

## APOSTASY IN MODERN EGYPTIAN LAW

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### 1 Apostasy in Islamic law

*Šarī'a* law, according to the interpretations of the legal schools, condemns an apostate to death.<sup>1</sup> Egyptian state law, however, does not recognise such legislation (Berger 2005:90ff). But even classical Islamic law has never applied it rigidly, giving the accused time to convert and profess himself/herself a Muslim again. Traditionally, this command was only relevant when a Muslim publicly stated that he/she did not believe in God and the Prophet Muḥammad and did no longer consider himself/herself a Muslim, or simply converted to another religion (Hilālī 2003). In the Middle Ages, moderate religious scholars, who formed the majority, distinguished faith (*īmān*) and Islam, and condemned only those who openly denied their religion. al-Ġazālī (d. 1111), e.g. expressed his deep moral indignation when he read in the autobiographical writings of the great Muslim philosopher and medical practitioner Ibn Sīnā (d. 1037) that he only prayed because others did the same around him. In al-Ġazālī's view, this is why God will condemn Ibn Sīnā in the afterworld, but people cannot condemn him because he did not deny Islam (al-Ġazālī, *Munqid* 74–75). Modern Islamist extremist trends no longer follow this view when they consider that issues of faith should be brought to court even in the case of persons who proclaim that they are Muslims.

Before dealing with the application of this command in connection with a few select cases in late 20<sup>th</sup>– early 21<sup>st</sup> century Egypt, and in order to provide a historic background to the treatment of this question, it seems appropriate to quote in detail the relevant passage from aš-Ša'rānī's seminal work on the comparative presentation of the teachings of the four great legal schools of Sunnī Islam (aš-Ša'rānī, *Mizān*, III, 307–309, *Bāb ar-Ridda*).<sup>2</sup>

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<sup>1</sup> Here the use of strict Arabic terminology is avoided because it differentiates between divine law (*šarī'a*) and its human interpretation, i.e. jurisprudence (*fiqh*). References are generally made only to the *šarī'a*, hiding the fact that usually it can only be explained from the source texts by having recourse to very different human interpretations.

<sup>2</sup> Translation by K. D. The translation does not include aš-Ša'rānī's evaluation of the jurists' opinions based on their positions on a scale, as is indicated by the title of the work

“The Chapter on Apostasy

Voluntary disengagement from Islam, an utterance or an act of unbelief should be interpreted as apostasy.<sup>3</sup> The Imams of the four schools agree that whoever leaves the religion of Islam should be killed and that it is compulsory (*wāğib*) to kill a heretic (*zindīq*). The latter person is one who spreads unbelief and only pretends to be a Muslim. If all the inhabitants of a locality (*balad*) abandon Islam, war should be waged against them and their possessions become booty. I found agreement in all these issues.

They [i.e. the Imams], however, differ e.g. in what was said by Abū Ḥanīfa (d. 767), i.e. that the apostate should be killed immediately, and that it is not dependent on whether he should be asked to repent or not. If he was asked to repent, but did not regret his sins, then [the execution] should be delayed only if he asks for it. In this case, delay can be granted three times. Some Ḥanafis say that delay should be granted even if he did not ask for it.

According to Mālik (d. 795), it is compulsory to call for repentance. If he [i.e. the apostate] repents immediately, his repentance should be accepted. If he does not repent [immediately], delay can be granted three times, so that he may repent. If he repents [he escapes the death sentence], if not, he should be killed.

aš-Šāfi‘ī (d. 820) said in the clearer opinion of his two views: it is compulsory to call for repentance, but no delay is granted after it, he should be killed immediately if he sticks to his apostasy.

Two recensions have been transmitted on the authority of Aḥmad [ibn Ḥanbal] (d. 855). The first one is the same as that of Mālik. According to the second, it is not compulsory to ask for repentance. The versions differ concerning whether delay should be granted or not.

It is related on the authority of Ḥasan al-Baṣrī (d. 728) that the apostate cannot be asked to repent, but should not be killed immediately.

[Wāṣil ibn] ‘Aṭā’ (d. 748) said that if he had been a Muslim and left his faith, then he should not be asked to repent. If, however, he had been an unbeliever who converted to Islam, then left it, he should be asked to repent.

It is told on the authority of [Sufyān] at-Ṭawrī (d. 778) that he should be asked to repent under all circumstances.

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(*Mīzān*). These, sometimes quite lengthy, passages are left out because they are not closely related to the subject of the present paper.

<sup>3</sup> The relevant Qur’ānic passage (2:217) does not contain punishment for apostates in this world:

ومن يرتدد منكم عن دينه فيمت وهو كافر فأولئك حبطت أعمالهم في الدنيا والآخرة وأولئك أصحاب النار هم فيها خالدون  
 “Those of you who turn away from their religion and die as unbelievers – their works fail in this world and in the next; these are the companions of Fire, in which they will remain forever” (Alan Jones’s translation).

According to the three Imams [Mālik, aš-Šāfiʿī, Ibn Ḥanbal] the same is valid for men and women. According to Abū Ḥanīfa, however, women should be imprisoned and not killed.

