

**The American University in Cairo**

**School of Humanities and Social Sciences**

**RIGHTS OF MUSLIM CONVERTS TO CHRISTIANITY IN EGYPT**

**A Thesis Submitted to the**

**Department of Law**

**In partial fulfillment of the requirements for the degree of  
Master of Arts in International Human Rights Law**

**By**

**Hebatallah Ghali**

**December 2006**

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School of Humanities and Social Sciences

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## DEDICATION

This thesis is dedicated, as an expression of love, to all the Muslim converts to Christianity (*al- Mutanasqerīn*), *the Prisoners of Truth*, who chose to live up to their convictions and beliefs, having to pay the price of their choice: incurring civil death, and outliving persecution by state and society for allegedly disturbing national peace and public order.

A special *Thank You* in acknowledgment to:

- \* My beloved God, Allah, Who loves me, upheld me throughout my entire life, saved me from many certain deaths, saw me through in times of despair and need, and opened doors for me to convey His love and voice His concern.
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## ABSTRACT

“Rights of Muslim Converts to Christianity in Egypt” is a research long-overdue, because converts are increasing in number and they are stripped off their human rights, persecuted by state and society, and considered as apostates civically dead. There is a sharp discrimination and difference in jurisprudence between Court of Administrative Litigation of State Council and State Security Court, which deal with converts. Converts of Christian background are recuperating their civil liberty rights, whereas rights of converts of Muslim background are still violated. I reached this conclusion by tracking the jurisprudential development of the Court of Administrative Litigation, which moved from a hardliner stance from 1970s to late 1990s vis-à-vis converts of both backgrounds to a human-rights oriented one vis-à-vis converts of Christian background. The Court of Administrative Litigation, that examined the actions filed by converts of Christian background requesting a name and religion change in the identity cards, entitled them to revert to their original names and religion before embracing Islam. Their new status was registered in the identity card, despite the abstention of the Civil Affairs Registry, affiliated to the Ministry of Interior. Will Converts of Muslim background, if they file such actions, be equally treated by the Court of Administrative Litigation, using the same jurisprudence? Or would the Court’s line of reasoning be different? This remains to be seen. Muslim converts of Muslim background are arrested and inhumanely treated by State Security, accused for contempt of religion under the Egyptian Penal Code, Article 98 F, tried before State Security Court whose jurisprudence remained unchanged, and persecuted by society for disturbing public order. Identity cards in Egypt, instating the religious affiliation, plays a role in discriminating between citizens on religious basis and further violation of the human rights of converts of Muslim background, as well as their children’s rights. Converts to Christianity of Muslim background will partially gain from the deletion in terms of non-discrimination in freedom of worship, movement, work, and education. And they will fully benefit, despite the ongoing social persecution, from the change of religion reflected in their identity cards, in terms of marriage, and children’s education, having to totally forsake inheritance rights in any case.

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## **Rights of Muslim Converts to Christianity in Egypt**

Human Rights of Muslim converts to Christianity in Egypt is a research long overdue, as converts are stripped off their civil rights, persecuted by state and society, and considered apostates civically dead. This paper\* is neither about Islamic law, nor Christian law; it scrutinizes Egypt's national laws and obligations towards Muslim Converts to Christianity, being Egyptian citizens entitled to various guaranteed rights, such as freedom of belief and worship, right to equal treatment before the law, right to marriage, right to education, right to movement, right to work, and right to political participation. This thesis focuses on the legal aspects of the problems encountered by the converts; however, an interdisciplinary approach will be the subject of my Ph.D. dissertation, as this topic deserves an in-depth research.

Muslim Converts to Christianity are divided into two categories: converts of Christian background, being the first category, and converts of Muslim background, being the second category. This paper argues that there is a sharp discrimination and selective treatment in handling both categories of converts, as well as a difference in jurisprudence between the State Council and State Security Courts; and the Court of Administrative Litigation should constitutionally equate between both categories before the law, in terms of freedom of belief, as materialized by entitlement to a name and religion change in identity cards of converts of Christian background.

Part I introduces the definition and difference between the term *apostate* and *convert*, and quasi-legal reasons for using the term convert throughout my paper and *not* apostate. It summarizes Naṣr Ḥamed Abū Zayd's case of apostasy based on the freedom of expression, defining from caselaw the Court of Cassation's definition and consequences of apostasy. Part II tracks the jurisprudential development from caselaws of Muslim converts, of both Christian and Muslim backgrounds, whose cases are examined by different courts. This part argues that the Court of Administrative Litigation, which examines cases of converts of Christian background, is a bold activist court, whose jurisprudence moved from a hardliner stance to a human rights oriented, entitling to a name and religion change in identity cards. Whereas the State Security Court, which tries converts of Muslim background, has not changed its jurisprudence; it only accuses the suspects while holding them in detention with perpetual renewal of custody writs, or releases them for insufficient incriminating evidence after spending a long time on remand pending trial. The comparison relating caselaws of both categories substantiates the sharp discrimination and selective treatment in handling both categories, as well as the difference in jurisprudence between the Court of Administrative Litigation of the State Council and State Security Courts. Part III examines the limitations and violations of converts' rights, whether political and civil, or economic, social, and cultural, including their children's rights; the assessment is based on national and international law. Then it discusses the issue of identity card instating the religious affiliation, and whether its deletion will solve the converts' problems in terms of rights enjoyment. An explanation of the legal status of identity cards in Egypt, with a brief overview on identity cards in Arab and Muslim countries, is necessary to understand the problems converts face. Also arguments and counter-arguments on the deletion of religious affiliations in identity cards are assessed to depict the pros and cons of such a deletion. Part III argues that despite the importance of deleting the religious affiliation from identity cards to the religious minorities, converts to Christianity of Muslim background will partially gain from the

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\* In this thesis paper, I have translated all court quotations and legal provisions.

deletion in terms of non-discrimination in freedom of worship, movement, work, and education. And they will fully benefit, despite the ongoing social persecution, from the change of religion reflected in their identity cards, in terms of marriage, and children's education, having to totally forsake inheritance rights in any case.

## **Part I: Introduction**

The introduction sets out the distinction between convert and apostate, and explains the reason why I have insisted on using the word convert and *not* apostate. This reason is directly related to universal human right concepts: the right to life and dignity, and the freedom of choice. Then it briefs Naṣr Ḥamed Abū Zayd's famous case of apostasy before the Court of Cassation, due to the freedom of expression, and the Court's view of public policy being disturbed.

### **A. Difference between Apostate and Convert**

Apostate (*murtad*) is a term applied only to Muslims upon abandoning Islam to another religion, or by simply renouncing their faith. While the term *convert* is applied to all non-Muslims who abandon their faith to another. If conversion is to Islam, the convert is said to have *embraced* Islam (*'aslam*) and not converted to Islam;<sup>1</sup> whereas if conversion is to Christianity, he/she is called *mutanaṣer* or *mutanaṣera*, respectively. The Muslim is socially not allowed to exit from Islam, only people embracing Islam are welcomed to be ushered in. Once the person embraces Islam, he/she is given a new Muslim name and said to be a Muslim regardless of their original background; and if they want to revert to their original faith, they are treated as *apostates* (*murtadīn*).

Throughout my paper, I insist on using the word convert and *not* apostate for a Muslim who has converted to Christianity or to any other religion. In the twenty-first century with a prevailing culture and law of human rights, extending the right to life and freedom of choice, it is legally more appropriate to use the word convert with the topic of my paper, which deals with the *Rights of Muslim Converts to Christianity in Egypt*; whereas the word apostate is associated with civil death and no rights at all.

According to Merriam Webster's dictionary, the word *convert* means to bring over from one belief, view, or party to another; to bring about an experience associated with the definite and decisive adoption of a religion; to alter or change from one form or function to another for more effective utilization; to be transformed.<sup>2</sup> All related meanings suggest that there is a radical life-changing experience that touches on the life of the beholder, a transformation into a more effective self-realization, fulfillment, and growth. Whereas *apostate* (*murtad*) is the person who commits apostasy (*'rtidad*), that is the conscious abandonment of allegiance or desertion of duty; abandonment without consent or legal justification of a person, post, or relationship, and its associated duties and obligations; renunciation of a religious faith or abandonment of a previous loyalty.<sup>3</sup> The word *apostate* suggests illegality of an unjustified act and has negative implications entailing deprivation and death. Conversion to the beholder should make a person happier with self-fulfillment because he/she is doing what they believe is right; they are prisoners of conscience. State and society in a Muslim country like Egypt have pronounced the moral death penalty, known in legal terms as *civil death*, of a convert from Islam to Christianity or to any other religion. He/she is

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<sup>1</sup> Maurits Berger, *Apostasy and Public Policy in Contemporary Egypt*, 25 HUM. RTS Q. 721, 720-740 (2003), at <http://muse.jhu.edu>.

<sup>2</sup> MERRIAM WEBSTER ONLINE, at <http://www.m-w.com/dictionary/convert>

<sup>3</sup> *Id.*, <http://www.m-w.com/dictionary/apostate>

labeled *apostate* civically dead, totally stripped off civil liberties in particular right to marriage and inheritance, and persecuted by state and society.

### **B. Naṣr Ḥamed Abū Zayd's Case.<sup>4</sup>**

Abū Zayd is an Egyptian Muslim scholar and a former Professor of Arabic literature at Cairo University, where he applied for a promotion in 1991. His colleagues opposed the promotion on grounds that his writings contradict Islam. Then the issue was developed further, in 1993, when a group of lawyers filed an action at the Jīza Court of First Instance (*Maḥkama al-Jīza al-'Ibtida'iyya*), alleging that his writings were heretical, considered him an apostate, and demanded the dissolution of his marriage. In January 1994, the first degree ruling dismissed the action on grounds that the plaintiffs, being a third party, were not entitled to the action; but the plaintiffs appealed.<sup>5</sup> In June 1995, the Court of Appeal reversed the ruling of the Court of First Instance and held that Abū Zayd was an apostate and that his marriage must be dissolved; so the defendants and the Public Prosecutor (*al-nīyaba al-'ama*) appealed.<sup>6</sup> In August 1996, the final ruling of the Court of Cassation applied the *ḥisba* principle and ordered Abū Zayd divorced from his wife on ground of alleged apostasy, due to his writings where he freely expressed his opinion regarding Islam and Sunna.<sup>7</sup> The *ḥisba* principle entitles citizens to file actions against whoever they consider to be affront to God in violation of a divine right, leading to divorce between spouses. After that ruling, the Egyptian Parliament issued Law No. 3/1996,<sup>8</sup> which prevents the use of *ḥisba* by individual citizens, and only the Prosecutor-General is entitled to file such action in personal status affairs. Some viewed that this codification of the *Ḥisba Law*, which was rarely practiced since the abolition of the Shari'a Courts (*al-Maḥakim al-Shar'iyya*) by Law No. 462/1955,<sup>9</sup> as a negative move because it will open doors for blackmailing<sup>10</sup> to intellectuals, and restrict the guaranteed freedom of thought, expression, and opinion, which is the first pre-requisite towards the freedom of belief. Johansen argues that "the apostasy trials in the Arab world were led against

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<sup>4</sup> Court of Cassation (*Naqd*), Case No. 475, 478, 481, Judicial Year 65 "Personal Status", 47 COLLECTION OF DECISIONS FROM COURT OF CASSATION 1147, 1134-1174 (5 Aug. 1996). See also Fauzi M. Najjar, *Islamic Fundamentalism and the Intellectuals: Case of Naṣr Ḥamed Abū Zayd*, 27 BRIT. J. M. E. STUD. 177-200 (2000), at <http://www.jstor.org>, visited 11 Feb. 2006; see also *supra* note 1; see generally personal webpage of Naṣr Ḥamed Abū Zayd, at <http://www.uvh.nl>

<sup>5</sup> Kilian Bälz, *Submitting Faith to Judicial Scrutiny through the Family Trial: The Abu Zayd Case*, 37 WELT DES ISLAMIS 2, 135-155 (Jul. 1997).

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* note 4.

<sup>8</sup> Law No. 3/1996, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 4, 29 Jan. 1996, at <http://www.tashreaat.com>. Art. 1 stipulates:

Only the General Prosecution, to the exclusion of others, is competent to file *ḥisba* action in personal status affairs; and whoever wants to file a *ḥisba* action, he has to file a petition to the competent General Prosecution explaining the request and reasons for such an action supported by relevant substantiating documents. After the Prosecution-General has heard the oral testimonies and made the necessary investigations, it has to issue a decision for filing an action before the competent court of first instance or keep petition on file. The decision of the Prosecution-General, as indicated above, is issued with valid reasons from the Attorney-General, then decision declared to the persons concerned within three days of issuance.

<sup>9</sup> OFFICIAL GAZETTE (*AL-WAQAE' AL-RASMIYYA*), Issue No. 73 b, 24 Sep. 1955, at <http://www.tashreaat.com>.

<sup>10</sup> Sa'd al-Dīn Ibrāhīm, *Court Cites Muslim 'Hisba' Principles in Apostasy Ruling*, COMPASS DIRECT (1 Aug. 1996), at <http://www.strategicnetwork.org/index.php?loc=kb&view=v&id=426>. Dr. Ibrāhīm is director of the Ibn Khaldoun Institute for Social Studies in Cairo, sociology professor at the American University in Cairo, and human-rights activist.



intellectuals, scientists, artists, and writers suspected of defending the political, legal, and religious culture of the secularizing state.”<sup>11</sup> And since the Court of Appeal in Abū Zayd’s case accepted the *ḥisba* testimony as an indispensable part of their control of the public sphere, anti-secularists militant groups, encouraged by the Court’s apostasy judgments, filed apostasy cases against Egyptian intellectuals.<sup>12</sup> Others argued that it is a positive move since it restricted the action to only the Prosecutor-General and not any citizens, as it used to be.

### 1. Definition of Apostasy and its Negative Consequences.

The Court of Cassation defined apostasy (*ridḍa*) as:

[M]erely believing the mentioned [unbelief] is not considered apostasy, unless it is embodied in words or actions. According to the majority of the Muslim legal scholars, among them the *Hanafis*, it suffices to consider a person an apostate once he deliberately speaks or acts in unbelief, as long as he meant to be degrading, contemptuous, obstinate, or mocking... He is an apostate, because he has revealed his unbelief after having been a believer, even if he claims to be a Muslim<sup>13</sup>... It is legally agreed that apostasy is proved by confession or by legal evidence... In case of confession, there is no need for legal evidence to prove apostasy; and the litigation is decided because the person has freely committed oneself, and thereby is not lying. So his self-testimony is stronger than the testimonies of others; also confession is valid by express words that are considered expressive evidence.<sup>14</sup>

“This case plays an important role in the alleged contradiction between apostasy and the freedom of religion,” as Berger<sup>15</sup> underlines; but the Court of Cassation explains why there is no contradiction:

The apostasy judgments do not contradict with the freedom of belief guaranteed by Islam, for nobody can force anyone to leave his belief and adopt another; for HE most high said: “there is no compulsion in religion” and “will you compel people to become believers?” The apostasy judgments are only applied to the Muslim who has abandoned Islam, to the exclusion of non-Muslims who are called to embrace Islam by wisdom and good exhortation. If they are not ushered in freely and willingly, they are left to their own beliefs; however they are covered by Islam’s protection that preserves their freedom, dignity, money, honor, and blood. Embracing Islam entails a commitment to its judgments including those of apostasy, because it is impossible to separate one’s belief from one’s conduct.<sup>16</sup>

The Court of Cassation further elaborates the apostasy judgments and its consequences:

The apostasy judgments are but a standard to keep the Muslim in his Islamic faith, differentiating the Muslim from others, thus society deals with such a person on grounds of that quality (being a Muslim).<sup>17</sup> According to the Hanafi jurisprudence, the apostate has no doctrine (*mīla*) and his apostasy is not approved, nor what he has chosen as a religion; his repentance is highly appreciated... if he refuses Islam, the judge will examine his case and request him to repent, or if he (the apostate) requests to be given three days for repentance; otherwise the apostasy punishment (*ḥad al-rida*) is applied.<sup>18</sup> Man’s apostasy leads to separation from his spouse without divorce or judicial decision; whereas repentance leads to resuming marital life with a new marriage contract and postponing the application of apostasy punishment.<sup>19</sup>

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<sup>11</sup> Baber Johansen, *Apostasy as Objective Depersonalized Fact: Two Recent Egyptian Court Judgments*, 70 *Social Research* 3, 698, 687-710, (Fall 2003). Johansen is a professor of Islamic religious studies and has a Ph.D. in habilitation in Islamic studies from Freie Universität Berlin.

<sup>12</sup> *Id.*, at 706.

<sup>13</sup> *Naqḍ*, Case No. 475, 478, 481, *supra* note 4, at 1147.

<sup>14</sup> *Id.* at 1151, § 26-28.

<sup>15</sup> *Supra* note 1, Berger at 731.

<sup>16</sup> Court of Cassation (*Naqḍ*), *supra* note 7, at 1153-1155, § 34.

<sup>17</sup> *Id.* at 1154, § 36.

<sup>18</sup> *Id.* at 1155, § 38.

<sup>19</sup> *Id.*, § 39-41.

This non-contradiction is justified on grounds of public order that the legislator never defined but left to the judiciary to assess and define its meaning, scope, and situations jeopardizing public order.

## 2. Apostasy and Public Order

The Court of Cassation defined public order and morale as “the social, political, economical or moral principles in a state related to the highest (or essential) interest (*maṣlahā ‘uliya or jawhariyya*) of society,” or as “the essence (*kīyan*) of the nation.”<sup>20</sup> The Court related Abū Zayd’s apostasy to constitutional Article 2 and the concept of public order (*al-niẓam al-‘am*) which is connected to essential principles of Islamic law that are fixed and indisputable:

Constitutional Article two stipulates that “Islam is the religion of the state and Islamic jurisprudence is the principle source of legislation.” All domestic legal systems stipulate penalties and provision regarding certain deeds in contradiction with its founding norms; and the apostasy of a Muslim is not an independent matter that the Islamic law and its state can pardon and overlook as one of the rights of individuals...because exiting from Islam is a revolt against it and this is reflected upon the person’s loyalty to Shari‘a and state, and his relations to society. Therefore, Shari‘a, all constitutions, and legislations grant the freedom of opinion with restrictions prohibiting any aggression or abuse in using that right. Nobody is entitled to call for whatever contradicts its public order or morale, nor uses the freedom of opinion to harm its foundation...Constitutional Article 47 grants the freedom of opinion as prescribed by law, within limits allowed by the essential order of the state, and according to rules among which Islamic Shari‘a takes pre-eminence ...The public acknowledgment of negative allegations against the belief of society and calling for its contempt is in contradiction with the public order; a matter that is not approved either by Shari‘a or order.<sup>21</sup>

In other words, the apostate who exits from Islam is committing an unpardonable crime against Shari‘a and public order, because he harms the highest interest of the nation and essence of society, and deserves to be punished. However, the Court of Cassation never specified the punishment of apostasy (*ḥad al-rida*), except applying the *ḥisba principle* that of divorcing him from his spouse.

