are considered to be potentially belligerent states. All precautions must be taken towards them and it would be wrong to establish diplomatic relations with them. Their subjects may enter the Islamic State only with a passport and a visa specific to every individual and for every visit, unless it became a real belligerent country.

4. With states that are actually belligerent states, like Israel, a state of war must be taken as the basis for all measures and dealings with them. They must be dealt with as if a real war existed between us – whether an armistice exists or not – and all their subjects are prevented from entering the State."

Article 186

"The State is forbidden to belong to any organisation that is based on something other than Islam or which applies non-Islamic rules. This includes international organisations like the United Nations, the International Court of Justice, the International Monetary Fund and the World Bank, and regional organisations like the Arab League."

II. RELEVANT DOMESTIC LAW

A. The Criminal Code

54. Article 205 § 1 of the Criminal Code of the Russian Federation (as in force at the material time) provides as follows:

> "Terrorism, that is an explosion, arson or other acts creating a danger of loss of human life, substantial material damage or other socially dangerous consequences, provided that such acts were committed for the purposes of undermining national security, frightening the population or influencing the authorities in order to make them adopt decisions favourable to terrorists, as well as threats to commit the above-mentioned acts, is punishable by eight to twelve years' imprisonment."

55. Article 205.1 of the Code (as in force at the material time) reads, in so far as relevant, as follows:

> "1. Aiding and abetting terrorism, that is incitement of a person to commit an offence under Articles 205 [terrorism], 206 [taking of hostages], 208 [organisation or membership of an armed criminal group], 211 [hijacking of an aeroplane, a ship or a train], 277 [attacking of a State official] or 360 [attacking of a person or an institution under international protection] of the Criminal Code; incitement of a person to participate in the activities of a terrorist organisation; training or arming of a person with the aim of committing one of the above-mentioned offences; or financing of terrorism, is punishable by four to eight years' imprisonment ..."

On 27 July 2006 that Article was amended. In particular, incitement to participate in the activities of a terrorist organisation was no longer classified as adding and abetting terrorism punishable under Article 205.1.

56. Article 210 of the Code reads, in so far as relevant, as follows:

> "1. The founding of a criminal group (criminal organisation) for committing serious and especially serious offences, as well as the leadership of such group or one of its sections ... is punishable by seven to fifteen years' imprisonment ..."

57. Article 15 of the Code provides that serious offences are premeditated offences for which the Criminal Code prescribes a maximum penalty of between five and ten years' imprisonment. Especially serious offences are premeditated offences for which the Code prescribes a maximum penalty of more than ten years' imprisonment or a heavier penalty.

58. Article 282.2 of the Code reads as follows:

> "1. The founding of a non-profit, religious or other organisation which has been dissolved or banned by a final judicial decision on the ground of its extremist activities is punishable by a fine ..., four to six months' detention or up to three years' imprisonment.
>
> 2. Membership of a non-profit, religious or other organisation which has been dissolved or banned by a final judicial decision on the ground of its extremist

activities is punishable by a fine ..., up to four months' detention or up to two years' imprisonment."

59. Article 327 § 3 of the Code provides that the use of official documents known to be forged is punishable by a fine, correctional labour, or three to six months' detention.

B. Anti-Terrorism Act

60. The Anti-Terrorism Act (Federal Law no. 130-FZ of 25 July 1998, as in force at the material time) defined terrorism as violence or the threat of violence directed against persons or organisations, as well as destruction or the threat of destruction of property or other physical objects, provided that such acts created a danger of loss of human life, substantial material damage or other socially dangerous consequences and that they were committed for the purposes of undermining national security, frightening the population, influencing the authorities in order to make them adopt decisions favourable to terrorists or satisfying their illegitimate pecuniary or other interests; an attempt on the life of a State or public official committed for the purposes of stopping his or her public or political activities or in revenge for such activities; an attack on a representative of a foreign State or a staff member of an international organisation enjoying international protection or on official buildings or means of transport of persons enjoying international protection, provided that such acts were committed with the purpose of provoking war or worsening international relations (section 3 § 1).

61. Terrorist activities include the following activities:

– organisation, planning, preparation and commission of terrorist acts;

– incitement to commit terrorist acts, violence against persons or organisations or destruction of physical objects for terrorist purposes;

– creation of an illegal armed group, criminal group (organisation) or organised group for the commission of terrorist acts, as well as involvement in such acts;

– recruitment, arming and training of terrorists;

– financing of an organisation or group known to be terrorist or any assistance to them (section 3 § 2).

