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CRIMINAL PROSECUTIONS FOR TERRORISM IN RUSSIA  
AND ABUSES BY THE STATE

A SERIES OF SURVEYS

**#2 Hizb ut-Tahrir**

We continue our publication of a series of surveys about the use of anti-terrorism law in political repression in contemporary Russia. The first survey (which can be read [here](#)) dealt with the general dynamics and scale of prosecutions under Articles 205 – 205.6 of the Russian Criminal Code.

In this report we look at how Article 205.5 has been used as a punitive instrument against Hizb ut-Tahrir, a religious organisation that has not committed any acts of terrorism.

## 205.5: Sweeping repression against Hizb ut-Tahrir

Article 205.5 (Organisation of the activity of a terrorist organisation or participation in it) was introduced into the Russian Criminal Code at the end of 2013. The Article is, to all intents and purposes, analogous to Article 282.2 of the Russian Criminal Code (Organisation of the activity of an extremist organisation or participation in it). The difference lies in the status of the organisation whose participants are prosecuted (extremist or terrorist). Furthermore, Article 205.5 provides for significantly severer penalties (see Table 1).

**Articles of the Russian Criminal Code cited in the survey:**

**Article 282.2** — Organisation of the activity of an extremist organisation (Section 1) or participation in it (Section 2).

**Article 205.5** — Organisation of the activity of a terrorist organisation (Section 1) or participation in it (Section 2).

**Article 210** — Organisation of a criminal group (Section 1) or participation in it (Section 2).

**Article 205.1** — Aiding and abetting terrorist activity.

**Article 30, Section 1, and Article 278** — Preparing to seize power by force.

Table 1. Penalties currently provided for by the Criminal Code of the Russia

Article 282.2, Section 1	Article 205.5, Section 1
Deprivation of liberty for terms from six to 10 years. Alternative penalties possible in the form of a fine.	Deprivation of liberty for terms from 15 to 20 years, or life. No alternative penalties.
Article 282.2, Section 2	Article 205.5, Section 2
Deprivation of liberty for terms from two to six years. Alternative penalties possible in the form of a fine or obligatory work.	Deprivation of liberty for terms from 10 to 20 years. No alternative penalties.

The objective aspect (actus rea) of offences under these articles is participation in the activity of an organisation ruled to be extremist or terrorist; the subjective aspect (mens rea) is the desire to take part in the activity of an organisation of that kind. There is no need to prove preparation of acts of terrorism or the participation of the accused in acts of violence, and so on. It is almost impossible to contest the assertion that an organisation is a danger to the public: this has already been shown in advance by the 2003 decision of the Supreme Court of the Russian Federation.

Simplification of this kind of the investigation and trial in cases where the charges concern particularly serious crimes carries serious risk of violations. These risks have been most evident in prosecutions for involvement in the international religious organisation Hizb ut-Tahrir.

In 2003 the Supreme Court of the Russian Federation declared Hizb ut-Tahrir al Islami ('The Party of Islamic Liberation') a terrorist organisation. Over the past 15 years, this ruling has been used to bring charges of terrorism.

*'Hizb ut-Tahrir al-Islami is, in our view, the most dangerous, in terms of its actions, its propaganda, and for that reason it is paid special attention, but this does not mean that in our work we are ignoring other terrorist organisations.'* – a statement by Army General Sergei Smirnov, first deputy director of the federal FSB on 5 April 2018 at a session of the Regional Anti-terrorist Structure of the Shanghai Cooperation Organisation.<sup>1</sup>

### **What is Hizb ut-Tahrir? Background information**

- ✓ The Sunni political party Hizb ut-Tahrir al Islami was founded in 1953 by Taqiuddin al-Nabhani, a judge at the Jerusalem Sharia appeal court.

