

# State Security v Freedom of Expression: Legitimate Fight against Terrorism or Suppression of Political Opposition?

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## 1. Introduction

On 31 March 2009, the UN Human Rights Committee ('the Committee') adopted its views in the case of *A.K. and A.R. v Uzbekistan*.<sup>1</sup> The Committee held that the conviction of the two authors, who were Uzbek citizens, for seeking, receiving and imparting information and radical ideas related to Islam did not violate any of the provisions of the International Covenant on Civil and Political Rights 1966 (ICCPR).<sup>2</sup>

The case is a telling example of the acute conflict between the fight against terrorism and religious extremism<sup>3</sup> on the one hand, and the protection of human rights on the other. At the centre of the case is a radical Islamic organisation—Hizb ut-Tahrir. The organisation's declared aim is to establish an

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1 *A.K. and A.R. v Uzbekistan* (1233/2003), CCPR/C/95/D/1233/2003 (2009); 16 IHRR 719 (2009).

2 999 UNTS 171. See *ibid.* at para. 7.2.

3 As early as 1992, President Karimov started to fight religious extremism. The President saw his authority challenged by political opposition emanating from independent politicised Islam. After 11 September 2001, President Karimov perpetuated his fight under the cover of the fight against terrorism and took advantage of the US fight against terrorism. Uzbekistan quickly became a partner of the United States in this fight. For this reason, this case note not only refers to the fight against religious extremism but also to the fight against terrorism. See Pyati, *Karimov's War: Human Rights Defenders and Counterterrorism in Uzbekistan* (New York: Human Rights First, 2005) at 1–4, available at: <http://www.humanrightsfirst.info/pdf/05119-hrd-uzbek-rep-karimov.pdf> [last accessed 3 November 2009].

Islamic state—the Caliphate—and to restore the practice of Islamic piety.<sup>4</sup> Conflicting with democratic and liberal ideas, Hizb ut-Tahrir’s ideology seriously challenges the international commitment to freedom of expression and freedom of religion.<sup>5</sup> With regard to Uzbekistan, the challenge is intensified by the fact that Uzbekistan’s President Karimov has utilised the situation to repress any political opposition. It is believed that, since the beginning of his campaign of religious persecution, several thousand persons have been arrested in Uzbekistan for their membership in Hizb ut-Tahrir and other underground activities.<sup>6</sup> Arrested individuals often claim to have been subjected to torture and ill treatment in order to extract confessions.<sup>7</sup>

Legal issues regarding Hizb ut-Tahrir transcend the Uzbek context. On 10 June 2006, a similar case against Russia, where Hizb ut-Tahrir is banned,<sup>8</sup> was lodged with the European Court of Human Rights.<sup>9</sup> As well, the German Federal Administrative Court had to adjudicate on the prohibition of Hizb ut-Tahrir in Germany in January 2006. The German Court upheld the ban on the grounds that the organisation’s anti-Semitic statements were not compatible with the understanding of nations (*Völkerverständigung*) and that the approval of violence as a political means violated German law.<sup>10</sup> Inconsistent state responses to Hizb ut-Tahrir reveal the difficulties in assessing the

4 See, for example, Human Rights Watch (HRW), ‘Creating Enemies of the State: Religious Persecution in Uzbekistan’ (USA: HRW, 2004) at 48, available at: <http://www.hrw.org/reports/2004/uzbekistan0304/index.htm> [last accessed 3 November 2009].

5 International Crisis Group (ICG), ‘Radical Islam in Central Asia: Responding to Hizb ut-Tahrir’, ICG Asia Report No. 58 (Brussels: ICG, 2003) at 43, available at: <http://www.crisisgroup.org/home/index.cfm?id=1441&l=1> [last accessed 3 November 2009].

6 See HRW, *supra* n. 4 at 3 et seq. In 2000, human rights activists estimated that between 6500 and 7000 persons had been arrested in Uzbekistan for membership in Hizb ut-Tahrir and other underground activities. The Uzbek branch of Hizb ut-Tahrir believes that some 4000 of its members were arrested in 2000.

7 See Economic and Social Council, Commission on Human Rights, Civil and Political Rights, Including the Question of Torture and Detention: Torture and Other Cruel, Inhuman or Degrading Treatment, Report of the Special Rapporteur on the Question of Torture, Theo van Boven, Mission to Uzbekistan, 3 February 2003, E/CN.4/2003/68/Add.2; and ICG, ‘Uzbekistan’s Reform Program: Illusion or Reality?’, Asia Report No. 46 (Brussels: ICG, 2003) at 5 et seq, available at: <http://www.crisisgroup.org/home/index.cfm?id=1446&l=1> [last accessed 18 November 2009]. See also *Muminov v Russia* Application No. 42502/06, Judgment of 11 December 2008 at para. 91 et seq.

8 On 14 February 2003, in a closed session, the Russian Supreme Court designated Hizb ut-Tahrir to be a terrorist organisation and banned it. See Ministry of Foreign Affairs of the Russian Federation, ‘Daily News Bulletin: On the Detention of Members of the Terrorist Organization “Islamic Liberation Party” (“Hizb ut-Tahrir al Islami”)’, available at: <http://www.in.mid.ru/bl.nsf/0/43bb94f12ad12c7543256d42005a9b49?OpenDocument> [last accessed 16 November 2009].

9 See *Saybatalov v Russia* Application No. 26377/06, lodged on 10 June 2006.

10 See German Federal Administrative Court, Judgment of the 6th Senate, 25 January 2006, BVerwG 6 A 6.05 at 11. Underlying the judgment is an ordinance forbidding Hizb ut-Tahrir, which the Federal Ministry of the Interior enacted on 15 January 2003. The Court noticed that Hizb ut-Tahrir had so far not implemented its anti-Semitic statements. This failure did not hinder the Court, however, which reasoned that the statements were of such overall importance as to justify a ban.

organisation's character. Whereas several states have banned the organisation (for example, Russia and Germany) or made it illegal by non-registration (Uzbekistan), others have a more liberal approach (for example, United States, Australia, Denmark, United Kingdom and Switzerland).<sup>11</sup> In view of the delicate political issues surrounding the organisation, the approach taken by the Human Rights Committee in weighing the conflicting interests at stake is worthy of examination.

