

The Baha'I Case as an Ordeal of Citizenship and Freedom of Belief in Egypt*

Position Paper

On November 28th 2002, the United Nations Human Rights Committee (HRC) presented its Concluding observations on the third and fourth reports submitted by the government of the Arab Republic of Egypt. The HRC pointed out to subjects of concern including practices in breach of Article (18) of the International Covenant on Civil and Political Rights (ICCPR), concerning the right to freedom of thought, conscience and religion and of observing Baha'i rituals¹. The reply drafted by the Egyptian government (which was incorporated within the third and fourth reports) was obsessed with dealing with the political embarrassment caused by the Committee's observations on the second report of the Egyptian government. Furthermore, the Egyptian government is fairly hypersensitive about making any pledges that would close the door before arbitrary practices by the Executive Estate with regard to the general situation of freedom of belief in Egypt. Nevertheless, it is noteworthy that in its official response, the Egyptian government alleged that it has never undermined the Baha'is freedom of belief, that it hasn't restricted their freedom to embrace this faith, and that what happened was an attempt to implement provisions of Law No 263 of 1960² on disbanding Baha'i congregations because they were breaching public order.

This suspension was given a legal cloak with the "public order" justification, which came on top of government justifications geared toward restricting the freedom of members of the Baha'i faith, emerging quite strongly in the recent couple of years, with vehement public debate around the Baha'i faith and the limits of practices related to freedom of belief. This debate overlapped with the situation of religious freedom of other confessions in Egypt. The state of vehemence came in the aftermath of a lawsuit reviewed by Egyptian law courts, which was one among many frequent cases focusing on the regulation of legal procedures of members of the Baha'i faith – rather than their freedom to observe their rituals- concerning the statement of "Baha'i or other religions" on official documents (passports, birth certificates, new computerized identity cards). In this connection, the court ruling in lawsuit No 24044 of the year 1985 entitled members of the Baha'i faith to state their religious belief on official documents³. The legal reasoning of this court ruling was clearly congruent with another ruling made by the Supreme Administrative Court in 1983⁴ in a similar case as its counterpart presented before the court of law in 2004.

The 1983 lawsuit betrays the distinguishing features of legal and jurisprudential frameworks affecting the situation of Baha'is in Egypt. In sum, this lawsuit concerned the case of a Baha'i university student who was denied access to a computerized personal ID card by the Alexandria civil registration office, which culminated with the suspension of this student from his faculty in his senior year (because he could not defer military conscription as he was not allowed to renew his exemption from military service without the ID card). Following the suspension decision, the student's guardian filed a lawsuit before the Administrative court on December 8th 1976, requesting the invalidation of the decision of the Montazah district civil registration office not to issue a personal identity card to his son.

Three years after the legal action, the Administrative Court of Alexandria decided on May 16th 1979 (lawsuit No 84 of the year 31) to dismiss the case. In its reasoning for dismissal, the

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court mentioned that whereas Muslim Shari'a principles are the fundamental source of legislation, other constitutional provisions pertaining to freedom of belief, non-discrimination on the basis of religion or belief should be regarded "insofar as Islam permits it and in such a way as not to contravene its precepts or contradict its provisions". However, the court did not specify the limits that Islam permits. Furthermore, the court went beyond its original role of "settling disputes" to practice another more general function, namely putting the belief itself to trial (a situation that might be recurrent later in the form of prosecution of members of either another divine religion or any other faith or confession). For instance, the reasoning mentioned that "Baha'ism contradicts divine religions". Accordingly, the court approved the decision of the civil registration office, which refrained from issuing the ID card and deemed it as "a correct and sound decision", and that the decision to suspend the student from his faculty "is based on a justifiable reason, and therefore the request to invalidate the decision should be dismissed".

However, four years after this unusual ruling, the decision of the Supreme Administrative Court on January 29th 1983 (i.e. almost seven full years after the incident of refusal of the civil registration office) in the appeal to the decision of the lower administrative court fell in the paradox of either permitting full practice of the right on the one hand or unjustifiably restricting this right on the other. Hence, the Supreme Administrative Court dismissed the "dissonant" decision of the lower administrative court of Alexandria. One of the "exceptional" grounds on which the ruling was based was that the Baha'li congregations that were dissolved as per Law No 263 of 1960 were administrative bodies, which are totally distinguished from "Baha'i activities and practices", especially that the legislator did not deal with the theology itself, as its "sanctity is ensured". Furthermore, the Court emphasized that "the Abode of Islam encompassed non-Muslims of different faiths and confessions, where they lived as full citizens on equal footing with other people without being coerced to convert to another religion or modify their beliefs". However, and unfortunately, the Court linked this evenhanded interpretation with a stipulation that the rites and rituals publicly practiced by other religions should be approved by "the government of Islam", and restricted the right to publicly practice such rites to "the customs and traditions of the People of the Book (i.e. Jews and Christians) known to Muslims in Egypt". The Court undertook a very serious course when it stipulated that the Baha'i faith should necessarily be identified on official documents, not because this is their right but "to identify the affiliation of its beholder and that he/she would not be allowed any legal position not condoned to this faith by the Muslim community".

