

FIRST SECTION

Application no. 1413/08
by Ibragim IBRAGIMOV and CULTURAL EDUCATIONAL FUND “NURU-BADI”
against Russia
lodged on 3 December 2007

STATEMENT OF FACTS

THE FACTS

The first applicant, Mr Ibragim Salekh ogly Ibragimov is a Russian national who was born in 1968 and lives in Moscow. He is the executive director of the second applicant, Cultural Educational Fund “Nuru-Badi”, an NGO registered in Moscow. The applicants are represented by Mr S. Sychev, a lawyer practising in Moscow.

A. The circumstances of the case

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

The second applicant is the publisher of *Risale-I Nur* Collection, a body of commentary on the Qur'an written by a Muslim Turkish scholar Said Nursi.

On 24 April 2006 the prosecutor of the Tatarstan Republic applied to a court, asking that the following books from *Risale-I Nur* Collection published by the second applicant be declared extremist and banned:

- “Faith and Man”;
- “The Foundations of Sincerity”;
- “The truths of an eternal soul”;
- “The truths of faith”;
- “The guide for women”;
- “The fruits of faith”;
- “Ramadan. Care. Thankfulness”;
- “Munajat (Prayer). The third ray”;
- “Thirty-three windows”;
- “The foundations of brotherhood”;
- “The path of truth”;
- “The staff of Moses”;
- “The short words”;
- “Book for the sick”.

The prosecutor enclosed expert opinions by psychologists Ms F., Mr Le., Mr Li. and Mr P. and a psychiatrist Ms Ya. The experts found that the above texts attempted to subconsciously influence the psyche of the reader and form irrational values and opinions. The reader was deprived of the capability to think critically and independently and to choose freely his religion. The texts formed negative opinion about the adherents of other confessions and thus encouraged hatred and enmity towards them. They also advocated the ideas of superiority or inferiority of citizens depending on their religion. In particular, the texts by Said Nursi incited the readers to look at non-believers with disdain and aversion and therefore promoted discord between believers and non-believers. Muslims

guilty of apostasy from Islam were even denied the right to life. The experts concluded that Said Nursi's texts formed in the reader the feelings of aversion, anger, hatred and enmity towards non-believers.

The prosecutor's application was examined by the Koptevskiy District Court of Moscow. The second applicant and the Council of Mufti of Russia were invited to participate in the proceedings as third parties.

On 4 August 2006 the Council of Mufti of Russia submitted an alternative expert opinion by a doctor of theology Mr A. and a doctor of religious philosophy Mr Po. The experts found that in his books Said Nursi exposed the foundations of the Islamic doctrine, and commented the Qur'an. His commentary was in conformity with the classical version of Islam. They did not contain any extremist statements and did not call for violence or ethnic or religious enmity. Although some texts indeed morally condemned sinners and non-believers, blaming them for the immorality of the modern society, such discourse was characteristic of all religious texts. The perusal of the texts also revealed that their author promoted peaceful coexistence of religions and dialogue between them.

The experts further criticised the conclusions made by the prosecutor's experts. In their opinion, the prosecutor's experts were incompetent in religious matters and did not have even the basic knowledge of Islam. The reproaches made by them against Said Nursi's books could have been made against any theological treatise, be it Muslim, Christian, Judaic or any other religious text.

In his letter of 4 August 2006 the Chief Mufti of Russia supported the above expert opinion and stated that the texts written by Said Nursi did not advocate hatred or enmity towards adherents of other religions or atheists and did not call for any illegal actions.