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<sup>1</sup> <https://ria.ru/world/20180405/1518004644.html>

- ✓ The aim of Hizb ut-Tahrir is to promote the return of Muslims to an Islamic way of life based on the norms of Sharia and the dissemination of Islamic faith in the world by means of jihad. According to the party's philosophy, this is possible if the Caliphate (a theocratic state uniting all Islamic countries) is recreated.
- ✓ Hizb ut-Tahrir's strategy implies three phases: in the first, the party nucleus is formed; in the second there is active collaboration with the Ummah (the worldwide community of Muslims); the third phase will begin only after the creation of the Islamic state and includes, among other things, the spreading of the Islamic call in the world.
- ✓ At present, Hizb ut-Tahrir does not recognize a single state as Islamic. Even theocratic Muslim countries fail to correspond to its vision for the organisation of society. Among other things, Hizb ut-Tahrir members do not consider the currently existing terrorist organisation Islamic State to be the Caliphate.
- ✓ The time of the recreation of the Caliphate is unknown (it is known only to Allah). Nor is the location, that is to be the point of distribution of the Islamic call, known. Nonetheless, Hizb ut-Tahrir believes that the Islamic state will initially be created in the Arab countries.

Sources:

Vitalii Ponomaryov, *Islam Karimov against Hizb ut-Tahrir* [Islam Karimov protiv Hizb ut-Tahrir], 1999;

Madeleine Gruen, *Hizb ut-Tahrir*, 2004;

Vitalii Ponomaryov, *Russia: Security Services against Hizb ut-Tahrir*, [Rossiya: spetssluzhby protiv Hizb ut-Tahrir], 2005;

Houriya Ahmed & Hannah Stuart. *Hizb ut-Tahrir: Ideology and Strategy*, 2009;

U.S. Department of State. Country Reports on Terrorism 2009, 2010;

Judgment of the European Court of Human Rights in the case *Hizb ut-Tahrir and others v. Germany*, 2012;

Judgment of the European Court of Human Rights in the case of *Kasymakhunov and Saibatalov v. Russia*, 2013;

Publications on politics and society by Hizb ut-Tahrir.

- ✓ Until the recreation of the Caliphate, Hizb ut-Tahrir rejects violent methods of struggle and engages only in the distribution of its ideas among Muslims. If the Islamic state appears, it is anticipated that that state will conduct wars of conquest.
- ✓ In the countries of Western Europe, Hizb ut-Tahrir is banned only in Germany for rejecting the state of Israel's right to exist. As stated in a decision of the European Court of Human Rights in the case of *Hizb ut-Tahrir and others v. Germany* of 2012, the maximum penalty in Germany for taking part in the banned organisation is one year in prison. The US State Department, in a 2009 report on terrorism, called Hizb ut-Tahrir an extremist organisation that could give indirect ideological support to terrorism. However, the State Department said there was no evidence the organisation had been involved in acts of terrorism. In the Middle East and Central Asia, Hizb ut-Tahrir is banned in Turkey, Pakistan, Tajikistan and a number of Arab countries.
- ✓ Hizb ut-Tahrir does not share the ideas of democracy and human rights as set out in the Universal Declaration of Human Rights and international law based upon it. The European Court of Human Rights rejected an application by the organisation against Germany alleging violation of the rights to freedom of religion, expression and association. The Court concluded that the activity of Hizb ut-Tahrir contradicts the values of the Convention on Human Rights. In the case of *Kasymakhunov and Saibatillov v. Russia*, the European Court of Human Rights dismissed similar applications, but recognized that in relation to Kasymakhunov Russian had violated the right to a fair trial since at the time of the trial Kasymakhunov had been unable to find out that the organisation had been banned.

## **Basis for charges of terrorism**

The Supreme Court of the Russian Federation justified its decision as follows:

*'The Party of Islamic Liberation (Hizb ut-Tahrir al-Islami) is an organisation that has the goal of removing non-Islamic governments and establishing Islamic rule throughout the world by means of recreating a "Worldwide Islamic Caliphate," initially in regions with a predominantly Muslim population, including Russia and the countries of the CIS. The main forms of activity of Hizb ut-Tahrir are: militant Islamic propaganda, combined with intolerance towards other religions; and active recruitment of supporters along with activities intended to divide society (in the first place, propaganda and powerful financial reinforcement). In a number of Middle East states and the CIS (Uzbekistan), Hizb ut-Tahrir has been banned under the law.'*

If we step back from the negative evaluations expressed in these severe formulations and the errors of fact (about which one can read in the report by Vitalii Ponomarev, *Russia: Security Services against Hizb -ut-Tahrir*, 2005 [Россия: спецслужбы против Хизб ут-Тахрир]), it is not possible to find instructions for terrorism, neither in terms of the Russian Criminal Code, the Russian Federal Law 'On Combating terrorism', nor common sense.