## 2. Factual Background

On 16 February 1999, terrorist bombings took place in Tashkent, the capital of Uzbekistan. The Uzbek government imputed the bombings to the Islamic Movement of Uzbekistan (IMU)<sup>12</sup> and to the international Sunni pan-Islamist political party named Hizb ut-Tahrir (Party of Liberation). The bombings are often cited by the Uzbek government as examples of the perilous nature of religious extremism.<sup>13</sup> Following these bombings, some members and alleged members of Hizb ut-Tahrir were arrested and tried in connection with these events.<sup>14</sup> All the documents found during searches of the detained persons' homes and the homes of other citizens were submitted, at the request of the Samarkand Regional Prosecutor's Office, for expert examination.<sup>15</sup> In March 1999, A.K. and A.R. were arrested after the authorities discovered numerous written materials on religious themes in the attic of A.K.'s brother's home.<sup>16</sup>

11 In the United States, Hizb ut-Tahrir is neither banned nor on the US list of terrorist organisations. See United States Department of State, 'Foreign Terrorist Organizations', 2009, available at: <http://www.state.gov/s/ct/rls/other/des/123085.htm> [last accessed 7 January 2010]. Hizb ut-Tahrir is not listed in Australia as a proscribed terrorist organisation: see Criminal Code Regulations, S.R. 2002 No. 67 as amended, made under the Criminal Code Act 1995 (Cth.), prepared on 9 July 2009. In Denmark, Hizb ut-Tahrir is not banned but there are calls for its ban: see Hizb ut-Tahrir: The Liberation Party (Britain), 'Denmark finds no Basis to Ban Hizb ut-Tahrir', 2008, available at: <http://www.hizb.org.uk/hizb/press-centre/press-release/denmark-finds-no-basis-to-ban-hizb-ut-tahrir.html> [last accessed 3 November 2009]. In the United Kingdom, where Hizb ut-Tahrir has its major domicile in Western Europe, the organisation is not yet banned. See BBC News, 'Brown and Cameron Clash over ID', 2007, available at: <http://news.bbc.co.uk/2/hi/uk.news/politics/6267656.stm> [last accessed 3 November 2009]. Switzerland does not have its own lists of terrorist organisations. It uses the United Nations' list, which does not contain Hizb ut-Tahrir. See United Nations, 'The Consolidated List established and maintained by the 1267 Committee with respect to Al-Qaida, Usama bin Laden, and the Taliban and other individuals, groups, undertakings and entities associated with them', 3 December 2009, available at: <http://www.un.org/sc/committees/1267/consolidatedlist.htm> [last accessed 7 January 2010].

12 The Islamic Movement of Uzbekistan is, unlike Hizb ut-Tahrir, sometimes deemed to be a terrorist organisation. See, for example, the US list of terrorist organisations: *ibid.*

13 See Beckwith, 'Uzbekistan: Islam, Communism, and Religious Liberty – An Appraisal of Uzbekistan's 1998 Law "On Freedom of Conscience and Religious Organizations"', (2000) 3 *Brigham Young University Law Review* 997 at 1008.

14 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 2.1.

15 *Ibid.* at para. 2.2.

16 *Ibid.* at para. 2.3.

On 6 May 1999, a group of experts consisting of specialists from Samarkand State University expressed the view that the seized books, magazines and leaflets sold by the accused and used for teaching their students called for anti-constitutional activities to change the established order in Uzbekistan and contained ideas running counter to Uzbek law. For example, they called upon all Muslims to join together as one nationality or race in a single Islamic state and to sacrifice their lives for this idea if necessary.<sup>17</sup>

On 6 August 1999, the Samarkand Regional Criminal Court convicted A.K. and A.R. under Article 156(2)(e) of the Uzbek Criminal Code<sup>18</sup> (Incitement of Ethnic, Racial or Religious Hatred), as well as Article 159(4) (Attempts to Overthrow Constitutional Order of Republic of Uzbekistan), Article 216 (Illegal Establishment of Public Associations or Religious Organisations), Article 242(1) (Organisation of Criminal Community) and Article 244-1(3)(a) and (c) (Production and Dissemination of Materials Containing Threat to Public Security and Public Order). They were both sentenced to 16 years imprisonment.<sup>19</sup> In its reasoning, the Samarkand Regional Court noted that A.K. and A.R. had engaged in a criminal conspiracy with Hizb ut-Tahrir. In this connection, the Regional Court referred to the report of the group of experts, which declared Hizb ut-Tahrir a religious and political association aimed at waging political war in order to create a single Islamic state.<sup>20</sup> Together with other members of Hizb ut-Tahrir, the two authors had directed over 10 *naqib*<sup>21</sup> and run more than 174 cells, which studied forbidden literature.<sup>22</sup> A.K., who admitted having joined Hizb ut-Tahrir and taught a study group, asserted that he had never conspired to organise explosions or resettle populations and that he never intended to overthrow the constitutional order. A.R. acknowledged that he had resolved to become a Hizb ut-Tahrir member, and organised 6 study groups and taught 22 individuals.<sup>23</sup>

On 6 October 1999, the Criminal Division of the Supreme Court of Uzbekistan upheld the authors' appeal against the charges under Articles 156(2)(e), 242(1) and 244-1(3)(c) of the Criminal Code.<sup>24</sup> The Supreme Court

17 Ibid. at para. 2.4.

18 A translated version of the Criminal Code of the Republic of Uzbekistan, 2012-XII, 22 September 1994, is available at: <http://www.unhcr.org/refworld/docid/3ae6b59216.html> [last accessed 3 November 2009].

19 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 2.5.

20 Ibid. at para. 2.6.

21 According to Naumkin, a *naqib* is the head of a *jihaz*, which encompasses the limits of one populated area. Naumkin, *Radical Islam in Central Asia, Between Pen and Rifle* (Lanham, Md: Rowman & Littlefield, 2005) at 144. Another author explains that a *naqib* is the leader of a local committee at the city level, who is responsible for the administration of the group affairs relevant in the area: see Karagiannis, 'The Challenge of Radical Islam in Tajikistan: Hizb ut-Tahrir al-Islami', (2006) 34 *Nationalities Paper* 1 at 5.

22 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 2.7.

