

INQUISITION TRIAL IN EGYPT

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In the introductory pages of my book *Critique of Islamic Discourse* I brought to attention the relationship between political Islamist discourse in Egypt and the socio-economic scandal caused by the so called Islamic Investment Companies. Some representatives of the political Islamist discourse issued and published so many *fatwās* condemning the economic banking system as religiously illegal because it is based on a fixed interest rate system equal to usury prohibited in Islam. The Islamic alternative to this non-Islamic dealing should, in their religious opinion, be the Islamic investment companies although some high rate of self-interest was involved in those companies also. These *fatwās* encouraged the majority of the Egyptian people to put their savings into those companies. The result was the largest swindle operation in modern history at the expense of hundreds of thousands Egyptians who trusted the opinions of those representatives and believed the religious emblems they used.

In May 1992, I applied to the department of Arabic studies for the rank of a full professor and submitted my last five years' academic publications consisting of eleven papers and two books, one of them was *Critique of Islamic Discourse* to be evaluated. According to the university regulation, an advisory committee judges the scholarly value of the publications and submits its report to the dean of the faculty. One of the three academic judges appointed by the advisory committee to evaluate my works was a religious councillor for one of those companies. It has become known that the committee had got the opinion of three experts and that two of the three had expressed a very favourable opinion on the scholarly qualities of the works. Never-

theless, only the unfavourable opinion of that Islamist professor was considered the committee opinion although some members of the committee had refused to sign the report. It has been clear in the mean time that the judgment of the committee had not at all been unanimous as had been stated in the report. It had been a vote of 7 to 6.

What happened within the academic committee would not have happened if the social and political context was not conducive to such things. The fact that one opinion was able to persuade the committee to adopt it ignoring the other two favourable opinions testifies to that. Without the atmosphere of terror that prevails whenever someone talks about religion it would have been impossible to conceive of such farce taking place. But this should not mean to neglect the personal element involved in this specific case. The fact that the committee member who presented the negative report was the religious councillor of one of the "Islamic" investment company to which I made a critical remark in *Critique of Islamic Discourse* could explain his insistence to label my academic works as representing apostasy.

What was concluded in that remark was for the honourable committee member as a red rag to a bull; he lost sense of any academic responsibility to the extent that in his so called "academic" report he did not bother to examine the three chapters of the book neither did he mention a single word concerning the method of analysis used. That was exactly what the department's committee included in their letter of protest and denunciation to the dean of the faculty. The report, according to the department committee's opinion, went beyond the fundamental task of the promotion committee which is, according to the academic rules: "to investigate exclusively the scholarly production without having concern with any other consideration". The report, more than that, disregarded an objective scholarly evaluation and concentrated upon dogmatical aspects which had no connection with the task of the committee; it was transformed into a dogmatical accusation. That was clear because the report contained phrases that doubted the faith of the candidate, and instead of passing judgment on his academic capabilities his true faith in Islam was judged.

The academic procedure reached finally its last chapter when all the papers came to the hands of Cairo University rector who had to make the final decision within the University committee. And again the atmosphere of intellectual terrorism prevailed; the university rector preferred to deal with the case as if the issue was an issue of a regular ordinary promotion; he was very reluctant to admit that the issue was the academic values in the heart of which the freedom of research. As the appointment to the position of a university rector is a political decision made by the prime minister, he dealt with the matter in a way which was mainly inspired by the political soft attitude of the state in dealing at that time with the terrorist phenomenon. It was much easier for him to refute Abu Zaid's promotion than to provoke the Islamists in the university. Abu Zaid, the rector thought loudly, could re-apply some months later and get promoted in the second round, but provoking the Islamists in the context of the state trying to reach a compromise with them will be very dangerous to all the parties including Abu Zaid himself.

As the academic values and the University reputation were damaged by such political manipulation of the whole affair the matter became a subject of intellectual debate outside the academic boundaries. Only two weeks after the university decision, the same Islamist professor used the pulpit of a central Cairene mosque, 'Amr Ibn al-'Āṣ mosque, to publicly proclaim that Abu Zaid was an apostate. That was on Friday, 2 April 1993. The following Friday mosques all over Egypt were proclaiming Abu Zaid's apostasy, including a small mosque in my home village which is very close to the city of Tanta. Ironically, the preacher of that mosque and I grew up together learning and memorizing the Qur'an in the same traditional school called *kuttāb*. For this preacher and others, the source of those allegations was a reliable unquestionable authority, and the university decision surely added more credit to his opinion.

It seems that a single person was able to lead a serious campaign against not only one individual but also against the intellectual school of thought presented in Abu Zaid's writing. But things could not have

moved in that direction without a situation in which some individuals are treated as if they were sacred and protected against committing any mistake by God himself. It was the context in which some people's understanding and explanation of religion enjoyed an almost religious sanctity. In this specific atmosphere of intellectual stagnation any new fresh explanation or interpretation of religion could easily be branded as blasphemous and proof of apostasy. Such a context which involved the hammering home of a message by constant repetition before an illiterate audience, be that a real or cultural illiteracy, could normally and easily facilitate such a situation.