62. A terrorist organisation is an organisation created with the aim of carrying out terrorist activities or admitting the possibility of recourse to terrorism as part of its activities (section 3 § 8).

63. An organisation may be declared a terrorist organisation and dissolved by a judicial decision at the request of a prosecutor (section 25).

64. On 6 March 2006 a new Anti-Terrorism Act (Federal Law no. 35-FZ) was passed to replace the 1998 Anti-Terrorism Act. The 2006 Anti-Terrorism Act provides that a list of organisations which have been declared terrorist by a Russian court is to be kept by the federal security services. That list must be published in the official periodical press, as

determined by the Government (section 24 § 5). Pursuant to Government Decree no. 1014-p of 14 July 2006, the list of organisations which have been declared to be terrorist organisations by a Russian court is to be published in the official periodical *Rossiyskaya Gazeta*.

C. Suppression of Extremism Act

65. The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002, as in force at the material time), which was recently examined by the Venice Commission (see Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, adopted by the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012)), defines extremist activities as activities of non-profit, religious or other organisations, the media or individuals consisting in planning, directing, preparing or committing acts aimed at:

– forcible change of the constitutional foundations of the Russian Federation and breach of its territorial integrity;

– undermining the national security of the Russian Federation;

– taking over or usurpation of power;

– founding of armed criminal groups;

– carrying out of terrorist activities;

– encouraging racial, ethnic, religious or social hatred accompanied by violence or calls for violence;

– creation of mass disorder, commission of disorderly acts or acts of vandalism out of ideological, political, racial, ethnic or religious hatred or enmity, or out of hatred or enmity towards a social group;

– propaganda promoting the exceptionality, superiority or inferiority of citizens on the ground of their religion, social position, race, ethnic origin or language;

– propaganda and public display of Nazi attributes or symbols, or attributes or symbols which are similar to Nazi attributes or symbols to the point of becoming undistinguishable;

– public appeals to carry out the above-mentioned activities or to commit the above-mentioned acts, as well as financing of the above-mentioned activities or the assistance of their performance by other means, including by providing financial support or technical facilities, information services or other facilities (section 1§ 1).

66. The Suppression of Extremism Act further defines an extremist organisation as a non-profit, religious or other organisation which has been dissolved or banned by a final judicial decision on the ground of its extremist activities as defined by the Act (section 1 § 2).

67. It is prohibited to publish and distribute extremist material – that is, printed, audio, video or other material meeting at least one of the criteria

defined in section 1 § 1. Such material includes official material of banned extremist organisations (section 13).

THE LAW

I. JOINDER OF THE APPLICATIONS

68. The Court notes at the outset that both applicants complained that the law provisions which had served as a basis for their convictions were not foreseeable in their application, taking into account that the judgment of the Supreme Court banning Hizb ut-Tahrir had not been officially published at the time when the acts attributed to them had been committed. They also complained that their convictions for the membership of Hizb ut-Tahrir had violated their freedoms of religion, expression and association. Finally, they both complained of discrimination on account of their religious beliefs. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interests of the proper administration of justice, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

69. The applicants complained that the Supreme Court's decision banning Hizb ut-Tahrir had not been officially published. The law provisions which had served as a basis for their convictions were therefore not foreseeable in their application, contrary to the requirements of Article 7 of the Convention. That Article reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

A. Admissibility

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

71. The Government conceded that the Supreme Court's decision of 14 February 2003 had not been officially published prior to the applicants' conviction. That was because at the material time Russian law had not established a publication procedure or any procedure for keeping an official list of banned terrorist organisations. It was not until March 2006 that such a procedure had been provided for by law (see paragraph 64 above) and not until July 2006 that the official list of banned terrorist organisations had been published (see paragraph 10 above). However, the information about the banning of Hizb ut-Tahrir and other organisations had been divulged on 14 and 15 February 2003 by many traditional and Internet media outlets. Referring to the Supreme Court's decision of 18 June 2003 (see paragraph 9 above), the Government argued that as a result of those publications, society had been sufficiently informed about the banning of Hizb ut-Tahrir.