23 Ibid. at para. 2.8.

24 Criminal Division of the Supreme Court of the Republic of Uzbekistan, Ruling No. 03-1016-99K, 6 October 1999.

dismissed the appeal against their convictions under Article 159 of the Criminal Code, but reclassified the offences from paragraph 4 thereof to Article 159(3)(b). In its judgment, the Supreme Court did not rule on the conviction under Article 216 of the Criminal Code and left the sentence unchanged.<sup>25</sup>

On 9 July 2003, after the Supreme Court's judgment, A.K. and A.R. communicated their case to the Human Rights Committee. They claimed violations of Articles 7, 9, 10, 14, 15 and 19 of the ICCPR. In their submission, they asserted that they were prosecuted simply for reading and studying religious texts and for meeting with like-minded persons.<sup>26</sup> On 1 December 2004, A.K. was granted an amnesty. He was released two and a half months later.<sup>27</sup>

### 3. The Human Rights Committee's Views

The Committee declared the authors' claims in respect of Articles 7, 9, 10, 14 and 15 of the ICCPR inadmissible on the basis that they had not been substantiated. The claim under Article 19 of the ICCPR was declared admissible.<sup>28</sup>

Having carefully studied the experts' report as well as the judgment of the Samarkand Regional Criminal Court and the appellate ruling of the Uzbek Supreme Court, the Committee held that there had not been a violation of Article 19 of the ICCPR, which protects freedom of expression. The Committee held that it 'cannot conclude that the restrictions imposed on the authors' expression were incompatible with article 19, paragraph 3'.<sup>29</sup> The Committee noted that the national courts had been concerned with 'a perceived threat to national security (violent overthrow of the constitutional order) and to the rights of others'.<sup>30</sup> The careful steps taken by the judiciary (for example, reliance on the group of experts' report) as well as the fact that, on appeal, the authors did not challenge certain details of their conviction, further persuaded the Committee that the limitations were justified.<sup>31</sup>

25 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 2.9. The authors were finally convicted for offences under Article 159 part 3(b), Articles 216 and 244-1 part 3(a) of the Uzbek Criminal Code. Article 159 part 3(b) of the Criminal Code carries a range of punishment of five to ten years imprisonment. The range of punishment of Article 216 of the Criminal Code is a fine from 50 to 100 minimum monthly wages, or arrest up to six months, or imprisonment up to five years. A violation of Article 244-1 part 3(a) is punishable with imprisonment from five to eight years.

26 *A.K. and A.R. v Uzbekistan*, supra n. 1 at paras 3.1 and 3.2.

27 *Ibid.* at para. 2.10.

28 *Ibid.* at paras 6.3 and 6.4.

29 *Ibid.* at para. 7.2.

30 *Ibid.*

31 *Ibid.*

## 4. Analysis

### A. Limiting Freedom of Expression

Article 19(2) of the ICCPR guarantees the right to seek, receive and impart information and ideas of all kinds. Actions going beyond the mere dissemination of information and ideas (for example, the active implementation of these ideas) may be considered criminal acts not protected by Article 19(2) of the ICCPR.<sup>32</sup> Thus, states may criminalise the establishment of anti-state associations or actions aimed at overthrowing the constitutional order. However, not every expression of critical opinions may be suppressed by invoking state security concerns.<sup>33</sup> Article 19(3) of the ICCPR provides that freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted.<sup>34</sup> Such restrictions must be provided by law and be necessary in order to achieve one or more of the objectives enumerated in Article 19(3) of the ICCPR.<sup>35</sup> They may directly prohibit an individual from expressing a certain idea or opinion. Typically such restrictions are indirect: they are aimed at the medium or legal entities selected to express oneself, such as media enterprises, cinemas, religious groups and so on.<sup>36</sup>

The present case reveals two interferences with freedom of expression. First, Hizb ut-Tahrir, as a result of having been denied registration according to national law, was regarded as an illegal organisation. It was thus lawfully prevented from pursuing its activities. Second, specific individual behaviour relating to the dissemination of certain information and ideas was criminalised. The former constitutes an indirect restriction, the latter a direct restriction of freedom of expression. However, the Committee only concerned itself with the second interference, as there was a lack of information regarding whether the non-registration of Hizb ut-Tahrir was compatible with the ICCPR.

### B. Questionable Legal Basis for Uzbek Measures

The Uzbek limitations to freedom of expression are provided by law. The Law of the Republic of Uzbekistan on Freedom of Worship and Religious

32 Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd edn (Kehl: Engel, 2005) at 445.

33 *Ibid.*

34 Human Rights Committee, General Comment No. 10: Freedom of opinion (Article 19), 29 June 1983, HRI/GEN/1/Rev.9 (Vol. I) 181; 1-2 IHRR 9 (1994) at para. 4.

35 Article 19(3) ICCPR provides: ‘The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.’

36 See Nowak, *supra* n. 32 at 449.

Organizations ('1998 Freedom of Conscience Law')<sup>37</sup> is the primary legal basis for these limitations. The Uzbek Criminal Code, which was amended subsequent to the enactment of the 1998 Freedom of Conscience Law, served as the legal basis for the punishment of the authors' acts. These two statutes contain provisions that can further affect the right to peaceful assembly (Article 21 of the ICCPR) and freedom of association (Article 22 of the ICCPR).<sup>38</sup> According to these national provisions, Hizb ut-Tahrir is illegal in Uzbekistan for not having been registered.<sup>39</sup>

While the Committee requires that national laws comply with the ICCPR,<sup>40</sup> it does not examine in the individual complaint procedure the compatibility of laws with the ICCPR *in abstracto*.<sup>41</sup> In this connection, the Committee considers it sufficient if the concrete application of the law to an individual is consistent with the ICCPR.<sup>42</sup> This approach may produce divergences between the results of the state reporting procedure under Article 40 of the ICCPR and the individual complaint procedure under the first Optional Protocol. In its last two concluding observations on Uzbekistan, the Committee criticised the 1998 Freedom of Conscience Law and the use of criminal law as not being fully compatible with the ICCPR.<sup>43</sup> However, despite considering it necessary in its views on a different communication to underline the problematic nature of a national statute,<sup>44</sup> the Committee abstained from doing the same in the present communication. It settled for succinct views in order to avoid tackling a delicate issue. As a result, the examination of Article 19(3) of the ICCPR

37 For a translated version of the Law of the Republic of Uzbekistan on Freedom of Worship and Religious Organizations as published in the Uzbek Press, see Corley, 'Narodnoye Slovo', (Tashkent: BBC, 15 May 1998), available at: <http://www.2stetson.edu/~psteeves/relnews/uzbeklaw.html> [last accessed 3 November 2009].

38 For more detailed information about particular Articles of the 1998 Freedom of Conscience Law, which can be interpreted as violating Articles 21 and 22 ICCPR, see Beckwith, *supra* n. 13 at 1029.

39 See HRW, *supra* n. 4 at 50.

40 See, for example, *Robert Faurisson v France* (550/1993), CCPR/C/58/D/550/1993 (1996); 4 IHRR 444 (1997) at para. 9.5.