The notion that Hizb ut-Tahrir is intolerant of other religions is debatable, but in any case propaganda of religious discord and terrorism are different things. Neither propaganda nor recruitment of supporters nor receipt of financial support are crimes in themselves.

Defendants in prosecutions for involvement in Hizb ut-Tahrir are very often charged with holding meetings, reading and distributing banned books, discussion of the international political situation and of the state of society, agitation among Muslims and even having conversations about conspiracies and conduct when under interrogation. As a rule, the prosecution concludes from all this that participants in Hizb ut-Tahrir were involved in terrorist activity or in attempts to change the Russian constitutional order.

## **2004-2014: Summary of prosecutions**

In the first ten years of prosecutions for involvement in Hizb ut-Tahrir, at least 180 people were convicted<sup>2</sup> (the majority in Bashkortostan and Tatarstan), of whom about 110 were sentenced to terms in prison. Up to 40% of those charged were sentenced to non-custodial sentences. At the same time, those associated with Hizb ut-Tahrir were sentenced with similar frequency to terms of less than one year in a low-security prison colony as well as more than five years in a strict regime prison colony, while the most common punishments were sentences of between one and two years. The approach to the handing down of penalties has clearly been arbitrary.

Formally, the decision of the Supreme Court of the Russian Federation to recognise Hizb ut-Tahrir as a terrorist organisation allows defendants to be charged with serious offences under Article 205.1 of the Russian Criminal Code (Aiding and abetting terrorist activity), but law enforcement agencies have used this Article relatively rarely.

At least 80% of prosecutions known to us in the years 2004-2014 were brought solely under Article 282.2 of the Russian Criminal Code (Organisation or taking part in the activity of a banned organisation). Moreover, until the end of 2013 this Article was not a serious offence for 'participants' (up to two years in a prison colony) and of medium gravity for the organisers of cells (up to three years in a prison colony).

Article 210 of the Russian Criminal Code (Organisation of, or taking part in, a criminal group, punishable by up to 20 years in prison) also failed to 'take root'. The 2004 trial of the married couple, Iusup Kasymakhunov and Anna Drozdovskaya, was the very first trial for an alleged offence under this

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<sup>2</sup> Here and in what follows the generalised data about prosecutions for involvement in Hizb ut-Tahrir has been obtained mainly from news reports published by the Sova Centre for News and Analysis. Sova's regular monitoring over many years has been conducted with care. However, it should be noted that even monitoring of this kind cannot embrace all events since not every criminal prosecution is reported in the news or in press releases by law enforcement agencies.

Article. In 2005 Article 210 was again used in a Hizb ut-Tahrir prosecution in Ufa, but there has been no more information about such cases.

In 2009 defendants in Tatarstan were charged under Article 30, Section 1, and Article 278 of the Russian Criminal Code (Preparing to seize power by force, punishable by up to 10 years in a prison colony). Most likely this was a carbon copy of repressive practices in Uzbekistan, where Hizb ut-Tahrir associates have been charged under Article 259 of the Criminal Code of Uzbekistan (Attempted overthrow of the constitutional order of the Republic of Uzbekistan).

The very idea of changing, in some non-specific future time, non-Islamic governments for Islamic governments began in itself to be classified as an attempt to seize power by force, although there was no evidence of preparation or planning a coup d'état by adherents of Hizb ut-Tahrir.

Since individuals were charged with both preparing to seize power by force and taking part in a banned organisation, and in each case the same facts were simply repeated, what was in fact taking place was a double punishment for a single act.