72. The Government further referred to the legal principle "ignorance of the law is no excuse" and submitted that, in any event, the domestic courts had established that the applicants had known about the banning of Hizb ut-Tahrir. Indeed, the applicants, their co-defendants and witnesses had admitted to knowing that the organisation had been banned when questioned by the investigator. Moreover, leaflets criticising the decision to ban Hizb ut-Tahrir had been found in the second applicant's flat. Accordingly, the applicants had possessed information about the Supreme Court's decision of 14 February 2003 and could therefore have foreseen that their membership of Hizb ut-Tahrir was criminally punishable under Articles 205.1, 210 and 282.2 of the Criminal Code.

73. The first applicant submitted that the Supreme Court's decision of 14 February 2003 had been an essential element in establishing his guilt under Articles 205.1 and 210 of the Criminal Code. In particular, the domestic courts had based their finding that Hizb ut-Tahrir was a "criminal organisation" within the meaning of Article 210 on the Supreme Court's decision of 14 February 2003 by which Hizb ut-Tahrir had been declared a terrorist organisation. The fact that his conviction under Article 205.1 had later been set aside following an amendment to the Criminal Code (see paragraph 25 above) had not deprived him of victim status because there had been no acknowledgment of a violation of his rights. In any event, his conviction under Article 210 of the Criminal Code – which, as argued above, had been essentially based on the Supreme Court's decision of 14 February 2003 – still stood.

74. The first applicant further submitted that the Supreme Court's decision of 14 February 2003, taken *in camera* and in the absence of the organisation's representatives, had never been officially published, as acknowledged by the Government. The reference to that decision in the media could not compensate for the absence of an official publication. Firstly, the media had not published the full text of the decision or at least its operative part or a summary of its reasoning. Secondly, the press articles referred to by the Government had been published immediately after the decision had been adopted and before it had become final. Some publications had mentioned that the decision was still amenable to appeal. No mention of the decision's entry into force had been made in the media. The first applicant could not therefore have learned from the media reporting whether the Supreme Court's decision was enforceable and, accordingly, whether Hizb ut-Tahrir had indeed been officially banned by a final judicial decision.

75. The second applicant maintained his claims.

2. The Court's assessment

(a) General principles

76. The guarantee enshrined in Article 7, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 92, 17 September 2009).

77. Article 7 § 1 of the Convention goes beyond prohibition of the retrospective application of criminal law to the detriment of the accused. It also sets forth, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*). While it prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, it also lays down the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy. It follows that offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. When speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, including those of accessibility and foreseeability (see *Cantoni v. France*,

15 November 1996, § 29, *Reports of Judgments and Decisions* 1996-V; *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 145, ECHR 2000-VII; and *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, §§ 107 and 108, 20 January 2009).

78. As a consequence of the principle that laws must be of general application, the wording of statutes is not always precise. One of the standard techniques of regulation by rules is to use general categorisations as opposed to exhaustive lists. That means that many laws are inevitably couched in terms which, to a greater or lesser extent are vague, and their interpretation and application depend on practice. Consequently, in any system of law, however clearly drafted a legal provision may be, including a criminal law provision, there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adaptation to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see *Scoppola (no. 2)*, cited above, §§ 100 and 101). A law may still satisfy the requirement of "foreseeability" where the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Achour v. France* [GC], no. 67335/01, § 54, ECHR 2006-IV, and *Huhtamäki v. Finland*, no. 54468/09, § 44, 6 March 2012).

(b) Application to the present case

79. In the light of the above principles, the Court observes that it is not its task to rule on the applicants' individual criminal responsibility, that being primarily a matter for the assessment of the domestic courts, but to consider, from the standpoint of Article 7 § 1 of the Convention, whether the criminal offences for which the applicants were convicted were defined with sufficient accessibility and foreseeability by Russian law.

80. The essence of the dispute between the parties is whether the domestic law provisions which served as a basis for the applicants' convictions were foreseeable in their application, taking into account that the judgment of the Supreme Court declaring that Hizb ut-Tahrir was a terrorist organisation had not been officially published at the time when the acts attributed to them had been committed. The Court must thus examine whether the provisions in question fulfil the foreseeability requirement.

(i) The first applicant's case

81. The first applicant was convicted of incitement to participate in the activities of a terrorist organisation, an offence under Article 205.1 of the Criminal Code, and of founding a criminal organisation, an offence under Article 210 of the Criminal Code.