Counsel for the second applicant submitted the following documents to the Koptevskiy District Court:

- a letter from the president of the Central Spiritual Board of Muslims of Russia stating that Said Nursi's texts could not be qualified as extremist or fanatical. They did not contain any calls for violence, ethnic or religious hatred or overthrow of governments. They promoted Islamic values of goodness, love and belief in God;
- a letter from the president of the Spiritual Board of Muslims of the Tatarstan Republic affirming that Said Nursi was a respected commentator of the Qur'an. He called for love towards all people irrespective of their ethnic origin, race or religion and advocated clemency, compassion, peace, brotherhood and mutual understanding. He encouraged interreligious dialogue and opposed all radical actions and attitudes;
- a letter from the Ombudsman of the Russian Federation speaking against declaring Said Nursi's texts extremist materials and arguing that it would violate the rights of Muslims to freedom of religion;
- a letter by Professor J. from the International Islamic University in Malaysia stating that Said Nursi's texts called for reconciliation, peaceful co-existence and cooperation of different religions and cultures, as well as for justice, tolerance, freedom and love;
- an expert opinion by the Department of Islamic Studies of the Tatarstan Republic Institute of History, according to which the books by Said Nursi called for self-development and moral perfection and spoke against violence. For that reason his books were an important tool in the fight against religious extremism. Although he indeed stated that Islam was superior to the other religions and to the atheism, such statements were inherent to all religious texts;
- a letter from Mr M., a Catholic priest and the Secretary for Interreligious Dialogue of the Society of Jesus, affirming that texts written by Said Nusri belonged to mainstream Islam and were rooted in the centuries-old Islamic tradition. They did not contain any elements of extremism. On the contrary, they were a moderating force in Islam proposing to Muslims a way of life that was tolerant and open to others. They explicitly endorsed Muslim-Christian cooperation and unity and

stimulated friendship and positive relations between Muslims and the followers of Christianity;

- a copy of the decision of 1984 of the prosecutor's office of Istanbul not to initiate criminal proceedings against the publisher of *Risale-I Nur* Collection in Turkey. The prosecutor's office referred to an expert opinion which did not find any indications of a criminal offense in Said Nursi's texts;

- copies of expert opinions delivered in 1960 by a group of Turkish experts at the request of several Turkish prosecutors. The experts found that the books by Said Nursi did not contain any harmful or unlawful statements;

- a letter from the Council on Religious Matters of the Committee of Ministers of the Turkish Republic, stating that Said Nursi's books contained directions on moral and religious issues inspired by the Qur'an and did not touch on politics. Said Nursi was a respected theologian who always distanced himself from political, ideological and extremist activities, as well as from radical Islam. He proclaimed that the truth was to be found through dialogue and spoke against hatred and all forms of compulsion;

- a letter from the Ministry of Justice of the Arab Republic of Egypt and the Mufti of Egypt, submitting that Said Nursi's texts were beneficial to the reader as they taught love of God and high moral values and condemned envy, hatred, anger and resentment;

- a letter from the director general of the Research Centre for Islamic History, Art and Culture of the Organisation of Islamic Conference, stating that Said Nursi promoted love of God, the importance of prayer and high moral values. His books did not contain any insulting or hostile statements against adherents of other religions or persons belonging to other races;

- a letter from Dr T., a professor of the Institute of Middle Eastern and Islamic Studies of the University of Durham, submitting that Said Nursi's books did not contain any statements aimed at stirring up religious hatred. Said Nursi was extremely careful throughout his life to foster a sense of solidarity between follows of different religions and it was reflected in his texts. Nor did his books contain statements promoting exclusiveness, superiority or inferiority of people based on their religious affiliation or ethnic origin or justifying extremist activities. Said Nursi was one of the few modern Muslim scholars who unequivocally opposed the ideas of extremism, political activism or offensive jihad. His texts provided a welcome antidote to the militancy of the contemporary Islamic discourse as they proscribed military jihad altogether, be it offensive or defensive, and said that Islam was not to be defended by the sword but by the force of reason, progress and civilisation.

On 9 November 2006 the Koptevskiy District Court ordered an expert opinion and appointed a philologist Mr MA., a linguist psychologist, Mr T., a social psychologist Ms P. and a psychologist Mr KA. as experts.

Counsel for the second applicant appealed, submitting that the appointed experts were incompetent in religious matters. He asked the court to appoint experts with expertise in religious issues. On 26 December 2006 the Moscow City Court rejected the appeal and upheld the decision of 9 November 2006.

On 15 February 2007 the experts delivered their joint report, finding that Said Nursi's texts encouraged hatred between believers and non-believers, contained humiliating statements about non-believers and promoted superiority of believers over non-believers.