Correct views [concerning the unnecessary of calling the apostate to repent] go back to the *ḥadīth* “Whoever exchanges his religion, kill him” (*man baddala dīnahu fa-qtulūhu*), where the Prophet did not mention it either.

Abū Ḥanīfa interpreted “*man*” as masculine. Women, in any case, will not be missed in the religion of Islam, if they abandon their faith, since they do not fight for the religion of unbelief (*dīn al-kufr*) if they become apostates, in contrary to men.”<sup>4</sup>

The following tables give a summary of the above text:

Abū Ḥanīfa	Mālik	aš-Šāfiʿī	Aḥmad ibn Ḥanbal	
compulsory to kill (imprison women); unrelated to the call to repent	should be asked to repent		= Mālik	should not be asked to repent
repentance accepted				
3 delays		no delay	different versions	

Ḥasan al-Baṣrī	Wāṣil ibn ‘Atā’		Sufyān aṭ-Ṭawrī
cannot be asked to repent; should not be killed immediately	Muslims should not be asked to repent	former unbelievers should be asked to repent	should be asked to repent

## 2 Apostasy in modern Egyptian law

From among the Egyptian laws, only family laws (*aḥkām al-aḥwāl aš-šaḥṣiyya*) are those that are almost entirely based on Islamic law: the provisions of marriage, divorce, childcare and inheritance.<sup>5</sup> Marriage laws include the provision that in some cases the court may pronounce divorce (which is, in general, the husband’s exclusive

<sup>4</sup> This goes back to the two kinds of interpretations concerning the word “*man*” in the *ḥadīth* above. The first considers *man* as a word having both masculine and feminine connotations, while the second interprets it as relating only to men.

<sup>5</sup> The full text of the Egyptian constitution and laws are available in Arabic on the Egyptian government’s website: <https://www.egypt.gov.eg/arabic/laws/default.aspx> [last accessed 5 August 2017].

and out-of-court privilege). Some of these are beneficial to women, e.g. if the husband does not give any sign of life for a long time and does not provide for his family, or if he seriously abuses his wife. Besides, the court also has jurisdiction over such a case when one party converts to another religion, which is, however, very rare in the history of Islam. It is a peculiarly modern phenomenon that extremist Islamists attempt to use this law and the tribunal of family law to denounce their opponents as unbelievers. The reason for this is that family law is the only one in the Egyptian legal system where it is possible to establish apostasy, and then on that basis extremist Islamic groups can pronounce the traditional death sentence of Islamic law – which is not supported by state law – and may find someone who will finally execute it.<sup>6</sup> If the court decides on compulsive divorce (*tafīrīq*) due to the abandonment of religion, then as a consequence, the person will lose all his/her rights in the marriage in retrospect, as for example, the care for a child, or his/her right to remarry or inherit (Sammūr 2010).<sup>7</sup>

### 3 The case of Naṣr Ḥāmid Abū Zayd

The first case of apostasy which aroused great attention all over the world was the case of Naṣr Ḥāmid Abū Zayd between 1994 and 1996. Abū Zayd had been teaching at the University of Cairo and in 1992 applied for promotion to full professor. During this process, one of the members of the committee, ‘Abd aṣ-Ṣabūr Ṣāhīn, a well-known religious scholar, described him as an unbeliever on the basis of his publications. Based on this opinion, an Islamist lawyer filed a lawsuit to declare Abū Zayd and apostate and separate him from his wife.<sup>8</sup> Instead of asking for a legal decision (*fatwā*) – as happened earlier in another case<sup>9</sup> –, the lawsuit was probably necessitated because Abū Zayd had not previously been sufficiently well-known to achieve any political gain from such a decision. It was the lawsuit which made him famous at home and abroad alike.

Abū Zayd expressed in many books and articles his radically novel opinion on the re-interpretation of Islamic texts, the need to develop a new Islamic discourse and the freedom of debate and thought.<sup>10</sup> Another question in which he had his voice

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<sup>6</sup> Previously, family members had been charged with apostasy only in some cases of inheritance in order to exclude these persons from the inheritance, but these cases never reached the trial stage, ending in out of court reconciliation. Cf. Berger, 2005:3–4, 89ff.

<sup>7</sup> For further details between the relationship between Islamic law and the Egyptian legal system, see El Fegiery 2013.

<sup>8</sup> Cf. among others Loza 2013, Wild 1996, Abū Zayd’s own description (Abu Zaid 1998).

<sup>9</sup> See the murder case of Farag Fōda below.

<sup>10</sup> See more recently, e.g. Abū Zayd 2006. On the difficulties and near impossibility of the newly emerging discourse on the Qur’ān as a text, see Wielandt 1996.

heard and in which his accusers were personally involved was a great fraud that was revealed in the early 1990's. This fraud was committed by some banks and businesses that operated on the principles of Islamic law and that enjoyed the support of some Muslim scholars, resulting in hundreds of thousands of people losing their investments (Abu Zaid 1998:47).