82. Examining the wording of Article 205.1 of the Criminal Code, the Court observes that no definition of a "terrorist organisation" is contained in that Article. A definition may, however, be found in the Anti-Terrorism Act, which defines a "terrorist organisation" as an organisation created with the aim of carrying out terrorist activities or admitting the possibility of recourse to terrorism as part of its activities (see paragraph 62 above). The Anti-Terrorism Act also specifies which actions may be regarded as amounting to "terrorism" and "terrorist activities" (see paragraphs 60 and 61 above). A similar definition of "terrorism" is contained in Article 205 of the Criminal Code (see paragraph 54 above). The Court considers that Article 205.1, read in conjunction with Article 205 and with the provisions of the Anti-Terrorism Act, is formulated with sufficient precision to enable an individual to know, if need be with appropriate legal advice, what acts and omissions will make him criminally liable.

83. Similarly, the wording of Article 210 of the Criminal Code is also precise. Article 210 defines a criminal organisation as an organisation created for the commission of serious and especially serious offences, while Article 15 of the Criminal Code determines which offences are considered serious and especially serious (see paragraphs 56 and 57 above).

84. It is significant that a conviction for incitement to participate in the activities of a terrorist organisation under Article 205.1 or for founding a criminal organisation under Article 210 has not been made conditional on the existence of a prior judicial decision banning that organisation on the ground of its terrorist, extremist or otherwise criminal nature. It is sufficient for the trial court to establish, on the basis of the evidence provided by the parties, that the organisation in question possesses all the characteristics of a terrorist or criminal organisation as defined by the above-mentioned provisions of the Criminal Code and the Anti-Terrorism Act.

85. Turning to the circumstances of the first applicant's case, the Court notes that the domestic courts found all the constituent elements of the offences under Articles 205.1 and 210 in the first applicant's acts. Thus, it was established that the local section of Hizb ut-Tahrir founded by him was a terrorist, and therefore criminal, organisation. It is true that when making that finding the domestic courts relied on, *inter alia*, the Supreme Court's decision of 14 February 2003 banning Hizb ut-Tahrir on the ground of its terrorist aims. However, the Supreme Court's decision was not the sole basis for that finding. The domestic courts also relied on the leaflets and brochures found in the first applicant's flat and distributed by him. After a detailed assessment of their contents, the domestic courts concluded that

they called for a violent overthrow of non-Muslim governments and advocated and glorified warfare against non-Muslim States. The fact that the guidelines on the use of weapons, explosives and poisons were found among the above-mentioned leaflets and brochures was also relied upon by the courts as a basis for their finding that the local section of Hizb ut-Tahrir founded by the first applicant was terrorist in nature. The Court is therefore not convinced by the first applicant's argument that the Supreme Court's decision of 14 February 2003 was an essential element for his conviction under Articles 205.1 and 210 of the Criminal Code.

86. In view of the above, the fact that the Supreme Court's decision of 14 February 2003 was not officially published at the material time did not deprive the legal provisions which served as a basis for the first applicant's conviction of their accessibility and foreseeability. The Court considers that Articles 205.1 and 210 of the Criminal Code, read in conjunction with Articles 15 and 205 of that Code and the provisions of the Anti-Terrorism Act, met the Convention's "quality of law" requirements.

87. There has therefore been no violation of Article 7 of the Convention in respect of the first applicant.

(ii) The second applicant's case

88. The second applicant was convicted of incitement to participate in the activities of a terrorist organisation, an offence under Article 205.1 of the Criminal Code, and of founding and membership of an extremist organisation, an offence under Article 282.2 of the Criminal Code.

89. The Court has already found that Article 205.1 is formulated with sufficient precision to enable an individual to regulate his conduct. It remains to be examined whether Article 282.2 was also foreseeable in its application at the time when the acts attributed to the second applicant were committed.

90. The Court observes that under Article 282.2 of the Criminal Code, the founding or membership of an extremist organisation constitutes a criminal offence only if that organisation has been previously dissolved or banned by a final judicial decision on the ground of its extremist activities (see paragraph 58 above). Such a judicial decision was therefore an essential element for a conviction under Article 282.2.

91. The Supreme Court's decision of 14 February 2003 banning Hizb ut-Tahrir has never been officially published, as acknowledged by the Government, and is therefore not accessible to the public. Nor was the official list of banned extremist organisations published until July 2006, long after the commission of the offences of which the second applicant was accused.