The next step after the declaration of apostasy was to prove it by a court verdict. The entire plan was decided and organized in another mosque in the Pyramids neighbourhood an associate professor of Cairo university preaches. It was proposed by him to carry the issue to the Family Court asking the marriage of Abu Zaid to be abolished on the ground of being declared an apostate. An apostate is supposed to be executed according to the opinions of traditional jurists unless he or she does repent and return back to the true faith. Till execution is carried out an apostate is treated as a dead person and should not be allowed to marriage not to mention being married to a Muslim woman. According to this associate professor's own words, in a book which was distributed free of charge to Abu Zaid's students inside the university, when the idea of raising a lawsuit occurred to him he consulted with the dean of Dār al-'Ulūm college along with another professor. They approved and gave their permit and blessing. Some Islamist lawyers volunteered to carry on the case in court and money was collected to cover the expenses involved.

They chose the Family Court because they had uncovered an old but apparently still effective article in its legislative code that permits such a case to be presented. Although the Family Code was totally institutionalized as part of the Egyptian civil code when the *shari'a* court was abolished, it was left open to the judge to apply the Hanafite opinion for the cases which are not dealt with in the civil code. Defending religion and religious values were indicated as the plaintiff's

objectives of bringing me to the court under the old *hisba* principle. As an apostate my marriage was against the *shari'a*, and my wife was to be considered adulteress if she insisted on being married to me. As a Muslim woman she had to be protected from such an evil unlawful marriage even against her will. It was ironically obvious that the Islamists were not really concerned about my marital status, because the leader of the plaintiffs openly declared that they wanted to use this obscure article with the intention of having a judge of the state establish the apostasy of Abu Zaid. If the judge would do so then they could start to have me discharged from my teaching commitment at the university. This was openly also mentioned on 15 April 1993 in moderate Islamic weekly *al-Liwā' al-Islāmī* published by the ruling National Democratic Party and intended to teach the true meaning of religion to fight against religious extremism and terrorism. In the editorial column, the editor had cried out against the heretic Abu Zaid who endangered the religious creed of his students and urged the rector of Cairo university to fire him. The same weekly newspaper of the ruling party in its 22 April issue brought "execution" as the penal code to be applied in the case of Abu Zaid by the official authorities. But the hidden intention of the Islamists was to have me killed legally and officially by the name of Islam. One year earlier, one of the intellectual sources of inspiration of the Islamists, Shaykh Muḥammad al-Ghazālī, had declared at the trial of the assassins of Farag Fūda, assassinated on June 1992, that if the state did not perform this very religious duty, then every Muslim was obliged to take care of the execution of the punishment.

When the court procedure started on May 1993 the case generated intellectual and public protest and attracted the attention of international Human Rights organizations and international mass media. The defence committee built his argumentation on the lack of individual interest. As for the collective interest it is the responsibility of the General Attorney not the responsibility of any individual. The *hisba* was a traditional institution abolished along side with the *shari'a* court by the introduction of the modern civil code. On the 27th of January 1994 the

Giza Court of First instance passed a judgment and decided that the plaintiffs had no legal standing as they had no personal and direct interest in filing this case, in accordance with the Law on Civil and Commercial Procedures. The Court decided that the case could not be admitted as *hisba*, based on *shari'a* law, as neither the prevailing personal status court regulations nor any other law include any rules on the conditions, procedures, content and scope of this case. Therefore, the Law on Civil and Commercial Procedures should apply.

This judgment was appealed, and on 14 June 1995, the Cairo court Appeal passed an unprecedented judgment, accepting the appeal, cancelling the First Instance judgment, rejecting all pleas related to the Court's jurisdiction and acceptance of the case and decided on the merits to divorce Abu Zaid and his wife. The Court gave as grounds for its judgment, inter alia, that Abu Zaid has, in his books, allegedly denied the existence of certain creatures such as angels and devils referred to in the Qur'ān, and has described certain images in the Qur'ān about heaven and hell as mythical, has described the text of the Holy Qur'ān as human and has advocated the use of intellect to replace the concepts derived from the literal reading of the text of the Qur'ān, by modern, more human and progressive concepts, and in particular the texts related to inheritance, women, the Christians and the Jews (*ahl adh-dhimma*) and women slaves.

The judgment caused severe chock for the whole Egyptian society. A *fatwā* from the terrorist Jihād group was dispatched by fax from Switzerland to many newspapers decided that Abu Zaid should be killed. A similar *fatwā* was issued by a group of al-Azhar scholars called "The Front of al-Azhar Scholars" (*Jabhat 'Ulamā' al-Azhar*). The Government officially provided heavy security protection for me and my wife at home, and body guards to accompany each of us outside. The Public Prosecution challenged the judgment before the Supreme Court (Cour de Cassation), because it represented a severe threat to social order and stability. A coalition of sixteen of the most prominent Egyptian lawyers was formed to respond to the above unprecedented judgment in an unprecedented manner before the Supreme

Court. All these lawyers volunteered to handle this case, in recognition that the judgment passed by the Court of Appeal represented an eminent danger to the stability and the security of the Egyptian society, and a threat to the true spirit of Islam, in that it admitted for the first time a case filed on the basis of *hisba*, contrary to the law, accusing a thinker of apostasy based on his scientific research and publications, which were accepted and commenced by the Faculty of Arts, Cairo University, as basis for his promotion to full professor only two weeks before the judgment. This provided religious and terrorist groups with a legal mechanism to practice terrorism through the court system and combat the principles of human rights, particularly the rights to freedom of thought, freedom of expression and freedom of religion as well as the right to marry and found a family. All are protected by international treaties and the Egyptian Constitution.