On 27 January 1994, the Giza Family Court dismissed the action against Naṣr Ḥāmid Abū Zayd because of the lack of direct personal involvement of the applicant in the case, which is obligatory under Egyptian law in civil procedures (Berger 2003 and 2005). However, on 4 June 1995, the Cairo Appeal Court (*Maḥkamat al-Isti'nāf*) accepted the action on the basis of the principle of *ḥisba*, which means that to defend public morals, actions can be filed by a person even if he/she has not direct involvement in the case. So the lower court's judgment was altered in favour of the plaintiff. The judge, 'Abd al-Ālim Mūsā, who had been working for years in Saudi Arabia, so might have been influenced by Wahhābī doctrines, found Abū Zayd an apostate, and declared his marriage with Ibtihāl Yūnis invalid. In the judgment, *inter alia*, the judge ruled that the accused was guilty of calling unlawful the discriminatory per capita tax (*ḡizya*) levied on Christians and Jews, and based on Q 9:29, furthermore, he did not accept that the keeping of slave girls was allowed on the basis of unequivocal Qur'ānic verses, and what is even more, he also stated that he does not believe in Jinns, which are also mentioned at several places in the Qur'ān (Berger 2005:95–96).

The first two charges are significant primarily in a historical perspective, since neither *ḡizya* nor slavery exist either in contemporary Egypt or even Saudi Arabia. Concerning the third accusation, Cook (2000:47) has proven that it was not true, since Abū Zayd merely wrote that the presence of Jinns in the Qur'ān was a historical necessity because of (the still common) popular religious beliefs which were deeply rooted at the age of the Prophet Muḥammad in 7<sup>th</sup> century Arabia. So why did the judge base his judgment on these charges instead of the hermeneutical methods of Abū Zayd, which aroused the anger of religious scholars? Obviously, because these simple questions were easily understood by the large sections of the population who were targeted by the whole trial and judgment. The ruling, in addition to Islamic law, also referred to the Egyptian constitution, Article 12 of which refers to the obligation to protect morals and traditions.<sup>11</sup> On the basis of this Article, the courts, in order to protect the public interest (*maṣlaḥa 'amma*), may consider it a disruption of the

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<sup>11</sup> Constitution of the Arab Republic of Egypt 1971, Article 12: "Society shall be committed to safeguarding and protecting morals, promoting genuine Egyptian traditions. It shall give due consideration, within the limits of law, to high standards of religious education, moral and national values, historical heritage of the people, scientific facts and public morality." [http://www.palatauruscentrostudi.eu/doc/EGY\\_Constitution\\_1971\\_EN.pdf](http://www.palatauruscentrostudi.eu/doc/EGY_Constitution_1971_EN.pdf) [last accessed 15 November 2017]

public order if a Muslim converts to another religion or renounces Islam, however, the legal requirements for this were not fulfilled in this case (Berger 2005:90ff). Although the judgment could not have any other consequences beyond divorce under Egyptian law, the couple emigrated out of fear, which Abū Zayd later justified with the constant death threats and the unbearable police protection. They had not waited until the case was brought to the Egyptian Court of Cassation (*maḥkamat an-naqd*) in 1996, although it should be pointed out that this court also found Abū Zayd guilty. Abū Zayd became a professor at the University of Leiden where he stayed until his death in 2010.<sup>12</sup>

Although the state did not defend Abū Zayd, but simply hushed up his case, the whole procedure and especially the judgment had a far reaching effect. This happened because the judge not only condemned Abū Zayd, but in his verdict, he called on Egyptian Muslims to bring to the court as many similar actions as possible against persons whose writings or statements of opinion posed a threat to Islam and thus to the Egyptian state, which is based on Islam. This call triggered an unprecedented wave of actions filed in the courts. Although no verdict was rendered, the Ministry of Justice, in order to prevent the further influx of actions, submitted to the People's Assembly an amendment of the Civil Code in 1996 with the so-called *ḥisba* law, according to which only the public prosecutor may institute legal proceedings in cases of violation of public morality and religion in which nobody has any personal interest (Murphy 2002:209). From that time on, indictments have to be submitted to the public prosecutor, who considers whether to institute court proceedings.<sup>13</sup> This amendment of the law was justified by the fact that even at the time when the courts had been fully based on Islamic law, only the *muḥtasib*<sup>14</sup> – usually translated as “market inspector” – had the right to turn to the judge in such cases, and his power in the modern state was taken over by the public prosecutor.<sup>15</sup>

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<sup>12</sup> On the consequences of the case and its social effects, see Agrama 2012:42–68, Chapter One “The Legalization of Hisba in the Case of Nasr Abu Zayd”.

<sup>13</sup> This addition has remained part of the new Egyptian Civil Code as well, cf. *Qānūn al-aḥwāl aš-šaḥṣiyya al-ġadīd*, §. 6. Cf. Berger, 2005:94, fn. 386. See also the detailed discussion of the parliamentary debate and the new legislative amendment on *ḥisba* in *al-Ḥayāt* (5 February 1996) *Da'āwī l-ḥisba tukarriruhā ad-dawla al-miṣriyya*.

<sup>14</sup> The origin of the words *ḥisba* and *muḥtasib* is not clear and they do not appear in the Qur'ān. Their first descriptions have come down to us from the 11<sup>th</sup> century, much later than their first mention by historians.

<sup>15</sup> It should be noted that, despite this measure, the number of such submissions did not cease, in 2016, the figure was even 30% higher than in the previous year, when 6500 such requests were submitted in Egypt, primarily by women who seem to believe that this might be an effective way to break their unwanted marriage, not taking into account the fact that it is extremely difficult to pronounce divorce on the basis of apostasy and that even women have other means to obtain divorce more easily (al-Fawzān 2017).

