[TRANSLATION FROM ARABIC]

[Translator's notes appear in square brackets [ ].]

In the Name of God, the Compassionate, the Merciful

In the name of the People

The State Council
The High Administrative Court
First Section - Merits

In the public hearings of Saturday 16/12/2006 the State Council (First Section), sitting as a Chamber composed of:

Mr. Al-Sayyid Al-Sayyid Nofil — President
Mr. 'Isam'u'ddin 'Abdu'l-'Aziz Gad'ul'Haq
Mr. Mustafa Sa'id Hanafi
Mr. 'Abdu'l-Halim Abul-Fadl Ahmad Al-Qadi
Mr. Ahmad 'Abdu'l-Hamid Hasan 'Adud — Judges
Mr. 'Abdu'l-Qadir Husayn Mabruk Qandil — State Commissioner

and in the presence of

Mr. Kamal Nagib Marsis — *Section Registrar*

Delivers the following decision with regard to the applications nos. 16834 and 18971 of 52 J. H.

In the case of :
Adv. 'Abdu'l-Majid Al'Anani

v.

1- Mr. Husam 'Izzat Muhammad Musa
2- Mrs. Rania 'Inayat 'Abdu'Rahman Rushdi
3- The President of the Republic
4- The Minister of the Interior
5- The Attorney General

And in the case of :

1- The Minister of the Interior
2- The Head of the Civil Affairs Department - Ministry of the Interior
3- The Head of Passports and Immigration - Ministry of the Interior

v.

1- Mr. Husam 'Izzat Muhammad Musa
2- Mrs. Rania 'Inayat 'Abdu'Rahman Rushdi

In the matter of the judgment delivered by the Administrative Court of Cairo in the application no. 24044 of 58 J.
On 4/4/2006

PROCEDURE

On Monday 17/4/2006, Adv. ‘Abdu’l-Majid Al‘Anani filed a statement of appeal at the secretariat of the court, recorded under no. 16834 of the year 52 J.H., concerning the judgment delivered by the Administrative Court of Cairo, in the case no. 24044 of the year 58 J. on 4/4/2006, which pronounced: “the court has decided to admit the case as to its form, to annul the contested negative decision and all its consequences, as indicated in the court’s reasoning, and obligates the administration to bear the costs”.

The appellant demanded—for reasons given in his statement of appeal—that an early date be fixed for a preliminary hearing, so that his appeal may be referred to the High Administrative Court, and that it decide the admission of the appeal as to its form, the annulment of the appealed judgment and the dismissal of the case. He requested, in addition, that the administration be ordered to execute the judgment on the authority of its draft and obligate the appellee to bear the costs for the two degrees of jurisdiction. Furthermore, he demanded that the case be referred to the Supreme Constitutional Court in order [that it] examine his plea concerning the constitutionality of Art. 3 and 3bis of the civil and commercial procedural law promulgated by Law no. 13 of 1968, which was altered by Law no. 81 of 1996, as well as by Art. 1, 2, 3, 4 of Law no. 3 of 1996 regarding the hisba in the matter of personal status, which law contradicts Art. 2, 3, 40, 64, 65, 68, 69 of the Constitution, or else to authorize him to initiate the procedures of the action before the Constitutional Court.

On Saturday 6/5/2006, the state commissioners, in their capacity as the representative of the appellants of the second appeal, submitted a statement of appeal inscribed under no. 18971 of the year 52 J. H. in connection with the same judgment delivered by the Administrative Court of Cairo in case no. 24044 of the year 58 J., and demanded (for reasons given in their statement of appeal) that the preliminary hearings be fixed the earliest possible, in order that the admission of this appeal be decided [in that session] as to its form and that the stay of the execution of the appealed judgment be urgently ordered, as well as the inadmissibility of the case because of the inexistence of an administrative decision. In addition and as a precautionary demand, [they demanded] that the case be dismissed for not following the course prescribed by law and as an absolute precautionary demand to dismiss the case. Moreover, to obligate the appellee to bear the costs.

Notification concerning both appeals was undertaken as indicated in the papers.