Counsel for the applicant submitted the following expert opinions, criticising the report of 15 February 2007:

- an expert opinion by Mr Mu., the president of the Russian Islamic University, who found that the court-appointed experts were not competent in religious matters and that they quoted and analysed Said Nursi's statements out of context. Although in his books Said Nursi indeed criticised the Western way of life and condemned non-believers, he did not promote hatred or enmity towards those who did not share his opinion. Moreover, similar statements were present in all religious texts;

- an expert opinion by Mr S., a doctor of law specialised in Muslim law, who expressed similar criticisms of the report of 15 February 2007 and found that Said Nursi's texts did not contain any propaganda of discrimination, hatred or religious superiority. On the contrary, they were permeated with the ideas of brotherhood, friendship and goodness, while anger and hatred were clearly condemned;

- an expert opinion by Mr Me., a doctor of philosophy, who came to the same conclusions. He found, in particular, that Said Nursi's texts were no different from other religious texts which all proceeded from the assumption that their religion was superior to the others and all condemned non-believers.

Counsel for the second applicant again asked the court to appoint experts in religious matters. On 9 April 2007 the Koptevskiy District Court rejected his request, finding that only experts in psychology, social psychology and linguistics could analyse the meaning of the texts.

On 28 April 2007 the Koptevskiy District Court ordered an additional expert opinion by the same experts.

On 15 May 2007 the experts delivered an additional expert report, confirming their previous findings.

During the closed hearing before the Koptevskiy District Court a co-president of the Council of Mufti of Russia submitted that Said Nursi was a worldly renowned Muslim scholar whose texts formed an integral part of the official teachings of Islam. They did not contain any extremist statements.

On 21 May 2007 the Koptevskiy District Court declared the books written by Said Nursi extremist materials and banned them. It referred to the expert opinions submitted by the prosecutor and the expert opinions commissioned by the court. It rejected the expert opinions submitted by the applicants and the Council of Mufti of Russia, finding that only experts in psychology, social psychology and linguistics were competent to decide whether the contested texts were extremists.

Counsel for the second applicant appealed. On 18 September 2007 the Moscow City Court upheld the judgment of 21 May 2007 on appeal, finding that it had been lawful, well-reasoned and justified.

B. Relevant domestic law

The Suppression of Extremism Act (Federal Law no. 114-FZ of 25 July 2002 in force at the material time) 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, in particular, encouraging racial, ethnic, religious or social hatred accompanied by violence or calls for violence; or propaganda of exceptionality, superiority or inferiority of citizens on the ground of their religion, social position, race, ethnic origin or language (section 1).

It is prohibited to publish and distribute materials declared extremist by a court or store such materials with the intention of distributing. Publication, storage or distribution of extremist materials is punishable under Russian law (section 13).

COMPLAINTS

1. The applicants complain under Article 6 of the Convention that the judicial proceedings had been unfair. In particular, the Koptevskiy District Court held closed hearings, applied domestic law incorrectly and inaccurately assessed the evidence.
2. The applicants complain under Articles 9 and 10 of the Convention about the ban on distributing Said Nursi's books. The books in question are a commentary on the Qur'an and are used for religious and educational purposes in mosques and medreses. They do not contain any extremist statements. The applicants also refer to Article 14 of the Convention.

QUESTIONS TO THE PARTIES

1. The parties are requested to submit copies of the expert reports by Ms F., Ms Ya., Mr Le., Mr Li. and Mr Pr. They are also requested to submit a translation in English, by a certified translator with expertise in translation of religious texts, preferably an English native speaker, of the above expert reports, as well as of the expert reports of 15 February and 15 May 2007 by Mr M. A., Mr T., Ms P. and Mr K. A.

2. Did the ban on the distribution of books by Said Nursi pronounced in the judgment of the Koptevskiy District Court of Moscow of 21 May 2007, as upheld on appeal on 18 September 2007, interfere with the applicants' rights under Article 9 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Article 9 § 2 of the Convention?

3. Did the ban on the distribution of above-mentioned books interfere with the applicants' freedom of expression guaranteed by Article 10 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention?

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