#### 4 The court action against Nawāl as-Sa'dāwī

In February 2001, Nabīh al-Waḥš, an Islamist lawyer,<sup>16</sup> initiated legal proceedings in a Cairo personal status court against Nawāl as-Sa'dāwī (b. 1931), physician, psychiatrist and feminist writer, accusing her of expressing contempt for the Islamic faith, thereby having become an apostate (Dawoud 2001; Gardner 2001). He asked the court to establish the apostasy (*ridda*) on the basis of the evidence presented and the testimony of religious leaders, and to divorce the writer from her husband, the physician and writer Šarīf Ḥitāta (1923–2017), annulling their marriage on the basis of the law (based on the *šarī'a*) that an apostate woman (*murtadda*) cannot be the wife of a Muslim man, and *vice versa*, an apostate man (*murtadd*) cannot remain a Muslim woman's husband (Salīm 2009:158–159, 163–164). The court is only entitled to declare the divorce, the establishment of apostasy is the task of religious scholars. The court, however, takes this into account, and the consequence of the forced divorce would be that there is now a court ruling on unbelief.

However, Nabīh al-Waḥš, the lawyer who filed the charges, said before the trial that their target is met even if the court did not separate the author from her husband, but the aroused media attention would deter her from further statements and writings against Islam. “Whether she has to divorce her husband or not, is not important. What matters is that she should keep her opinions to herself, because they are against Islam. These opinions are poison for Muslims” (Gardner 2001). In contrast, Nawāl as-Sa'dāwī has repeatedly emphasised that she considered herself to be a good Muslim, but everyone should have the right to write what he or she thinks and believes (*Ibid.*). It does seem, however, that this is not so in contemporary Egypt.

Who is the person accused? For decades, Nawāl as-Sa'dāwī has been the number one “public enemy” in certain Egyptian religious and political circles.<sup>17</sup> In the 1960s, she held a high post in the Ministry of Public Health, but lost it as a result of a heated discussion following the publication of her first feminist book, “Woman and Sex” (*al-Mar'a wa-l-ġins*) in 1972. In this book, she advocated women's equality, and free divorce, at the same time condemning the suppression of women, and protest against female genital mutilation, traditionally sanctioned by religious leaders (as-Sa'dāwī 1972). For a while, she was the editor of a feminist magazine *Confrontation* (*al-Muwāġaha*), but she was also removed from here and imprisoned in 1981. Referring to this she wrote in her memoirs that “truth in a time of lying cannot be absolutely

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<sup>16</sup> This appellation refers in Egypt to lawyers who studied secular law, and who, in the service of various extremist religious groups, sued certain members of the “secular” intelligentsia regarded as enemies in the past few decades.

<sup>17</sup> For her biography, see Jalaluddin 2015, Belton & Dowding 2000, Cooke 2015, and as-Sa'dāwī (El Saadawi) 2002.

free”.<sup>18</sup> Her books have been translated into more than 30 languages. Her fame is mainly due to her documentary novel, *Woman at point zero* (*Imra’at ‘inda nuqṭat aṣ-ṣifr*), which contains the conversations she has conducted as a psychiatrist with a woman of ill fortune sentenced to death for killing her husband (as-Sa’dāwī 1977).

Why were the Islamist extremists in their fierce reaction trying to turn to the court in their outrage? In January 2001, in the year 1421 of the Muslim calendar, just before the month of the Meccan pilgrimage, when thousands of Egyptian Muslims were already making preparations for it, as-Sa’dāwī<sup>19</sup> agreed to give an interview to a journalist of the periodical *al-Mīdān* which was published with omissions and in a much simplified way, titled “Nawāl as-Sa’dāwī says that the pilgrimage is a heathen custom and kissing the Black Stone in the Ka’ba” – an important element of the ritual of pilgrimage according to ancient tradition – “counts as idol worship”.<sup>20</sup> Since pilgrimage is the fifth pillar of Islam, the statement caused a great outrage.<sup>21</sup> At the same time, it is undeniable that there had been pilgrimage in Arabia in the pagan period (*ḡāhiliyya*) prior to the emergence of Islam, and the Islamic ritual is very close to the pagan ritual, as is acknowledged by the Qur’ān itself. However, the main difference, according to the Qur’ān and contemporary scholars alike, is that Muslims think of God as they follow the rites of the pilgrimage while pagan Arabs only honoured their ancestors.<sup>22</sup> The then Grand Mufti, Sheikh Naṣr Farīd al-Vāṣil declared that if the report contained what Nawāl al-Sa’dāwī had said, then she had indeed rejected Islam and should be considered an apostate (Hepburn 2001).

Nawāl as-Sa’dāwī, however, did not only get into conflict with this single statement with the religious elite. More outrage has been caused by the words with which she attacked the Islamic legal basis of the law of inheritance. By law, women are entitled to half of what men inherit. In her view, this is not only legally but also

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<sup>18</sup> as-Sa’dāwī 2000:13 (الصدق في زمن الكذب لا يمكن أن يكون حراً طليقاً), see also e.g. Sharma 2001. Translated (as-Sa’dāwī 1986) as “nothing is more perilous than truth in a world that lies”.