Abū Zayd’s case of freedom of opinion was briefly mentioned because it contains the Court’s legal definition and reasoning regarding apostasy, its relation to public order, and its negative consequences. Also the freedom of opinion originates from the freedom of thought, which leads to the understanding and formulation of opinion that might be dissenting from majority concurring opinion, thus jeopardizing public order. When this different opinion is believed in, adopted, applied to one’s life, and expressed in public, it will surely contradict the majority concurring opinion or established norms and beliefs in society, and threaten public order. The freedom of expression, originating from the freedom of thought, in Abū Zayd’s case, led society to pronounce him an apostate, although he kept confirming that he is a Muslim. Whereas the freedom of belief, originating from the freedom of thought that led some people to think and believe differently than the faith in which they were born, drove society to pronounce them apostates civically dead and socially persecuted.

The next part deals with converts to Christianity (*mutanaṣṣerīn*) before the Egyptian Courts, showing how converts were tried differently by different courts, according to their original background, whether of Christian origin or from Muslim background.

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<sup>20</sup> SAMİR KAMEL, LESSONS IN INTRODUCTION TO LAW 50 (2005); Samīr Kamel is a civil law professor at Cairo University and a lawyer at the Court of Cassation. See also Berger, *supra* note 1, at 725.

<sup>21</sup> Court of Cassation, *supra* note 4, at 1172.

## **Part II: Muslim Converts before Egyptian Courts**

The Egyptian Courts that dealt with converts are the Court of Administrative Litigation (CAL) of the State Council (SC), the State Security Courts (SSC), and occasionally in few cases the Court of Cassation (CC). Because most cases of converts from Christian background were decided by the Court of Administrative Litigation, a brief explanation of the composition and competence of the State Council and Court of Administrative Litigation is necessary to understand various issues regarding caselaws. Also a short presentation of the State Security Court is indispensable too, because converts of Muslim background have been tried before that Court. The Court of Cassation examined few occasional cases pertaining to inheritance of converts, the reason why there will be no focus on that Court. Then an examination of caselaws will track the jurisprudential development for both State Council and State Security Courts.

Caselaws of Muslim converts to Christianity of Christian background, the first category, are examined by the Court of Administrative Litigation (CAL); whereas the caselaws of Muslim Converts to Christianity of Muslim background, the second category, are tried before the State Security Courts (SSC). Converts of the first category often file actions requesting a change of religion in the identity card; whereas converts of the second category often file petition for release.

The comparison between caselaws is set before and after 2000, because there is a substantial change in CAL jurisprudence regarding converts of Christian background, from that date onward, geared to protecting guaranteed constitutional and international human rights laws, Arab Charter for Human Rights, and Islamic law favoring freedom of religion and belief. The CAL jurisprudence registers a landmark development favoring human rights; however, SSC jurisprudence regarding Muslim converts of Muslim background remains unchanged because they are arrested by State Security and detained on remand by Emergency State Security Court writ. The comparison relating caselaws of both categories substantiates the sharp discrimination and selective treatment in handling both categories, as well as the difference in jurisprudence between the State Council and State Security Courts.

### **A. Muslim Converts from Christian Background before the Court of Administrative Litigation (CAL).**

The jurisprudence of the State Council (*Majles al-Dawla*,) that examined the actions filed by Muslim converts of Christian background, as opposed to the State Security Courts that tried Muslim converts of Muslim background, is a bold activist court that marks a new trend favoring the protection of human rights.

#### **1. State Council (SC) and Court of Administrative Litigation (CAL)**

The State Council is an independent judicial authority,<sup>22</sup> composed of three sections: judicial, consultative, and legislative. The council is formed of a chief, deputy-chiefs, counselors, assistant-counselors, deputies, and representatives.<sup>23</sup> The judicial section is composed of two levels: Court of Administrative Litigation (*Mahkamat al-Qada'*

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<sup>22</sup> Law No. 136/1984, amending art. 1 of Law No. 47/1972, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 31, 2 Aug. 1984, at <http://www.tashreaat.com>. The old version of the law states that “the State Council is an independent judicial authority, supplement to the Ministry of Justice.”

<sup>23</sup> Law No. 47/1972, art. 1 and 2, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 40, 5 Oct. 1972, at <http://www.tashreaat.com>

*al-'Idary*) and High Administrative Court (*al-Mahkama al-'Idariyya al-'Uliya*).<sup>24</sup> The CAL has jurisdiction to decide all litigations, actions or challenges, filed by people or authorities to abrogate final administrative decisions.<sup>25</sup> Challenges to the Court's decisions are carried to the second level, the High Administrative Court, whose decision is final.

Many Muslim converts to Christianity of Christian background have recently filed actions against the Ministry of Interior and Civil Affairs Registry (CAR) for refusing to change their religious affiliation in the identity cards, as prescribed by the CAR Law No. 143/1994. The Ministry of Interior is involved because the CAR is an administrative organ, part of the Ministry of Interior,<sup>26</sup> and any action filed against its decisions falls within the jurisdiction of the Court of Administrative Litigation of the State Council. The cases decided were never appealed by the defendants, the Ministry of Interior and CAR, and the Court's ruling became final. Both defendants refused to honor the Court's judgment; hence, the applicants had to get a court order to enforce the decision, which were executed finally (as explained in details below).

## 2. Jurisprudence of the State Council

### a. Before 2000

The jurisprudence from 1970s to 1990s was characterized with a hardliner point of reference, *equally* treating both categories of converts as apostates, civically dead in terms of marriage, and totally stripped off any inheritance rights, whether to inherit from parents, or leave inheritance to children and relatives. Before the 1970s, no caselaws, *to my knowledge*, are available to indicate the legal reasoning of the CAL, most probably, because the post-revolutionary period focused on preserving the gains of the revolution and defending Egypt's national security. That period was dense with detrimental events to Egypt, such as the nationalization of the Suez Canal, followed by the 1956 tri-partite invasion, then the sequestration laws, then the 1967 Six-Day War defeat, and most important the 1969 *massacre of the judges*.<sup>27</sup> Whereas the 1973 October-War victory restored Egypt's pride and weight among the nations worldwide, and the judiciary was in the process of healing and being gradually restored. Johansen justifies the 1980s hardliner stance for state-tailored Shari'a-based laws as a state-reaction to the mobilized religious opposition against secular states, arguing that:

In the 1980s, the failure of authoritarian Arab nation-states to win their wars and to guarantee economic development, social justice, and cultural integration mobilized a religious opposition against the secular state that called for a return to Islamic Law through what is called "the codification of Islamic Law" (*taqnin al-shari'a*). The states reacted to this demand in giving the form of legislative texts to classical or postclassical *fiqh* rules and in integrating them into their codes.<sup>28</sup>

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<sup>24</sup> *Id.*, art. 3. See also Nathalie Bernard-Maugiron and Baudouin Dupret, *Introduction: A General Presentation of Law and Judicial Bodies*, EGYPT AND ITS LAWS XXIV-LII (2002).

<sup>25</sup> *Id.*, Law No. 47/1972, art.10§5.

<sup>26</sup> Law No. 143/1994, art. 1; see *infra* note 44.

<sup>27</sup> After Egypt's defeat in the 1967 Six-Day War against Israel, the judiciary feared being absorbed into the Arab Socialist Union during Nasser's régime. The vocal leadership directly challenged the system by calling for greater independence and the rule of law. The authoritarian régime responded by dismissing hundreds of sitting judges known as the *massacre of the judges*; but subsequent régimes backtracked and granted autonomy to the judiciary, and raised salaries and benefits. See Nathan Brown, *Egypt's Judges Step Forward*, CARNEGIE ENDOWMENT (May 2005).

<sup>28</sup> Baber Johansen, *supra* note 11, at 698.

In 1973 and 1980, two caselaws,<sup>29</sup> *inter alia*, deal with Muslim converts of Christian background reverting to Christianity. According to the 1970s hardliner jurisprudence of the Court of Cassation and Court of Administrative Litigation, an apostate has neither the right to marry, nor to inherit. In a caselaw,<sup>30</sup> the CAL ruled that the marriage in question is not legal. The facts of the case are summarized as follows: a Christian woman married a Christian professor who died; as a widow, she received a pension from the university till December 1966. The professor's sister disclosed that the first and second court rulings upheld that the marriage was invalid since the professor's wife was an apostate, having previously converted to Islam then reverted to Christianity; and therefore, she had no right to the inheritance. The marriage of an apostate being void, thus she was not his wife; consequently, she had no right to his pension. The university filed an action demanding the pension to be returned, and the plaintiff argued that the applicant's argument is unconstitutional because the rules governing apostasy are incompatible with religious freedom, and Law No. 77/1943 does not deny an apostate inheritance. The CAL ruled that the defendant (widow) should return the pension sum that she had illegally received, since the Inheritance Law stipulates that she has to legally be the deceased's widow, and that she was not because her marriage was invalidated being an apostate. The widow's defendant appealed to the Supreme Administrative Court of State Council,<sup>31</sup> which held the same ruling of CAL.

Whereas in the other caselaw,<sup>32</sup> the Court concluded that an apostate has no civil rights according to Shari'a, and that freedom of religion is unilateral; in other words, those that wish to embrace Islam are only allowed a religion change, and that Islamic Shari'a clearly stipulates that apostasy is not to be condoned but should be prevented. Berger argues that contemporary Egyptian jurisprudence refers to the prohibition of apostasy, but not to the death penalty; whereas Egyptian statutory law does not make any reference to apostasy, and omission is not permission for apostasy.<sup>33</sup> In line with Berger's argument, there is no legislation on apostasy, but it has legal repercussions in civil matters of marriage and inheritance; it manifests itself in two areas: reprimand or punishment by members of society, and degrading treatment and harassment by police or State Security agencies.<sup>34</sup>

The Court of Cassation in caselaw precedent pointed out and stressed on "the invalidity of the marriage of a female Muslim apostate if she gets married after apostasy to a non-Muslim and separation is enforceable...and the impermissibility of changing the name or religion status of the apostate in the identity card information...a woman apostate (*mortada*) does not originally have the right to marry either a Muslim or a non-Muslim; she is considered dead, and a dead is not subject to

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<sup>29</sup> Ahmad Seif al-Islam Hamad, *Legal Plurality and Legitimation of Human Rights Abuses: A Case Study of State Council Rulings Concerning the Rights of Apostates*, in LEGAL PLURALISM IN THE ARAB WORLD 219- 228, 227 (Baudouin Dupret, Maurits Berger, and Laila al-Zwaini eds., 1999). See also State Council, Court of Administrative Litigation, Case No. 240, Judicial Year 22, 13 May 1973; Case No. 20, Judicial Year 29, 8 Apr. 1980. See also Maurits Berger, *Apostasy and Public Policy in Contemporary Egypt*, 25 HUMAN RIGHTS QUARTERLY 720-740 (2003). See appendix for details of the cases.

<sup>30</sup> State Council, Court of Administrative Litigation, Case No. 240, Judicial Year 22, 13 May 1973. See also Ahmad Seif al-Islam Hamad, *id.* at 226-227; see also appendix for casebrief.

<sup>31</sup> Ahmad Seif al-Islam Hamad, *supra* note 29, at 227.

<sup>32</sup> Court of Administrative Litigation, Case No. 20, Judicial Year 29, 8 Apr. 1980; see *id.* Ahmad Seif al-Islam Hamad; see also appendix for casebrief.

<sup>33</sup> Berger, *supra* note 1, at 722.

<sup>34</sup> The degrading treatment and harassment by state security agencies are discussed in part III.

marriage,<sup>35</sup> according to the Ḥanafī jurisprudence and not to a legal provision because there is no national legislation on apostasy as confirmed by the Court.<sup>36</sup>

The children of Muslim converts are Muslims “if they are born before the apostasy of their parents and so they don’t follow suit with their parents’ apostasy; whereas, if any child is born after the parents’ apostasy, he/she is not a Muslim since both parents are not Muslims. Upon maturity or reaching the age of fifteen years, he/she can choose which religion to follow.”<sup>37</sup> On 21 May 2006, a *fatwa* was issued by Sheikh Aly Gom’a, *Muḥtāḥ al-Dīyar al-Maṣriyya*, entitling the Christian mother to have custody over her child in case the father embraces Islam,<sup>38</sup> which is in accordance with the *Ḥanafī* jurisprudence.<sup>39</sup>

The recent trend in Egypt is more towards applying international human rights laws favoring the freedom of belief, as confirmed by the recent jurisprudence of the Court of Administrative Litigation for Muslim converts to Christianity of Christian background, unlike the 1970s and 1990s hardliner jurisprudence.<sup>40</sup>

### **b. After 2000**

In many caselaws,<sup>41</sup> converts of Christian background<sup>42</sup> got an affidavit from the competent religious authority,<sup>43</sup> certifying that they are active members of the Church after reverting from Islam to Christianity, and applied with that certified affidavit to the Civil Affairs Registry (CAR) for a name and religion change in the identity card. The CAL referred in its reasoning to Articles 46, 47, 48, 50, 53, and 66 of CAR Law No. 143/1994, which entitles citizens to make changes in their personal data by two procedures. Data concerning birth, death, family, or children are changed by a decree from a committee composed of Attorney-General of the General Prosecutor, Director of CAR, and Director of Health Affairs Directorate.<sup>44</sup> Data pertaining to nationality, religion, profession, marriage, or divorce are made by rulings or relevant documents

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<sup>35</sup> Court of Cassation, Case No. 1359, Judicial Year 28, 27 Nov. 1984; Case No. 162, Judicial Year 62, 16 May 1995, at <http://www.tashreaat.com>.

<sup>36</sup> *Id.*

<sup>37</sup> Court of Cassation, Case No. 255, Judicial Year 68, 28 Dec. 1998, at <http://www.tashreaat.com>.

<sup>38</sup> Naguib Gabrail, *Express and Open Fatwa Rectifying Situations in Egypt (Fatwa Ṣariḥa wa Jarī’a Toṣaḥeḥ al-Awḍā’ fī Miṣr)*, EGYPTIAN UNION FOR HUMAN RIGHTS ORGANIZATIONS, at [http://www.euhroeg.com/statements\\_body.php?id=35](http://www.euhroeg.com/statements_body.php?id=35), visited on 6 Oct. 2006. See appendix for more details on the fatwa.

<sup>39</sup> Court of Cassation, Case No. 255, Judicial Year 68, 28 Dec. 1998, at <http://www.tashreaat.com>

<sup>40</sup> See A. S. al-Islam, supra note 29, at 226-227.

<sup>41</sup> State Council, Court of Administrative Litigation, Case No. 18924, Judicial Year 58, 5 Apr. 2005; Case No. 18925, Judicial Year 58, 5 Apr. 2005; Case No. 26103, Judicial Year 58, 26 Apr. 2005; Case No. 20498, Judicial Year 58, 24 May 2005; Case No. 5025, Judicial Year 59, 14 Jun. 2005; Case No. 28195, Judicial Year 59, 17 Jan. 2006; Case No. 18923, Judicial Year 58, 14 Feb. 2006; Case No. 3284, Judicial Year 60, 7 Mar. 2006; Case No. 11811, Judicial Year 58, 21 Mar. 2006; Case No. 3839, Judicial Year 59, 22 Mar. 2005; Case No. 9072, Judicial Year 59, 4 Apr. 2006; Case No. 3839 & 14384, Judicial Year 59, 18 Apr. 2006. These cases were collected from the applicants’ lawyer; and they are just an illustration but the total reached over 170 cases. While I am writing my M.A. thesis, this figure increases as time elapses. See appendix for some casebriefs.

<sup>42</sup> Those converts of Christian background were originally Christians, who embraced Islam, then reverted to Christianity once again.

<sup>43</sup> In these cases, the competent religious organ is the Coptic Orthodox Patriarchy.

<sup>44</sup> Law No. 143/1994, OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 23, 9 Jun. 1994, at <http://www.tashreaat.com> Art. 46 stipulates:

In each Governorate, a committee of three, composed of the Attorney General of the General Prosecutor, Director of Civil Affairs Registry, and Director of Health Affairs Directorate, is in charge of any correction or change in the civil registry data concerning birth, death, and family registration.”

issued by the competent organs without the need to refer to this committee of the CAR.<sup>45</sup> The national identity card must be issued to every citizen having completed sixteen years old;<sup>46</sup> and the administrative organs or representatives of the public authorities are not allowed to abstain from certifying the personality of its holder, withdraw or keep the identity card from its holder.<sup>47</sup> And any change of data has to be reported to the CAR within three months, and is a duty incumbent upon the citizens;<sup>48</sup> otherwise, a penalty is to be paid.<sup>49</sup>

According to these provisions, the legislator made the duty of every citizen reaching sixteen years to file a request for an identity card, which includes the religion,<sup>50</sup> that has to be either Judaism, Christianity, or Islam, and gave it a special importance by making it a legal document certifying the authenticity of its data as long as it has not expired.<sup>51</sup> Any correction or change of religion is done according to rulings or certified documents from the competent organs. In cases involving Coptic Orthodox, the competent organ is the Coptic Orthodox Patriarchy.

The Court examined the legality of the administrative bodies' holding, turned down the negative administrative decree, and entitled applicants to a name and religion change in their identity cards. The CAL based its reasoning on the following:

1. Egyptian Constitution guarantees the equal opportunity between citizens in their public rights and duties, there is no discrimination between them on grounds of race, origin, language, religion or belief (Art. 40); and the freedom of belief and practice of religious rites (Art. 46).

The Court pointed out that there is a relation between the opportunity to the freedom of belief and the inevitable repercussions of such a freedom; and to say otherwise would empty and vacate the freedom from its contents and substance, turning it into mere rituals and nonsense without genuine content, as long as that freedom was not restricted by any legal consequence or reality resulting from the exercise of such a freedom.

2. Universal Declaration of Human Rights (UDHR), Article 18 stipulates that:  
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

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<sup>45</sup> *Id.*, art. 47:

Any change or correction in the civil registry data for birth, death or family and children could only be done upon a decree issued by the committee mentioned in art. 46. Any change or correction of nationality or religion or profession or marriage or annulment thereof... should be done according to rulings or documents issued by the competent organs without the need to issue a decree by the committee mentioned in art 46.

<sup>46</sup> *Id.*, art. 48: "Every Egyptian citizen having attained sixteen years old should file a request to obtain a national identity card from the civil registry in the area where he/she lives within six months after attaining sixteen years."

<sup>47</sup> *Id.*, art. 50:

The national identity card is a legal document certifying the authenticity of the data, provided it is still valid and has not expired; and the governmental and non-governmental agents/organs are not allowed to abstain from certifying the personality of its holder... the representatives of the public authorities are not allowed to either withdraw or keep the identity card.

<sup>48</sup> *Id.*, art. 66.

<sup>49</sup> *Id.*, art.53: "If any change occurs in the identity data or civil status then he/she has to report such changes within three months to the civil registry police station in the area where he/she lives."; and art. 66: "66 stipulates that a penalty for breaching the law...ranging from a mini of 100 LE to a maxi of 200 LE."

<sup>50</sup> *Infra note*, part III, executive regulations bylaw, ministerial decree 1121/1995.

<sup>51</sup> See Law No. 143/1994, *supra* note 44, art. 48.