92. The Court takes note of the Government's argument that, despite the lack of an official publication, the second applicant knew about the Supreme Court's decision because information about it had been widely reported in

the media. It is, however, not convinced by that argument. It considers that journalistic reporting of the Supreme Court's decision cannot substitute for official publication of the text of the decision, or at least of its operative part. Only a publication emanating from an official source can give an adequate and reliable indication of the legal rules applicable in a given case.

93. It follows that, in the absence of an official publication of Supreme Court's decision of 14 February 2003, the second applicant could not reasonably have foreseen that his membership of Hizb ut-Tahrir would make him criminally liable under Article 282.2.

94. Finally, it is relevant that the second applicant's conviction under Article 282.2 resulted in a heavier penalty for him as compared to the penalty that would have been imposed had he been convicted under Article 205.1 only (see paragraph 41 above, and compare *Moiseyev v. Russia*, no. 62936/00, § 242, 9 October 2008). In these circumstances, the Court concludes that the second applicant's conviction for founding and membership of an extremist organisation, an offence under Article 282.2 of the Criminal Code, was incompatible with the principle "*nulla poena sine lege*" embodied in Article 7.

95. There has therefore been a violation of Article 7 of the Convention in respect of the second applicant.

III. ALLEGED VIOLATION OF ARTICLES 9, 10 AND 11 OF THE CONVENTION

96. The applicants complained that their convictions for membership of Hizb ut-Tahrir had violated their rights under Article 9, 10 and 11 of the Convention, which provide:

Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Submissions by the parties

97. The Government submitted that the applicants had not been convicted for their religious beliefs but for their membership of a terrorist organisation, Hizb ut-Tahrir al-Islami. In particular, they had distributed leaflets and brochures promoting the superiority of Muslims over adherents of other religions, calling for a confrontation between Islamic fundamentalists and all others, for the violent overthrow of non-Muslim governments and for universal Islamisation of mankind. Hizb ut-Tahrir rejected the possibility of participating in the democratic political process and chose to conduct its activities in an illegal and clandestine manner. The interference with the applicants' freedoms of religion, expression and association had therefore been "necessary in a democratic society". Moreover, given the terrorist and extremist nature of the organisation and its intention to create hostility between adherents of different religions, to foster disunity in society and to undermine the constitutional foundations of the Russian Federation, the applicants' actions within that organisation had been aimed at destroying the rights and freedoms set forth in the Convention. Referring to Article 17 of the Convention, the Government argued that the applicants could not therefore claim the protection afforded by Articles 9, 10 and 11.

98. The first applicant submitted that his conviction had interfered with his freedoms of religion, expression and association. Given that the Supreme Court's decision of 14 February 2003 banning Hizb ut-Tahrir had

not been officially published, that interference had been based on legal provisions which did not meet the criteria of accessibility and foreseeability. Nor had the interference met a "pressing social need". Indeed, the Supreme Court's decision banning Hizb ut-Tahrir was vague and did not refer to any facts justifying the finding that Hizb ut-Tahrir was a terrorist organisation. The judgments convicting the first applicant had not contained any evidence of terrorist activities either. Although he had never been accused of any violent acts, he had been sentenced to eight years' imprisonment for the mere fact of his membership of Hizb ut-Tahrir. Such a severe sanction had been obviously disproportionate to the gravity of the acts attributed to him, which consisted in nothing more than keeping Islamic literature at home, spreading Islamic propaganda and recruiting new members of Hizb ut-Tahrir.

99. As regards Article 17 of the Convention, the first applicant submitted that that Article had been mainly applied to applications concerning anti-Semitic statements or lodged by anti-Semitic groups (he referred to *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX; *W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII; and *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007). It had also been occasionally applied in cases concerning xenophobic statements (he cited *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI), whereas in other cases involving similar statements the Court had found that the application of Article 17 was not justified and that the case should be examined on the merits (he referred to *Leroy v. France*, no. 36109/03, 2 October 2008, and *Féret v. Belgium*, no. 15615/07, 16 July 2009). As regards applications lodged by Muslim groups advocating the introduction of sharia, the Court had never found that, by virtue of Article 17 of the Convention, such groups could not benefit from protection under the Convention. All such applications had been examined on the merits (he cited *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II; *Fazilet Partisi and Kutan v. Turkey* (dec.), no. 1444/02, 30 June 2005; and *Erbakan v. Turkey*, no. 59405/00, 6 July 2006). The Government had not explained into which of the above categories of cases potentially covered by Article 17 the present application could fall, instead limiting their submissions under that Article to arguing that Hizb ut-Tahrir had been banned in Russia on the ground of its intention to overthrow the constitutional foundations of the Russian Federation.