<sup>19</sup> The reporter of the journal *al-Mīdān* was Waḥīd Rifāt, who called his own report “astonishing” (*al-Mīdān*, March 2001).

<sup>20</sup> The second caliph, ‘Umar I (634–644), had already resented the kissing of the Black Stone (*al-ḥaḡar al-aswad*) – a rock of possibly meteoritic origin built into the Eastern corner of the Ka’ba –, saying: “You are just a stone that cannot do any harm or be beneficial. Had I not seen the Prophet kissing you, I would not have kissed you.” Ibn Ḥaḡar al-‘Asqalānī, *Fath*, III, 541, no. 1520.

<sup>21</sup> At the same time Nawāl as-Sa’dāwī emphasised that she considered the pilgrimage as one of the pillars of Islam which she did not want to attack, and that her critique related to some of its rituals. Cf. e.g. a report with her in *aṣ-Ṣarq al-awsaṭ*, 24 April 2001.

<sup>22</sup> Q 2:200: “And when you have completed your rites, remember Allah like your [previous] remembrance of your fathers or with [much] greater remembrance.” English translation of *Sahih International* (<https://quran.com>).



socially unfair, because in today's Egypt only women work in 30% of the families, they are paying the costs and they would need a full share from the inheritance of their fathers, husbands and other relatives. These words provoked the disapproval of Egyptian men in general, while religious scholars considered it as an attack against the fundamentals of Islam, since the laws of inheritance are based on Qur'anic legislation (Q 4:11-12, 4:176). It was also considered outrageous that in the same interview she attacked the veiling of women saying that this was not a Muslim practice at the time of the Prophet Muḥammad, but its origin should be sought in earlier Jewish and Christian customs in the Middle-East taken over by Muslims at a later period.<sup>23</sup> Many, however, consider that the veiling of women belongs to the fundamental tenets of Islam.<sup>24</sup>

## 5 The foundation of the lawsuit

The question arises what is the legal basis for someone to doubt another person's religious affiliation. This is in fact derived from the idea of ancient tribal cohesion (*aṣabiyya*), which became incorporated into Islam as a foundation of the life of the entire community of Muslims. According to Q 3:103 everybody should "hold firmly to the rope of Allah" in order not to become divided. This is the only way for the members of the community to escape the fire of Hell and follow the right path: "And let there be [arising] from you a nation (*umma*) inviting to [all that is] good, enjoining what is right and forbidding what is wrong" (Q 3:104).<sup>25</sup> This is also the basis of true faith. Another verse interprets the concept of "right" action (*ma'rūf*) very interestingly, when it uses another form of the same root (*'arafa* "to know"): "Enjoin [Oh,

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<sup>23</sup> She is not alone with this view. Several scholars have said earlier that the veiling of women has no basis in the Qur'ān or in the traditions of the Prophet Muḥammad, i.e. the fundamental texts of Islamic law, but it takes its origin in a Persian urban custom of the pre-Islamic era. The most well-known among these scholars was Imam Muḥammad 'Abduh, Grand Mufti of Egypt between 1899 and 1905, see Abduh 1993: II, 105–113: "Ḥiḡāb an-nisā' min al-ḡiḡa ad-dīniyya" (Women's veil from the religious point of view"). Cf. Ṭāhā 1967:158–161, "*al-ḡiḡāb laysa aṣlan min al-islām*". A similar view was expressed more recently by Ġamāl al-Bannā (2002). See also al-Ġawādī 2003. Face veil (*niqāb*) was banned in 1995 at Egyptian schools by the Minister of Education. When a father of two teenage girls – who had been barred from entering their secondary school wearing a face veil – undertook a case against the minister and the principal of their school, the court ruled against him and established that the decree did neither contradict the provisions of the Constitution nor was it contrary to Islamic regulations concerning the dress of women (Brown & Lombardi, 2006).

<sup>24</sup> Cf. e.g. al-Kubaysī 2001.

<sup>25</sup> Later, this expression has become a morally obliging legal term known as "*al-amr bi-l-ma'rūf wa-n-nahy 'an al-munkar*".

Muḥammad] what is good (*urf*)” (Q 7:199). This word is then interpreted in the meaning of *maʿrūf* (Ibn Kaṭīr, *Tafsīr*).

From among the countless mediaeval interpretations of this Qurʾānic command, suffice it to mention here that of Abū Ḥāmid al-Ġazālī (d. 1111). He regards this as an individual duty (*farḍ ʿayn*) of every Muslim, but also says that one must first examine himself/herself whether he/she is on the right path and if so, only then he/she can warn others. This warning, however, should also be done in private, not in front of others (al-Ġazālī, *Ihyāʾ*, II, 303). This is the exact opposite of the contemporary interpretations of this Qurʾānic passage on “commanding right”. Those who “command and forbid” consider themselves above all criticism, while they publicly criticize and condemn those who hold different views (al-Qaraḍāwī 1980:12ff).