### **Article 205.5**

With the introduction into the Russian Criminal Code of Article 205.5, a process of unifying cases concerning involvement in Hizb ut-Tahrir began. In June 2015 the first conviction was handed down for members of Hizb ut-Tahrir under Article 205.5 of the Russian Criminal Code (a case concerning a Hizb ut-Tahrir cell in the city of Diurtiuli in Bashkortostan). The defendants were sentenced to terms ranging from five years and two months to 10 years and six months. All sentences of which we are aware that have subsequently been handed down have included convictions under this article.

The charges brought against those arrested on suspicion of involvement



in Hizb ut-Tahrir in the first two years after entry into force of Article 205.5 of the Russian Criminal Code were, as a rule, divided into two parts: for alleged offences committed before November 2013 and those allegedly committed after November 2013. Defendants were charged simultaneously with offences under the two Articles of differing severity for one and the same on-going activity.

*'It is amazing how the authorities evaluated the danger that might come from the Hizb ut-Tahrir party and its members. If in 2011 for the same actions I was sentenced to one year in prison, and then, having quashed this sentence, to a fine of 100,000 roubles, then now my actions would be penalised by a sentence of from 15 to 20 years in prison. The sentence has increased in severity by a factor of more than 10. For what? After all the activity of Hizb ut-Tahrir has not changed, nor have my actions. I did not end my involvement in Hizb ut-Tahrir in 2008. I am a member of the organisation and I do not understand why my continuing actions were classified under two different Articles of the Criminal Code, after all my participation in Hizb ut-Tahrir was unchanged.'*

– Asgat Khafizov, on 4 December 2017, in his final address to the court at his trial.<sup>3</sup> On 8 December he was sentenced to 19 years and two months in a strict-regime prison colony.

In a series of prosecutions, charges under Article 205.5 of the Russian Criminal Code have been supplemented by charges under Article 30, Section 1, and Article 278 of the Russian Criminal Code, that has also resulted to the 'doubling up' of the facts of the case and to making the punishments more severe. In Ufa, in the 'Case of the 26', a second charge was laid against all defendants except three who had pleaded guilty. In this way, we would suggest, the additional charge of preparing a seizure of power by force has in some instances been used by the law enforcement agencies as a means of putting pressure on defendants.

Another means of manipulating the seriousness of the punishment is the arbitrary selection of either Section 1 (Organisation of the activity of a cell) or Section 2 (Participation in activity) of Article 205.5 of the Russian Criminal Code. For a long time it was usual for cases concerning banned

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<sup>3</sup> <https://graniru.org/Politics/Russia/Politzeki/m.266152.html>

organisations to recognise a single leader of the organisation and a number of participants. However, in recent years in cases concerning involvement in Hizb ut-Tahrir a number of group sentences have been handed down in which each of those convicted has been found to be an organiser of the cell. Analysis, for example of materials of the case<sup>4</sup> against eight individuals convicted in Kazan in December 2017, shows that the notion of leadership, as used by investigators, is very vague. The prosecution describes a complex and confused 'hierarchical schema' according to which the defendants both supervised and were subordinate to each other and other persons (for example, according to the investigators, Uzbekov and Davletshin were simultaneously subordinate to Adiev and Khafizov; Khafizov also supervised Valiullin and Khevronin, while Valiullin also supervised Khevronin, and so on). It would seem that these hierarchical links were invented in order to make the charges more serious.

### ***Terms in prison colonies***

Over the last five years, the maximum sentence handed down for involvement in Hizb ut-Tahrir has increased by a factor of three (see Table 2).

Table 2. Severest sentences for involvement in Hizb ut-Tahrir

<b>2004-2013</b>	<b>2014-2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
8 years	11 years	17 years	19 years and 2 months	24 years

Furthermore, the ban, introduced in 2014, on handing down sentences 'less than the lower limit' for terrorist offences came into force. All sentences handed down to 'organisers of cells' of Hizb ut-Tahrir in 2017 (except for the sentence handed down to Murad Valiev in Dagestan) were for at least 15 years, when earlier less severe sentences had been handed down on more than one occasion. The case of Ruslan Zeitullaev, a resident of annexed

<sup>4</sup> <https://memohrc.org/ru/special-projects/kazanskoe-delo-8-o-chlenstve-v-zapreshchyonnoy-hizb-ut-tahrir>