3. Arab Charter for Human Rights (approved by Arab League Resolution No. 5427 dated 15 September 1997) stipulates in Article 26 that “everyone has the right to freedom of belief, thought and opinion”; and Article 27 stipulates that:
 

Adherents of every religion have the right to practice their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No. restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.
4. Islamic Shari’a has preceded all such international covenants and constitutions about 1400 years and approved such freedoms. Besides, the jurisprudence would consider the Muslim an apostate if he gladly accepts, opens his heart to non-belief, and effectively embraces it as God’s saying “whoever gladly accepts non-belief” as written in the Sunna jurisprudence by Mr. Sabek, Volume 2, page 437, 20<sup>th</sup> legal edition 1997, publisher Dar al-Faḥ Lel I’lam al-‘Araby.
  - a. Sūrat al-Baqara,<sup>52</sup> verse 256 states “there is no compulsion in religion; the path of rectitude has been made distinct from error.”
  - b. Sūrat Yūnes, verse 99 states “had God willed, He would have induced everyone on earth to believe, will you then force people to believe.”
5. The prince of poets Ahmad Shawqy said: “religion belongs to the Judge; had God willed, He would have united the peoples.”

The Court viewed the defendants’ stance (administrative organ) of abstention as an unjustified interference and a compulsion it is exerting on the applicants to choose a certain belief or religion that the applicants do not wish. The Court considered registering their new data as a mere registration of an absolute material fact concerning their civil status in the identity card that is purposed for that, as long as they live; consequently, a change of religious status would be a protection for the others dealing with the applicant. Then the Court requested all state authorities to register the true religion of the applicants (Christianity), as well as their names without falling in any error; it viewed that there is a legal commitment on behalf of the administrative organ to take such action. The Court repeatedly said that it is by no means acceptable that the administrative organ should use its legal authority to compel the applicants to still embrace Islam. Accordingly, the abstention on behalf of the administrative organ to give the applicants identity cards, instating their new name and true religion, which they reverted to from Islam after obtaining an affidavit from the competent organ (Coptic Orthodox Patriarchy), is unjustified in fact or in law. Therefore it has to be judicially repealed with all pertaining repercussions, and applicants be given identity cards including their original names and original religion before embracing Islam. In spite of the Court’s decision, the administrative organ refused to implement the court’s ruling and change the applicants’ names and religion to their original ones before embracing Islam. It justified its abstention on grounds that it is apostasy in breach of *public order* that could not produce any subsequent changes. The applicants had to get a court order to enforce the Court’s decision;<sup>53</sup> and finally a change of name and religion was made in the national identity cards of the applicants.

This is an unprecedented groundbreaking legal reasoning by the Administrative Justice that will and should clearly impact future rulings, should the Islamic fundamentalists not take over the judiciary. The jurisprudence honored the guaranteed constitutional human rights, Arabic Charter of Human Rights, and Islamic law

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<sup>52</sup> Al Montakhab, *The Select in the Interpretation of the Holy Qur’an*, MINISTRY OF AL AWQAF, High Council for Islamic Affairs (1993).

<sup>53</sup> This information was provided by the applicants’ lawyer.



favoring the freedom of belief. The interesting point is that the Court referred to Article 18 of UDHR, which is a worldwide authoritative declaration, but non-binding because it was not ratified by Egypt.<sup>54</sup> Instead, the CAL should have referred to the International Covenant on Civil and Political Rights<sup>55</sup> (ICCPR). The issue worth highlighting is the difference in Article 18 between the UDHR<sup>56</sup> and ICCPR.<sup>57</sup> UDHR Article 18 entitles to the freedom to *change* one's religion or belief; whereas, ICCPR Article 18 confers the right to *have* or to *adopt* a religion or belief of one's choice, prohibiting any coercion. Assumably, the Administrative Justices are aware of the difference in wording and the past history of the debate in the travaux préparatoires in the bill of rights revolving around that difference. However, they have chosen to adopt and apply the UDHR to the exclusion of the ICCPR, which confers a higher level of religious freedom, that of the *freedom to change one's religion or belief*. The Egyptian Judiciary, in the defense of its autonomy and independence, referred to UDHR and other international instruments based on UDHR freedom of expression to all citizens.<sup>58</sup> So now judges can *not* reject UDHR legal provisions, since they themselves referred to in defending the independence of the judiciary; it has become part of the Egyptian legal reference and reasoning. And even if they were not aware of that difference, worst case scenario, proper legal reasoning based on other sources of law, excluding UDHR and fundamentalist judges, should lead to the same judgment favoring the application of human rights in the freedom of belief.

## **B. Muslim Converts from Muslim Background before the State Security Courts**

Since there is and was no legislation on apostasy,<sup>59</sup> converts of Muslim Background had to be punished for apostasy on grounds of disturbing public policy.<sup>60</sup> They are accused of *damaging national unity and social peace in contempt of religion*, under Article 98 F<sup>61</sup> of the Penal Code, which is a misdemeanor threatening national

<sup>54</sup> Declarations are not subject to ratifications, only covenants.

<sup>55</sup> Egypt ratified ICCPR, on 1 October 1981, by a Presidential Decree No. 536/1981, published in the OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 15, in force on 15 April 1982, at <http://tashreaat.com>

<sup>56</sup> UDHR, art. 18:

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

<sup>57</sup> ICCPR, art. 18:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

<sup>58</sup> ‘Aṭef Shaḥat Sa‘īd, *The Role of the Judges’ Club in Enhancing Judiciary Independence and Political Reform*, in *JUDGES AND POLITICS IN EGYPT* (Nathalie Bernard-Maugiron ed., forthcoming Fall 2007). ‘Aṭef Shaḥat Sa‘īd is a solicitor before the Courts of Appeal in Egypt, and a student at the Sociology Doctorate Program in Michigan, USA. This paper was presented in the conference on *The Role of the Judiciary in the Political Reform in Egypt and the Arab World*, 1-3 Apr. 2006, hosted by Cairo Institute for Human Rights Studies (CIHRS) and the Institut de Recherche et de Développement (IRD).

<sup>59</sup> *Naqd*, *supra* note 33 & 34.

<sup>60</sup> *Supra* note 11-14.

<sup>61</sup> Penal Code, Law No. 58/1937, as amended by Law No. 29/1982, art. 4, OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 16, 22 Apr. 1982. Art. 4 added art. 98 F which stipulates:

Detention for a period of not less than six months and not exceeding five years, or paying a fine of not less than five hundred pounds and not exceeding one thousand pounds shall be the penalty inflicted on whoever exploits and uses the religion in advocating and propagating by

security, and judged by State Security Courts<sup>62</sup> that has exceptional jurisdiction.<sup>63</sup> Article 98 F of the Penal Code, which was added in 1982 by Law No. 29/1982, served that purpose; and Muslim converts of Muslim background were tried before the State Security Courts. Before that addendum, converts of Muslim background were not tried on criminal basis by the Penal Code, because there was no such article that could incriminate them. They were mistreated and harassed by State Security; consequently, some fled to Europe or United states, and applied for refugee status on grounds of religious persecution.<sup>64</sup> Such category of converts started to increase in number<sup>65</sup> with the Islamic fundamentalist movement, whose activities resulted in the assassination of President Sadat on 6 October 1981.

### 1. State Security Courts (SSC)

State Security Courts operate whenever a state of emergency<sup>66</sup> is declared under Article 7<sup>67</sup> of Law No. 162/1958 on the State of Emergency, trying crimes in violation of presidential or executive writs. Summary State Security Courts are established within first instance courts, and formed of one judge, or one judge and

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talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition or division or disdaining and contempting any of the heavenly religions or the sects thereto, or prejudicing national unity or social peace.

<sup>62</sup> Permanent State Security Courts were created by Law No. 105/1980, and abrogated by Law No. 95/2003.

<sup>63</sup> MOHAMAD HISHAM ABŪ AL-FETŪH, STATE SECURITY JUDGMENT: A COMPARATIVE STUDY (*QADA' AMN DAWLA: DERASA MOQARANA*) 27 (1996).

<sup>64</sup> *Convention Related to the Status of Refugee*, UNGAR 429 (V), 14 Dec. 1950, in force 22 Apr. 1954, at <http://www.un.org>. Art. 1A2 stipulates:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

<sup>65</sup> There is no credible research done to reach for the reasons of increment in conversion rate from that time on, but my assumption is that Sadat's massacre was shocking to all Egyptians. Many Muslims started to research the philosophy of *jihad* and to study the Qur'an more in-depth; they found themselves in disagreement with many unresolved issues. The Church realized that they are increasing in number, because the natural consequence of conversion was that they reached for places to better understand the Biblical teachings, so they sought the Church in the first place.

<sup>66</sup> MOHAMED HISHAM ABŪ AL-FETOUH, STATE SECURITY JUDGMENT: A COMPARATIVE STUDY (*QADA' AMN DAWLA: DERASA MOQARANA*) 13 (1996).

<sup>67</sup> Law No. 162/1958, OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 29, 28 Sep. 1958, at <http://www.tashreaat.com>. Art. 7 stipulates that:

The state security summary and higher courts shall judge in the crimes occurring in violation of the provisions of the writs issued by the President of the Republic or his assigned delegate. Each of the state security summary circuits in the First Instance Court shall be formed of court justices and be concerned with judging in the crimes penalized with imprisonment and a fine or either penalty. The Higher State Security Circuit of the Appeal Court shall be formed of three counselors and be concerned with judging in the crimes penalized with felony penalties and the crimes to be defined by the President of the Republic or his assigned delegate, whatever the penalty prescribed thereof. The prosecution before the State Security Courts shall be assumed by a member of the Public Prosecution. As exception for the President of the Republic, he may order forming the summary state security circuit of one judge and two armed forces officers of the rank of sergeant or at least his equivalent, and forming the higher state security circuit of three counselors and two command officers. The President of the Republic shall appoint the state security courts members after consulting the view of the Minister of Justice concerning the justices and counselors, and the view of the Minister of Defense concerning the officers.

two armed forces officers; and the High State Security Courts are established within the appeal courts, and formed of three counselors, and two command officers could be adjunct.

The High SSC exclusively examine, *inter alia*, felonies related to protection of national front and social peace,<sup>68</sup> protection of freedom of country and citizens, and political parties. The Public Prosecution has jurisdiction to accuse and investigate in crimes that fall under the competence of these courts.<sup>69</sup> The Courts' decisions are final and not subject to challenge,<sup>70</sup> which could be unconstitutional according to constitutional Article 57,<sup>71</sup> but in emergency situations the state is entitled to override its normal legal proceedings. The President can leave case on file, or grant amnesty,<sup>72</sup> or alleviate judgment.<sup>73</sup>

The state of emergency has been in force since 1981 after Sadat's assassination, and suspects can be held in provisional detention, almost indefinitely, without trial at the discretion of the Minister of Interior or SS Police. Petitions for *release* can be filed by detainees before the High SSC, at thirty days intervals.<sup>74</sup> The Court decides the complaint or petition for release by passing a substantiated writ within fifteen days from the submission date of the petition, after hearing the statements of the arrested or detainee, who otherwise shall be released immediately.<sup>75</sup> The Ministry of Interior can object to the writ of release within fifteen days from its issuance; the objection is then referred to another judicial circuit who should decide within fifteen days of referral date, otherwise detainee is released immediately and the Court's decision is enforceable.<sup>76</sup> If the complaint is turned down, the detainee has the right to file another petition for release within thirty days from rejection date.<sup>77</sup>

## 2. Jurisprudence of State Security Courts (SSC)

Although caselaws before 2000 mark a hardliner jurisprudence of State Council vis-à-vis apostates of Christian background, the treatment and accusation of converts of Muslims background is even more disciplinarian than converts of Christian background, notably from 1980s onward. Converts of Muslim background are accused of contempt of religion, under Article 98 F of the Penal Code, which states that:

Detention for a period of not less than six months and not exceeding five years, or paying a fine of not less than five hundred pounds and not exceeding one thousand pounds shall be the penalty inflicted on whoever exploits and uses the religion in advocating and propagating by

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<sup>68</sup> Law No. 33/1978, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 22, 3 Jun. 1978, at <http://www.tashraat.com>. See *infra* notes 115-120.

<sup>69</sup> Law No. 162/1958, art. 10:

With the exception of the procedures and rules prescribed in the following articles of the writs to be issued by the President of the Republic, the provisions of the laws in force shall apply to investigating the cases that are judged by the State Security Courts, as well as to the procedures of their examination, the ruling passed therein, and the execution of the penalties inflicted by the courts. Upon investigation, the Public Prosecution shall have all the powers entrusted thereof, as well as to the inquiry judge and the referee, as per these laws.

<sup>70</sup> *Id.*, art. 8.

<sup>71</sup> CONSTITUTION OF EGYPT, ART. 57: "Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription."

<sup>72</sup> Law No. 162/1958, art. 13.

<sup>73</sup> *Id.*, art. 14

<sup>74</sup> Law No. 162/1958, as amended by Law No. 60/1968 and Law No. 164/1981, art. 3 bis.

<sup>75</sup> *Id.*, art. 3 bis §d.

<sup>76</sup> Law No. 162/1958, art. 3 bis §e & §f.

<sup>77</sup> *Id.*, art. 3 bis §g.

talk or in writing, or by any other method, extremist thoughts with the aim of instigating sedition or division or disdain and contempting any of the heavenly religions or the sects thereto, or prejudicing national unity or social peace.<sup>78</sup>

A famous High SSC Case No. 662/1990 concerns three Muslim-born young men who converted to Christianity.<sup>79</sup> All three were arrested in September and October 1990 and held until mid July 1991, at Tora Reception and Abū Za‘bal Industrial prison. They were accused under Article 98 F of the Penal Code for: 1) evangelistic activities and seeking to convert others, 2) despising the Islamic religion and threatening national and social harmony, and 3) aiding and abetting others in procuring forged identity documents.<sup>80</sup> The charges are liable to punishment by a term of imprisonment from three to ten years. Following arrest and detention, they appeared at the High SSC on 24 November 1990. The Court issued a writ of release on 16 December 1990 due to insufficient evidence to sustain the charges. The Court’s findings of 24 November 1990 rescinded upon objection<sup>81</sup> by the Minister of the Interior turned down the release. Various petitions for release were filed (January, February, March 1991), but all were rejected.

During detention, the three underwent torture to force a renunciation of their Christian faith and return to Islam. The State Security (SS) subjected them to stress-duress: they were stripped and beaten, suspended by their wrists from manacles, subjected to electric shocks applied to their genitals, burnt with cigarettes, and threatened with rape. The youngest, who was twenty-one year old at that time, was treated more harshly than the others and spent weeks in the special behavior wing of Abū Za‘bal Industrial prison in a cell that was too small to lie down or to stand upright. On 8 June 1991, the three charges were reinstated and detention continued. On 13 July 1991, the three men were released following international pressures and only after recantation of Christianity. The case was suspended, but the file remained open. Regarding these men, the High SSC Justice Al-‘Ashmawy commented: “There is no future for them to stay. They will be displaced from society, rejected from their families, and they will be in constant trouble. They have to repent or leave Egypt.”<sup>82</sup>

High SSC (*amn al-dawla al-‘uliyā*) Case No. 627/2005 is listed among the converts to Christianity from Muslim background because it is the most recent case, treated under Article 98 F of the Penal Code indicting the accused of contempt of religion. He was not tortured in prison, because his charge was not conversion to Christianity, but calling for a new religion. Muslim Converts to Christianity of Muslim background get a harsh degrading treatment: abuse, rape, and torture in provisional detention, with impunity. The fact, that such converts have transgressed Islamic law and are viewed as apostates *civically dead*, entitles no one whether state apparatus, society, or family members to abuse, harass, intimidate, and torture them. Torture is punishable by constitutional and legislative laws, as well as by international law to which Egypt is a state member to the Convention against Torture,<sup>83</sup> as acceded on 25 June 1986. And since our Constitution stipulates that no criminal or civil

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<sup>78</sup> Penal Code, Law No. 58/1937, as amended by Law No. 29/1982, art. 4, OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 16, 22 Apr. 1982. See *supra* note 61.

<sup>79</sup> U.S. Country Reports on Human Rights Practices, Released by the Bureau of Democracy, Human Rights, and Labor, February 23, 2001, at <http://www.state.gov/g/drl/rls/hrrpt/2000/nea/784.htm>

<sup>80</sup> Penal Code, Law No. 58/1937, art. 208-215; those articles pertain to the penal repercussions for forging official documents.

<sup>81</sup> Emergency Law No. 162/1958 as amended by Law No. 60/1968 then substituted as per Law No. 164/1981.

<sup>82</sup> Unofficial interview with News International on 30 June, 1993.

<sup>83</sup> *Convention against Torture, other Cruel, Inhuman, or Degrading Treatment or Punishment*, UNGAR 39/46, 10 Dec. 1984, in force 26 Jun. 1987, art.1.

lawsuit is liable to prescription,<sup>84</sup> such acts of torture, cruel, inhuman, or degrading treatment can be reported and lawsuits filed at anytime against the state, for redressing and compensation.

The case involves a certain convert, BAA, arrested on remand at Tora Ranch Prison on 6<sup>th</sup> April 2005. He was charged of contempt of religion punishable under Article 98 F<sup>85</sup> of the Penal Code alleging that: 1) he denied the three heavenly religions: Judaism, Christianity, and Islam; 2) he denied Islam; 3) he called for a new religion “equality of people” based on love, justice, and equality; 4) he alleged that the Qur’anic verses, Hadiths, Fiqh and Prophet’s life were all perverted; 5) he denied the five basic pillars of Islam mainly testimony (*shehada*), tithing (*zakat*), prayer (*ṣalat*), pilgrimage (*ḥaj*), and fasting (*ṣom*) because they were imputed to the prophet and not to God. ASMS was accused with him for working on attracting new people to this calling and for succeeding in convincing MDM with this new religion. The defendant was charged of convening cultural meetings in his privately-owned food store, where he used to teach his thoughts and beliefs, discuss other writings supporting his beliefs, and research how to diffuse publication among citizens. He was further accused of planning to establish a human rights organization under the name “Freedom Advocates Organization” (*Jam‘iyyat Anṣar al-Horiyya*), whose activities included correspondence with foreign institutions and states to get financial aid, as he had previously sent letters to some embassies in Egypt, stating that he was persecuted and requested protection and financial support. A writ of custody was issued from the Public Prosecutor to detain him on remand pending trial. He visited several times Ibn Khaldoun Center, Jam‘iyyat al-Tanwīr, and the Liberal Parliament (*al-Montadah al-Liberaliy*) where he participated in order to get some financial privileges and aids with the aim of spending on his calling. The defendant was charged of writing some books that propagated his ideas and beliefs, in view of disseminating them among the citizens.