Although *enjoining what is right and forbidding what is wrong* have originally been considered a personal task, an institution emerged in the Islamic world in the 10<sup>th</sup> century, this is *ḥisba*, the office of the person responsible for the implementation of this Qurʾānic decree in a town, for the supervision of morals, especially at the markets. This person, the *muḥtasib*, together with the *qāḍī* and the police chief was one of the most important persons in the life of a town. The existence of this office shows well that already in the Middle Ages it was the *muḥtasib*’s task to inspect public morals and turn to the court to accuse a person of immorality. Apart from him, no other person could do this. In other words, it means that *ḥisba*, i.e. the inspection of public morals and the denunciation of persons who do not observe these morals to the *qāḍī* or the police chief is not individual, but collective duty (*farḍ kifāya*), which should be carried out by a member of the community designated for this task (al-Ġazālī, *Ihyāʾ*, II, 320).

It is only in the last half century that has become customary – and not just in Egypt – to take the initiation of a legal action in one’s own hands, harass, or even kill with alleged reference to the Qurʾānic command. In Egypt, the first such notorious case was the assassination of Farag Fōda in 1992 who had fought for the secularisation of the country. The attack was carried out by the extremist movement, al-Gamāʿa al-Islāmiyya (“The Islamic Group”), but was also sanctioned by the previously issued *fatwa* of Muḥammad al-Ġazālī, a sheikh of al-Azhar, in which he declared Farag Fōda an apostate (*murtadd*) for his views on secularism. In addition, he subsequently referred to the murder as legitimate during the trial of the murderer (Kamāl 2016). At the hearing, the murderer stated that he had to kill the victim because of his writings expressing unbelief, although he had not read a line because he was illiterate. Before his execution, he said that the rope of hanging will bring him to Paradise (*Qāṭil Farag Fōda ...* 2015). The case was also turned into a highly successful Egyptian film against Muslim extremists, under the title “The terrorist” (*al-Irhābī*) (Ġalāl 1994). To prove that not all Muslims agree on the legitimacy of the immediate assassination of apostates, suffice it to quote the title of only one book:

“The Killing of the Apostate: The Crime which was Prohibited by Islam (*Qatl al-murtadd: al-ğarīma llatī ħarramahā l-islām*) (Idlibī 1993).

## 6 The outcome of Nawāl as-Sa’dāwī’s case

Despite the fact that on the basis of the 1996 *ħisba* amendment, there was no legal justification for the case against Nawāl as-Sa’dāwī, the court took a long time to reach a decision, but finally, on 9 July 2001 they announced in front of the representatives of international journalists that this case cannot be tried at a court, so they considered it definitely closed. Although as-Sa’dāwī expressed her joy over this decision, at the same time she voiced her anxiety because of the long time which was necessary for the court to take this decision, thereby making it possible for the Islamist forces to wage war against her and the freedom of expression (Hepburn 2001). According to the general opinion of intellectuals called “laymen” (*‘almāniyyūn*) by extremist Islamists, the freedom of expression suffered a great blow in Egypt (Gardner 2001; Şalāĥ 2014; Saeed 2004; Sookhdeo 2009).

Despite the fact that Nawāl as-Sa’dāwī was not condemned in a trial, and in fact there was no trial at all, her persecution by Islamist extremist continued until she was forced to flee Egypt for a time.

## REFERENCES

### A. Primary sources

- ‘Abduh, Muĥammad, *A’māl* = Muĥammad Abduh, *al-A’māl al-kāmila*. Edited by Muĥammad ‘Amāra. Cairo & Beirut: Dār aš-Şūrūq, 1993.
- Constitution of the Arab Republic of Egypt 1971*, [http://www.palatauruscentrostudi.eu/doc/EGY\\_Constitution\\_1971\\_EN.pdf](http://www.palatauruscentrostudi.eu/doc/EGY_Constitution_1971_EN.pdf) [last accessed 15 November 2017]; <https://www.egypt.gov.eg/arabic/laws/default.aspx> [last accessed 5 August 2017].
- al-Ġazālī, *Iĥyā’* = Abū Ĥāmid Muĥammad al-Ġazālī, *Iĥyā’ ‘ulūm ad-dīn*. Cairo: al-Maṭba‘at al-Maymaniyya, 1895.
- al-Ġazālī, *Munqid* = Abū Ĥāmid Muĥammad al-Ġazālī, *al-Munqid min ad-ḍalāl*. (= *Mağmū‘at Rasā’il al-Imām al-Ġazālī*, 7). Beirut: Dār al-Kutub al-‘Ilmiyya, 1988.
- Ibn Ĥaġar al-‘Asqalānī, *Fath* = Aĥmad ibn ‘Alī ibn Ĥaġar al-‘Asqalānī, *Fath al-bārī: šarĥ Şaĥīĥ al-Buĥārī*. Cairo: Dār ar-Rayyān li-t-Turāt, 1986.
- Ibn Katīr, *Tafsīr* = ‘Imād al-Dīn Abū l-Fidā’ Ismā‘īl Ibn Katīr, *Tafsīr al-Qur’ān al-‘azīm*. Beirut: Mu’assasat ar-Risāla, 2000.

