

THE IMPLEMENTATION OF THE “KHUL’ LAW” IN EGYPTIAN COURTS SOME PRELIMINARY RESULTS

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1 Introduction

On 26 January 2000 the Egyptian parliament passed a new procedural law on Personal Status. Three days later, the president of Egypt, Hosni Mubarak, promulgated the law in the Official Gazette as Law No. 1 of the year 2000. The new law aimed at facilitating and speeding up litigation in matters pertaining to Personal Status disputes such as divorce, by compressing the 600 clauses of the old procedural law into seventy-nine.

One of its clauses included a new interpretation of *khul’*. According to this new interpretation of *khul’* a woman has the right to divorce her husband on any grounds, as long as she renounces her dower and all her financial rights. The clause proved highly controversial and provoked widespread public discussion in the People’s Assembly, among the *‘ulamā’*, and among the general public.¹ Even so, this did not prevent the government from implementing the new law.

However, the success of any legal reform is dependent on two main factors, the attitude of the general public at the grassroots level toward the new reform and the interpretation given to it by judges. When women gain broader divorce rights, there is no automatic change in long established and internalized cultural values regarding women’s role and status in society. Similarly judges may obstruct any reform that contradicts their social and legal beliefs by interpreting it in a manner different from that intended by legislators. The determining effect of legal reform cannot be assumed. In this paper, I intend to analyze to what extent and in which way the new *khul’* law is implemented in the courts in Egypt. I would like to remind the reader that I have not studied the matter in sufficient depth as to be able to provide a detailed and conclusive answer to the question posed above. The preliminary results presented in this paper are the result of a MA thesis which I wrote in 2002 as well as short periods of fieldwork which I conducted in January 2002 and in May and June 2003.

The judiciary is classified under the Ministry of Justice. Exceptions are the Council of State, the High Constitutional Court, and the socialistic Prosecutor. In 1955 the *sharī'a* courts were abolished after which all cases were heard in the National Courts.² The new courts for Personal Status were instructed to apply a combination of substantive Islamic family law and Western-inspired regulations of evidence and procedure.³

The independent Supreme Judiciary Council appoints judges for life. Judges should be independent and their status is irrevocable. In January 2003 Egypt appointed its first female judge (to the High Constitutional Court), Tehani al-Gebali. Until then, the judiciary was a fortress of male power even though the law does not forbid women from becoming judges or prosecutors.

In his study on *sharī'a* courts in twentieth century Egypt Shaham concludes: "...the *qādīs*, judges, did not fail in implementing the reforms. The obstacle to social change was not mainly the *sharī'a* legal system but rather pressures coming from the society itself".⁴ Shaham wonders if the benevolence of the judges to implement the reforms can be related to the relatively liberal atmosphere in Egypt of the 1920s and 1930s.⁵ My impression is that it did have an influence. In the more conservative 1970s and 1980s, Islamism gained wide popularity within the legal profession and the judiciary. The idea that the *sharī'a* needed to be implemented became increasingly popular in these circles.

In the 1990s Muslim lawyers have repeatedly endeavoured to prohibit certain activities due to their perceived non-Islamic character.⁶ A number of Islamist lawyers made a specialization of filing *hisba*⁷ cases (i.e. a procedure that allows an individual to file a complaint "on behalf of society" against a person alleged to have slandered Islam or stated heretical beliefs) against Egyptian intellectuals and writers in the early 1990s. One *hisba* case resulted in 1995 in a court order for the separation of university professor Nasr Abu Zayd from his wife. For the first time in the judicial history of contemporary Egypt, a judge publicly incited all Muslims to kill a person as a religious duty.

In response the government asked parliament to amend the *hisba* law, allowing only the prosecutor-general, after receiving complaints from individuals, to file such cases. In 1996 the new *hisba* law was instated. In 2001 Nabil al-Wahsh, an Islamist lawyer, took Nawal Saadawi to court. The lawyer made use of the second article of the Egyptian Constitution, which states that the *sharī'a*, is the main source of legislation in Egypt, and filed the *hisba* lawsuit against Saadawi, accusing her of belittling Islamic traditions in an interview with a magazine. The Personal Status Court rejected the lawsuit against Saadawi, ruling that al-Wahsh had overstepped Egyptian legal boundaries. The court ruled

that, according to the 1996 law, only a general prosecutor might file a *hisba* charge.