The defense memos argued that the expansive enumeration of charges is meant to impose weight and heavy charges on the convict, because there is redundancy in charges as the second, fourth, and fifth charges are included in the first one. Second, the charges were all based on the intelligence investigation which does not present any evidence against the applicant to confirm the arbitrary charges; consequently, the charges can not be credible. Third, the third charge, that of a calling for a new religion called *equality between people*, was charged before in the Case No. 325/1998<sup>86</sup> High SSC, where the applicant was released subsequent to the investigation and the case was set processus because of invalid accusation (*ḥefz al-qādiyya le ‘adam ṣeḥat al-itihām*). It follows that he cannot be charged once again for the same charge from which he was acquitted (legally-speaking *double jeopardy*). Fourth, all charges investigated were confined to guaranteed constitutional rights: freedom of thought of a researcher, freedom of opinion, freedom of expression, right to publicize one’s opinion verbally or in writing or by photography or by other means within the limits

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<sup>84</sup> CONSTITUTION OF EGYPT, ART. 57:

Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription. The State shall grant a fair compensation to the victim of such an assault.

<sup>85</sup> *Supra* note 61.

<sup>86</sup> This is a previous case when BAA was arrested in 1998 by State Security, but acquitted from this charge for which he was re-accused in 2005.

of the law, and self-criticism and constructive criticism are the guarantees for the safety of the national structure.

They extensively referred to the guaranteed constitutional rights: starting with the preamble that places man's humanity and dignity on a pedestal; then Article 41 ensures the necessity of *de facto* judicial investigation and writ of arrest for security concerns issued by the competent judge or prosecution; Article 47 guarantees the freedom of expression and opinion, which unveils and corrects shortcomings and weaknesses in public affairs, to ensure pluralism and neutrality; Article 57 guarantees the security of private life, which if violated is a crime not liable to prescription; Article 67 assumes innocence till proven guilty; and Article 71, on the due process of law, that entitles detainees the right to communication, to be faced with his charge, and to lodge a petition for release.

The defense too referred to Article 18 of International Covenant on Civil and Political Rights (ICCPR), on the freedom of thought, conscience, and religion, highlighting that Egypt ratified that covenant, which became part of its legislation applied by the judiciary in caselaws, according to constitutional Article 151;<sup>87</sup> Article 15 of International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>88</sup> entitling everyone to cultural rights and to enjoying state protection for one's production. They elaborated on the freedom of opinion in Islam, and referred to the Qur'an, and Islamic jurisprudence.<sup>89</sup> The question raised by the defendant's lawyers was: how could a right be transformed to a crime punishable? Accordingly, the defendant's lawyers argued that the justification of preventive custody is non-existent since the criminal charges are non-existent; and since the investigation was discontinued as at June 2005, where is the interest of the investigation (*maṣlahat al-tahqīq*)?

Six months lapsed from the date of arrest in preventive custody and a hearing took place on 6 December 2005. SS usually throws suspects in provisional detention and retards investigations on purpose; such a delay is part of the abuse exercised on the detainee to keep him in detention on remand. The SSC issued a writ to renew custody for forty-five days, because the Ministry of Interior objected and renewed its allegations. And the defendant applied for a new petition for release, since Article 3 bis of Emergency Law entitles him to file another petition for *release* to the competent SSC every thirty days from the rejection date of the petition.

The SSC kept renewing the custody writ indefinitely. The second defense memo submitted to SCC argued that perpetual renewal of custody is unfair because preventive detention should be confined to strict limits of ensuring the safety of the preliminary investigations, and the accused has to be confronted with the new allegations, supported by credible evidence; otherwise, the accused

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<sup>87</sup> CONSTITUTION OF EGYPT, ART. 151:

The President of Republic shall conclude treaties and communicate them to the People's Assembly, accompanied with a suitable clarification. They shall have the force of law after their conclusion, ratification and publication according to the established procedure.

However, peace treaties, alliance pacts, commercial and maritime and all the treaties involving modifications in the territory of the State, or having connection with the rights of sovereignty, or which lay upon the Treasury of the State certain charges not provided for in the budget, must acquire the approval of the People's Assembly.

<sup>88</sup> Egypt ratified ICESCR on 1 October 1981, by the Presidential Decree No. 537/1981, published in the Official Gazette (*al-Jarīda al-Rasmiyya*), Issue No. 14, in force 8 April 1982.

<sup>89</sup> Sūrat Saba': 46 "kol inama a'ezakom bewaheda an taqūmū lelah mathna wa farada thuma tatararo"; Sūrat al-Baqara: 170-171, 256; Sūrat al-Nahl: 44; Sūrat Yūnes: 24, 99; Sūrat al-Kahf: 29; Abd al-Wahed Moḥamad al-Fa'r, 317-319 (2004); Ibrahīm 'Ali Badawi, *Nafad Itizamāt Maṣr al-Dawliyya fī Magal Huqūq al-'Insan fī al-Nizām al-Maṣry* 210 (2003).

should be released from detention. So the defense requested the annulment of the arrest writ and search warrant of the Prosecutor-General, because the oral testimonies delivered by his followers under stress-duress are unreliable. Also documents seized upon invalid arrest and search are not considered evidence and do not contain any words in contempt of heavenly religions; accused was acquitted from the same charges before, so it is double-jeopardy to re-try him for the same charge.

The High SSC renewed the custody writs, upon the objection of the Ministry of Interior, on same grounds of contempt of religion, and the accused was detained in remand. However, a new Law No. 145/2006 was issued on 27 July 2006 (in force on 28 July 2006) amending certain articles in Law No. 150/1950 of Criminal Proceedings, related to committing flagrant delict (Art. 18 bis), to investigation (Art. 124), provisional detention (Articles 134, 142, 143), temporary release (Art. 150), appeal to decisions of investigating judge (Articles 164, 166, 167, 168), public prosecutor investigation (Articles 201, 202, 205, 206, 237), attendance of litigant (Art. 325), and judgment (Art. 312). Article 143 regarding provisional detention states that:

Protective detention should not exceed three months, unless the accused was informed of transfer to a court of jurisdiction before the end of that period (three months). The public prosecution, in that case, should present the writ of detention within fifteen days maximum from the date of referral to the jurisdiction court according to Article 151 of this Law; otherwise, accused must be released. If the charge imputed is a felony, the provisional detention should not exceed five months, except if before the end of that period (five months) an extension of detention amounting to forty five days, renewable once or multiple times, is renewed by the court of jurisdiction; otherwise, the accused must be released. In all cases, the period of provisional detention is not to exceed the preliminary investigation period, nor the various stages of the criminal action, amounting to one third of the entire penalty stripping off his/her freedom, in a way not to exceed six months for misdemeanor, eighteen months for felony, and two years for any crime whose judgment would be life imprisonment or death penalty.

The new amended Law No. 145/2006 of Criminal Proceedings, Article 143, should benefit the accused, since it limited detention to six months for misdemeanor. And since BAA's charge is a misdemeanor, he should *de jure* be released. The Court in application of the new amended Article 143 of the Criminal Proceedings issued a writ of release to BAA (on 30 July 2006) from detention, but the Ministry of Interior and SS are refusing to implement the law, or comply with the writ of release issued by the emergency SSC. The Ministry of Interior renewed its objection, insisting to keep him in provisional detention. His lawyers filed an international action before the African Court on Human Rights and People's Rights.

### **C. Critical Comments and Conclusion**

Many questions transpire throughout part II; one could speculate and envision, but the true answers remain to be seen from caselaw. For instance, why didn't the Ministry of Interior challenge the decision of the CAL? Was it out of conviction with the constitutional and international human rights guarantees of freedom of religion that contradict the concept of public policy? Was it out of a desire to calm the Coptics and give them half a loaf? Did it get direct orders from the executive authority not to appeal the court judgment? Was the administrative judiciary itself pressurized to implement Egyptian national law and human rights laws, or freely applied human rights without being coerced to adopt a certain line of reasoning? Answers to such questions will be unfolded should the Court of Administrative Litigation decide a case pertaining to converts of Muslim background.

Two lines of reasoning could be speculated. First, it might reject the request for a change in the religious affiliation from Muslim to Christian on the identity card, on grounds of threat to public policy (as discussed in part I), closely linked to the essential principles of Islamic law (*al-mabadi' al-asasiyya fi ahkam al-shari'a al-islamiyya*), that are fixed and indisputable (*naş şarihh qati' al-thubūt wa qati' al-dalala*).<sup>90</sup> In other words, they are not subject to change or interpretation because of its “strong link to the legal and social foundations which are deep-rooted in the conscience of [Egyptian] society.”<sup>91</sup> The interest or principles that make up public policy are never clearly delineated, as they depend on the particular circumstances of a given society at a given time.<sup>92</sup> Their definition is left to the courts, as they are deemed the best suited to establish, on an ad hoc basis, when a legal act or statute should be considered a violation of public policy.<sup>93</sup> In the case of apostasy or conversion, the Court of Cassation and the Supreme Administrative Court disproved the claim that the rules of apostasy did not apply since they were not codified, but nevertheless they apply since they pertain to the fundamental legal order of Egyptian society, that of public policy.<sup>94</sup> It maintained that they constitute rules of public policy, and ignoring them is tantamount to violating public policy. However, in the recent cases of converts of Christian background, the CAL jurisprudence never mentioned public policy or interest; on the contrary, when a private lawyer wanted to partake, as a third party, in the defense along with the Ministry of Interior and CAR, the Court turned down his petition for lack of personal and direct interest. The Court too held that the abstention on behalf of the administrative organ, despite the availability of relevant legal documents, to issue an identity card reflecting the name and religion change, is an unjustified stance in fact or in law. But in the case of converts of Muslim background, I would speculate since there is no legislation on apostasy, it might use the *Hisba Law*,<sup>95</sup> stressing that the highest interest of society that makes up public policy is preserving the Muslim family unit from dissociation by the conversion of a member, who could be a threat to other family members, by sharing their new conviction and trying to convert others.

Second, the CAL could apply the same line of reasoning as the case precedents and implement national and international laws pertaining to religious freedom, ruling out coercion and compulsion in beliefs. But in such a case, the Ministry of Interior will certainly challenge the decision in the High Administrative Court, should the CAL rule in favor of freedom of belief for converts. The Ministry's challenge will

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<sup>90</sup> Maurits S Berger, *supra* note 1, at 727; taken from M.A. 'ARAFA, AL-QANUN AL-DUWALĪ AL-KHAS; AL-KITAB AL-THANĪ FĪ ALTANAZU' AL-DŪWALĪ LIL QAWANĪN 141 (1993); A. KHALLAF, TAFSĪR AL-NUSUS AL-QANUNIYYA WA TA'WĪLUHU 31 (1950/51). S. 'ABD AL-WAHAB, AL-NIZAM AL-'AMM FĪ AL-AHWAL AL-SHAKHSIYYA FĪ MASR, 39 AL-MUHAMA 350 (1958); H. AL-'AHWANĪ, SHARH MABADI' AL-'AHWAL AL-SHAKHSIYYA LIL MASIHIYYIN AL-MASRIYYIN 180 (1993/94); R. ABŪ SA'UD, WASĪT FĪ SHARH AL-AHWAL AL-SHAKHSIYYA LI-GHĀIR AL-MUSLIMĪN 425–26 (1986).

<sup>91</sup> *Supra* note 1, Berger, at 727.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*; see also Court of Cassation No. 28, Year 33, 19 Jan. 1966; No. 20, Year 34, 30 Mar. 1966. Supreme Administrative Court, No. 240, Year 22, 13 May 1973. See also State Council, Legal Ruling (Fatwa) Nr. 804, 2 Dec. 1962, in which reference is made to an earlier ruling of the Administrative Court, Case No. 195, Judicial Year 4, 26 May 1952 (mentioned by A. 'Abd al-Barr, *Dawr Majlis al-Dawla al-Maşri fi Himayat al-Huqūq wa al-Huriyyat al-'Ama* 292–299 (1991).

<sup>95</sup> *Hisba Law*, *supra* note 8: “... and whoever wants to file a *hisba* action, he has to file a petition to the competent General Prosecution explaining the request and reasons for such an action supported by relevant substantiating documents.”



assumably be grounded in Islamic Shari‘a, which prohibits and punishes apostasy and public policy.

The caselaws regarding Muslim converts of Christian background mark a distinct development in the jurisprudence of the CAL, geared towards the implementation of national and international laws for the religious rights. The CAL is a judicially activist court because it referred to Islamic Shari‘a, that promoted the religious freedom, in terms of rejecting compulsion of belief. The jurisprudence of the first category evolved from being treated as apostates civically dead in late twentieth century, to citizens with civil rights to change their religious affiliation in the identity card in the twenty-first century. However, CAL jurisprudence regarding Muslim converts to Christianity of Muslim background is a matter that remains to be seen, in case they file actions for religion change. These cases also illustrate the discrimination between both categories of converts, because the second category are still considered apostates civically dead, not deserving to live, and punished for abandoning Islam; they are arrested, detained on remand, abused, raped, sexually harassed, and tortured to recant their faith. And once they are released, State Security agents intimidate them, making their lives excruciating, intolerable, and not worth living at all. Some of them apply for refugee status, but after 11<sup>th</sup> September 2001 many asylum claims applied by Arabs were turned down; whereas, other converts choose to remain in Egypt and pay the price for changing their belief, daring to declare it out loud, thus challenging the public order.

Although the twenty-first century marks a significant development in jurisprudence favoring human rights, discrimination in the implementation of human rights in caselaws is obvious between converts of Christian background and converts of Muslim background. Actions filed by Muslim converts to Christianity of Christian background was handled by the normal competent judiciary as prescribed by law, which is the administrative judiciary. Whereas, Muslim converts of Muslim origin were arrested by SS and tried by the High SSC for contempt of religion under Penal Code, Article 98 F. The cases of the two categories are different because the subject-matter is different. The first category, converts of Christian background, files actions for change of religion in their identity cards; whereas the second category, converts of Muslim background, never filed such actions because they are arrested and accused of contempt of religion. Therefore, there is an obvious discrimination in treatment and selective application of jurisprudence between both categories. If we speak of constitutional equality before the law and since both categories are Muslims, CAL should equally entitle the second category, as the first category, to a religion change in identity cards and SSC should abstain from penalizing them of contempt of religion.

The next part argues that despite the importance of deleting the religious affiliation from identity cards to the religious minorities, converts to Christianity of Muslim background will partially gain from the deletion in terms of non-discrimination in freedom of worship, movement, work, and education. And they will fully benefit, despite the ongoing social persecution, from the change of religion reflected in their identity, cards in terms of marriage, and children’s education, having to totally forsake inheritance rights.

### **PART III: Rights of Converts and Identity Cards.**

This part starts by examining the limitations on the rights of converts, whether civil and political, or economic, social, and cultural, including their children’s rights; the assessment is based on national and international law. Then the question of whether the deletion of the religious affiliation in the identity card will solve the problems of

converts in terms of enjoyment of rights will be investigated. Moreover, a comparison between the legal status of identity cards in various Arab and Muslim countries will help assess and clarify, whether the religious affiliation is necessary or meaningless. Then, a legal description of the status of identity cards in Egypt, through which many actual problems for converts persist, is presented. Also a presentation of various arguments and counter-arguments on this issue will be discussed. Critical comments conclude part III.

### **A. Limitations on the Rights of Converts**

The role of identity cards in Muslim countries becomes more evident in issues related to marriage and heritage. Converts face various kinds of harassment in worship, freedom of movement, marriage, heritage, education, work, and housing. They encounter various unexpected difficulties in the normal transactions when buying and selling valuable items (apartments, cars), renewing car driving licenses, issuing official papers, establishing businesses with commercial registry, interstate traveling (movement inside Egypt), even walking inside one's own native city, and studying at the Seminary School of Theology. Marriage and heritage pose serious legal problems for converts, which will not be solved through the deletion of the religious affiliation in the identity card, but rather through a religion change in their identity card with pertaining legal consequences (as discussed below).

The next part are the conclusions reached from the interviews with converts who all confirmed that the deletion of religious affiliation will partially impact converts' rights positively, but the full enjoyment of civil liberty rights could only be extended by a change of religion in the identity cards. The rights are categorized between civil and political rights, and economic, social, and cultural rights according to the international covenants, intersecting with the covenant on the rights of the child, which are in line with the guaranteed constitutional rights.

#### **1. Civil and Political Rights of Converts**

Egypt is a state party to the International Covenant on Civil and Political Rights (ICCPR), ratified on 1 October 1981, by a Presidential Decree No. 536/1981, published in the Official Gazette (*al-Jarīda al-Rasmiyya*), Issue No. 15, in force on 15 April 1982.

##### **a. Freedom of Worship**

The freedom of worship is an absolute constitutional guaranteed right (Art. 46),<sup>96</sup> which is not restricted as prescribed by law as stipulated in the ICCPR (Art. 18),<sup>97</sup>

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<sup>96</sup> CONSTITUTION OF EGYPT, ART. 46: "The State shall guarantee the freedom of belief and the freedom of practice of religious rites."

<sup>97</sup> *International Covenant on Civil and Political Rights*, U.N.G.A. Res. 2200A (XXI), 16 Dec. 1966, entry into force 23 Mar. 1976, at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm). Art. 18 stipulates:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

which gave states a fairly wide margin of appreciation when it comes to the limitations on the manifestation of religious beliefs, within due process of law, along the same line of reasoning to the European Court of Human Rights.<sup>98</sup> However, the freedom of worship for Copts in Egypt in terms of building churches, which affect the worship, though not expressly stipulated in the Constitution *as prescribed by law*, is confined by a royal decree (*faraman 'aly*), known as *hegemonic line (al-khat al-hamayūny)* issued in February 1852.<sup>99</sup> So once Muslims convert to Christianity, they get joined to Coptics whose religious rights are restricted by that royal decree. Naturally, they want to practice their beliefs by external manifestation in worship and service; they are afraid of being arrested at the Church gate by undercover State Security agents, especially that all their moves are closely monitored and their identity could be checked at anytime. Any veiled woman is hardly allowed to enter into Church, after investigating the reasons for visiting the Church, and should be a one-time visitation, not recurrent. Some are stopped at the gate by SS and intimidated in order to renounce coming to Church. They are driven to lead a double life that could only hurt society at large, their families, and themselves.

The questions remain: is SS entitled to prevent harmless visitors to enter to Church? Why would a Muslim veiled woman be intimidated, even forbidden to enter a Church? Many Muslims attend funeral and marriage ceremonies, why are they not stopped, while others are?

#### **b. Freedom of Movement**

The right to freedom of movement is guaranteed by constitutional Article 41,<sup>100</sup> which only restricts the free movement in case of a flagrant delict, and with an order by the competent judge or public prosecution. Article 12<sup>101</sup> of ICCPR also guarantees the freedom of movement and that any restrictions should be provided by law, and are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others.

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4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

<sup>98</sup> See also European Court of Human Rights, *Kokkinakis v. Greece 1993*; JACOBS AND WHITE, EUROPEAN CONVENTION ON HUMAN RIGHTS (2002); see also European Court on Human Rights website, at <http://www.echr.coe.int/ECHR/>.

<sup>99</sup> Dr. Antūn Al-Sāghīr, , *Mohāṭ al-Sharāe'*, Vol. No. 3, p. 2852-2857, Al-Amīriyya Press (1953), at [http://www.copts-united.com/Case\\_Studies/Hamaouny\\_Line\\_3.htm](http://www.copts-united.com/Case_Studies/Hamaouny_Line_3.htm)

<sup>100</sup> CONSTITUTION OF EGYPT, ART. 41:

Individual freedom is a natural right and shall not be touched, except in cases of a flagrant delict. No person may be arrested, inspected, detained or his freedom restricted or prevented from free movement except by and/or necessitated by investigations and preservation of the security of the society. This order shall be given by the competent judge or the Public Prosecution in accordance with the provisions of the law. The law shall determine the period of custody.