41 See, for example, *Leo Hertzberg et al. v Finland* (61/1979), CCPR/C/OP/1 at 124 (1985) at paras 9.2 and 9.3; and *Robert Faurisson v France*, *ibid.* at para. 9.3.

42 See, for example, *Robert Faurisson v France*, *ibid.* at para. 9.5 ('For these reasons the Committee is satisfied that the Gayssot Act, as read, interpreted and applied to the author's case by the French courts, is in compliance with the provisions of the Covenant.').

43 See Concluding Observations of the Human Rights Committee regarding Uzbekistan, 26 April 2005, CCPR/CO/83/UZB at para. 22; and Concluding Observations of the Human Rights Committee regarding Uzbekistan, 26 April 2001, CCPR/CO/71/UZB at para. 24.

44 See *Robert Faurisson v France*, *supra* n. 40 at para. 9.3 ('Although it does not contest that the application of the terms of the Gayssot Act, which, in their effect, make it a criminal offence to challenge the conclusions and the verdict of the International Military Tribunal at Nuremberg, may lead, under different conditions than the facts of the instant case, to decisions or measures incompatible with the Covenant, the Committee is not called upon to criticize in the abstract laws enacted by States parties.').

in the present case fell short of earlier, more in-depth reviews of the provision.<sup>45</sup>

As the Committee was not called upon to criticise the pertinent Uzbek law in the abstract, the crucial point is whether the concrete application of the law leading to the convictions of the authors was necessary in order to protect national security and the rights of others.<sup>46</sup> The existence of a threat is thus a precondition to the application of the necessity test. Whether the actions taken by the Uzbek government were necessary depends on the character of the threat and, in the present case, the threat derived from the dissemination of Hizb ut-Tahrir's ideology.

### C. *The Ideology of Hizb ut-Tahrir as a Real Threat*

Taqi al-Din Nabhani, the founder of Hizb ut-Tahrir, formed the organisation's global ideology in the 1950s.<sup>47</sup> Today, Hizb ut-Tahrir declares that its 'objective is to resume the Islamic way of life by establishing an Islamic State that executes the systems of Islam and carries its call to the world'.<sup>48</sup> The projected Islamic state—the Caliphate—is to be under the exclusive reign of Islamic law (*Sharia*) and any other form of legal provision or political structure—such as democracy—is uncompromisingly rejected.<sup>49</sup> In addition, strong anti-American and anti-Semitic tendencies reveal themselves in Hizb ut-Tahrir's literature.<sup>50</sup> Some aspects of the organisation's aims are in opposition to different rights provided by the ICCPR. Invoking the ICCPR under such circumstances might be considered as an abuse of the right of submission,<sup>51</sup> and as such would render the communication inadmissible according to Article 3 of the

45 Views that thoroughly examine the fulfilment of the conditions are, for example, *Ballantyne, Davidson, McIntyre v Canada* (359/1989), CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993); 1 IHRR 145 (1994) at para. 11.4; *Robert Faurisson v France*, supra n. 40 at para. 9.4 et seq.; *Keun-Tae Kim (represented by Mr Yong Whan Cho, Duksu Law Offices, in Seoul) v Republic of Korea* (574/1994), CCPR/C/64/D/574/1994 (1999); 6 IHRR 930 (1999) at paras 12.2 et seq.

46 See Articles 19(3), 21 and 22(2) ICCPR.

47 See, for example, Naumkin, supra n. 21 at 128.

48 See official website of Hizb ut-Tahrir, 'About us', available at: <http://english.hizbuttahrir.org/1-19-about-us.aspx> [last accessed 3 November 2009].

49 See, for example, ICG, supra n. 5 at 4. Hizb ut-Tahrir rejects the political method of gradualism to implement the *Sharia*. See Karagiannis, 'Political Islam in Uzbekistan: Hizb ut-Tahrir al-Islami', (2006) 58 *Europe-Asia Studies* 261 at 266.

50 See HRW, supra n. 4 at 56 et seq. In the present communication, anti-Semitism was not an issue. If it was, the Committee would have had to consider Article 20(2) of the ICCPR, which demands the prohibition of religious hatred that constitutes incitement to discrimination, hostility or violence.

51 For detailed information concerning the abuse of the right of submission, see Möller and de Zayas, *United Nations Human Rights Committee, Case Law 1977–2008, A Handbook* (Kehl: Engel, 2009) at 92 et seq.

first Optional Protocol.<sup>52</sup> An application of Article 5(1) of the ICCPR in connection with Article 3 of the first Optional Protocol could further have endangered the admissibility of A.K. and A.R.'s communication. As far as individuals are concerned, Article 5(1) of the ICCPR is intended to prevent reliance upon rights recognised in the ICCPR, such as freedom of expression or association, to protect 'any act aimed at the destruction of any of the rights and freedoms recognized' in the ICCPR. Jurisprudence on this provision is very scarce<sup>53</sup> and no General Comment exists in this regard.<sup>54</sup> The impact of Article 5(1) of the ICCPR is therefore difficult to evaluate.

According to Hizb ut-Tahrir, the establishment of the Caliphate is to come about in three stages of political struggle. In the beginning, Hizb ut-Tahrir members try to convince other individuals of their ideas with the objective of recruiting them as new members. This involves studying Hizb ut-Tahrir's ideology and educating new members (stage 1—period of study and culture). Subsequently, Hizb ut-Tahrir will interact with the wider Muslim community, the *Ummah*, in order to establish Islam in life, state and society (stage 2—period of interaction with the *Ummah*). Finally, Islamic governance is established and Islam and *Sharia* implemented (stage 3—period of establishing Islamic governance and implementing *Sharia*).<sup>55</sup> Hizb ut-Tahrir renounces violence in order to establish the Caliphate. However, their vague ideological commitment to non-violence does not prohibit the use of violence in defensive wars or conflicts that are already in progress.<sup>56</sup> Some of the group's members believe that, eventually, war will be unavoidable in order to establish the Caliphate since it is the only way to overcome the prevailing repression.<sup>57</sup> As a matter of fact, it has never been proven that Hizb ut-Tahrir has performed any violent or terrorist act in Central Asia.<sup>58</sup>

In its fight against religious extremists, the Uzbek government has emphasised the dangerous character of Hizb ut-Tahrir and has arrested its members *en masse* for various crimes.<sup>59</sup> In respect of the dissemination of the ideology

52 In *J.R.T. and the W.G. Party v Canada* (104/1981), Admissibility Decision, CCPR/C/OP/2 at 25 (1984) at para. 8(b), the author claimed a violation of Article 19 of the ICCPR by Canada, which prevented him from disseminating anti-Semitic messages. The Committee found that Canada had an obligation under Article 20(2) of the ICCPR to prevent such advocacy of racial and religious hatred. In respect of this claim, the communication was declared inadmissible according to Article 3 of the First Optional Protocol.