According to a study by Shmeis on the Zananiri Personal Status Court in Cairo, many judges opposed the 1979 reforms that extended women's rights for divorce. Some judges even admitted they had not applied the new reforms in the spirit of the legislator's expectations (1995). However, this opposition might be related to the fact that the constitutionality of the 1979 Personal Status Law was in question. As long as the High Constitutional Court had not issued a ruling on its constitutionality, a number of judges decided to freeze its application,⁸ which resulted in many delayed Personal Status lawsuits.

The new Personal Status Law of 2000, and in particular the *khul'* clause, was being appealed as well, by a man whose former wife had divorced him by way of *khul'*. The husband appealed the new law because he deemed it unconstitutional that the judge's ruling in case of *khul'* is irrevocable, and because he was of the opinion that the law violates the *sharī'a* since the consent of the husband is not required in granting a woman the right to *khul'*. However, in December 2002, the High Constitutional Court declared the new Personal Status law constitutional on the grounds that it did not violate the *sharī'a* because there are definitive Qur'anic verses supporting it, and because legislators have the right to promulgate a law whose rulings are not open to appeal, if there is an acceptable justification for it.⁹

Beside the (un) willingness of the judges, another factor plays an important role in the implementation of the new *khul'* law: the independence of the judiciary. Various authors have argued that the judiciary in Egypt assumed a much stronger independent role in Egyptian politics than it ever had before.¹⁰ Together with the Islamisation of the legal profession and the judiciary, this could seriously hinder the implementation of the new law in the spirit of the legislator's expectations. So far, however, the High Constitutional Court's ruling that the new Personal Status Law is constitutional seems to convey the opposite. Even so, to date, no research has been done as to the actual effects of the implementation of the new *khul'* law in the courts. For this reason I will present two *khul'* cases, which were brought before the Zananiri court of First Instance in Cairo, in March 2003.

3 The implementation of the *khul'* law in the courts

(1) The case of Abu Bishoy. In March 2003 Abu Bishoy, a lawyer, accepted as a client a woman who wants to divorce her husband by way of *khul'*.

Shortly after marriage the wife had discovered that her husband had lied to her about his profession. He had claimed that he works as an engineer, whereas

in reality, he works as a manual laborer. Furthermore, he used to hit her and take the money she earned with her job as a sport teacher for girls at a secondary school in Egypt. Finally, he accused her of betraying him.

When she decided to divorce him by way of *khul'*, he refused to accept this. However, Abu Bishoy explained that the proceeding of the case is not dependent on the husband's consent. The first thing he and his client had to take care of was paying back the dower to the husband. According to the marriage contract he had paid her a dower of one pound and a sum of ten thousand pounds was registered as the deferred dower. In front of the judge, the husband had to sign that his wife had returned the dower to him. The husband, however, refused to sign the document, where after the dower of one pound was kept in the safe of the court. Abu Bishoy remarked jokingly that he had traveled all the way from his office in Cairo to Tanta, where the husband is living, only to return a dower of one pound which is now waiting for its owner in the safe of the court. The journey by train and the taxes, on the other hand, had cost him forty pounds. He added that all the paper work was done by mail. However, with regard to the restitution of the dower and the reconciliation sessions, he had to travel to Tanta. At this moment [June 2003] he and his client are awaiting the reconciliation sessions. The wife has chosen her sister to act as her reconciliator.

(2) The case of Abu Wagih. On 30 March 2003 Abu Wagih, a lawyer, accepted as a client a woman who is working as a nurse in Saudi Arabia, and who requested a divorce by way of *khul'*. Earlier, she had requested her husband, who is working and living in Egypt, to divorce her by way of *ṭalāq*, something which he had refused. Since she is working in Saudi Arabia, she had asked Abu Wagih to act as her representative in Egypt. After a while the husband received an official document from the court in which he was requested to sign that his wife was divorcing him by way of *khul'*. The husband refused and instead he insisted on divorcing her by way of *ṭalāq*. Shortly after, the husband again received an official document from the court, this time stating that he wanted to divorce his wife by way of *ṭalāq*, and which he was supposed to sign. Since he also refused to sign this document, Abu Wagih again requested a divorce by way of *khul'* at the Zananiri court.¹¹

Shortly after the husband had to sign a document which stated that his wife had paid him back the dower and that he had received and accepted the dower. Abu Wagih pointed out that sometimes the return of the dower causes problems since the husband does not accept the returned dower. If he wants more, he will call witnesses to testify on his behalf that he paid her more than she has returned to him. However, in this case the husband accepted the dower and signed the document.