<sup>101</sup> ICCPR, art. 12:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Converts' right to free movement within one's own country is often violated on no legal grounds and without judicial order, either from the competent judge or public prosecution. One<sup>102</sup> was called lately to the State Security Intelligence (SSI), who took his identity card, kept it and refused to give it back to him. It is a kind of harassment to the freedom of movement which is often practiced to intimidate them, because they can not move in or out of Cairo without their identity cards, otherwise they are detained especially that their names are on the list. So he complained to the police station that his identity was taken from him for no reason at all and without judicial order. The Head of the Civil Affairs Registry got the identity card from the SSI and gave it back to him.

Many converts (with a record on the conversion list at SS) were stopped at the airport on grounds of suspicious religious activities and allegations of spying for foreign states. SSI withheld their passports, cancelled their trips, and detained them for few days without judicial order, then released them. Such practices are recurrent and allegations are not documented, no material evidence at hand, just suspicions for which they are incriminated which is contrary to the legal reasoning of *beyond reasonable doubt* that is central to every criminal trial. State Security wastes resources in terms of time and effort to pursue harmless people charged of contempt of religion for abandoning their beliefs, while forsaking dangerous criminals, aggressive fundamentalists, and terrorists really threatening national security and public order.

### **c. Right to Marriage**

The right to form a family founded on religion, morality, and patriotism, is a constitutional guaranteed right according to Article 9.<sup>103</sup> State interference in marriage alongside to society, under the pretext of preserving the genuine character of the Egyptian family, destroys the morality of the couple (husband and wife), and consequently their patriotism and love for their country. In many caselaws,<sup>104</sup> apostates were confirmed civically dead, not entitled to marriage after conversion or any inheritance rights. Article 23<sup>105</sup> of ICCPR confers the right to marry and found a family; and this latter should enjoy protection by society and state. Nobody should be deprived of marriage on grounds of conversion from Islam to other religions, nor should they be persecuted by society and state. Some would argue that Egypt ratified that covenant with only one reservation, "putting into consideration that it does not

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<sup>102</sup> See *appendix* for details.

<sup>103</sup> CONSTITUTION OF EGYPT, ART. 9:

The family is the basis of the society founded on religion, morality, and patriotism. The State is keen to preserve the genuine character of the Egyptian family with what it embodies of values and traditions, while affirming and developing this character in the relations within the Egyptian society.

<sup>104</sup> See *supra* notes 29-32.

<sup>105</sup> ICCPR, art. 23:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

contravene with the laws of Islamic Shari‘a.”<sup>106</sup> Such a reservation is elastic and vague, because it does not define which Shari‘a laws contravene with the covenant clauses; do they mean the State-tailored laws wearing the Shari‘a mantel to gain social acceptance? Should Islamic Shari‘a be properly applied to the Egyptian legal system, all covenants pertaining to women will not be applicable, slavery legalized, *rida hudūd* inserted in the Penal Code, male converts stoned to death, and female converts imprisoned for life.

Male converts, with an identity card still instating the Islamic religious affiliation, can marry Christian females; whereas female converts can only marry Muslim men. Female converts marry male converts according to the Islamic Shari‘a, and then perform Christian marriage rituals; but problems transpire with the upbringing of the children. The deletion of the religious affiliation will enable civil marriage, but the legal consequences of conversion will be sustained regarding heritage and children. Male converts are not any less unfortunate than female converts because they are often rejected by Christian families as ineligible for marriage; but since the number of converts from both genders is increasing, converts marry among themselves.

In the absence of a legal means to register their change in religious status, some converts have resorted to soliciting illicit identity papers, often by submitting fraudulent supporting documents or bribing the government clerks who process the documents.<sup>107</sup> In such cases, authorities periodically charge converts with violating laws prohibiting the falsification of documents, the reason why the Church totally prohibited such illegal actions; and if it is practiced, it is without the Church consent.

The main issue for converts in their civil rights is the children, who according to the jurisprudence<sup>108</sup> those born after the apostasy of their parents are not Muslims, but it is not clear whether they would be rated as apostates or Christians. If they choose to be Christians upon maturity, will they be stigmatized as apostates? Such questions are hard to answer, but it is foreseeable from the CAL jurisprudence that the culture of human rights in the freedom of religion and belief will take pre-eminence and keep developing if the Muslim Brothers do not take over the executive, legislative, and judiciary authorities.

#### **d. Right to Heritage**

Both the Constitution and international covenants ratified by Egypt are silent in this regard; but Article 1 of 1948 Civil Code stipulated that “in the absence of legislation, customs should be applied, then Islamic Shari‘a, then natural law, and then rules of justice.”<sup>109</sup> Since legislation is void of laws governing the status of a Muslim convert to Christianity or to other non-heavenly religions, and since Egyptian customs is not concerned with legal rights and commitments, but rather with the morale boundaries of apostasy, therefore Islamic Shari‘a should be referred to.<sup>110</sup> The reasoning of the Court of Cassation reiterated that “the conversion of any Muslim apostate abandoning Islam to a heavenly or non-heavenly religion is invalid ...and therefore it ruled that

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<sup>106</sup> Art. 1, Presidential Decree No. 536/1981, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 15, 15 Apr. 1982, at <http://www.tashraat.com>

<sup>107</sup> U.S. Department of State, Egypt: Country Report on Human Rights Practices 2005, 8 Mar. 2006, at <http://www.state.gov/g/drl/rls/hrrpt/2005/61687.htm>, visited Oct. 2006.

<sup>108</sup> See *supra* note 37.

<sup>109</sup> Civil Code, Law No. 131/1948, OFFICIAL GAZETTE (*AL-WAQAE‘ AL-MAS‘ŪRIYYA*), Issue No. 23, 9 Jun. 1948.

<sup>110</sup> Court of Cassation, Case No. 1359, Judicial Year 28, 27 Nov. 1984.

the apostate does not inherit.”<sup>111</sup> In a more recent case, the Court of Cassation ruled that apostasy disqualifies from heritage, because the marriage of a female apostate that has abandoned Islam is unlawful as if originally not contracted, and does not impute any right to inherit.<sup>112</sup> Not only does apostasy from Islam disqualify the apostate from inheriting, but also others to inherit him; in other words, the apostate neither inherits nor has any inheritance to transfer to his family and relatives.<sup>113</sup>

Converts are denied by their families their legal heritage according to the inheritance laws applied to apostates; however, some families choose not to deprive their children, contrary to the Egyptian Inheritance Laws that apply to apostates. Article 5 and 6 for the Inheritance Law No. 77/1943 enumerates the reasons for being disqualified from inheritance: 1) if the heir kills the patrimonial, 2) between Muslim and non-Muslims; and Article 7 restricts a person’s legal heirs to blood relations and spouse. Scholars of Islamic Shari‘a unanimously argued that inheritance among non-Muslims does not include apostates such as a female Muslim convert would be disqualified from inheriting a Christian husband; in other words, an apostate does not inherit from a Muslim or non-Muslim.<sup>114</sup> However, there is no express stipulation in Egyptian national law, therefore, reference is made to Islamic Shari‘a jurisprudence.

Although Islamic Shari‘a is the principal source of legislation and reference is made to it in personal status matters and apostasy, the development of the administrative jurisprudence confirms that the reasoning of the Court of Administrative Litigation favors human rights. To what extent would the Court develop its jurisprudence regarding the converts of Muslim background, this matter remains to be seen. Converts will have to forsake their inheritance rights, unless new legislations are passed!

#### **e. Political Rights**

According to Law No. 33/1978 (totally abrogated in 1994) on the Protection of the Internal Front and Social Peace,<sup>115</sup> converts accused of contempt of religion under Article 98 F of the Penal Code and those calling for a new religion were stripped off their political rights. Converts in contempt of religion were denied public offices involved with leadership and in contact with the public opinion and masses,<sup>116</sup> affiliations to political parties, and practice of political rights.<sup>117</sup> Those people, calling for a new religion denying and opposing the three heavenly religions, are denied elections to membership of local councils, cooperative organizations, labors syndicates, labor federations, and board of companies or press institutions.<sup>118</sup> Only a presidential amnesty would restore to the convert, considered by the administrative or judicial authorities to be in contempt of religion, his/her political rights.<sup>119</sup>

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<sup>111</sup> *Id.* The Court of Cassation pointed to a precedent dated 19 Jan. 1966, but did not mention the case number.

<sup>112</sup> Court of Cassation, Case No. 162, Judicial Year 62, 16 May 1995.

<sup>113</sup> Court of Cassation, Case No. 79, Judicial Year 56, 15 Jan. 1991.

<sup>114</sup> See Ahmad Seif al-Islam Hamad, *supra* note 29, at 219; see also State Council, Administrative Court Case No. 240, Judicial Year 22, 13 May 1973.

<sup>115</sup> Law No. 33/1978, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 22, 3 Jun. 1978, at <http://www.tashreaat.com>

<sup>116</sup> *Id.*, art. 2.

<sup>117</sup> *Id.*, art. 4 and 5.

<sup>118</sup> *Id.*, art. 3.

<sup>119</sup> *Id.*, art 7.

This Law was totally abrogated by Article 4 of Decree-Law No. 221/1994, on 27 October 1994, as well as any indication or reference to it in Law No. 40/1977, regarding political parties, or any other law.<sup>120</sup>

## **2. Economic, Social, and Cultural Rights of Converts**

Egypt is a state party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>121</sup> ratified on 1 October 1981, by the Presidential Decree No. 537/1981, published in the Official Gazette (*al-Jarīda al-Rasmiyya*), Issue No. 14, in force 8 April 1982.

### **a. Right to Education**

Constitutional Article 12<sup>122</sup> stipulates that the society has to protect morals, promote genuine Egyptian traditions, and abide by the high standards of religious education, making the religious education a principal subject in the courses of general education.<sup>123</sup> In other words, society and state should focus on the citizens' religious education, which became a matter of a fail or pass subject in schools. Children have to attend either Islamic or Christian religion classes, and have to officially pass exams at school; consequently, they are subjected to unnecessary pressures, raising religious discrimination between children from their early ages, which is carried on at various age-groups heightening the religious congestion.

Schools note the child's religious affiliation from the birth certificate, which is among the documents requested to enroll the child; and it automatically places the child in the religion class pertaining to the affiliation registered in the birth certificate. Many children greatly suffer from compulsion in religion classes and peer pressure; teachers become aggressive with the children of converts, whose language and words used reveal their faith. They get confused and frustrated because of the psychological pressure exerted on them by their school-teachers who compel them to pray in the Islamic way, and by their classmates who shun them for being different. Such a treatment is in contradiction to the ICESCR, Article 12§3 which stipulates that

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions...

Not all converts can afford to enroll their children in private schools; however, even those children enrolled in private international schools do face peer pressures. The problem lies with the educational institution itself and the mentality of society as a whole that refuses to accept differences, *the other*.

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<sup>120</sup> Law No. 221/1994, art. 4, OFFICIAL GAZETTE (*AL-JARĪDA AL-RASMIYYA*), Issue No. 43, 27 Oct. 1994, at <http://www.tashreaat.com>.

<sup>121</sup> *International Covenant on Economic, Social, and Cultural Rights*, U.N.G.A. Res. 2200A (XXI) (16 Dec. 1966), in force 3 Jan. 1976, at [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm).

<sup>122</sup> CONSTITUTION OF EGYPT, ART. 12:

The society shall be committed to safeguarding and protecting morals, promoting the genuine Egyptian traditions and abiding by the high standards of religious education, moral and national values, historical heritage of the people, scientific facts, socialist conduct and public morality within the limits of the law. The State is committed to abiding by these principles and promoting them.

<sup>123</sup> CONSTITUTION OF EGYPT, ART. 19: "Religious education shall be a principal subject in the courses of general education."

Also the Convention on the Rights of the Child,<sup>124</sup> to which Egypt is a state party, stipulated in Article 19§1 that:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

So the school, instead of protecting the child from all forms of physical or mental violence, has become a source of compulsion and psychological pressure through the school-teachers. Children live a double life, like schizophrenics: Muslim at school and Christians at home and in Christian surroundings. The family life of converts is very hard-pressed. The children's problem remains unsolved, even if the religious affiliation is deleted.

Article 12§1 of ICESCR confers the right to education to everyone, in a manner to develop the human personality and strengthen the respect for human rights and fundamental freedoms.<sup>125</sup> Some converts wanted to study at the Seminary School for Theology but were prevented. Upon entering the school, identity cards must be shown. When the police officer checks out the religious affiliation section and finds out that they are Muslims, they are prohibited from entering on grounds of preserving the security of the building from possible terrorist attacks.

#### **b. Right to Work**

Article 6 of ICESCR entitles everyone to work in order to gain one's living and the state should take positive steps to achieve the full realization of this right:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance, and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

If Islamic Shari'a considers converts as civically dead in terms of marriage and heritage, they are still entitled to basic economic rights such as work. And Egypt is not only internationally responsible to take the appropriate steps to safeguard the right to work to every citizen which is a positive right, but should start by ensuring the abstinence from persecuting converts thriving to work to provide for their families, with honesty and integrity.

Converts face hardships trying to find work or establishing a business. To get a commercial registry, they have to get the approval of the State Security who never releases such approvals; and many times the requests for commercial registry were turned down. In other words, the State Security punishes the

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<sup>124</sup> *Convention on the Rights of the Child*, U.N.G.A. Res. 44/25(20 Nov. 1989), in force 2 Sep. 1990, at <http://www.unicef.org/crc/> CRC was ratified by Egypt through presidential decree no. 260/1990, issued in the Official Gazette, Issue No. 7, 14 Feb. 1991; and implemented in the Egyptian legal system through Law No. 12/1996 published in the Official Gazette, Issue No. 13, 28 Mar. 1996; and its Executive Regulations issued by Prime Minister Decree No. 3452/1996, Official Gazette, Issue No. 48, 27 Nov. 1997.

<sup>125</sup> ICESCR, art. 12§1:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms....



converts by fighting them in their livelihood. It exercises all the means to cut them off from society, spoil their reputation, and denounce them to their employers who naturally dismiss them to avoid troubles. They are expelled from work, which means an unsteady source of income and instable economic life.

Another example, a female convert, wife of a convert, cooks at home and sells the food; so when her Muslim client felt from her language and attitude that she was Muslim of Christian faith, she stopped asking her for food which was her main source of income. Society plays a hurtful role to converts; and this social hostility should be addressed.

### **c. Right to Housing**

Article 11 of ICESCR entitles everyone to have an adequate standard of living for oneself and family, and that state should take positive steps for the implementation of such a right, contrary to the *de facto* situation of converts.

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
2. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

If Islamic Shari'a considers converts from Islam to any other religion civically dead, they are still human beings entitled to adequate food, clothing, and housing. Converts face problems pertaining to housing, often initiated and motivated by the SS agents who report them to their neighbors and landlords. They are often expelled from their homes by the owner who had leased the apartment and are always on the move. They face pressures from neighbors and mistreatment, especially if the female convert is not veiled. There are pressures even on Christians who help them, in order to cut them off and be helpless, as well as pressures on Muslims who support them.

A married couple of converts, both of Muslim background, faced a lot of problems in housing. They were living peacefully, till their neighbors knew about their conversion from State Security agents, who were investigating their ins and outs (that is how their neighbors got to know that they are converts). Also the wife is not veiled, nor is the husband wearing a silver wedding ring. They don't swear in the name of God, nor use Islamic expressions and terms; and their daughter refused to go the mosque to pray with her colleagues on Fridays, and is not veiled either. So their neighbors started bothering them and their kids, and exerting various kinds of pressures on them. They forced them to go to the mosque, pressurized the wife to wear the headscarf; consequently, they had to move to another house which they wanted to buy. The owner thought they were Christians because the husband was wearing a gold wedding ring, unlike the Muslims who wear the silver wedding rings or none at all; and the wife is not veiled with the headscarf, as a minimum acceptable standard. But the landlord finally accepted because he needed the money. On the way to the real estate registration office, the wife called her husband by his Muslim name, so the owner of the house told them: "I thought you were Christians and I was very hesitant to sell you the apartment because I dislike the Christians."

### **B. Will deletion of the Religious Affiliation Solve Converts' Problems?**

There is an extensive elaboration on the religious affiliation in identity cards for converts because it is detrimental to the enjoyment of their rights. The ethnic group classification on national identity cards played a fatal role in crimes of genocide in

Rwanda<sup>126</sup> and in Nazi Germany; likewise, religious classification has a discriminatory effect.

### 1. Identity Cards in Muslim and Arab Countries

Some Muslim countries, such as Afghanistan,<sup>127</sup> Brunei Darussalam,<sup>128</sup> Indonesia,<sup>129</sup> Laos, Malaysia,<sup>130</sup> Myanmar (Burma)<sup>131</sup>, Pakistan,<sup>132</sup> Sri Lanka,<sup>133</sup> Thailand,<sup>134</sup> and Turkey<sup>135</sup>, include the religious affiliation in the identity cards. Most Arab countries do not classify their citizens according to religion, such as Algeria, Bahrain, Iraq, Morocco, Oman, Qatar, Syria, Tunis, and United Arab Emirates. However, some have ethnic classification in the identity cards of their citizens such as Syria<sup>136</sup> and Iraq.<sup>137</sup> Few Arab countries have classification by religion. Lebanon has partially removed the religious affiliation in March 1997, and new identity cards do not list religious affiliation; however the cardholder's religious affiliation could be determined through the bar code.<sup>138</sup> In the Kingdom of Saudi Arabia, only Muslims can be citizens. Jordan's identity cards include religious affiliation; however, Baha'is and Druze are allowed to leave the religious affiliation blank.<sup>139</sup> Egypt has a religious classification

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<sup>126</sup> In Rwanda, the categories and groups in the identity cards were according to ethnicity: Hutu, Tutsi, Twa, Naturalisé. In July 1991, NGOs strongly recommended removal of ethnicity; and the Arusha Accords (Aug. 1993), Article sixteen, also required this removal by the transitional government. Identity cards were used to identify victims for death during the 1994 genocide. See Prevent Genocide International, *Global Survey of Group Classification on National ID Cards*, at <http://www.preventgenocide.org/prevent/removing-facilitating-factors/IDcards/>

<sup>127</sup> *Id.* Afghanistan includes ethnic groups (38% Pashtun, 25% Tajik, 19% Hazara, 6% Uzbek, 12% other). The Taliban militia régime made two initiatives to include religious affiliation and to require Hindus and Sikhs to wear distinctive identifying clothing or yellow cloth tags (introduced in 1999).

<sup>128</sup> The majority in Brunei is Muslims and the constitution makes Islam according to the Shafe'ite sect the official religion. Residents are required to carry an identity card with the religious affiliation.

<sup>129</sup> Indonesia includes religious affiliation embracing Islam, Christianity, Hinduism, Buddhism; in 1979, Confucianism was prohibited as a category in the religious affiliation.