53 In *M.A. v Italy* (117/1981), Admissibility Decision, CCPR/C/49/D/469/1991 at para. 13.3, the Committee referred *inter alia* to Article 5(1) ICCPR and declared the communication concerning Article 19 ICCPR inadmissible.

54 See Möller and de Zayas, *supra* n. 51 at 143.

55 See ICG, *supra* n. 5 at 5; and Walker, 'Islam, Islamism and Political Order in Central Asia', (2003) 56 *Journal of International Affairs* 21 at 38.

56 See HRW, *supra* n. 4 at 48.

57 See Ro'i, 'Islam, State and Society in Central Asia', (2003) 14 *Helsinki Monitor* 242 at 251 et seq.

58 See, for example, ICG, *supra* n. 5 at 24.

59 See Rhodes and Tscherne-Lempiäinen, 'Human Rights and Terrorism in the Central Asian OSCE States', (2002) 13 *Helsinki Monitor* 36 at 48; HRW, *supra* n. 4 at 117 et seq.; and ICG, *supra* n. 5 at 33.

of Hizb ut-Tahrir, the Human Rights Committee agreed with the Uzbek government that a threat to national security, consisting in the violent overthrow of the constitutional order, existed.<sup>60</sup> Since Hizb ut-Tahrir is not said to have used force in order to achieve their aim, it is questionable whether this threat is severe enough to warrant the measures taken. The so far non-violent nature of the threat emanating from Hizb ut-Tahrir finds endorsement in reports by Human Rights Watch and the International Crisis Group.<sup>61</sup> It would have been up to the authors of the communication to submit these reports for substantiation, all the more so since the Committee lacks competence to receive third party interventions or *amicus curiae* briefs.<sup>62</sup> Extending the Committee's power to consider admitting *amicus curiae* briefs could potentially introduce the Committee to useful information for evaluating a case. Judgments delivered by the European Court of Human Rights and the Inter-American Court of Human Rights, both of which accept third party interventions,<sup>63</sup> substantiate this assumption.

Even if the non-violent means used by Hizb ut-Tahrir may be legal, the proposed change is certainly not compatible with democracy and the prevalent constitutional order in Uzbekistan. Due to its history, its geopolitical situation, the high percentage of Muslims<sup>64</sup> and the poverty in some segments of the population, the risk of destabilisation by radical Islamic ideas may be higher in Uzbekistan than, for instance, in a Western country.<sup>65</sup> Since the fall of the Soviet Union, secular Uzbekistan claimed to fear destabilisation by Islamic extremists—imprecisely referred to as *Wahhabis*.<sup>66</sup> Along with Hizb ut-Tahrir's remarkable rise in popularity,<sup>67</sup> it is feared that it may align with local extremist groups, such as the IMU, who advocate the use of force as a means.<sup>68</sup>

60 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 7.2.

61 See HRW, supra n. 4 at 51 et seq.; and ICG, supra n. 5 at 24.

62 See Nowak, supra n. 32 at 873.

63 See Rule 44 European Court of Human Rights, Rules of the Court, July 2009; and Article 41 Inter-American Court of Human Rights, Rules of Procedure, approved by the Court during its XLIX Ordinary Period of Sessions, November 2000, and partially amended by the Court during its LXXXII Ordinary Period of Sessions, held from January 2009.

64 About 88 percent of the Uzbek population is Muslim: see Permanent Mission of the Republic of Uzbekistan to the United Nations, 'Culture, Religion, Profile of Uzbekistan', available at: <http://www.un.int/wcm/content/site/uzbekistan/cache/offonce/pid/8491;jsessionid=78C81AFBA7358CC44C5867E3AA648768> [last accessed 3 November 2009].

65 See Karagiannis, supra n. 49 at 267 et seq.; and Chaudet, 'Hizb ut-Tahrir: An Islamist Threat to Central Asia?', (2006) 26 *Journal of Muslim Minority Affairs* 113 at 118 et seq.

66 The word '*Wahhabi*' is derived from a Muslim scholar, Muhammad bin Abd al-Wahhab (1703–1791), who proclaimed the simplicity of the Islamic religion deriving from the Koran and the Sunna. *Wahhabism* is a branch of Sunni Islam, which is assigned to the Hanbali School. Today the conservative movement finds most followers in Saudi Arabia and Qatar. For further information, see DeLong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (London: Tauris, 2004).

67 Cornell and Spector, 'Central Asia: More than Islamic Extremists', (2002) 25 *The Washington Quarterly* 193 at 200, pointed out that Hizb ut-Tahrir's popularity is growing. Karagiannis, supra n. 49, enumerates several reasons for Hizb ut-Tahrir's popularity in Uzbekistan.

68 See ICG, supra n. 5 at 29.

It is possible that, in the future, Hizb ut-Tahrir may turn to violence.<sup>69</sup> Much depends though on the environment in which Hizb ut-Tahrir is situated and which is created *inter alia* by the responses given to the organisation by states.<sup>70</sup> For the moment, several observers consider the threat currently posed by Hizb ut-Tahrir and other Islamist groups as small or at least exaggerated.<sup>71</sup> States are thus well advised to not needlessly fuel this threat with their politics.

#### D. Second Thoughts on Necessity

In terms of risk assessment, the Committee concluded that the facts of the case indeed amounted to a threat posed by Hizb ut-Tahrir to national security and the rights of others. The determination whether a situation warrants invoking national security as a ground for human rights limitations lies with the Committee alone; states do not enjoy a margin of discretion.<sup>72</sup> In line with its case law, the Committee examined whether the restrictions met its strict tests of justification, which require that the state specifies the exact nature of the threat and how the limitation manages to contain this threat.<sup>73</sup> The Committee considered that the measures taken by Uzbekistan were necessary and thus did not amount to a violation of the right to freedom of expression.

Although the finding in *A.K. and A.R. v Uzbekistan* may be sound, as any risk assessment involves an evaluative judgment drawing on a certain set of data, there remains room for alternative conclusions. A.K. and A.R. were convicted for the simple dissemination of Hizb ut-Tahrir materials and not for actively implementing its ideas. Neither the threat emanating from the ideology of Hizb ut-Tahrir in general<sup>74</sup> nor that following from the actions of A.K. and A.R. in particular are as grave as proclaimed. Under these circumstances, the measures taken seem not to be proportionate to the aim pursued. This is not to dispute that some limitations upon an individual's freedom of expression may be necessary in order to protect national security and the rights of others. The point at issue is whether the specific state measures taken in

69 Karagiannis and McCauley, 'Hizb ut-Tahrir al-Islami: Evaluating the Threat Posed by a Radical Islamic Group that Remains Nonviolent', (2006) 18 *Terrorism and Political Violence* 315 at 328 et seq.