Sevastopol charged with having organised a Sevastopol cell of Hizb ut-Tahrir, set an important precedent. In its initial ruling, the North Caucasus Military Court ruled it had not been proved that Zeitullaev acted as an organiser, and in 2016 he was sentenced to seven years in a prison colony under Article 205.5, Section 2, of the Russian Criminal Code. Prosecutors appealed against this decision, demanding Zeitullaev be tried as an organiser under Section 1. The Supreme Court agreed with the prosecutors and Zeitullaev was retried. In April 2017 he was sentenced to 12 years in a strict regime prison colony, this time for an offence under Section 1. However, this decision did not satisfy the prosecutors either: the sentence was below the lower limit as provided for by the Article. The Supreme Court on appeal raised the sentence to 15 years in a prison colony.

In July 2016, Federal Law No. 375, known as 'Yarovaya's law', entered into force. The minimum and maximum limits for sentences under Article 205.5, Section 2, of the Russian Criminal Code were increased by a factor of two: the minimum from five to 10 years; the maximum from 10 to 20 years. This means that a court cannot sentence participants in Hizb ut-Tahrir, whose activity continued after July 2016, to less than ten years in a prison colony.

### ***The scale of prosecutions***

As of 10 December 2018 we know of 132 individuals convicted under Article 205.5 of the Russian Criminal Code for involvement in Hizb ut-Tahrir. This is more than half of all those convicted under Article 205.5. A further 14 people also remain in prison convicted before the active use of Article 205.5 (in their cases, participation in Hizb ut-Tahrir was classified as an offence under Article 282.2).

Among those convicted under Article 205.5, ten people were given sentences of more than 20 years, at least 26 people received sentences from 15 to 20 years, and at least 26 people sentences from 10 to 15 years.

At least 18 people at present are on trial on charges of involvement in Hizb ut-Tahrir and about 70 people are under investigation. In relation to six defendants, the court has returned the case to the prosecutor's office for revision. Consequently, in Russia a total of approximately 230 defendants in Hizb ut-Tahrir prosecutions have been deprived of liberty under Article 205.5 of the Russian Criminal Code. We point out that this list is not exhaustive since in a number of cases we do not know the names of those held in pre-trial detention. At least 10 people are being sought by the police.

As in previous years, two regions are 'in the lead': Bashkortostan and Tatarstan. Taken together, at least 116 people in these two regions have been sentenced to prison terms under Article 205.5 of the Russian Criminal Code for belonging to Hizb ut-Tahrir. In Ufa, in July 2018 a major trial of 20 individuals charged with belonging to Hizb ut-Tahrir ended. Half of the defendants received terms of 20 or more years in strict-regime prison colonies, to our knowledge the most severe sentences yet to have been handed down.

In third place in terms of the scale of repressive measures against supposed members of Hizb ut-Tahrir is the annexed region of Crimea (including Sevastopol). Thirty Crimea residents have been deprived of liberty (six of whom have been convicted; four of the convicted have been transferred to Russian colonies; the trials of a further nine are underway at present). The specific nature of the situation in Crimea is related to the legal status of the peninsula: according to international law, Crimea is part of Ukraine and in Ukraine Hizb ut-Tahrir operates legally. Until 2014 the organisation encountered no prosecutions in Crimea.

## **Summary**

The danger presented to the Russian public by the organisation Hizb ut-Tahrir is hypothetical. The question whether the organisation should be considered extremist remains open for discussion, but it is not a terrorist organisation, despite the ruling of the Russian Supreme Court.

The severity of the prosecutions by Russian law enforcement agencies for involvement in Hizb ut-Tahrir cannot be understood from the point of view of common sense. There has been a rapid 'inflation' of penalties without any justification whatsoever. In the past five years alone, the longest prison term handed down for participation in Hizb ut-Tahrir increased by a factor of three: from eight to 24 years. At the same time, Hizb ut-Tahrir did not become three times more dangerous.

The relevant legislation has been amended in recent years in such a manner that almost all prison terms, to which those involved in Hizb ut-Tahrir will be sentenced in the future, will be of at least 10 years.