<sup>130</sup> *Id.* Malaysia has long included race on identity cards, but in October 1999 the government added religion. In April 2001, a high court judge rejected the application of a Malay woman Lina Joy (formerly Azlina Jailani) who argued that she had converted to Christianity, and requested that the term "Islam" be removed from her identity card.

<sup>131</sup> Race and religion appear on identity cards.

<sup>132</sup> *Id.* In 1992, the government introduced, then withdrew, a new policy to add religious affiliations on identity cards. Religious affiliation appears on the application for identity cards and also Pakistani passports.

<sup>133</sup> Sri Lanka is not a Muslim country; it includes both ethnic categories (74% Sinhalese, 18% Tamil, 7% Muslim, 1% other) and religious (Islam, Christianity, Buddhism, Hinduism).

<sup>134</sup> In April 1999, Thailand introduced identity cards with optional religious affiliation in response to the demands of parliamentarians who wanted easier identification of persons requiring Muslim burial. The religions practiced are Christianity, Islam, Hinduism, Sikh, Taoist, and Animist.

<sup>135</sup> *Id.* Turkey includes religion on the top of the back side of the identity card. Categories of religion include Islam, Christianity (Greek Orthodox and Armenian Orthodox). Persons with incorrect "Muslim" category could not change their religious category to Christians. In August 2000, the Democratic Left Party and the Motherland Party proposed that "religion" and "marital status" be removed from identity cards, but it was opposed.

<sup>136</sup> *Id.* Syria includes ethnic categories: Arabs, Kurds, and Jews, Arabs. Such classification played a role in the persecution of Jews, who were prohibited from leaving Syria till 1990ies when they emigrated.

<sup>137</sup> *Id.* Iraq includes ethnic classification: Arabs, Kurds, Sunni Muslims, Shi'ites Muslims, Jews. The régime was interested in identifying the Shi'ites from the Sunnis, because the régime was Sunni Ba'ath Party of Saddam, a minority; whereas, the Shi'ites outnumber the Sunnis and they are a majority in constant conflict with the Sunnis.

<sup>138</sup> *Id.*, See Prevent Genocide International, *Global Survey of Group Classification on National ID Cards*, at <http://www.preventgenocide.org/prevent/removing-facilitating-factors/IDcards/>

<sup>139</sup> *Id.*

in the identity cards, which plays a discriminatory role to religious minorities particularly Copts and Baha'is, and strips converts from Islam to Christianity off their civil liberty rights and affects enjoyment of economic rights (employment).

The problems converts face in enjoying their civil and economic rights are directly related to the identity card that states the religious affiliation section. The deletion of the religious affiliation will alleviate problems and ease hardships; however, it will not be a solution. In order to understand the detrimental role of religious classification in the identity cards on converts, an examination of the definition, content, and procedures for issuance are necessary, as well as, a presentation of the various arguments and counter-arguments that transpired in the debate on deleting the religious affiliation in identity cards.

## **2. Legal Status of Identity Cards in Egypt**

This part describes the identity cards, explains the procedures for issuing one, and notes down some critical comments.

### **a. Definition and Content**

The identity card is a card, whose specifications are 85 millimeters long, by 54 millimeters large, by 0.8 millimeters thickness (round figures), issued by the CAR to every Egyptian citizen that has completed sixteen years old, and is valid for a specific period as determined by the Ministerial Decree<sup>140</sup> No. 1121/1995. The decree is the executive regulations (*al-la'iha al-tanfidiyya*) to implement the Civil Affairs Registry (CAR) Law No. 143/1994. Article 33 of the executive regulations specifies the data content included in the national identity card:<sup>141</sup>

1. The office that issued the card.
2. The national number which is formed of fourteen numbers:
  - i. The first from left: the century
  - ii. The next six numbers: birth date
  - iii. Two numbers for the Governorate
  - iv. Four serial numbers:
  - v. Last number to verify the national number.
3. The name: up to four names (i.e. father, grandfather, grand grandfather).
4. Place of residence.
5. Gender.
6. Religion.
7. Profession.
8. Husband's name (for married women).
9. Expiry date.

The inequality between men and women is obvious in the contents of the identity card that has to instate the woman's husband's name, whereas the man's identity card only instates the marital status, single or married. The application form for men are more exhaustive, as he has to include the names of his wife (if he is married to only one) or wives (with a maximum allowance of four at a time), and children. The final national identity card does not include the wives' names, or the children's; he has to issue another document called family identity card (*al-betaqa al-'a'iliyya*), where his

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<sup>140</sup> Ministerial Decree No. 1121/1995, art. 3, OFFICIAL GAZETTE (*AL-JARIDA AL-RASMIYYA*), Issue No. 50, 27 Feb. 1995. The decree is the executive regulations to implement the Civil Affairs Registry Law No. 143/1994.

<sup>141</sup> *Id.*, art. 33.

full civil status, in terms of wives and children, is registered. However, the authorities get to know the marital status of any male by checking the national identity card.

### **b. Issuance of Identity Cards**

By scrutinizing Decree No. 1121/1995 of the Minister of Interior, one realizes the amount of difficulties that originate from the administrative procedures entailed to issue an identity card. That is over and above the fact that the application form to be filled for issuing the identity card requests a lot more information than what is included in the law (as discussed below). The documents requested are: the birth certificate, marriage or divorce certificates, residence as certified by a rental contract, or telephone receipt, or electricity receipt, or gaz receipt, work documents certifying the place of work (if any), and educational degree certified (if any). Such documents must be original and should be presented to the CAR, which is an administrative organ affiliated to the Ministry of Interior.<sup>142</sup> There is one central CAR in every Governorate, and a sub-branch in every police station of every constituency, in charge of issuing the identity cards. Sixteen-year old citizens are requested to go to the nearest police station to their residence to apply for identity cards. And if all documents are legally flawless, the identity card is issued and delivered to the person concerned. The time factor involved in issuing the identity card differs from one citizen to another depending on the time needed by the CAR to verify the documents; it usually takes fifteen days to get the national identity card. If documents contain flaws, in terms of incorrect information or data provided by the applicant, a total set of procedures takes place and a longer time is consumed before the CAR issues the national identity card. For instance, if the mistake is in religion, it could take forever to rectify the religion from Muslim to Christian; and if the mistake is parent's name in birth certificate, an application to rectify information (*tashīh qīd*) is filled out and presented to a committee of the CAR,<sup>143</sup> who has to agree on such a change, then the information is rectified, then identity card issued. Section 10, Articles 66 – 77, include different penalties for various kinds of violations entailing sixteen-year old citizen not applying for identity card, false information, falsified documents, un-updated information; the penalties are pecuniary and/or prison-time, ranging from LE 100 – 3,000 and one month to one year, depending on the violation.

### **c. Critical Comments**

In Egypt, many women don't have identification cards because they originally don't have the documents requested by the CAR in order to issue an identity card, such as the birth certificates. Moreover, the procedures are cumbersome<sup>144</sup> and costly to poor women. Generally speaking, women are not aware of its importance in getting services such as government pensions, joining illiteracy classes, being admitted by employers to work and earn their livelihood, and voting in elections. Many non-governmental organizations realized that issue and started to work on raising women's

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<sup>142</sup> Law No. 143/1994, art. 1.

<sup>143</sup> *Id.*, art. 46; *see supra* note 44.

<sup>144</sup> For instance, if a woman got a judicial divorce from the Court of Appeal, she has to present a divorce certificate (*qasimat talaq*), which in turn requests many documents. She has to present the original final verdict, a document from the bailiff department instating the wording of the final appeal verdict, a document from the Court of Cassation that there was no re-appeal, and a fifty-pound family stamp from the post office on the application. This is long, cumbersome, and costly in terms of money and time.

awareness of its importance.<sup>145</sup> Women converts face even greater harassment and difficulties in normal official transactions, as an indirect means to pressure them to renounce their faith; they are enrolled at the various electronic state organs as suspects dangerous to public policy and morale.

Some have argued that the religious affiliation section was never stipulated in the CAR Law No. 143/1994, and that Article 33 of the Ministerial Decree No. 1121/1995 requested to instate religion which has to be abrogated, because it is not expressly stated in the law. They grounded their argument on the fact that CAR Law is supra-legislative to the Administrative Ministerial Decree and should be abrogated.<sup>146</sup> This might have been correct, had the CAR Law not mention in Article 9 that “the executive regulations determines the registry forms and applications to get civil affairs services and other documents or certificates”; and Article 45 that “the executive regulations is competent to decide on the specifications and data requested to issue the identity card”; and Article 49 that: “the executive regulations should decide the specifications of the personal and family identity card, documented data requested, and necessary procedures for issuance.” Such articles are elastic and gave the executive authority the competence to request any data, disregarding the constitutional clauses of equality and non-discrimination (Articles 8 and 40).<sup>147</sup>

Furthermore, only the three heavenly religions, Judaism, Christianity, and Islam, with no mention of denominations, are allowed to be instated, which is nowhere stipulated in either the legislation or administrative decree. The expected defense would be that Islamic Shari‘a only approves the three religions; and even if it is not expressly stipulated in law, customs only acknowledges those three religions. A lawyer and human rights activist<sup>148</sup> filed an action requesting the deletion of the religious affiliation section on grounds of illegality, but the Court of Administrative Litigation rejected the action on grounds of its substance.

In my opinion, one of the main reasons for inserting the religious affiliation in national identity cards is to prevent Muslims to convert to any other religion. A second reason would be matters related to civil rights pertaining to marriage and heritage, to further make it harder for Muslims to convert. A third reason is to limit the increase of Baha’is in Egypt and non-monotheists, since they will be harassed to issue an identity card stating their true religion. They are compelled to be either Muslims, or Christians or Jews, because these are the three religions approved by Islamic Shari‘a. A fourth reason would be to stigmatize Copts and prevent them from reaching sensitive public offices or leadership positions in a Muslim nation that does not accept a non-Muslim to have jurisdiction over Muslims; and converts became included in the same package as Copts. But this is a weak argument because Copts are known by their names, physical appearance, attitude, and language used. Muslims feel superior

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<sup>145</sup> World Bank, *Promoting the Rights of Egyptian Women to claim their Identity and their Futures*, at <http://web.worldbank.org>, visited on 15 Oct. 2006. Egyptian Center for Women’s Rights (ECWR), a civil society organization (CSO) working in some of Cairo’s most underprivileged areas, conducted research in 1996 into why more Egyptian women don’t vote. It turned out, 10 percent (16,000) of those targeted held neither an identity card (ID), required for voting, nor a birth certificate (BC).

<sup>146</sup> Civil Code, Law No. 131/1948, OFFICIAL GAZETTE (*AL-WAQAE’ AL-MASRIYYA*), Issue No. 102 A, 9 Jul. 1948. Art. 2 states: “a legislative article cannot be abrogated except with a subsequent legislation expressly stipulating this abrogation, or if it includes a legislative article that contradicts a previous legislation, or if it regulates anew the same substance that was previously stipulated in that legislation.”

<sup>147</sup> CONSTITUTION OF EGYPT, ART. 8: “The State shall guarantee equality of opportunity to all citizens”. ART. 40: “All citizens are equal before the law. They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed.”

<sup>148</sup> Mamduh Nakhla is a lawyer at the Court of Cassation and Director of a human rights organization called *Markaz al-Kalema le-Hawqūq al-Insan*.

to Christians and legally entitled to subdue them because there is no jurisdiction for a non-Muslim over a Muslim, according to the Islamic Shari'a.

### **3. Arguments and Counter-Arguments on Deleting the Religious Affiliation.**

Arguments and counter-arguments<sup>149</sup> on deleting the religious affiliations from identity cards are important in the understanding of the discriminatory effects, as well as the benefits of including religion.

#### **a. Pro-Deletion**

The supporters of the deletion envisioned the abolition as a positive step forward, which alone is incapable of solving the problem of discrimination, but is in line with the prevailing international standards in the era of globalization. It will limit discrimination between citizens on religious basis and expand political participation based on citizenship and not religious affiliation. New approved religions, embraced by 51% of world population, will surface and Egypt will be compelled to approve; so either we approve all the religions or abolish the section on religious affiliation from identity cards. The religious affiliation threatens stability and national unity through its misuse in private and public sectors in discriminatory human resource recruitment. Christian citizens face difficulties in getting official documents to substantiate their status, because of the abstention of officials at the CAR, affiliated to the Ministry of Interior, to register their religions in the official files. Finally, there are other Muslim countries that do not include the religious affiliation section, which means that it is unnecessary and could be done without.<sup>150</sup> This section on religious affiliation is one of the main reasons for the diminished rights of Christians in the daily procedures and dealings. There are many files on hold for people, on whose identity cards are mistakenly written *Muslims* instead of *Christians*; and the procedures to amend such information from Muslim to Christian put such people in the category of apostates, despite the fact that he/she is not a Muslim, and this increases the religious congestion.

#### **b. Against Deletion**

The dissenting party totally rejected the abolition of the religious affiliation on grounds of its usefulness in personal affairs litigations of marriage, divorce, and inheritance, and when dealing with legal administrative state-organs, for statistical purposes, and for state security issues. The duties of the legal system and requirements of public order justice necessitate the inclusion of religion in the national identity card, in order to prevent problems pertaining to heritage and marriage and is necessary for courts, police stations, and civil registry offices, but not in political matters. This decision to delete the religious affiliation might be correct in a certain society at a given time and incorrect at other times, as some argued; and that such a deletion in the

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<sup>149</sup> Mohamad 'Abd al-Naby Tareq al-Tohamy, *Ghaly requests acknowledging the new Religions and the Return of the Baha'is on the Scene*, AL-WAFD, Issue No. 6066, year 20, 9 Aug. 2006, page 6; see also Egyptian Union for Human Rights Organizations, HUQUQ AL-INSAN, non-periodical magazine, Sep. 2006 issue; see also in Yusef Sha'ban, *Battle between Civil Society Organizations on Religious Affiliation Section*, AL-WATANY AL-YUM, year 1, Issue No. 6, 15 Aug. 2006, page 4; see also Husam Bahjat, *Comment on the Workshop of the National Council for Human Rights regarding the Abolition of the Religious Affiliation from the National Number Card is a Positive Step forward but insufficient*, EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS, visited on 5 Oct. 2006, at <http://www.eipr.org/press/06/0708.htm>; see also in Mohamad Abd al-Naby Tarek al-Tohamy, *Human Rights is incapable of deciding on the Issue of Religious Affiliation (Huquq al-Insan Ya'jaz fi al-Faṣl fi Khanat al-Diyana)*, AL-WAFD, weekly Issue No. 1171, year 23, 10 Aug. 2006, page 6.

<sup>150</sup> See *supra* notes 127-139.

West is due to the secular mindset that separates between state and religion, till the social contract theory prevailed. Also in many state security concerns, the state needs to know the religion. It is necessary for statistical purposes, in terms of social and legal demography of society, arguing that legislation is not a dead letter law but has to keep up with changes, being well-aware of the consequences of the amendments in personal status matters, if the religious section is abolished. One confirmed that this issue is a double-edged weapon. On the one hand it is needed for personal affairs litigations; on the other, keeping it leads to discrimination in public offices on religious basis. Another argued that the abolition of the religious affiliation section will neither improve nor retard, and requested more space for freedom and science to go beyond ignorance and fanaticism.

### **c. Novel Proposal**

A novel proposal transpired by requesting to keep the religious affiliation and add other religions above the three religions (Judaism, Christianity, and Islam); and that this section on religion should be left open and optional (to be filled or not ‘ - - - ’), as actually practiced in Jordan.<sup>151</sup>

### **d. Critical Comments**

The arguments and counter-arguments regarding the deletion of the religious affiliation made no mention of converts, but repeatedly insisted on the religious affiliation for legal issues related to marriage and inheritance. The dissenting party argued that it is beneficial to include religion for statistical purposes in terms of social and legal demography of society, which is a valuable argument if properly used to promote equality between citizens without discrimination on religious basis. However, this section could only be included in the CAR information, without the need to register it on the identity cards, like in Lebanon.<sup>152</sup> In response to those who considered it a double-edged sword, in the sense that keeping it promotes discrimination and abolishing it creates problems in personal status litigations, birth certificate could be used in marriage and inheritance because it certifies the religion of the beholder. The novel proposal, of keeping the section blank or write dashes (---), will not solve the problem of discrimination because everybody will know that such a person has strong reasons for not mentioning the religion, and will be stigmatized as a Baha’i, a convert/apostate, or atheist, or non-monotheistic.

The pro-deletion arguments underlined diminished rights for non-Muslims and discrimination in public offices, being totally silent regarding converts. The deletion of religious affiliation will partially ease the converts’ lives by ruling out the fear and lies surrounding worship, because they will be able to have free access to Church to practice their belief, and disqualify State Security from preventing them to enter. They will move freely in and out of the country, without arbitrary arrest and illegal unauthorized detention. However, the deletion will not benefit the children of converts because they are enrolled at school through their birth certificates that certify the religious affiliation; accordingly, they will be automatically placed in the religion classes with Muslims. Regarding work and housing, if State Security abstains from denouncing them to their employers and landlords, they will outlive being cut off from their families as hard as this is.

In brief, the deletion of religious affiliation in the identity cards will not solve the converts’ civil problems in terms of marriage or inheritance, it will only alleviate their

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<sup>151</sup> See *supra* note 139, on Jordan.

<sup>152</sup> See *supra* note 138.

difficulties in terms of freedom of worship, movement, work, and housing; but in critical matters related to marriage, heritage, and children's school-education, their problems remain unchanged. Neither approving all religions nor deleting the religious affiliation will solve the converts' problems, only a change of religion will solve the converts' right to marriage, while reiterating that they have to forsake their inheritance rights, bear the social persecution, and put up with the fact of being cut off from their families and excommunicated from society. Society plays a hurtful role to converts; and this social hostility condoned by state should be addressed. The educational institutions should be constructive in grounding the culture of human rights and partake in changing the mentality of society (parents and children) that refuses to accept *the other*.

#### **IV. Conclusion: Summary and Restatement**

The rights of Muslim converts to Christianity from Christian background, the first category of converts, are in the process of being recuperated, because the Court of Administrative Litigation has entitled them to re-acquire their original names and religion, and ordered the Civil Affairs Registry to make that change. How the Court of Administrative Litigation will judge the actions filed by Muslim converts to Christianity of Muslim background, the second category of converts, remains to be seen. The Court of Administrative Litigation should constitutionally equate between both categories before the law, in terms of freedom of belief, as materialized by entitlement to a name and religion change in identity cards of converts of Christian background.

However, there is a sharp discrimination and selective treatment in handling both categories, as well as a difference in jurisprudence between the Court of Administrative Litigation of State Council and State Security Courts. Converts of Christian background file actions at the Court of Administrative Litigation requesting a name and religion change in the identity cards; while converts of Muslim background are arrested by State Security, detained on remand pending trial by State Security Courts for long periods, then released for insufficient incriminating evidence. Court of Administrative Litigation, which tries converts of Christian background, is a bold activist court, whose jurisprudence moved from a hardliner stance to a human rights oriented. Whereas the State Security Court, which tries converts of Muslim background, has not changed its jurisprudence; it accuses them under article 98 F of Penal Code, holds them in detention with perpetual renewal of custody writs upon objection of the Ministry of Interior, then releases them for insufficient incriminating evidence after spending a long time on remand pending trial.