The next procedural step to be taken was the preparation of the reconciliation sessions. According to Abu Wagih, the court will choose neutral persons to act as reconciliators for the husband and the wife. Since his client was living abroad, Abu Wagih said that in this case the reconciliator of the wife will call her by telephone in order to try to reconcile the couple. If she refuses the reconciliation, this will be noted in her file, which will be circulated to the judge again.

After a while, it appeared that the judge insisted on the presence of the wife during the reconciliation sessions. Abu Wagih tried to overcome the request of the judge by letting her write a certified deposition in the *shahr al-'iqārī*, cadastre, at the Egyptian Embassy in Saudi Arabia, admitting in it that she refuses reconciliation and that she is determined in her request for *khul'*. After two months the judge ruled that her deposition was accepted.

According to Abu Wagih, the law obliges judges to propose reconciliation sessions, two times if the couple has children, and one time if the couple is childless. However, the law does not stipulate the necessity of the litigants to be present in person during the reconciliation sessions. For this reason, Abu Wagih thinks that the judge's insistence was due to instructions from the Ministry of Justice.

At the time of the session before the last (August 2003), Abu Wagih had a lot of other Personal Status cases in other courts as a result of which he was not able to attend the case of his client from Saudi Arabia. To overcome the problem, he sent one of his colleagues to the Zananiri court and the case was postponed to another date, which happened to coincide with another *khul'* case. Again, he will not be able to attend the session and again one of Abu Wagih's colleagues will replace him at the Zananiri court.

3.1 Returning the "real" or the "formal" dower?

What transpires from these two cases is the problem the reimbursement of the dower constitutes. Although the husband of Abu Wagih's client accepted the dower, Abu Wagih and Abu Bishoy both claim that the return of the dower is often problematic. Husbands frequently do not accept the dower payment, which is registered in the marriage contract, and take the case to a civil court in order to claim the "real" dower.

It is interesting to note that opponents as well as proponents of the new law criticised the *khul'* law on the ground that it would only be an option for rich women who could afford to relinquish their financial rights. However, during fieldwork many persons, working in the field of the judiciary and the NGOs, rejected the fact that the *khul'* law is only a law for rich women. They all

stressed that a husband seldom registers a dower of more than one pound in the marriage contract, although he normally pays the wife a dower which exceeds this one pound, something which is confirmed by the two *khul'* cases described above.

Marriage contracts are registered by the *ma'dhūn*, the state official responsible for drawing up Muslim marriage and divorce contracts. The higher the dower registered, the more taxes, *ḡarā'ib*, the husband needs to pay to the *ma'dhūn*. According to the persons just mentioned, Egyptians do not like to pay the *ma'dhūn* since he, as a state official, is associated with the corrupt Egyptian state. In case of divorce by way of *khul'*, a woman profits when her husband has paid her a dower which exceeds the registered sum of one pound in the marriage contract. According to Nihad Abu al-Qumsan, lawyer and director of the Egyptian Center for Women's Rights (NGO), ninety nine percent of all marriage contracts in Egypt have registered a dower of one pound. As a consequence of the introduction of the *khul'* clause in the new law, men are starting to include the real amount of dower payment in the marriage contract. "Now the system is getting fairer to both men and women", she says.

The problems related to the reimbursement of the dower did not go unnoticed in the field of the judiciary, which is proven by the many publications on the new *khul'* law which discuss this problem. For instance, in *Da'wā al-khul' li-l- muslimīn wa-li-l-masīḡiyīn wa-li-l-yahūd*, the lawyer Hisham Zwain, stresses the necessity for women to return the "real" dower instead of the dower registered in the marriage contract. He also poses the question as to how a husband can prove to the court the "real" dower which he has paid his wife.¹²