100. The first applicant conceded that Hizb ut-Tahrir had been accused by some international experts of expressing anti-Semitic views. It also indisputably advocated the introduction of sharia, which had been found to be incompatible with the Convention. However, neither the Supreme Court's decision banning Hizb ut-Tahrir nor the judgments convicting the first applicant had relied on any anti-Semitic, racist or otherwise xenophobic

statements attributable to the organisation in general or the first applicant in particular. The thrust of the accusations levelled against the first applicant was his membership of an organisation whose aim was to establish Islamic rule by reviving a "Worldwide Islamic Caliphate". It should be taken into account that Hizb ut-Tahrir was not active in Russia, concentrating its activities in Muslim States, such as Uzbekistan. It could not therefore realistically seize power and start creating a legal regime contrary to the Convention. The application of Article 17 was therefore not justified in the first applicant's case.

101. The second applicant maintained his claims.

B. The Court's assessment

102. The Court will first examine whether Article 17 of the Convention is applicable to the present case. That Article states:

> "Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

103. The general purpose of Article 17 is to prevent individuals or groups with totalitarian aims from exploiting in their own interests the principles enunciated by the Convention (see *Norwood*, cited above). Although to achieve that purpose it is not necessary to take away every one of the rights and freedoms guaranteed from groups and persons engaged in activities contrary to the text and spirit of the Convention, the Court has found that the freedoms of religion, expression and association guaranteed by Articles 9, 10 and 11 of the Convention are covered by Article 17 (see, among other authorities, *W.P. and Others v. Poland*, cited above; *Garaudy*, cited above; *Pavel Ivanov*, cited above; and *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, §§ 72-75 and 78, 12 June 2012).

104. Indeed, the possibility cannot be excluded that a political party or other association, in pleading the rights enshrined in Article 11 and also in Articles 9 and 10 of the Convention, might attempt to derive therefrom the right to conduct what amounts in practice to activities intended to destroy the rights or freedoms set forth in the Convention and thus bring about the destruction of democracy. In view of the very clear link between the Convention and democracy, no one may be authorised to rely on the Convention's provisions in order to weaken or destroy the ideals and values of a democratic society. In that context, the Court considers that it is not at all improbable that totalitarian movements might do away with democracy, after prospering under the democratic regime, there being examples of this in modern European history (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 99).

105. The Court has accordingly defined as follows the limits within which political organisations can continue to enjoy the protection of the Convention while conducting their activities. It has found that a political organisation may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political organisation whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (ibid., §§ 97 and 98).

106. Turning to the circumstances of the present case, the Court notes that both applicants were members of Hizb ut-Tahrir and were engaged in spreading its ideology by distributing its literature and recruiting new members. It has already found that, by reason of Article 17 of the Convention, that organisation cannot benefit from the protection of Articles 9, 10 and 11 of the Convention because of its anti-Semitic and pro-violence statements, in particular statements calling for the violent destruction of Israel and for the banishment and killing of its inhabitants and repeated statements justifying suicide attacks in which civilians are killed. The Court has held that Hizb ut-Tahrir's aims are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life (see *Hizb ut-Tahrir and Others*, cited above, §§ 73-75 and 78).

107. The Court does not see any reason to depart from this finding in the present case. Indeed, during the meetings of the local section of Hizb ut-Tahrir chaired by the second applicant, statements calling for violence against Jews were made (see paragraph 35 above). There is also evidence that, when recruiting new members, the first applicant urged them to fight the unfaithful with weapons (see paragraph 14 above). Moreover, the experts who examined the leaflets and brochures distributed by the applicants were unanimous in finding that they contained statements calling for violence. Thus, the experts noted that Hizb ut-Tahrir's literature advocated and glorified warfare in the form of jihad, a term which was mainly used in its meaning of "holy war", to establish the domination of Islam. Some of the documents in question also stated that it was permissible to kill any citizen of enemy States, among which were named, besides Israel, the United States of America, the United Kingdom, France and Russia (see paragraphs 21 and 37 above). In view of the above, the Court is not convinced by the applicants' assertions that Hizb ut-Tahrir is an organisation which rejects the possibility of recourse to violence.