- Qānūn *al-aḥwāl aš-šaḥṣiyya al-ġadīd*. [http://www.egypt.gov.eg/arabic/laws/personal/chp\\_one/part\\_one.aspx](http://www.egypt.gov.eg/arabic/laws/personal/chp_one/part_one.aspx) [last accessed: 16 March 2017].
- al-Qurān al-Karīm*. Arabic text and English translation of Sahih International <https://quran.com> [last accessed 10 October 2017]; Translated into English by Alan Jones. Gibb Memorial Trust, 2007.
- aš-Ša'rānī, Mīzān = 'Abd al-Wahhāb aš-Ša'rānī, *Kitāb al-Mīzān*. Edited by 'Abd ar-Raḥmān 'Umayra. 3 vols., Beirut: 'Ālam al-Kutub, 1409/1989.

## B. Secondary sources

- Abū Zayd, Naṣr Ḥāmid. 1998. "Inquisition trial in Egypt". *Recht van de Islam* 15.47–55.
- \_\_\_\_\_. 2006. *Reformation of Islamic thought: a critical historical analysis*. Amsterdam: Amsterdam University Press, 2006.
- Agrama, Hussein Ali. 2012. *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*. Chicago & London: The University of Chicago Press.
- al-Bannā, Ġamāl. 2002. *al-Ḥiġāb*. Cairo: Dār al-Fikr al-Islāmī.
- Belton, Brian and Clare Dowding. 2000. *Nawal El Saadawi – a creative and dissident life*. <http://infed.org/mobi/nawal-el-saadawi-a-creative-and-dissident-life/> [last accessed: 16 March 2017].
- Berger, Maurits S. 2003. "Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts". *Human Rights Quarterly* 25.3.720-740.
- \_\_\_\_\_. 2005. *Sharia and public policy in Egyptian family law*. Amsterdam: University of Amsterdam.
- Brown, Nathan J. and Clark B. Lombardi. 2006. "The Supreme Constitutional Court of Egypt on Islamic Law, Veiling and Civil Rights: An Annotated Translation of Supreme Constitutional Court of Egypt Case No. 8 of Judicial Year 17 (May 18, 1996)". *American University International Law Review* 21.3.437–460.
- Cook, Michael. 2000. *The Koran – a very short introduction*. Oxford: University Press.
- Cooke, Rachel 2015. "Nawal El Saadawi: 'Do you feel you are liberated? I feel I am not'". *The Observer* (11. 10. 2015). <https://www.theguardian.com/books/2015/oct/11/nawal-el-saadawi-interview-do-you-feel-you-are-liberated-not> [last accessed: 16 March 2017].
- Dawoud, Khaled. 2001. "Case of excitement". *Al-Ahram Weekly Online* (12–18 July 2001, No. 542). <http://weekly.ahram.org.eg/Archive/2001/542/eg7.htm> [last accessed: 16 March 2017].

- El Fegiery, Moataz Ahmed. 2013. "Islamic Law and Freedom of Religion: The Case of Apostasy and Its Legal Implications". *Muslim World Journal of Human Rights* 10.1.1–26.
- al-Fawzān, 'Abd al-'Azīz ibn Fawzān. 2017. "Miṣr: 'Maḥkamat al-usra' 6500 qadiyyat ṭalāq fī 'ām bi-sabab ar-ridda 'an ad-dīn". *al-Multaqā al-fiqhī* 1438/06/12 (11/03/2017) 05:55 <http://fiqh.islammesssage.com/NewsDetails.aspx?i15955> [last accessed: 16 March 2017].
- Ġalāl, Nādir, director. 1994. *al-Irhābī* (film). Cairo. <https://www.youtube.com/watch?v=1n2WCWhJPM> [last accessed: 16 March 2017].
- Gardner, Frank. 2001. "Court to hear Egypt apostasy case". *BBC News Middle East* (9 July 2001) [http://news.bbc.co.uk/2/hi/middle\\_east/1429415.stm](http://news.bbc.co.uk/2/hi/middle_east/1429415.stm) [last accessed: 16 March 2017].
- al-Ġawādī, Muḥammad. 2003. "al-Ustād al-imām Muḥammad 'Abduh". *Maqāṣid aš-šarī'a wa-qadāyā al-'aṣr. Abḥāt wa-waqā'i' al-mu'tamar al-'āmm at-tānī wa-l-išrīn li-l-Maḡlis al-A'lā li-š-Šu'ūn al-Islāmiyya* VII, 2. Cairo: al-Maḡlis al-A'lā li-š-Šu'ūn al-Islāmiyya.
- Hepburn, Samira. 2001. "No compromise". *BBC News, World Edition* (26 October 2001) <http://news.bbc.co.uk/2/hi/programmes/correspondent/1619902.stm> [last accessed: 16 March 2017].
- Hilālī, Sa'd ad-Dīn Mus'ad. 2003. "Mawqif al-islām min ar-ridda". *Maqāṣid aš-šarī'a wa-qadāyā al-'aṣr. Abḥāt wa-waqā'i' al-mu'tamar al-'āmm at-tānī wa-l-išrīn li-l-Maḡlis al-A'lā li-š-Šu'ūn al-Islāmiyya* III, 12. Cairo: al-Maḡlis al-A'lā li-š-Šu'ūn al-Islāmiyya.
- Idlibī, Muḥammad Munīr. 1993. *Qatl al-murtadd: al-ḡarīma llatī ḥarramahā l-islām*. Damascus: Dār al-Ahālī.
- Jalaluddin, Ivanaliza. 2015. *Oppression on Women as Portrayed in "Celia, A Slave" and "Woman at Point Zero": A Comparative Literature*. PhD Dissertation <http://repository.usu.ac.id/handle/123456789/53599> [last accessed: 16 March 2017].
- Kamāl, Rabāb. 2016. "Dikrā Farag Fōda: A hunāka dimā' alā ḡilbāb al-Azhar!" *Miṣriyyāt* (08. 06. 2016) <http://masreiat.com/opinion/2016/jun/08/39888> [last accessed: 16 March 2017].
- al-Kubaysī, 'Iyāda ibn Ayyūb. 2001. *Libās at-taqwā wa-t-taḥaddiyāt al-mu'āšira li-l-mar'a l-muslima*. Dubai: Dār al-Buḥūt li-d-Dirāsāt al-Islāmiyya wa-l-ḥyā' at-Turāt.
- Loza, Pierre Roshdy. 2013. *The case of Abu Zaid and the reactions it prompted from Egyptian society*. Georgetown University, Washington, MA Dissertation. [https://repository.library.georgetown.edu/bitstream/handle/10822/558329/Loza\\_georgetown\\_0076M\\_12035.pdf?sequence=1](https://repository.library.georgetown.edu/bitstream/handle/10822/558329/Loza_georgetown_0076M_12035.pdf?sequence=1) [last accessed: 16 March 2017].