70 See ICG, supra n. 5 at 43.

71 Ibid. at 29; Walker, supra n. 55 at 21; and Chaudet, supra n. 65 at 119 and 123.

72 See Conte and Burchill, *Defining Civil and Political Rights*, 2nd edn (Farnham: Ashgate, 2009) at 44; *Keun-Tae Kim (represented by Mr. Yong Whan Cho, Duksu Law Offices, in Seoul) v Republic of Korea*, supra n. 45 at paras 10.3 and 12.4 et seq.

73 See, for example, *Vladimir Viktorovich Shchetko v Belarus* (1009/2001), CCPR/C/87/D/1009/2001(2006); 14 IHRR 11 (2007) at paras 7.3 and 7.5; *Keun-Tae Kim (represented by Mr. Yong Whan Cho, Duksu Law Offices, in Seoul) v Republic of Korea*, supra n. 45 at para. 12.4; and Conte and Burchill, supra n. 72 at 87.

74 See Chaudet, supra n. 65 at 119 et seq.

the particular case meet the proportionality test implied by the necessity requirement.<sup>75</sup>

It follows that the Committee could have interpreted the necessity requirement more narrowly and concluded that there was a violation of Article 19(3) of the ICCPR. The finding of a violation might have contributed to a perceptible change of anti-terror politics. The war on terror, which has served President Karimov as a cloak for his repressive politics and made these politics find favour with Western states,<sup>76</sup> is at the crossroads. Policy-makers have come to realise that sacrificing human rights for short-term security benefits is not beneficial in the long run.<sup>77</sup> Against this backdrop, the Committee's decision has to be understood as a manifestation of judicial restraint rather than as a permissive stance towards anti-terrorism or anti-extremism measures. A *carte blanche*, as it were, does not exist, as limitations to freedom of expression are subject to strict scrutiny. The reasoning of the Committee provides little guidance for possible restrictions. In particular, an in-depth analysis of the nature of the invoked threat is missing. It would also have been helpful if the Committee had spelt out a test, such as for instance the 'clear and present danger test',<sup>78</sup> by which to determine the existence of a threat justifying the restrictions.

## 5. Freedom of Thought, Conscience, Religion and Belief

### A. *Iura novit curia before the Human Rights Committee?*

The fact that the Committee did not examine whether there was a violation of freedom of religion raises several issues. In this regard, one has to bear in mind that the authors did not explicitly invoke Article 18 of the ICCPR which

75 See Nowak, *supra* n. 32 at 460; *Robert Faurisson v France*, *supra* n. 40 at individual opinion by Elizabeth Evatt and David Kretzmer, co-signed by Eckart Klein (concurring) at para. 8; and *Rafael Marques de Morais v Angola* (1128/2002), CCPR/C/83/D/1128/2002 (2005); 12 IHRR 644 (2005) at para. 6.8. In the case of *Kim Jong-Cheol v Republic of Korea* concerning Article 19 ICCPR, the Committee noted 'that the sanction visited on the author, albeit one or [sic] criminal law, cannot be categorized as excessively harsh'. *Kim Jong-Cheol v Republic of Korea* (968/2001), Admissibility Decision, CCPR/C/84/D/968/2001(2005); 13 IHRR 67 (2006) at para. 8.3.

76 See Hanks, 'Religion and Law in Uzbekistan', in Richardson (ed.), *Regulating Religion, Case Studies from Around the Globe* (New York: Kluwer Academic/Plenum Publishers, 2004) at 326.

77 For the US approach, see for example Brennan, Assistant to the President for Homeland Security and Counterterrorism, 'A New Approach to Safeguarding Americans', (Washington: Centre for Strategic and International Studies, 2009), available at: <http://www.whitehouse.gov/the.press.office/Remarks-by-John-Brennan-at-the-Center-for-Strategic-and-International-Studies/> [last accessed 3 November 2009]. For more detailed information, see International Commission of Jurists, *Assessing Damage, Urging Action: Report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights* (Geneva: International Commission of Jurists, 2009), available at: <http://icj.org/IMG/EJP-report.pdf> [last accessed 3 November 2009].

78 Justice Holmes introduced the test in *Schenk v United States* 249 U.S. 47 (1919).

provides: 'Everyone shall have the right to freedom of thought, conscience and religion.' As Hizb ut-Tahrir perceives itself as a political party,<sup>79</sup> this might be the reason for the authors' only rather vague reference to freedom of religion. In their communication to the Committee, the authors only submitted that 'the convictions amount to breaches of Articles 29 and 31 of the Uzbek Constitution, which guarantee freedom of thought and religion'.<sup>80</sup> Neither the first Optional Protocol<sup>81</sup> nor the Committee's Rules of Procedure<sup>82</sup> require an author to name a particular provision in their communication. However, the author must contend that the outlined facts constitute a violation of a right in the ICCPR.<sup>83</sup> According to Article 1 of the first Optional Protocol, the author simply needs to claim a violation of any of the rights protected by the ICCPR. The Committee has clarified in several views that it will examine on its own initiative (*iura novit curia*) which provisions of the ICCPR may have been violated by the facts presented.<sup>84</sup> In recent years, the Committee has established the practice of limiting its examination of an individual communication to the human rights issues expressly raised therein if the author is represented by counsel. By contrast, in cases where there is a legally unrepresented author, the Committee will claim full power of examination.<sup>85</sup> Although this differentiation may seem appropriate at first glance, it may prove unsatisfactory. Complainants in the human rights field are sometimes

79 See the organisation's own word: 'Hizb ut-Tahrir is a political party whose ideology is Islam, so politics is its work and Islam is its ideology.' Hizb ut-Tahrir, 'Definition', available at: <http://www.hizb-ut-tahrir.org/index.php/EN/def> [last accessed 3 November 2009].

80 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 3.2.