The Egyptian Center for Women's Rights has issued a pamphlet series: "A B Law", which uses simple language to educate Egyptian women on law and their legal rights. In the A B Law series on *khul'*, al-Qumsan and Muhsin, both lawyers, pose the following question: "What shall be the legal standing of the judge in case there arises a dispute between two spouses in establishing the amount of advanced dower, especially as it is a custom to register a very small amount in the [marriage] contract (one Egyptian pound)?" The answer: "In conformity to the stipulations of the [*khul'*] article [20], the wife is obliged to return the advanced dower as fixed in the marriage contract, that is to say, the logical amount of money which is called the similar dower, and not one pound only. If the advanced dower is defined in the marriage contract, but the husband pretends that he paid more than that in reality, then the court is obliged to rule the *khul'* if the wife has returned the stipulated amount in the marriage contract. Then, this paves the way for the husband to ask what he contends in an independent lawsuit in a special court of law that deals with that [issue]. If the advanced dower is not [clearly stated] in the marriage contract and a debate arises between the two parties in fixing its amount, then, in this case, the court resorts

to article 19 of law 25 of the year 1929 in order to determine exactly the dower. If the court is able to determine the value of the dower, but the wife denies that she received the dower from her husband, then the court is obliged to apply the general *sharī'a* norm, that is to say, that the evidence is incumbent upon the claimer and the oath on the disclaimer. That is to say, the husband has to prove, in all possible ways, the value of the dower given. The husband is obliged to prove that the wife has taken from him the advanced dower and he has to prove that by evidence (the testimony of witnesses). If the wife denies that, then the court will ask her to undertake a legal oath."¹³

Lawyer Abu Bishoy confirmed that if the husband takes the case to a civil court in order to claim the "real" dower, and if he can get witnesses and prove that he paid more than one pound, then a judge from the civil court might rule in favor of the husband and demand the woman to pay back to her husband the "real" dower. However, in the mean time a judge from the Personal Status court has granted the wife a divorce by way of *khul'*, the result being that the wife is divorced but her dower becomes decreed as a debt owed by the wife to the husband. He further remarks: "As a consequence of this complication, everybody is waiting for the Court of Cassation to issue a ruling on this matter. Although an Executive Memorandum was issued, it did not elaborate on how to handle complications with the dower as a result of which judges apply the law as they wish."

3.2 Reconciliation sessions

Another procedural problem in *khul'* lawsuits is related to the fact that it is not clear whether or not both husband and wife should be present during the reconciliation sessions. Where I tentatively remarked in my MA thesis¹⁴ that husbands pose a problem by not showing up for the reconciliation sessions, in the case of Abu Wagih exactly the opposite is true. Here the wife, who is working in Saudi Arabia, is not able to attend the reconciliation sessions in person. However, at first instance, the relevant judge did not accept that her lawyer is acting as her representative and insisted on her presence in person during the reconciliation sessions. Finally, this judge accepted the certified deposition the wife wrote. However, with large numbers of Egyptian men, and to a smaller extent also women, working abroad, it is to be expected that the prerequisite of showing up in person for the reconciliation sessions will place many women in a difficult, if not impossible, situation. Moreover, as transpires from the case of Abu Wagih, the law does not stipulate that litigants are obliged to be present in person during the reconciliation sessions. For this reason, Abu Wagih thinks that the judge's insistence is due to instructions from the Ministry of Justice.

On a deeper level, the judge's request is strange considering the remarks made by different lawyers and others working in the field of the judiciary and/or a number of different women NGOs. These people all claimed that going to a court symbolizes the end of a marriage. According to them, it means that all previous reconciliation efforts have failed and that the marriage cannot be saved anymore. Nevertheless, the new *khul'* law stipulates that a ninety-days reconciliation period is obligatory. It looks like the state, through the courts, is taking over tasks traditionally performed by the family, by providing a last recourse to reconciliation. This seems to be confirmed by a woman informant, working as a counselor at the Ministry of Justice, who, although claiming that the introduction of a reconciliatory period was just a formality, said that its introduction was due to two factors: (1) the legislators wanted to make sure that the marriage was over by providing a last recourse to reconciliation, and (2) the Koran requires a reconciliatory period before a divorce can be formalized.