- Muḥammad, ‘Abīd and Nağwā ‘Abd al-‘Azīz. 2001. “Maḥkama miṣriyya tanzur qaḍiyya li-t-tafrīq bayna l-kātiba Nawāl as-Sa’dāwī wa-zawġihā”. *aš-Šarq al-Awsaṭ* No. 8183, 24.04.2001. <http://archive.aawsat.com/details.asp?section=4&issueno=8183&article=36655#.WICrRDdG2Uk> [last accessed 7 October 2017].
- Murphy, Caryle. 2002. *Passion for Islam: Shaping the Modern Middle East: The Egyptian Experience*. New York: Scribner.
- al-Qaraḍāwī, Yūsuf. 1980. *al-Ḥalāl wa-l-ḥarām fī l-islām*. Beirut & Damascus: al-Maktab al-Islāmī.
- Qātil Farag Fōda .. *lā yaqra’*. 2015. <http://againsterhab.com/?p=16198> (8 June 2015) [last accessed: 16 March 2017].
- as-Sa’dāwī, Nawāl. 1972. *al-Mar’a wa-l-ġins*. Cairo: an-Nāširūn al-‘Arab.
- \_\_\_\_\_. 1977. *Imra’a ‘inda nuqtat aš-šifr*. Beirut: Dār al-Ādāb.
- \_\_\_\_\_. 1986. *Memoirs from the Women’s Prison*. Transl. by Marilyn Booth. London: Women’s Press.
- \_\_\_\_\_. 2000. *Muḍakkirātī fī siġn an-nisā’*. Beirut: Dār al-Ādāb.
- \_\_\_\_\_. 2002. *Walking through Fire: The Later Years of Nawal El Saadawi*. Transl. by Sherif Hetata. London: Zed Books.
- Saeed, Abdullah and Hassan Saeed. 2004. *Freedom of Religion, Apostasy and Islam*. New York: Routledge.
- Šalāḥ, Tahānī. 2014. “Qaḍyā l-ḥisba ḍidd ḥurriyyat ar-ra’y wa-t-ta’bīr”. *al-Ahrām* 06. 02. 2014.
- Salīm, ‘Iṣām Anwar. 2009. *Mabādi’ an-naẓariyya l-‘amma li-l-aḥwāl aš-šaḥṣiyya li-ġayr al-muslimīn min al-miṣriyyīn*. Alexandria: Maṭba‘at Nūr al-Islām.
- Sammūr, Māġid Tawfiq Ḥamāda. 2010. *at-Tafrīq bayna z-zawġayn li-r-ridda aw ibā’ al-islām*. PhD dissertation. Gaza: al-Ġāmi’a al-Islāmiyya, Kulliyat aš-Šarī’a wa-l-Qānūn. <http://library.iugaza.edu.ps/thesis/93081.pdf> [last accessed: 16 March 2017].
- Sharma, Kalpana. 2001. “Egypt’s Face of Courage”. *The Hindu* (03. 06. 2001) <http://www.thehindu.com/2001/06/03/stories/13030786.htm> [last accessed: 16 March 2017].
- Sookhdeo, Patrick. 2009. *Freedom to Believe: Challenging Islam’s Apostasy Laws*. McLean, VA: Isaac Publishing.
- Ṭāhā, Maḥmūd Muḥammad. 1967. *ar-Risāla at-tāniya min al-islām*. Khartoum.
- Wielandt, Rotraud. 1996. “Wurzeln der Schwierigkeit innerislamischen Gesprächs über neue hermeneutische Zugänge zum Korantext”. In: *The Qur’an as Text* edited by Stefan Wild, 257–282. Leiden: E. J. Brill.
- Wild, Stefan, ed. 1996. *The Qur’an as Text*. Leiden: E. J. Brill.