81 Uzbekistan acceded to the First Optional Protocol on 28 September 1995.

82 Rules of Procedure of the Human Rights Committee, 22 September 2005, CCPR/C/3/Rev.8.

83 Rule 96(b) Rules of Procedure. In connection with Treaty Body complaint procedures, the Office of the United Nations High Commissioner for Human Rights holds that '[i]t is helpful, though not strictly necessary, for you [the author] to identify the articles of the treaty that have allegedly been violated.' Office of the United Nations High Commissioner for Human Rights, 'Human Rights Treaty Bodies – Individual Communications: 23 FAQ about Treaty Body complaints procedures: "What information do you need to provide in your complaint?"', available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#what> [last accessed 3 November 2009].

84 See *B.d.B. et al. v The Netherlands* (273/1989), Admissibility Decision, Supp. No. 40 (A/44/40) at 286 (1989) at para. 6.3 ('The Committee observes that whereas authors must invoke the substantive rights contained in the Covenant, they are not required, for purposes of the Optional Protocol, necessarily to do so by reference to specific articles of the Covenant.'). *Marieta Terán Jijón v Ecuador* (277/1988), CCPR/C/44/D/277/1988 (1992) at para. 6; *Mohammed Ajaz and Amir Jamil v Republic of Korea* (644/1995), CCPR/C/66/D/644/1995 (1999); 7 IHRR 34 (2000) at para. 3.3; and *Zouhair Ben Said v Norway* (767/1997), CCPR/C/68/D/767/1997 (2000); 8 IHRR 17 (2001) at para. 6.4.

85 In *Sattorov v Tajikistan* the Committee decided that the facts raised issues under Articles 6, 7, 10, 14(1) and 14(3)(g) ICCPR, even though the author, not represented by counsel, did not invoke Article 10 ICCPR; see *Sattorov v Tajikistan* (1200/2003), CCPR/C/95/D/1200/2003 (2009) at paras 3.1–3.4 and 7.4.

represented by inexperienced lawyers, often on a *pro bono* basis.<sup>86</sup> Therefore, the Committee has not always followed this practice strictly.<sup>87</sup>

In the instant case, the authors were represented by counsel. They claimed that they were convicted 'because of their religious views and activities' and that their convictions amounted to breaches of both freedom of thought and religion as guaranteed by the Uzbek Constitution.<sup>88</sup> The Committee, however, did not examine whether these claims raised issues in connection with Article 18 of the ICCPR. This approach can be explained by the fact that the authors did not exhaust local remedies with regard to freedom of religion. Article 5(2)(b) of the first Optional Protocol requires domestic remedies to be exhausted prior to the submission of a communication to the Committee. This requirement allowed the Committee to steer around the delicate question as to what extent radical Islamic thoughts are protected by freedom of religion. The question continues to remain a blank spot on the international human rights map. One can expect, however, that this controversial issue will be raised again. It is only a matter of time. At the regional level, the European Court of Human Rights is already concerned with a case touching on this subject.<sup>89</sup>

### **B. Impact on Freedom of Religion**

In recent years, the inter-relationship between freedom of expression and freedom of religion has been marked by heated debates on blasphemy, which were sparked by the Danish cartoon controversy (Mohammed cartoons).<sup>90</sup> This controversy raised questions of the permissibility of statements infringing upon religious beliefs of others under the protection of freedom of expression. Yet, neither blasphemy nor the critique that some interpretations of the Koran do not respect freedom of religion (for example, the punishment of apostasy) were at stake in the present case. Instead, taking centre stage were political ideas which have their roots in Islam; ideas that may be concurrently protected by both freedom of expression and freedom of religion.<sup>91</sup> Intolerance

86 See Möller and de Zayas, *supra* n. 51 at 44.

87 In *Geniuval M. Cagas, Wilson Butin and Julio Astillero v The Philippines* (788/1997), CCPR/C/73/D/788/1997 (2002); 9 IHRR 319 (2002) at para. 3.4, the Committee declared, for example, that the facts submitted raise issues under several not expressly invoked Articles. The authors were represented by counsel.

88 *A. K. and A. R. v Uzbekistan*, *supra* n. 1 at para. 3.2.

89 See *Saybatalov v Russia*, *supra* n. 9.

90 See Keane, 'Cartoon Violence and Freedom of Expression', (2008) 30 *Human Rights Quarterly* 845; and Harkness et al., 'Crossing the Line? Freedom of Speech and Religious Sensibilities', (2007) 40 *Political Science and Politics* 275.

91 Some researchers believe that Taqi al-Din Nabhani, the founder of Hizb ut-Tahrir, was an adherent of the Hanbali School, which forms a part of Sunni Islam. Nevertheless, due to the vagueness of its theological and legal platform, Hizb ut-Tahrir gains support among Muslims believing in different forms of Islam. See Naumkin, *supra* n. 21 at 135.

towards Islam, especially in times of a global war against terrorism and extremism, is a further topic the case touches upon. International human rights standards provide an enforceable minimum standard of tolerance.

Doubts about the reasonableness of construing the right to religious freedom to cover acts such as those by Hizb ut-Tahrir members are well founded. Hizb ut-Tahrir understands itself as a global Islamic political organisation (Liberation Party).<sup>92</sup> Yet, Hizb ut-Tahrir members are eligible for the protection of freedom of religion (Article 18 of the ICCPR) as long as they manifest their belief in Islam and as long as this manifestation is compatible with Article 5(1) of the ICCPR.<sup>93</sup>

The dissemination of leaflets containing religious ideas and aimed at the improvement of society is one possible manifestation of one's religion or belief in public. Studying religious texts and teaching them also falls under the protection of freedom of religion.<sup>94</sup> The authors claimed to have studied *inter alia* the Koran, which is undoubtedly a religious book.<sup>95</sup> The nature of other texts is more problematic. Expressing Hizb ut-Tahrir's ideology, these texts aim at establishing the Caliphate and improving society. Thus, the struggle to improve society, i.e. Jihad, is a Muslim's duty. The authors possibly regarded the dissemination of these texts as their religious duty, which makes their acts eligible for protection under Article 18 of the ICCPR. However, even if disseminating these texts falls under Article 18 of the ICCPR, this does not imply that acts concerned are protected under Article 18(3) of the ICCPR. Manifestations of religion or belief may be limited under the conditions enumerated in Article 18(3) of the ICCPR, which generally correspond to the conditions set out in Article 19(3) of the ICCPR. However, the two limitation clauses do have their differences. Article 18(3) of the ICCPR permits limitations only towards manifestations of one's religion or belief in order to protect public safety but not national security. With regard to the rights of others, interferences are only allowed as far as fundamental rights and freedoms of others are at stake. The significance of freedom of religion and especially its non-derogable character may explain these differences.<sup>96</sup>

92 See Hizb ut-Tahrir Britain, 'Media Information Pack', at 2, available at: <http://www.hizb.org.uk/hizb/images/PDFs/HT.media.pack.pdf> [last accessed 3 November 2009]; and HRW, supra n. 4 at 49. In this context, one has to bear in mind that Islam is a religion with a political nature: see Polonskaya and Malashenko, *Islam in Central Asia* (Reading: Ithaca Press, 1994) at 120.