Despite the fact that this ruling did not fulfill the needs and claims of individuals regarding maximum freedom to practice religious rituals, and that it was discriminatory on the basis of religion, it represented an important turning point in the legal debate over the situation of the Baha'is in Egypt. Actually, this judgment was used as a ground for bringing legal action No 24044 of the year 1985, whereas the Administrative Court pronounced on April 4th 2006 its ruling that the Baha'i community was entitled to lawfully declare their faith on official documents.

The 4th of April ruling was distinguished from other rulings because it stirred up severely violent reactions either in official or party newspapers. However, the most important opposing reaction came nearly a month after the court ruling was pronounced, specifically on the third of May, when the People's Assembly Speaker⁵ decided to open the discussion on a subject that was not on the agenda, namely the court ruling pronounced by the administrative court on the 4th of April 2006, that the Civil Registry (an affiliated body of the Ministry of Interior) should lawfully acknowledge the Baha'i faith in official documents. The People's Assembly reviewed petitions filed by seven MP's, namely Ahmed Shoubeir, Sobhi Saleh, Akram Al Shaer, Ali Laban, Al Sayed Askar, Zakaria Younes and Mohamed Amer Helmy. Those petitions were presented to the Minister of Religious Endowments, i.e. a minister having no relation with or jurisdiction over the case (Civil Registration is the competent authority, which is subordinate to the administrative authority of the Ministry of Interior).

The problem lies not only in the wrong choice of the minister in charge of the case, but the more serious situation is also that the petitioners relied quite unusually on very fragile and ambiguous information. Some of them was merely satisfied with instigating the government against Baha'is, while others like Sobhi Moussa called upon "government, represented in the Ministry of Endowments, Al-Azhar and competent ministries to challenge the ruling and intervene in the lawsuit with information proving that the Baha'is are atheists, apostates, and that such judgments were reached by consensus of the Muslim community (umma). Furthermore, This group should be incriminated or legislation should be enacted to criminalize the thoughts and rituals of the Baha'is so as not to open the door for the corruption of the doctrines, beliefs, and ethics of people, especially that this devious and perverse group embraces principles that violate the general morals, ethics, doctrines and thoughts and thus could demolish public order and ethics in society". In other words, this MP reduced the role of state institutions, which are supposed to be neutral, to putting individual beliefs to trial. This stringent attitude of the People's Assembly created a severely congested situation regarding the role of state bodies in restricting individual freedoms, which further underpinned the situation of the Ministry of Interior in its appeal against the ruling of the Administrative Court.

Then came The Day: 16th of December 2006, a day which carried with it a "shocking" ruling of the Supreme Administrative Court, presided by Counselor Al Sayed Noufal, Head of State Council. The shock stemmed from the fact that the court ruling contrasted Baha'i teachings with Islamic precepts. The reasoning ridiculed in large part the Baha'i faith, apart from the corrupt logical inferences from some laws and rulings of judiciary institutions, for instance the State Supreme Court ruling of March 1st 1975⁶. Finally, the arguments indicated that the interpretation of Article 46 of the 1971 Constitution on the freedom to practice religious rites applies only to the three divine religions, which is totally at odds with the case at hand. The latter was not totally concerned with the freedom to practice religious rites but was seeking an outlet to the predicament of the Egyptian Ministry of Interior's denial to some members of the Baha'i faith the right to issue official documents. Furthermore, the court adopted a very peculiar approach, legally speaking, when it interpreted provisions related to freedom of belief in Egyptian successive constitutions (starting from the 1923 Constitution) through the preparatory works of the constitutions, so as to refer solely to the three divine religions. However, this interpretation is not based on historical evidence especially that Egyptian legislators have never attempted to produce statistics on the number of religions and faiths permitted within the country. The Parliament (House of Representatives and the Senate) were thus urged to enact Law No 15 of the year 1927 on the King's authority regarding religious institutions and on permissible religious faiths⁷. This law meant quite evidently that "permissible religions" and the regulatory matters related thereto were procedural affairs legally subject to the powers of the king and which the Prime Minister could exercise (according to Articles 1 and 3 of Law No 15 of 1927).

The Supreme Administrative Court Ruling: A Gate to Further Legal Controversies

The most recent court ruling represents a marked threat to civil pillars of the Egyptian state, and places several restrictions on the exercise of public freedoms, which would later culminate with a crisis (not exclusively at the level of efficiency and performance of state institutions) but rather a crisis in the management of public procedures within the state. For instance, according to the December 2006 ruling of the Supreme Administrative Court, the State does not acknowledge except three religions, which contravenes both aggregately and in detail the legal structure regulating the acquisition of Egyptian nationality, especially that the first law regulating this matter was enacted in the second decade of the twentieth

century⁸, and was semi-civil. In other words, the requirement of espousing one of the three divine religions was not set as a condition for acquiring the Egyptian nationality, which is the legal tradition adopted by the law regulating the Egyptian nationality currently in force (Law No 26 of the year 1975), Article (11)⁹. This means that any individual espousing any faith or religion (divine or not) and fulfilling the requirements of Article 11 of Law No 26 /1975 is entitled to the Egyptian nationality, and thus is obliged as per provisions of Law No 143 of the year 1994, to issue several official documents where he/she would state his/her faith or religion. Herein lies the impasse facing state institutions, since according to the Supreme Administrative Court ruling (of 2006), registering any "other" religion (other than the three divine religions) is a breach of the law. In case the civil registration office refuses to register "other" religions, the outcome would be an evident contravention of Article (40) of the 1971 Constitution, which provides that "All citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed".