108. Furthermore, it is significant that the experts also noted that, although Hizb ut-Tahrir clearly aspired to gain political power in order to

overthrow non-Muslim governments and impose Islamic rule worldwide, it rejected any possibility of participating in the democratic political process. The terminology used in Hizb ut-Tahrir's literature to refer to the methods to be employed to gain political power was so ambiguous as to give cause to believe that recourse to violent methods was envisaged (see paragraphs 21 and 37 above; see also the reports on the ideology of Hizb ut-Tahrir by reputed international NGOs cited in paragraphs 44-50 above). It follows from the above that the means which Hizb ut-Tahrir plans to use in order to gain power and to promote a change in the legal and constitutional structures of the States where it is active cannot be regarded as legal and democratic.

109. Nor are the changes in the legal and constitutional structures of the State proposed by Hizb ut-Tahrir compatible with the fundamental democratic principles underlying the Convention. The Court notes that the regime which Hizb ut-Tahrir plans to set up after gaining power is described in detail in its documents. An analysis of these documents reveals that Hizb ut-Tahrir proposes to establish a regime which rejects political freedoms, such as, in particular, freedoms of religion, expression and association, declaring that they are contrary to Islam. For example, Hizb ut-Tahrir intends to introduce capital punishment for apostasy from Islam and to ban all political parties which are not based on Islam (see paragraph 51 above).

110. Furthermore, in its literature Hizb ut-Tahrir clearly states its intention to introduce a plurality of legal systems, that is, a distinction between individuals in all fields of private and public law, with different rights and freedoms afforded depending on religion. Thus, according to Hizb ut-Tahrir's Draft Constitution (see paragraph 51 above), only Muslims will have the right to vote and to be elected, to become State officials or to acquire membership of political parties. Different tax rules and family laws will be applicable to Muslims and to adherents of other religions. The Court has already found that such a system cannot be considered to be compatible with the Convention system because it undeniably infringes the principle of non-discrimination on the ground of religion (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 119). Similarly, some provisions of the Draft Constitution promote differences in treatment based on sex, for example providing that women cannot take up high-ranking official positions. These provisions are hard to reconcile with the principle of gender equality, which has been recognised by the Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 115, ECHR 2005-XI).

111. Lastly, the Court observes that the regime that Hizb ut-Tahrir intends to set up will be based on sharia. However, it has previously found a regime based on sharia to be incompatible with the fundamental principles

of democracy, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts. An organisation whose actions seem to be aimed at introducing sharia in a State Party to the Convention can hardly be regarded as complying with the democratic ideal that underlies the whole of the Convention (see *Refah Partisi (the Welfare Party) and Others*, cited above, § 123).

112. It is significant that the activities of Hizb ut-Tahrir are not limited to promoting religious worship and observance in private life of the requirements of Islam. They extend outside the sphere of individual conscience and concern the organisation and functioning of society as a whole. Hizb ut-Tahrir clearly seeks to impose on everyone its religious symbols and conception of a society founded on religious precepts (ibid., § 128; see also *Leyla Şahin*, cited above, § 115).

113. In view of the above considerations, the Court finds that the dissemination of the political ideas of Hizb ut-Tahrir by the applicants clearly constitutes an activity falling within the scope of Article 17 of the Convention. The applicants are essentially seeking to use Articles 9, 10 and 11 to provide a basis under the Convention for a right to engage in activities contrary to the text and spirit of the Convention. That right, if granted, would contribute to the destruction of the rights and freedoms set forth in the Convention and referred to above.

114. It follows that the applicants' complaints under Articles 9, 10 and 11 are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

115. Lastly, the applicants complained under Article 14 of the Convention, taken in conjunction with Articles 9, 10 and 11, that they had been discriminated against on account of their religious beliefs.

116. The Court has found that that the applicants are precluded by Article 17 of the Convention from relying on Articles 9, 10 and 11 of the Convention in respect of their convictions for membership of Hizb ut-Tahrir and dissemination of its ideas. It follows that they cannot allege a violation of Article 14 of the Convention taken in conjunction with these same Articles (see *Hizb ut-Tahrir and Others*, cited above, § 89).

117. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

119. The second applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the complaint concerning the conviction on the basis of legal provisions that were allegedly neither accessible nor foreseeable in their application admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been no violation of Article 7 of the Convention in respect of the first applicant;

4. *Holds* that there has been a violation of Article 7 of the Convention in respect of the second applicant.

Done in English, and notified in writing on 14 March 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President