Converts to Christianity of Muslim background will partially gain from the deletion in terms of non-discrimination in freedom of worship, movement, work, and education. And they will fully benefit, despite the ongoing social persecution, from the change of religion reflected in their identity cards, in terms of marriage, and children's education, having to totally forsake inheritance rights.



## UPDATE

After finishing the thesis, a convert of Muslim background filed an unprecedented action at the Court of Administrative Litigation (CAL) requesting a religion change from Islam to Christianity. In February 2008, the Court turned down his action and the sitting judge, Muhamad Huseini, said that according to Sharia, Islam is the final and most complete religion and therefore Muslims already practice full freedom of religion and cannot convert to an older belief (Christianity or Judaism).<sup>153</sup> Huseini said that “He (convert) can believe whatever he wants in his heart, but on paper he can’t convert.”<sup>154</sup>

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<sup>153</sup> Wikipedia, at [http://en.wikipedia.org/wiki/Mohammed\\_Hegazy](http://en.wikipedia.org/wiki/Mohammed_Hegazy)

<sup>154</sup> *Id.*

## APPENDIX

### Footnote 29

**State Council, Court of Administrative Litigation, Case No. 20, Judicial Year 29, 8 April 1980: no right to change the data on his/her identification documents to reflect the new status.**

#### *Facts:*

The claimant is an Egyptian Copt who embraced Islam in 1953 and reverted to Christianity in 1974. He based his claim on Article 36§2 of Law No. 260/1960 that entitles him to change the data on his identity without the need for court order; Article 46 of the Constitution on the freedom of belief; and that Islamic Shari'a is only applicable to Family Law.

#### *Defense Argument:*

The State argued that the:

1. Court has no jurisdiction to examine the case because the law stipulated that only the committee of the Civil Affairs Registry has the competence to decide which data can be changed.
2. Article 2 of the Constitution states that the principles of Islamic Shari'a are the main source of legislation and Qur'an forbids apostasy, so every law opposed to it is invalid.

#### *Court Holdings:*

1. Court has jurisdiction to examine the case since the body that has turned down the plaintiff's request is administrative.
2. Principles of Shari'a should be applied to the litigation (Article 2 Constitution) and Article 1§2 of Civil Code which stipulates that in the absence of applicable text of law, reference is made to customary law, if not then Islamic Shari'a and finally natural law or rule of justice. Since there is no law regulating the status of persons embracing Islam and since customary law is concerned mainly with moral issues rather than legal status, it becomes imperative to apply rules of Shari'a.
3. An apostate has no civil rights according to Shari'a and freedom of religion is unilateral, i.e. only to those that wish to embrace Islam. "Islamic Shari'a is clear in stipulating that apostasy is not to be condoned, but should be prevented."
4. Plaintiff, since he embraced Islam, has become a Muslim subject to its rules.
5. The purpose of the law, which does not sanction the plaintiff's request, is to enable the proper identification of people. Such a change although is not sanctioned by law, but if it implies sanctioning an action that is in itself illegal (apostasy), the administration has the right to refuse the plaintiff's request.
6. Freedom of belief and apostasy:  
Article 46 of Constitution which protects freedom of belief is not opposed to Article 2 which states that Islam is the official religion of the state. Islam protects freedom of belief as granted by the constitution; however, this freedom does not restrict the application of Islamic Shari'a to those who embrace Islam. Civil code stipulated that in the absence of text, Islamic Shari'a should be applied. Thus, both justice and legality require that freedom of belief should not restrict the application of Islamic Shari'a to those who embrace Islam. Since the plaintiff has embraced Islam, he must then submit to its laws which does not approve apostasy"

**Second Case, State Council, Supreme Administrative Court, Case No. 240, Judicial Year 22, 13 May 1973: an apostate may neither marry nor inherit.**

*Facts:*

A Christian woman married a Christian professor who died. As a widow, she received a pension from the university till December 1966. The professor's sister disclosed that the first and second court rulings upheld that the marriage was invalid since the professor's wife was an apostate having previously converted to Islam then reverted to Christianity; and therefore, she had no right to the inheritance. The State Council gave its advisory opinion which sided with the two court rulings that she had no right to inheritance since she had not legally been the wife of the deceased. The marriage of an apostate being void, thus she was not his wife; consequently, she had no right to his pension. The university filed an action demanding the pension to be returned and the plaintiff argued that the applicant's argument is unconstitutional, because the rules governing apostasy are incompatible with religious freedom, and Law No. 77/1943 does not deny an apostate inheritance. The State Council ruled that the defendant widow should return the pension sum, that she had illegally received, since the inheritance law stipulates that she has to legally be the deceased's widow and that she was not because her marriage was invalidated being an apostate. The widow defendant appealed to the Supreme Administrative Court of State Council.

*Defense Arguments:*

When defendant converted to Islam, she aimed at getting the divorce. Having obtained the divorce, she reverted to Christianity, which could not be what Shari'a scholars had meant by apostasy back then.

*Court Holdings:* the appeal was rejected.

*Court Reasoning:*

1. An apostate does not have the right to marry
  - \* Personal Status Court, whose decision is final, ruled that the marriage in question is not legal. The defendant had embraced Islam and deposited her attestation denying all other religions. Her marriage certificate shows that she married the deceased, who is a Coptic Orthodox, as a Coptic Orthodox; thus, she willingly denied Islam in order to marry the deceased. Consequently, she is an apostate according to Islamic Shari'a which defines an apostate as "any Muslim who denies Islam regardless of whether he was born a Muslim, had originally belonged to another religious sect, or had been of no religion."
  - \* Article 1 of Law No. 462/1955 abrogates all the Shari'a and Religious Courts and refers such cases to national courts for examination. National courts will examine her case and is to be decided according to the Law of Adjudication Procedures.
2. An apostate does not have the right to inherit.

Article 7 of Law No. 77/1943 restricts a person's legal heirs to blood relations and spouse, thus invalidation of a marriage automatically disqualifies the spouse in question as an heir. Also scholars of Islamic Shari'a unanimously argued that inheritance among non-Muslims does not include apostates; an apostate does not therefore inherit from a Muslim nor from a non-Muslim. Claims that inheritance laws does not include apostasy as disqualifying from heritage, and that it violates constitutional articles on equality and freedom of belief, the Court answered that inheritance of an apostate is governed by Article 280 of Law No. 178/1931 which clearly states that in the absence of legislation, the Court is to apply the salient position with the doctrine of Abu Hanifa.
3. Depriving an apostate from his rights does not violate the freedom of belief.

### Footnote 38

This fatwa was issued in response to action no. 2149 on 4 April 2006, filed by Counselor Dr. Najīb Jabraīl, Director of Egyptian Union for Human Rights Organization (EUHRO), to Dar al-'Ifta' addressed to Dr. 'Aly Gom'a, *Mufty al-Dīyar al-Maṣriyya*, requesting Al-Azhar's opinion on the custody of the Christian mother to her children when the father embraces Islam. This request was motivated by Case No. 71/2005 issued on 28 June 2006 by the Alexandria Family Court (al-'Atarīn), whose judgment ruled on depriving a Christian mother from the custody of her children because their father embraced Islam. The Court's decision was grounded on a precedent *fatwa* issued in 1936, saying that keeping the child with his/her mother could lead to discrimination in favoring one religion above the other. Dr. Najīb Jabraīl, in his defense, referred to Caselaw No. 1449/29 (Shubra) and Family Law No. 4/2005, regarding custody between Copts and Muslims that entitles the mother custody till fifteen years old, and Caselaw No. 449/1985 (Ma'adi) which turned down the request of the father (convert from Christianity to Islam) to have custody over his child.

At [http://www.euhroeg.com/statements\\_body.php?id=35](http://www.euhroeg.com/statements_body.php?id=35)

#### **English Translation of the Mufty's religious counsel (translated by myself).**

When an action is filed before the judiciary, it is not proper to discuss the judge's delivered ruling. The judge's ruling terminates the contention, as it is not proper to comment on it, because it was issued after investigating the facts pertaining to the case under examination. Requesting a religious counsel (*fatwa*) after a judicial ruling is only to request a general Shari'a judgment or its ramifications, that might be applicable to that particular case; it could also not be the case if the facts and conditions of that particular case restrict it and get it out of the applicability of the general judgment. As to the general judgment regarding the custody of a non-Muslim woman to a Muslim child, this case was decided by the Islamic legal jurists whose opinions are applied by the judiciary, such as Ibn 'Abdīn's provision: "relative custody is given to the mother as well as to the sister, the aunt *khala* or *'ama*, even if they were people of the Book (meaning Christians or Jews), because compassion is not related to religions and she is more compassionate to her child than his father, and for having come forth out of her wombs, closest to her heart." Also it was cited in al-Desūky al-Maliky: "Islam is not a condition for a custodian/guardian, male or female; and if there is any danger from the custodian subjecting the child in her custody to corruption, by eating pork meat or drinking alcoholic beverages, let there be overseers on the custodian-mother. And if she is a pagan whose husband embraced Islam, and she continued in unbelief *kufri*, she is entitled to custody; and in case there is any danger, custody is transferred to a Muslim woman, but not transferred to the father, and likewise for the pagan grandmother, sister, aunt, in case the father embraces Islam." Also cited in al-Shirbīny al-Shafe'ī: "Islam is a condition for the custodian, male or female, if the child is Muslim, because there is no jurisdiction for a non-Muslim over a Muslim, and because may be the non-Muslim custodian can entice the child away from Islam, and hence the child's closest Muslim relatives are entitled to have custody, else any Muslim can have custody."

Accordingly, it is possible for a non-Muslim mother to have custody of her Muslim child, except if there is danger over the child; and this possibility is ensured if both parents agree on it; and the judge is the person in charge of seeing that both agree or disagree on the terms.

#### **Footnote 41**

**State Council, Court of Administrative Litigation, Case No. 18925, Judicial Year 58, 5 April 2005.**

##### *Facts*

Ra'fat Najīb Ṣalīb filed an administrative court case against the Minister of Interior, Assistant to Minister of Interior, and the Civil Affairs Registry on 26 April 2004, requesting a stay of execution and cancellation of the negative decree proscribing him from his right to be given a national identity number proving his Christian name and religion. The applicant is an Egyptian Christian born of Christian parents. He embraced Islam on 1989 for special circumstances, and then reverted to Christianity by a Coptic Orthodox decree ratified by the Ministry of Interior. He did not practice the Muslim rituals. He wanted to issue a national identity number restating his Christian name and Christian religion, but the Ministry of Interior rejected his request claiming that there are no legal provisions.

##### *Arguments*

The applicant submitted the relevant legal documents and the respondent (the administrative apparatus) submitted legal documents and a defense memo. The State-Delegates Authority submitted a report accepting the action *prima facie* and rejecting the issue.

##### *Issue*

Should the negative administrative decree be struck down? Should the original Christian name and religion be reinstated in the identification card?

##### *Court Reasoning*

- \* The Court links legal consequences to the respondent's request for a stay of execution and cancellation of the negative decree of proscribing the issuing of national identity card, reinstating his original name and religion before embracing Islam.
- \* The Court turned down the rejection of inadmissibility of the action (as raised by the respondent) because:
  1. The committee of Civil Affairs Registry is incompetent to examine the request.
  2. The administrative decree expressed by the State-Delegates Authority is refuted.
- \* The action filed is accepted *prima facie* and to decide on the subject of the action will not necessitate the decision in its expeditious form.
- \* The Court referred to Articles 46, 47, 48, 50, 53, 66 of Law No.143/1994 on Civil Affairs Registry.
  1. *Article 46* composes a committee of three for each Governorate (Attorney-General of the General Prosecutor, Director of Civil Affairs Registry, and Director of Health Affairs Directorate) in charge of any correction or change in the civil registry data concerning birth, death, and family registration.
  2. *Article 47* stipulates that any change or correction in the civil registry data for birth, death or family and children could only be done upon a decree issued by the committee mentioned in Article 46. Any change or correction of nationality or religion or profession or marriage or annulment ... should be done according to rulings or documents issued by the competent organs, without the need to issue a decree by the committee mentioned in Article 46.
  3. *Article 48* stipulates that every Egyptian citizen having attained sixteen years old should file a request to obtain a national identity card from the civil

registry, in the area where he/she lives within six months after attaining sixteen years.

4. *Article 50* stipulates that the national identity card is a legal document certifying the authenticity of the data, provided it is still valid and has not expired; and the governmental and non-governmental agents or organs are not allowed to abstain from certifying the personality of its holder...the representatives of the public authorities are not allowed to either withdraw or keep the identity card.
  5. *Article 53* stipulates that if any change occurs in the identity data or civil status, then he/she has to report such changes within three months to the Civil Registry Police station in the area where he/she lives.
  6. *Article 66* stipulates that a penalty for breaching the law...ranging from a minimum of 100 LE to a maxi of 200 LE.
- \* *Article 47* stipulates that any change or correction of nationality or religion or profession or marriage or annulment thereof... should be done according to rulings or documents issued by the competent organs without the need to issue a decree by the committee mentioned in *Article 46*. And in this case the competent organ is the Coptic Orthodox Patriarchy without the need to refer to the committee composed by *Article 46*.
  - \* The legislator made the duty of every citizen reaching sixteen years to file a request for an identity card, which includes the religion (as prescribed by the executive regulations) and gave it a special importance by making it a legal document certifying the authenticity of its data as long as it has not expired. The legislator warned the governmental and non-governmental organs of withdrawing from using the identity as a document identifying its holder. Hence the identity card reveals the civil status of its holder through the data registered...and since the legislator made it a duty incumbent upon every citizen to update the identity card information if any changes occur, he has specified a penalty for breaching such a law as stipulated by *article 66* (100-200 LE).
  - \* Thus the identity card is undoubtedly of extreme importance that reveals the civil status of its holder and since the administrative organ has withdrawn from changing the applicant's name to Ra'fat Najīb Ṣalīb (the name he was holding before embracing Islam) from Aḥmad Moḥamad al-Ṭaīeb, and changing his religion to Christianity, anchored in that any change in Islamic religion to another religion in the identity card is equivalent to apostasy and the Islamic legal base reiterates that there is no apostasy in Islam. Any person who changes the religion from Islam to another, whether Christianity or Judaism, is considered in breach of public order. Accordingly, it could neither be approved nor produce any subsequent changes; consequently, such a change is not possible as highlighted by the administrative organ in its defense memorandum.
  - \* Since the Court monitors the legality of the administrative bodies' holding as a justification for its challenged decree; and since the Egyptian Constitution (*Article 40*) guarantees the equal opportunity between citizens in their public rights and duties, there is no discrimination between them on grounds of race, origin, language, religion or belief; and since the state guarantees the freedom of belief and practice of religious rites as stipulated in *Article 46* of the Constitution; and since it is well known that there is a relation between the opportunity of freedom of belief and the inevitable repercussions of such a freedom, to say otherwise would empty and vacate the freedom from its contents and substance, turning it to mere rituals and nonsense without genuine content, as long as that

freedom was not restricted by any legal consequence or reality resulting from the exercise of such a freedom.

- \* The Egyptian Constitution guaranteed the freedom of belief and the international covenants most importantly UDHR (approved by the UN General Assembly Resolution No. 217 D 3, on 10 December 1948), Article 2 stipulated that:  
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...without any discrimination between men and women.”
- \* UDHR article 18:  
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- \* Arab Charter for Human Rights (approved by Arab League Resolution No. 5427, **dated 15 September 1997**). **Article 26 “everyone has the right to freedom of belief, thought and opinion.”** Article 27 states that  
Adherents of every religion have the right to practice their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.
- \* And since the Islamic Shari‘a has preceded all such international covenants and constitutions about 1400 years and approved such freedoms by Sūrat al-Baqara,<sup>155</sup> verse 256 states: “there is no compulsion in religion, the path of rectitude has been made distinct from error”; Sūrat Yūnes 99 states: “had God willed, He would have induced everyone on earth to believe, will you then force people to believe”; The prince of poets Ahmad Shawqy said: “religion belongs to the Judge; had God willed, He would have united the peoples.”
- \* And since the administrative body considered the applicant an apostate (as previously mentioned), and the jurisprudence would consider the Muslim an apostate if he gladly accepts, opens his heart to non-belief and effectively embraces it as God’s saying: “whoever gladly accepts non-belief” as written in the Sunna jurisprudence by Mr. Sabek, Volume 2, page 437, 20<sup>th</sup> Legal Edition 1997, publisher Dar el Fath Lel I‘lam al-‘Araby.
- \* Since the documents certify that the applicant embraced and declared Islam in 1989, consequently he has changed his name from Ra’fat Najīb Ṣalīb to Aḥmad Moḥamad al-Ṭaīeb, and had an identity card issued in his new name and religion, then he reverted to his previous religion (Christianity), and obtained an official certificate from the Coptic Orthodox Patriarchy in Cairo stating his being a member of the children of the Coptic Orthodox Church, as mentioned in the action and which the administrative organ did not deny; then he requested the Civil Affairs Registry to change his name and religion in the identity card, and this latter abstained to do so claiming that he is an apostate and that it should not approve it.
- \* The Court held that this stance is an unjustified interference on behalf of the administrative organ and a compulsion it is exerting on the applicant to choose a certain belief or religion that the applicant does not wish. Also registering his new data is a mere registration of an absolute material fact concerning his civil status in the document (identity card) that is purposed for that, as long as he lives; and consequently, this would be a protection for the others dealing with the applicant.

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<sup>155</sup> AL MONTAKHAB: THE SELECT IN THE INTERPRETATION OF THE HOLY QUR’AN, MINISTRY OF AL AWQAF, SUPREME COUNCIL FOR ISLAMIC AFFAIRS (1993).

The Court requested all state authorities to prove the true religion of the applicant (Christianity) as well as his name, without falling in any error. Accordingly, there is a legal commitment on behalf of the administrative organ to take its initiative by registering and proving the true religion the applicant is embracing, in view of protecting the rights of others. Also it is by no means acceptable that the administrative organ should use its legal authority vested in it to compel the applicant to still embrace Islam.

- \* According to the above, the abstention on behalf of the administrative organ to give the applicant an identity card with his new name and true religion which he reverted to from Islam, after obtaining a certified document from the competent organ (Coptic Orthodox Patriarchy) is a negative decree unjustified in fact or in law that has to be judicially abrogated with all pertaining consequences. The administrative organ has to give the applicant an identity card including his new name and original religion before embracing Islam.

*Holding* (on 5 April 2005)

The Court considered the case admissible and struck down the challenged decision with all pertaining repercussions as mentioned above. The respondent (administrative organ) is to pay the expenses incurred.