How to Transcend the Debate on the Structure of Beliefs:

In the crisis of the Baha'is, the Three Estates agreed that Baha'ism was not Islam, a matter that is beyond the scope of the issue itself and represents a departure from the role of the civil state, namely to "legislate" in support of creating structures of a religious state, founded on "fatwa" (legal religious opinion). Most of the fatwa related to Baha'is focus on one premise, namely that the Baha'i faith is a defection from Islam (for instance, the fatwa delivered by the Egyptian Mufti Sheikh Abdul Majeed Selim in 1939 and that of Sheikh Jad Al Haq Ali Jad Al Haq in 1981)¹⁰. This state of affairs raises a serious problem regarding the role of the fatwa institution in influencing the legal rule-making, approval of legal rules and litigation pertaining thereto, especially that such legal or advisory opinion denies the concept of citizenship and the civil pillars of the Egyptian State. On the other hand, the pattern of political exploitation and manipulation of the fatwa for political ends and for justifying state practices against the Baha'is is severely mounting. This in fact gives more preponderance to political and social rhetoric based on putting beliefs to trial. Nevertheless, it is important to pinpoint the political role played by some social, political and media authorities, which was quite uncommon, through their action geared toward alleviating the intensity of religious polarization over the issue. Even though the general atmosphere was quite congested, with the intensive emergence of religious-related crises (hijab or head veil, and Copts), independent newspapers' concern with the Baha'i case was a new opportunity for a reading of this issue from other perspectives, thus focusing on rights rather than the nature of the creed.

Egyptian bloggers were also concerned with this phenomenon, which was an opportunity to engage in a political debate on various blogs, which became an open panel for exchanging opinions and attitudes. Bloggers attempted to create an unofficial network of defenders of the right of the Baha'is to lawfully register their religion on official documents (such as the symbolic demonstration on the day of the pronouncement of the court ruling). Finally, the interest exhibited by some human rights organizations, such as the Egyptian Initiative for Personal Rights EIPR), paved the way for bringing pressure to bear, though in a different pattern, and deal with the issue to project a different perspective on the freedom of belief , a perspective that invalidates other security or jurisprudential justifications. These organizations offered their legal expertise and focused on the core obligations of the Egyptian State ensuing from international human rights conventions that Egypt is a Party thereto.

To conclude, it is noteworthy that the Supreme Administrative Court ruling gave rise to a new dilemma for the Egyptian government: a group of Egyptian citizens rendered faithless and stateless, denied the right to possess official documents. This will naturally open the door incessantly for recurrent issues to appear on the surface, let alone the potential role that international and regional mechanisms might play to exert pressure on the Egyptian government to thwart its discriminatory practices against freedom of religion and of belief.

Endnotes

¹ See comments of the Commission in :

[http://www.unhchr.ch/tbs/doc.nsf/\(SymbloI\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(SymbloI)/CCPR.CO.76.EGY.En?Opendocument)

and government remarks:

[http://www.unhchr.ch/tbs/doc.nsf/898586b1de7b4043c1256a450044f331 / f2cae3b7c4416edbc1256ca6005a6269/\\$FILE/G0344824.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1de7b4043c1256a450044f331/f2cae3b7c4416edbc1256ca6005a6269/$FILE/G0344824.pdf)

² Decree of the President of the United Arab Republic No 263 of 1960 on Baha'i Congregations. Published in the Official Gazette, issue No 161, 19 July 1960, pp. 1411, 1412.

³ See Sawt Al Umma (Voice of the People) independent newspaper, 25 December 2006.

⁴ Ruling No 1109 of the Judiciary Year No 25, Hearing session of 29 January 1983.

⁵ Minutes of session No 69 of the People's Assembly, the first ordinary meeting, ninth legislative quarter, 3 May 2006, pp. 4-16

⁶ Ruling of the Supreme Constitutional Court, Session of March 1st 1975 in the case No 7, year 2, Official Gazette, No 14, 3 April 1975, pp. 234-235.

⁷ Law No 15 of the Year 1927 regulating the King's power regarding religious institutions and the appointment of religious heads, and permissible matters in what concerns religions, Egyptian Annals, No 52, 16 June 1927.

⁸ Article 11 of the Decree-Law No 25 of the year 1926, Article 8 of the Decree- Law No 19 of the year 1929 on Egyptian Nationality

⁹ Law No 26 of the Year 1975 on Egyptian Nationality, Official Gazette, No 22, 29 May 1975

¹⁰ For a review of the text of the legal opinions, visit the Egyptian Mufti Office official website: <http://www.dar-alifta.org/ViewFatwaByTopic.aspx>