However, if we consider the setting up of a new Family Court in October 2003, it might well turn out that reconciliation sessions are much more than a formality. The proposed Family Court will attempt, among other things, to incorporate family counseling in its functions. It even endeavors to set up a mandatory two-week mediation presided by the district attorney and a *ma'dhun*, prior to referring the case to court. Iman Bibars from the Association for the Development and Enhancement of Women said: "It is a place for law of course, but we want it also to be a support base for counseling marriages and families".¹⁵

3.3 Overloaded courts and delays of judgment

In Egypt there are no special Personal Status courts. However, every court has a Personal Status circuit. The courts with the most Personal Status circuits are the Zananiri Court in Shubra (South Cairo), and the 'Abbasiyya Court in Heliopolis (North Cairo). The absence of special Personal Status courts, combined with the enormous number of divorce cases and Personal Status disputes, have swamped the courts. Legal procedures have become slow and agonizing as a result of which it is not unusual for women, who file for a divorce, to wait five up till ten years before their case is issued a ruling, without necessarily obtaining a divorce at the end of that period. Many other women are waiting years before the alimony of the children is paid out. For these reasons, a new Family Court is in the offing. The idea is to create one court in which domestic disputes, such as divorce, alimony and custody cases, will be presided by the same judge in the same court. This should prevent families from moving between a number of judges and courts and will save a lot of time.

The positive effect this has for litigants as well as lawyers and judges is illustrated by the *khul'* case of lawyer Abu Wagih. He was not able to attend the *khul'* court sessions of his client in the Zananiri court since he was having other Personal Status cases in other courts at the same time, as a result of which the relevant sessions were postponed. In one session the lawyer does not show up, in another session the lawyer comes but the litigants do not turn up for the reconciliation sessions, and so on. In this way, suits easily exceed the established maximum period of three months within which a *khul'* lawsuit must be given a verdict, something which is illustrated by the fact that the two *khul'* cases, presented above, were not given a verdict within three months. Abu Wagih, however, is no exception as both lawyers and judges are overwhelmed by the many Personal Status disputes in Egypt's already litigious society.¹⁶ As for divorce, 1,5 million women, on a population of 64 million, file for a divorce annually.¹⁷ By creating one court in which all domestic disputes will be presided by the same judge in the same court, both lawyers and judges will be better able to help their clients. Personal Status sessions will no longer be scheduled at different courts, at the same time. Moreover, since judges rarely develop a field of specialization, the new Family Court, which will be presided by one and the same judge, will offer judges a possibility to specialize in the field of Personal Status. Judges become less dependent on expert opinions, which form a significant source of delay, as a result of which the course of litigation will become less slow, strained and inefficient.

The new court will also be an opportunity for women to become judges¹⁸ and, as such, will give women litigants a chance to plead their cases in front of female judges. This may make a difference in the way *khul'* cases are handled. This transpires in the statement of Ghada Nabil, lawyer at the Arab Office for Law. She claims that a ruling in case of *khul'* takes at least a year. She ascribes this delay to judges, who are obstructing the reform of the Personal Status Law because it contradicts their social and legal beliefs:

"I think that the majority of judges do not personally believe in *khul'*. They don't think it is Islamic and they believe that just because it so happened that once in the Prophet's lifetime a woman was granted *khul'*, there is no reason that it should be made into a general right, nor should it be legislated for. The resistance of the judges to implement the law really complicates matters for us, especially so because the law was not followed with an explanatory document clarifying the specific details of how it should be applied. ... The general atmosphere in courts was against the implementation of the law."¹⁹

If this attitude in the courts is widespread it is reflected in the low numbers of *khul'* appeals that eventually were given a positive ruling. And indeed, it appears that only a small percentage of the *khul'* appeals in court were ruled on within a year (whereas, initially, the maximum period in which a verdict should be reached was set at three months). In the governorate of Qena, for example, out of eighty-five appeals not a single case was ruled on. The Cairo governorate, receiving the highest number of appeals, reached a percentage not exceeding 14 per cent.²⁰