The summary request to stay execution of the Court of Appeal Judgment was heard by the Cour de Cassation on 19 September 1995, and the case was adjourned to 30 October 1995 in a chamber, where a written memorandum by the Prosecution department of the Supreme Court (which is different from the Public Prosecutor) was discussed. Upon review of the said memorandum, the lawyers were shocked to find that it literally adopted all the arguments of the religious extremist lawyers who filed the case. Although the said memorandum is advisory and not binding on the Court, it will definitely have an adverse impact on the Court. The Court decided not to rule on the summary request, join it to the challenge by the defence and the Public Prosecution and rule quickly on the whole matter. Hearings took place on 25 December 1995, 26 February 1996, 11 March 1996 and oral pleadings were heard on 24 April 1996, where the Court decided to pass judgment on 24 June 1996. The exceptional speed was not supported by the defence. It should be noted that the French Bar Association and the Federation of International Lawyers attended one or two hearings to show their solidarity with defence of Abu Zaid.

In the mean time, the Egyptian Government, in an attempt to stop this type of abusive litigation, proposed a law which was passed in

January 1996, prohibiting the filing of any case based on the concept of *hisba* in personal status matters directly through the court. Any complaint should be filed to the Public prosecutor who has exclusively the right to either reject the complaint or file proceedings. However, this law, although a step in the right direction, was not sufficient to stop abusive litigation threatening human rights and freedom of expression by writers and artists and did not apply to Abu Zaid case and many other cases, nearly 80 cases, which pending before the courts. A new law amending Article 3 of the Law on Civil and Commercial Procedures was therefore proposed by members of the People Assembly (Parliament). This draft law was supported by the Egyptian Government and was passed on 22 May 1996 as Law 81 for 1996. The new law confirmed that any action, appeal or application is not admissible unless it is filed by person who has direct and personal interest therein. This law made this rule a matter of public policy and obliged all the courts of Egypt, including the Supreme Court, to observe this rule of public policy and apply it in all the pending cases.

The defence on behalf of Abu Zaid also submitted to the Supreme Court an opinion from the Grand Mufti confirming that reading Abu Zaid's books does not provide sufficient basis for judgment separating between him and his wife. The Grand Mufti said that Abu Zaid must be summoned more than once to appear before the Court and that a thorough, scientific and detailed discussion should be conducted with him personally concerning all his writings and the accusations made against him, as it is possible that he might change his opinions subject of accusations, or that his opinions may be construed as valid interpretations, even in certain aspects.

On 5 August 1996, the Supreme Court passed a shocking and an unprecedented Judgment confirming the Appeal Court Judgment divorcing Abu Zaid and his wife. The Supreme Court recognized that the new Law 81/1966 is binding on the Supreme Court, but refused to apply it to the case, without any legal justification. The Supreme Court completely disregarded the Grand Mufti's opinion and rejected all the defence presented on behalf of Abu Zaid. This judgment is the first

precedent of its kind and has ruled against consistent judgments by the Supreme Court. According to the Law, derogating from consistent precedents of the Supreme Court requires that the case be referred to a higher circuit within the Supreme Court of seven or fourteen Judges, depending on the nature of the principle of law contravened. The circuit which passed the Judgment was made up of 5 judges only.

The defence of Abu Zaid has therefore filed a new case before the Supreme Court in accordance with the Law on Civil and Commercial Procedures, suing the five Judges who ruled on the case for gross professional error and bad faith and requested annulment of their Judgment as well as compensation. This action will be considered by another circuit of the Supreme Court in Chambers for admission in principle with the coming few months. If admitted, it will be considered by the General Assembly of the Supreme Court Judges who may nullify the Judgment and rule for compensation.

The defence also applied for stay of execution of the Court of Appeal Judgment confirmed by the Supreme Court, divorcing the Abu Zaid's, based on Law 81 for 1996. According to the said Law, no person at present has legal standing to request enforcement of the Judgment. On 24 September 1996, a "stay of execution" Judgment was passed. It was appealed against by the Islamist lawyers before the Appeal Court which is to pass the final judgment next August. A third case for nullity of the Supreme Court Judgment has also been filed based on the fact of jurisdiction that the five Judges who passed the Judgment had no judicial power to do so, since such Judgment should have been passed by seven or fourteen Judges. The case is pending before the South Cairo Court of First Instance and a first hearing took place on 14 October 1996. The case is adjourned to 18 November and again adjourned till the Appeal Court decides on the "stay of execution". Although Abu Zaid and his wife insist on fighting against this unjust Judgment and against all kinds of abuse to Islam, they had to leave their home land and to leave behind their students and colleagues.