93 The term 'religion and belief' in Article 18 ICCPR is to be understood broadly. It certainly encompasses the Islamic ideas of Hizb ut-Tahrir. For the scope of the term 'religion and belief', see Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Article 18), 30 July 1993, CCPR/C/21/REV.1/ADD.4: 1-2 IHRR 30 (1994), at para. 2.

94 Ibid. at para. 4.

95 *A.K. and A.R. v Uzbekistan*, supra n. 1 at para. 2.3.

96 Partsch, 'Freedom of Conscience and Expression, and Political Freedoms', in Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) 209 at 212.

### C. *Politicisation of Islam and Criminalisation of Religion*

After the fall of the Soviet Union, Sunni Islam served as a means for identity and nation-building in a formally secular Uzbekistan. The Soviet distinction between ‘official’ and ‘unofficial’ Islam, where ‘official’ Islam denotes the teachings of Islam flowing from the Muslim leaders appointed by the government, is still present in today’s Uzbekistan.<sup>97</sup> President Karimov sponsors religious education in instances that do not challenge his politics.<sup>98</sup> At the same time, he labels any critical Islamic ideas as being extremist or fundamentalist.<sup>99</sup> The 1998 Freedom of Conscience Law expresses this politicisation of Islam. The law restricts freedom to manifest one’s religion, it limits freedom to disseminate religious ideas and it restricts freedom to assemble for religious purposes as guaranteed in Article 21 of the ICCPR.<sup>100</sup> However, the most alarming characteristic is that it makes religious activity itself a matter of national security. By equating religious offences with national security offences, the law criminalises religious activity itself.<sup>101</sup> To prevent violence, the law criminalises religion instead of the violence itself.<sup>102</sup> It is thus questionable whether the limitations, which caused this criminalisation in the authors’ case, are compatible with the authors’ right to manifest their religion.

### D. *Limiting Freedom of Religion*

Assuming that the dissemination of Hizb ut-Tahrir’s ideology is covered by Article 18 of the ICCPR, the question as to the admissibility of the restrictions imposed by the Uzbek government arises. Public safety or fundamental rights and freedoms of others must be at stake if freedom of religion is to be limited lawfully. It is beyond dispute that the dissemination of the ideology of Hizb ut-Tahrir threatens fundamental rights and freedoms of others. With regard to ‘public safety’, the situation is not that clear. General Comment 22 regarding Article 18 makes clear that ‘paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security’.<sup>103</sup> The term ‘public safety’ is not tantamount to ‘national security’.<sup>104</sup> As it requires a specific danger threatening

97 See Beckwith, *supra* n. 13 at 1003.

98 *Ibid.* at 1025.

99 See Ro’i, *supra* n. 57 at 249.

100 See Beckwith, *supra* n. 13 at 1012.

101 *Ibid.* at 1019.

102 *Ibid.* at 1034.

103 General Comment No. 22, *supra* n. 93 at para. 8.

104 The protection of ‘public safety’ aims at the protection against danger to the life or physical integrity of persons or serious damage to their property. See Conte and Burchill, *supra* n. 72 at 57; The Siracusa Principles on the Limitation and Derogation Provisions in the

the security of persons or things, the scope of public safety is different from that of national security.<sup>105</sup> On the face of it, it may be said that the dissemination of Hizb ut-Tahrir's ideology does not specifically endanger public safety. However, only an in-depth examination of the issue can provide the solution. The considerations discussed above simply call attention to the fact that the consistency of the measures taken by the Uzbek government with regard to freedom of religion is not as easily established as is compatibility with freedom of expression. Summing up, the application of Article 18 of the ICCPR to particular aspects of Islam raises several issues, which require further in-depth analysis.

## 6. Conclusion

In *A.K. and A.R. v Uzbekistan*, the Committee did not find a violation of the guarantee of freedom of expression in Article 19 of the ICCPR with regard to the conviction of the authors for disseminating Hizb ut-Tahrir's ideology. The key question this finding raises is the necessity of limitations within the meaning of Article 19(3) of the ICCPR. The Committee did not simply substitute the state's discretion for its own but examined whether the respondent state's restrictions met the Committee's strict test of justification. Although the Committee did not contest the legality of the measures taken by the Uzbek government, the rather vague threat that the applicants presented could have allowed the Committee to find a violation without groundlessly substituting its discretion for that of the state.

The Committee's views are concise, and the succinct text might be easily misunderstood. Even though the Committee declared the measures taken by the Uzbek government as compatible with the ICCPR, it did not issue a *carte blanche* for anti-terrorism or anti-extremism measures. Rather, the Committee's views point out that the ICCPR contains rules fully applicable in the fight against terrorism. Moreover, it reveals that measures taken during this fight are not exempt from scrutiny on their compatibility with the ICCPR.

The case also illustrates the Committee's limited capacity as the supervisory organ responsible for reviewing compliance with the ICCPR. Its restricted competence as regards individual communications prevented the Committee from addressing certain questions that the facts strongly suggested in the case at hand. Neither Hizb ut-Tahrir as such, President Karimov's repressive politics

International Covenant on Civil and Political Rights (Siracusa Principles), E/CN.4/1985/4 Annex (1985) at para. 33. The objective of 'national security' is to protect alternatively the democratic order of the State, the existence of the nation, its territorial integrity or its political independence against force or threat of force: see Conte and Burchill, *supra* n. 72 at 55; and Siracusa Principles at para. 29.

105 See Nowak, *supra* n. 32 at 427.

to political opposition, nor the measures taken by the Uzbek government in its fight against religious extremism were considered. Against the backdrop of the ongoing debate about radical Islam, this failure weighs heavily. While procedural issues prevented the Committee from examining a violation of freedom of religion, judicial restraint precluded it from commenting on other points. The Committee obviously did not want to jump ahead in an area where little *praxis* exists at the international level. In *A.K. and A.R. v Uzbekistan*, judicial restraint prevailed over the call for further guidance in reconciling state security concerns with the rights of radical Muslims. The time might not have been ripe for a bolder decision. However, considering the existing radical Islamic trend and bearing in mind the abuses of the fight against terrorism, a clear stance in human rights is wanted more than ever.