However, I am aware of the fact that these findings should be analyzed with great care. One reason for these low numbers can be attributed to the attitude of the judges who do not wish to interpret the law according to the wishes of the legislator. A second reason, however, may be related to the fact that litigants do not always show up for the reconciliation sessions. It is not clear what will happen when one of the litigants does not show up. Third, as Brown has noticed, Egyptian courts have become one tool among many that Cairenes, involved in marital disputes, use.²¹ Litigants' strategies serve to gain a stronger position from within which they can renegotiate areas of conflicting interest. Consequently, when litigants have achieved what they were aiming at, they drop the court case. Since most litigants that frequent the courts are from the lower and lower middle class,²² it is not unlikely that women from these classes use *khul'* as a means to force their husbands either to live up to their marital obligations or to divorce her by way of *ṭalāq*. It might well be that women have filed *khul'* lawsuits only to withdraw their cases as soon as they have achieved their particular end. The case of the lawyer Abu Wagih might be an example of this. His client filed for a *khul'* lawsuit at the Zanani court where after her husband decided to divorce her by way of *ṭalāq* instead of having his wife divorce him by way of *khul'*. However, later on, he decided to revoke the *ṭalāq*. Finally, women can also withdraw a *khul'* lawsuit if they are exposed to severe social pressure from the social surroundings. This transpires in the statement of Azza Soliman, lawyer and manager of the Center of Egyptian Women's Legal Assistance (CEWLA). She attributes the lamentable percentages to the lack of training by judges on how to apply the new law as well as the patriarchal values in society that stigmatize women who seek a divorce. Moreover, the two appointed arbiters in the reconciliation sessions were often prejudiced to the point that they sometimes pressured the woman to relinquish her case instead of trying to arrive at genuine reconciliation.²³

4 Conclusion

After having investigated the dealings of the Egyptian judiciary with the new *khul'* law, it is now possible to advance a preliminary answer to the question as to what extent and in which way the new *khul'* law is implemented in the Egyptian courts. From the court cases presented in this paper, there follow two corollaries.

First, the introduction of the *khul'* clause was hailed as a means to speed up litigation in matters pertaining to divorce. Notwithstanding the fact that resolving court cases concerning judicial divorces could easily take up to five or more years before the introduction of the *khul'* law, the *khul'* procedure clearly has its drawbacks as well. It seems that the majority of the *khul'* cases is not issued a ruling within the established maximum period of three months. In the two *khul'* cases this is due to various reasons, such as the following: (1) overloaded lawyers who accept so many Personal Status cases that some are scheduled on the same day, at the same time, in different courts, as a result of which lawyers have to postpone some cases, (2) unclear litigation causing litigants, who are residing abroad, to write time consuming depositions in order to overcome requests of judges to be present in person during the reconciliation sessions, (3) and husbands refusing to give their wives the opportunity to divorce them by way of *khul'*, and who instead offer their wives to divorce them by way of *ṭalāq*, only to revoke the *ṭalāq* later. The delay in judgment seems to receive strong support from statistical evidence on the number of *khul'* cases that were issued a ruling within a period of a year. However, these statistics should be interpreted with great care. Apart from the possibility that women have become victims of unwilling judges, lawyers and/or social surroundings which all obstruct the proper implementation of the new law in the courts, women may well view the *khul'* law as a new tool with which they can obtain stronger bargaining positions in case of marital disputes. Having achieved their particular objectives, they might drop their *khul'* cases.

Second, *khul'* court cases have become complex due to the problem the restitution of the dower constitutes. In a large number of *khul'* cases, husbands have come to appeal in a civil court the amount of dower which their wives have returned to them, which is in most cases one Egyptian pound. Notwithstanding the fact that a judge in a Personal Status circuit may give a woman a divorce by way of *khul'*, husbands, who win their cases in a civil court, may place their wives in a legal limbo by positioning them in a situation in which they will have been divorced by way of *khul'*, while simultaneously the dower will become decreed as a debt owed by the wife to her husband. It seems, then, that husbands, although not allowed to appeal the *khul'* verdict, have other legal tools at

their disposal with which they can make women recoil from making use of the legal possibilities to file for an easy divorce.

Having said this, we must be careful here, however, to take into account the fact that the reform of the Egyptian Personal Status Law in 2000 was followed by other developments in the field of Personal Status. If we include the *khul'* clause in these new developments, this might highlight differently the question as to what extent and in which way the new *khul'* law is implemented in the courts.