**State Council, Court of Administrative Litigation, Case No. 26103, Judicial Year 58, 26 April 2005.**

*Facts*

On 30 June 2006, the applicant, Moḥamad El Mahdy ‘Abd Allah, filed a administrative court case against the respondents, the Minister of Justice (in his legal capacity) and the head of the Civil Affairs Registry (in his legal capacity), requesting the stay of execution of the negative decree issued, where the administrative organs abstained from changing his name and religion - to revert to his original Christian name and Christian religion – in the national identity card. The applicant is born of Christian parents and his name was Maurice Fahmy ‘Abd al-Malak. He embraced Islam and changed his name to Moḥamad El Mahdy ‘Abd Allah then returned to Christianity on 3 February 1997, according to a decree of the clerical council of the Coptic Orthodox; and he is practicing the Christian rites since that date. He filed an application to the Civil Affairs Registry (administrative organ) requesting a change of name and religion in the national identity card, but it was turned down. The Court examined the action expeditiously and both presented all relevant documents. On 21 December 2004, the Court postponed the examination to 1 March 2005 and charged the State-Delegate Authority to submit a report with its legal opinion, where it accepted the case *prima facie*, but rejected the issue.

*Issue*

The applicant requested a stay of execution of the negative decree and change of name and religion in the national identity card. Should the negative administrative decree be struck down? Should the original Christian name and religion be reinstated in the identification card?

*Court Reasoning*

- \* The essence of the applicant’s action is a request for a stay of execution and repealing of the negative decree of abstention from giving him an identification card substantiating his original name and religion, before embracing Islam with all pertaining consequences.
- \* The Court ought to reject the inadmissibility of the case, whether because it was not presented to the committee of Civil Affairs Registry which is incompetent to



review such a request, or because of the invalidity of the administrative decision submitted by the State-Delegate Authority.

- \* The Court turned down the respondent's right to intervene according to 126 of Law of Adjudication Procedures.
- \* Law No. 143/1994 on Civil Affairs Registry, Articles 46, 47, 48, 50, 53, 66 (look above case with all details of the Law). The legislator conferred to the committee (composed by Article 46) the competence to correct or change information in the civil affairs regarding birth, death or family registration. As to the correction or change of nationality, religion, profession or any other issues mentioned in Article 47, the administrative authority, Civil Affairs Registry, is in charge of making data-changes according to a judicial ruling or to formal documents issued from the competent organs, that is the Coptic Orthodox Patriarchy in our case, without the need to issue a decree from the committee composed by Article 46.
- \* The legislator obliged every sixteen-year old Egyptian citizen to file a request for an identity card which registers all the information, requested by the executive regulations, among which is religion. Also the legislator conferred to the identity a special magnitude (importance) by making it the only certificate that verifies the authenticity of one's personal information, provided it is valid and has not expired. The legislator has also warned, in view of highlighting the significance of the information registered in the identity card, the governmental and non-governmental organs against the abstention from approving the information registered in it.
- \* Thus, the identity card reveals the civil status of its holder through the information registered among which are the religion, name and birth date; and such information must be used when dealing with its holder. Also the legislator obliged the citizen to update the identity card information, if any changes occur, and any breach of the Law subjects its holder to a penalty (as stated in Article 66).
- \* Undoubtedly, the information registered in the identity card is of such magnitude that it represents and reveals the civil status of its holder only upon which state and society deal.
- \* Since the administrative organ abstained from changing the applicant's name to Maurice Fahmy 'Abd al-Malak instead of Moḥamad El Mahdy 'Abd Allah, holding that any change of religion from Islam registered in the identity card is considered apostasy, and that the Islamic legal base is that *there is no apostasy in Islam*, and that he who changes his Islamic religion to another, whether Christianity or Judaism, is considered in breach of the public order. Therefore, it can neither be approved nor have any consequences, accordingly no procedures could make such a change as underlined in the defense memorandum. And since the Court observes the legitimacy of the administrative organ's holding; since the Court monitors the legality of the administrative bodies' holding as a justification for its challenged decree; and since the Egyptian Constitution (Article 40) guarantees the equal opportunity between citizens in their public rights and duties, there is no discrimination between them on grounds of race, origin, language, religion or belief; and since the state guarantees the freedom of belief and practice of religious rites as stipulated in Article 46 of the Constitution; and since it is well known that there is a relation between the opportunity of freedom of belief and the inevitable repercussions of such a freedom, to say otherwise would empty and vacate the freedom from its contents and substance, turning it to mere rituals and nonsense, without genuine content as long as that freedom was not restricted by any legal consequence or reality resulting from the exercise of such a freedom.

- \* The Egyptian Constitution guaranteed the freedom of belief and the international covenants most importantly UDHR (approved by the UN General Assembly Resolution No. 217 D 3, on 10 December 1948), Article 2 stipulated that:  
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...without any discrimination between men and women.
- \* UDHR article 18:  
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- \* Arab Charter for Human Rights (approved by Arab League resolution no. 5427 dated 15 September 1997). Article 26 “everyone has the right to freedom of belief, thought and opinion.” Article 27 states:  
Adherents of every religion have the right to practice their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.
- \* And since the Islamic Shari‘a has preceded all such international covenants and constitutions about 1400 years and approved such freedoms by Sūrat al-Baqara,<sup>156</sup> verse 256 states: “there is no compulsion in religion, the path of rectitude has been made distinct from error”; Sūrat Yūnes 99 states: “had God willed, He would have induced everyone on earth to believe, will you then force people to believe”; The prince of poets Ahmad Shawqy said: “religion belongs to the Judge; had God willed, He would have united the peoples.”
- \* And since the administrative body considered the applicant an apostate (as previously mentioned), and the jurisprudence would consider the Muslim an apostate if he gladly accepts, opens his heart to non-belief and effectively embraces it as God’s saying: “whoever gladly accepts non-belief” as written in the Sunna jurisprudence by Mr. Sabek, Volume 2, page 437, 20<sup>th</sup> Legal Edition 1997, publisher Dar el Fath Lel I‘lam al-‘Araby.
- \* Since the documents certify that the applicant embraced and declared Islam in 1989, consequently he has changed his name from Maurice Fahmy ‘Abd al-Malak to Moḥamad El Mahdy ‘Abd Allah and had an identity card issued in his new name and religion, then he reverted to his previous religion (Christianity) and obtained an official certificate from the Coptic Orthodox Patriarchy in Cairo stating his acceptance as a member of the children of the Coptic Orthodox Church as mentioned in the action and the administrative organ did not deny it; then he requested the civil affairs registry to change his name and religion in the id card and this latter abstained to do so claiming that he is an apostate and that it should not approve it.
- \* Since this stance is an unjustified interference on behalf of the administrative organ and a compulsion it is exerting on him to choose a certain belief or religion that he does not wish, also registering his new data is a mere registration of an absolute material fact concerning his civil status in the document (identity card) that is purposed for that, as long as he is alive; consequently, this would be a protection for the others dealing with the applicant. All state authorities are requested to prove the true religion of the applicant (Christianity), as well as his

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<sup>156</sup> AL MONTAKHAB: THE SELECT IN THE INTERPRETATION OF THE HOLY QUR’AN, MINISTRY OF AL AWQAF, SUPREME COUNCIL FOR ISLAMIC AFFAIRS (1993).

name without falling in any error. Accordingly, there is a legal commitment on behalf of the administrative organ to take its initiative by registering the true religion the applicant is embracing, in view of protecting the rights of others; also it is by no means acceptable that the administrative organ should use its legal authority vested in it to compel the applicant to still embrace Islam.

- \* According to the above, the abstention on behalf of the administrative organ to give the applicant an identity card with his new name and true religion which he reverted to (Christianity) from Islam, after obtaining a certified document from the competent organ (Coptic Orthodox Patriarchy), is a negative decree unjustified in fact or in law which has to be judicially abrogated with all pertaining consequences (repercussions), and it has to give the applicant an identity card including his original name and religion before embracing Islam.

#### *Holding*

The Court accepted the application and struck down the administrative decree challenged with all its repercussions. The respondent (administrative organ) is to pay the expenses incurred.

### **State Council, Court of Administrative Litigation, Case No. 18923, Judicial Year 58, 14 February 2006.**

#### *Facts*

The applicant is born of Christian parents and his father embraced and declared Islam while he was still two years old. His father changed his name and religion to Amīr Moḥamad Aḥmad al-Mahdy. He filed an application to the Civil Affairs Registry asking for a national identity card, but the administrative organ refused holding that his father embraced Islam. The applicant described the administrative organ's conduct as contradicting the Constitution and Islamic Shari'a which guaranteed the freedom of belief, because he did not practice any Muslim rites. On 26 April 2004, the applicant Amīr Shawqy 'Abd al-Saīd filed an action against the Minister of Interior (in the legal capacity) and the Head of the Civil Affairs Registry (in the legal capacity) requesting the stay of execution and abrogation of a negative decree.

Mr. 'Abd al-Mejīd al-'Anany (a lawyer) submitted a declaration for interference against both applicant and respondents, requesting to strike down the action and transferring the case to the Prosecutor-General to apply the Ḥisba Law No. 3/1996; but it was turned down. The State-Delegate Authority issued a report admitting the case but turning down the issue.

#### *Arguments*

The Applicants requested the stay of execution and abrogation of the negative administrative decree of abstaining from issuing an identity card reflecting his original name and religion before embracing Islam. The defendant justified abstention on grounds of apostasy in breach of public order.

#### *Issue*

Should the negative administrative decree be struck down? Should the original Christian name and religion be reinstated in the identification card?

#### *Court Reasoning*

- \* Since the applicants aims by the action to stay the execution and abrogation of the negative decree issued by the administrative organ refraining from giving him an identification card registering his name and religion embraced before converting to Islam.
- \* Since Mr. 'Abd al-Mejīd al-'Anany (a lawyer) requested interference against both applicant and respondents according to article 126 of adjudication procedures

because of personal interest involved namely the protection of public order and alleged the unconstitutionality of articles 1,2,3 of the Ḥisba Law 3/1996, which conferred competence only to the Prosecutor-General.

- \* The Court said that the legislator did not prohibit the ḥisba suit but rather organized it and conferred it to the Prosecutor General and since Article 3, and 3 bis Adjudication Procedures Law, and article 2 of State Council Law which made the interest a condition to admit the case in civil and administrative articles. Thus these articles cease to be in a near contradiction with the Constitution and Islamic Shari‘a. Besides, the case filed pertains in essence to a change of religion in the applicant’s identity card, thus it is a civil lawsuit subject to Civil Affairs Registry Law No. 143/1994.
- \* According to the above mentioned, the unconstitutionality of Articles 1 to 4 of Ḥisba Law No. 3/1996 is irrelevant, since the documents submitted does not show any personal and direct interest to the third party for interference. Also the administrative organ has applied the relevant Ḥisba Law by rejecting the execution of the applicant’s request, holding the same position as the third party’s aim for interference, which leads the Court to refute the request for third party interference for absence of interest.
- \* As to the allegation of the inadmissibility of the case because it was not referred to the committee of the Civil Affairs Registry (composed by Article 47 of Law No. 143/1994) before filing the case; Article 47 does not confer any competence to the committee to examine requests related to change of religion.
- \* As to the allegation of the inadmissibility of the action because it is refuted by the administrative decree, the documents submitted reveal the abstention of the administrative organ, to issue an identity card where the applicant’s original name and religion are registered on the identity prior to his father’s embracing Islam, which is in contravention with the rule of law.
- \* Whereas all the necessary elements are prima facie fulfilled, the case is admissible.
- \* The Court referred to the following laws:
  1. Law No.143/1994: articles 46, 47, 48, 50, 53, 66 (see above jurisprudence).
  2. Egyptian Constitution: freedom of belief.
  3. UDHR: Articles 2 and 18.
  4. Arab Charter for Human Rights: Articles 26 and 27.
  5. Qur’an:
    - a. Sūrat al-Baqara 256.
    - b. Sūrat Yūnes 99.
- \* And since the administrative body considered the applicant an apostate (as previously mentioned), and the jurisprudence would consider the Muslim an apostate if he gladly accepts, opens his heart to non-belief and effectively embraces it as God’s saying “whoever gladly accepts non-belief” as written in the Sunna jurisprudence by Mr. Sabek, 2<sup>nd</sup> volume, page 437, 20<sup>th</sup> legal edition 1997, publisher Dar al-Fatḥ Lel I‘lam El ‘Araby.
- \* The documents submitted authenticate that the father embraced and declared embracing Islam, and then he changed his son’s name (the applicant). And when the applicant reached maturity (21 years), not having practiced any Muslim rites, confirmed embracing Christianity and filed a request to the Civil Affairs Registry to change his name and religion, and issue an identity card, the administrative organ abstained, holding that he is an apostate and should be so denied his request.
- \* This stance is an unjustified interference on behalf of the administrative organ and a compulsion it is exerting on him to choose a certain belief or religion that the

applicant does not wish. Also registering his new data is a mere registration of an absolute material fact concerning his civil status in the document (identity card) that is purposed for that, as long as he lives; and consequently, this would be a protection for the others dealing with the applicant. All state authorities are requested to prove the true religion of the applicant (Christianity), as well as his name without falling in any error. Accordingly, there is a legal commitment on behalf of the administrative organ to take its initiative by registering the true religion the applicant is embracing, in view of protection the rights of others. Also it is by no means acceptable that the administrative organ should use its legal authority vested in it to compel the applicant to still embrace Islam.

- \* According to the above, the abstention on behalf of the administrative organ to give the applicant a new identity card with his name and true religion, after obtaining a certified document from the competent organ (al-Maḥala al-Kobra Bishopric), is a negative decree unjustified in fact or in law, which has to be judicially abrogated with all pertaining consequences (repercussions); and the administrative organ has to give the applicant an identity card including his original name and religion before his father's embraced Islam.

#### *Holding*

On 14 February 2006, the Court ruled on the following:

1. Inadmissibility of the third party's request for interference for the absence of personal interest.
2. The abrogation of the negative decision issued by the administrative organ with all legal consequences above mentioned.
3. The administrative organ is to pay the relevant expenses.

#### **State Council, Court of Administrative Litigation, Case No. 20498, Judicial Year 58, 24 May 2005.**

##### *Facts*

The two applicants are born of Christian parents: Malak 'Ayyad 'As'ad and Teresa Sobḥy Ibrahīm, as certified in the Christian marriage certificate (Coptic Orthodox). In 1986, Malak embraced and declared Islam according to a religious affidavit No. 1582 and abandoned the girls' mother. Meanwhile he changed the girls' information from their Christian names to Muslim names: Olfat Moḥamad 'Abd al-Mahdy and Īman Moḥamad 'Abd al-Mahdy. When they reached the age of possessing an identification card (i.e. sixteen years old), they surprisingly found out their Muslim names and Muslim religion on the identity card. The identity card was not issued with their Christian names or Christian religion, taking into consideration that their father was deceased.

##### *Arguments*

The applicants alleged that the administrative organ abstained from issuing an identity card with their Christian name and religion, in contravention to national law and the Islamic Shari'a law. The defendant justified its abstention on grounds of apostasy in breach of public order.

##### *Issue*

Should the negative administrative decree be struck down? Should their original name and religion be reinstated in the identification card?

##### *Court Reasoning*

- \* The essence of the application is a request for a stay of execution and cancellation of the negative administrative decree of abstention from issuing an identification

card for the two applicants, registering their original names and religion before their father's embracing Islam.

- \* As to the allegation of the invalidity of legal procedures because the two applicants lack the competence to litigate, the action pertains to the integral personal rights of the applicants.
- \* The remaining jurisprudence like the above mentioned cases.

#### *Holding*

On 31 May 2005, the Court ruled in favor of the applicant:

1. The Court admitted the action prima facie.
2. The Court cancelled the negative administrative decree with all subsequent consequences and ordered the administrative organ to issue an identification card reflecting the original Christian name and Christian religion.
3. The administrative organ is to pay the expenses incurred.

### **State Council, Court of Administrative Litigation, Case No. 18924, Judicial Year 58, 5 April 2005.**

#### *Facts*

The applicant is born on 23 January 1979 and filed a request to the administrative organ to obtain an identification card. But the administrative organ turned down his request for issuing an id card with his true Christian name, on grounds that his father embraced Islam long ago and changed his name to Ḥusam al-Dīn Aḥmad Sherif, despite the fact that he is still a Christian according to the Affidavits No. 2272/2003, issued by the Coptic Orthodox Patriarchy and ratified by the Ministry of Interior.

#### *Arguments*

The applicant alleged that the negative decree is in contravention to the Constitution and domestic law, and requested a stay of execution of the negative administrative decree of abstaining from issuing the national identity number with all pertaining consequences. The defendant justified its abstention on grounds of apostasy in breach of public order.

#### *Issue*

Should the negative administrative decree be struck down? Should their original name and religion be reinstated in the identification card?

#### *Court Reasoning*

- \* The essence of the application is a request for a stay of execution and cancellation/abrogation of the negative administrative decree of abstention from issuing an identification card for the applicant registering/reflecting their original name and religion before their father's embracing Islam.
- \* The Court turned down the rejection of inadmissibility of the action (as raised by the respondent) because:
  1. The committee of civil registry is incompetent to examine the request.
  2. The administrative decree expressed by the state-delegates authority is refuted.
- \* The right for 3<sup>rd</sup> party intervention according to article 126 of the adjudication procedure law is denied because the request was filed after the case was scheduled for judgment.
- \* The court referred to:
  1. Law 143/1994 pertaining to civil status articles 46, 47, 48, 50, 53, and 66.
  2. Constitution: Articles 40 and 46.
  3. UDHR: Article 18.
  4. Arab Charter for Human Rights: Articles 26 and 27.
  5. Qur'an: Sūrat al-Baqara 256 and Sūrat Yūnes 99.

6. Sabek, Sunna Fikh, Volume 2, p. 437, legal edition, 1997, Dar al-Fathā Lel I‘lam El ‘Araby.

*Holding*

On 5/4/2005, the Court ruled in favor of the applicant, entitling to a name and religion change, reverting to his original ones.

**Footnote 102**

When he was an active member of the *Takfīr and Hījra* group, he was often called by the State Security Intelligence. In 1977, he was imprisoned for two years for participating in the killing of Moḥamad Ḥusein al-Zhahaby. Upon finishing his prison terms and being banned from traveling, he escaped to Yemen where he stayed for ten years (1980-1990). Upon returning on 26 December 1989, he was asked by the Amīr of the Gama‘a to make a research on the authenticity of the Holy Bible, and on Moḥamad in the Torah and New Testament. So the findings of his two researches led him to conclude that the Holy Bible is not perverted but is authentic; besides he could neither find Mohamed in the Torah nor in the New Testament. He was shaken and started to seek some churches that refused to deal with him. The Sermon of Jesus Christ on the Mount of Olives deeply touched his heart especially that the image of God was rectified in his eyes. He started a spiritual struggle and re-read the Qur’an with in-depth scrutiny. He found that the Koran was not the word of God and that Moḥamed is not a prophet, either in the Torah or the New Testament (according to his testimony). State Security Intelligence stopped calling him after conversion, while his other colleagues were summoned every now and then. His attitude changed totally after conversion, from a violent killer to a peaceful citizen living a serene quiet life with his family. However, State Security Intelligence still harasses him every now and then, but they have no hold on him any longer because what matters to the state, in terms of security, is that he is no longer a member of the *Takfīr and Hījra*, nor involved in hostile activities of burning churches.