Only a few months after the new Personal Status Law came into being, a new marriage contract was implemented in August 2000. Again, women and men were in the position to include mutually agreed upon conditions in their marriage contracts. One controversial condition is a women's right to include in her marriage contract the right to divorce herself without having to resort to the court, '*isma*'. Hence, the new marriage contract provides an immediate solution for marital disputes such as divorce, without having to go to court, without having to wait a long time for the case to be given a verdict and what is more, without women being obliged to renounce their financial rights as well as their dower in case they want a quick divorce.²⁴

In January 2003, Egypt appointed its first female judge. The establishment of a new Family Court in October 2003 might give further impetus to women wanting to become judges. Egyptian daily newspapers claim that many women have already applied to become judges in the new court. The very thought that women litigants no longer have to reveal the most intimate details of their life in front of a male judge, might make a difference in the way divorce cases are handled.

In addition, a draft law has been presented to the People's Assembly, in the summer of 2003, proposing to change Egyptian custody laws by extending the period a child can remain in the custody of the mother from twelve for a girl, and ten for a boy, to age fifteen.²⁵ When children attain the age of fifteen, a judge will ask the children whether they prefer to stay with their mother or father.

The seeds of some of these developments were already present in the new Personal Status law of 2000. For example, in case of divorce the same court came to consider all the relevant cases filed as a result of a divorce case. Summary courts, normally competent in alimony, custody, wages and other matters, were compelled to refer them to the court of First Instance so that one final ruling could be pronounced by it.²⁶ The setting up of a new Family Court can be seen as the culmination of these procedural changes. Furthermore, the new *khul'* law has made it easier for women to prove *ḍarar*, harm, by abolishing *sharī'a* law to matters of procedure in family disputes. Instead, the civil rules of the Law of Evidence have been implemented.²⁷ Civil rules of evidence, applied in a

Family Court presided by both male and female judges, are expected to facilitate the proof of *ḍarar*. In this respect, it seems that the new *khul'* law served to pave the way for new legislation in the field of Personal Status. As the late head of the High Constitutional Court, Fathi Naguib, remarked with regard to the implementation of *khul'*: "...Legislation has a decisive role in pushing things forward and spearheading change. It has to launch reform, a few calculated steps ahead but not to the extent of being rejected by society".²⁸

NOTES

- 1 There were other controversial points in the new law, such as the recognition of '*urfi*' marriages (Islamic marriage contracts that are not formally recognized by state authorities because they were not officially registered with them at the time of conclusion of the marriage), and the finally removed clause that allowed women to travel without their husbands' consent. However, for most people, the law will forever be known as the *khul'* law (Fieldwork Cairo 2002).
- 2 Nathan. J. Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*, Cambridge, Cambridge University Press, 1997, 63.
- 3 Ron Shaham, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts, 1900-1955*, Leiden, E. J. Brill, 1997, 12.
- 4 Shaham 1997, 235.
- 5 Shaham 1997, 234.
- 6 Maurits Berger, *Inleiding Recht en Bestuur in Egypte*, Leiden, CNWS, 1999, 26.
- 7 *Hisba* is the function of a person to promote good and forbid evil. The person entrusted with the *hisba* was called the *muhtasib*, Cl. Cahen and M. Talbi, "Hisba", *EJ²* vol. 3, 1971, 485b.
- 8 Nathalie Bernard-Maugiron and Baudouin Dupret. "From Jihan to Susanne: Twenty Years of Personal Status Law in Egypt", in: Susan Rutten (red.), *Recht van de Islam 19*, RIMO Maastricht 2001, 16.
- 9 Mariz Tadros, "Khul' Law passes Major Test," *Al-Ahram Weekly* (Cairo), 19-25 December 2002b (cf. [http:// weekly.ahram.org.eg/ print/2002/617/ eg11.htm](http://weekly.ahram.org.eg/print/2002/617/eg11.htm), 8 May 2003).
- 10 Chibli Mallat, "Constitutional Law in the Middle East: The Emergence of Judicial Power", in: *SOAS Law Department: Working Papers* 3, 1993; Moheb Zaki, *Civil Society & Democratization in Egypt, 1981-1994*, Cairo, Dar Al Kutub, 1994, 34-6; Berger 1999, 26.
- 11 It is not clear to me whether or not the first *khul'* request was withdrawn, after the husband had made it clear that he wanted to divorce his wife by

- way of *ṭalāq*. If the case was indeed withdrawn, then two *khul'* lawsuits must have been filed at the Zanānirī court, while in reality only one *khul'* divorce was requested. If these situations occur more often, they might explain, at least partly, why statistics have shown that only a small percentage of *khul'* lawsuits were issued a ruling after a period of thirteen months, Center for Egyptian Women's Legal Assistance, *Al-hisād 'amān 'alā al-khul'*, Cairo, 2002 (www.cewla.org/dra/2002/d7.htm, 27 April 2003).
- 12 Hisham Zwain, *Da 'wā al-khul' li-l-muslimīn wa-li-l-masihīyyīn wa-li-l-yahūd*, Scientific Center, fifth edition, 2003.
 - 13 Ahmad Muhsin and Nihad Abu al-Qumsan, *A, B, Law: Al-khul'*, Cairo, Egyptian Center for Women's Right, 2000, 17-8.
 - 14 Nadia Sonneveld, "Reinvention of *sharī'a* in Egypt: The *khul'* law of 2000 which granted women the right to unilateral divorce", master's thesis, University of Leiden, 2002, 78.
 - 15 Ursula Lindsley, "Civil Simplification: A New Law will create One Court for Domestic Disputes," *Cairo Times*, 20-6 February 2003 (cf. <http://www.cairotimes.com/news/familylaw0648.html>, 14 April 2003).
 - 16 Brown, 1997, 190.
 - 17 Mariz Tadros, "One step forward, a hundred to go," *Al-Ahram Weekly (Cairo)*, 13-19 January 2000 (cf. <http://web1.Ahram.org/weekly/2000/464/spec1.htm>, 24 May 2002).
 - 18 Tehani al-Gebali became Egypt's first female judge in January 2003. However, since she was appointed judge of the High Constitutional Court, her work involves the consideration of laws rather than the fate of women litigants who are involved in domestic disputes.
 - 19 Tadros 2002.
 - 20 Mariz Tadros, "What price freedom?," *Al-Ahram Weekly (Cairo)*, 7-13 March 2002a (cf. www.Ahram.org/weekly/2002/576/fe1.htm, 26 March 2002.) These statistics are based on one-year survey conducted by the Centre for Egyptian Women's Legal Assistance (CEWLA), comparing the number of *khul'* appeals made with those that actually received a court ruling in six Egyptian provinces.
 - 21 Brown 1997.
 - 22 Enid Hill, *Mahkama! Studies in the Egyptian Legal System*, London, Ithaca Press, 1979; Brown 1997.
 - 23 Tadros, 2002a.
 - 24 In 1931 law 87 on the organization of *sharī'a* courts was issued as a result of which it was no longer possible to insert substantive stipulations in the marriage contract, except for one: women could still include the right to divorce themselves in the marriage contract, Mona Zulficar, *The Is-*

lamic Marriage Contract in Egypt: An Instrument of Social Change, 4. However, not many women were aware of this right. Hence, although including conditions in the marriage contract did not totally disappear after 1931, and though it will take more than the presence of a blank space to get people used to the idea of adding stipulations, the debates, that surrounded the implementation of the new marriage contract, might serve to make women more aware of their legal rights.

- 25 Amal Ibrahim Sa'ad, "...Wa-'qtirāḥ muhimm li-l-aṭfāl: raf' sinn al-ḥaḍāna fī l-mahākīm," *Al-Ahram Weekly*, 27 May 2003; Reem Leila, "Rights of Motherhood," *Al-Ahram Weekly (Cairo)*, 15-21 May 2003 (cf. <http://weekly.ahram.org/eg/print/2003/638/fe1/htm>, 1 August 2003); fieldwork 2003.
- 26 Bernard-Maugiron and Dupret, 2001, 11; Zulficar, 9.
- 27 Zulficar, 15.
- 28 Hala Sakr and Mohammed Hakim, "One law for all," *Al-Ahram Weekly (Cairo)*, 1-7 March 2001 (cf. <http://web1.Ahram.org/weekly/2001/523/sc1k.htm>, 24 April 2002). At the time of the implementation of the new Personal Status Law Fathi Naguib was first deputy president of the Court of Cassation. In September 2001 he became head of the High Constitutional Court. With the death of Fathi Naguib in August 2003, the Egyptian judicial system lost, in the words of Tehani al-Gebali, "...the Qassim Amin of this era".