Hearings were fixed for 15/5/2006 for the examination of both appeals by the first section, during which it was decided, because of their correlation, to combine the two appeals into one in order that one decision be delivered concerning them. In addition, it was unanimously decided to stay the execution of the appealed judgment and to seek the state commissioners’ view concerning their merits. The state commissioners filed their legal views on the subject of both appeals and in their conclusions recommended to rule as follows:

First: to admit the appeal 18971 of year 52 J.H. as to the form, to annul the contested judgment and decide the dismissal of the case, in addition to obligating the appellee to bear the costs.

Second: to admit the second appeal no. 16834 of year 52 J.H. as to the form and to dismiss as to the merits the part of the contested judgment which denied him the intervention in support of the administration and obligated him to bear the costs.

On 20/11/2006, it was decided to refer the appeal before this section for its consideration on 2/12/2006, at which time it was examined as indicated in the minutes, and to adjudge it in the hearings of today. Accordingly, the decision of this court was delivered and its draft containing the reasoning of the court was filed.

THE FACTS

The circumstances of this litigation as is reflected in the documents are that Husam ‘Izzat Musa and Rania ‘Inayat ‘Abdu’Rahman Rushdi had submitted their application no. 24044 of 58 J. to the Administrative Court of Cairo on 10/6/2004 requesting the stay of execution and annulment of the negative decision under examination.

The applicants explained their grievances saying that they are Egyptian citizens and their religion is Baha’i. They submitted an application for the purpose of adding the names of their daughters Bakinam, Farah and Hana Husam‘Izzat to their passports, but surprisingly the administration refused to give them back their passports and withdrew their ID cards with no legal reason. The applicants alleged that this action violates the Constitution and the Universal Declaration of Human Rights. However, the applicants changed their request later on and asked the court to stay the execution of the negative decision concerning the refusal to issue them ID cards on which it is mentioned that their religion is Baha’i as well as the refusal to issue birth certificates for their daughters Bakinam, Farah and Hana in which the same religion is mentioned. During the hearings Adv. ‘Abdu’l-Majid Al‘Anani interfered as a party in support of the administration and requested that the case be dismissed.

On 4/4/2006 the court delivered its ruling, which is now under consideration, stating that, concerning the absence of a negative administrative decision and the issue of not following the appropriate course, these [points] are rejected on the grounds that “the Civil Status Committee is not competent to examine the issues raised in the present case according to Article 47/2 of Law no. 143 of 1994. In addition, a negative administrative decision exists in the present case.” The court based its decision concerning the inadmissibility of the request for intervention in support of the administration “on the absence of the required interest for such intervention”. The court also rescinded the negative decision on the grounds that “existing authoritative reference books on Islamic jurisprudence indicate that Muslim lands have housed non-Muslims with their different beliefs; that they have lived in them like the others, without any of them being forced to change what they believe in; but that the open practice of religious rites was confined to only those recognized under Islamic rule. In the customs of the Muslims of Egypt this is limited to the peoples of the Book, that is Jews and Christians only. The provisions of the shari’a [Islamic jurisprudence] require a disclosure that would allow to distinguish between the Muslim and non-Muslim in the exercise of social life, so as to establish the range of the rights and obligations reserved to Muslims that others cannot avail [themselves] of, for these [rights and obligations] are inconsistent with their beliefs. Thus, the obligation prescribed by the Law of Civil Status no. 143 of 1994 concerning the issuance of an identity card to every Egyptian on which appears

his name and religion and the same on birth certificates is a requirement of the Islamic shari'a. It is not inconsistent with Islamic tenets to mention the religion on a person's card even though it may be a religion whose rites are not recognized for open practice, such as Bahá'ism and the like. On the contrary, these [religions] must be indicated so that the status of its bearer is known and so he cannot enjoy a legal status to which his belief does not entitle him in a Muslim society. It is not for the Civil Registry to refrain from issuing identity cards or birth certificates to the followers of Bahá'ísm, nor it is up to such Registry to leave out the mention of this religion on their identity cards." The court concluded that the refusal of the administration to give the plaintiffs ID cards on which mention is made of this religion (Baha'ism) and its refusal to issue birth certificates to their daughters which mentions the Baha'i religion …(sic) constitute an invalid negative decision that should be annulled with all the consequences of such annulment, in particular, to issue the plaintiffs ID cards and birth certificates for their daughters on all of which the Baha'i religion is inscribed.

[Summary of the basis of the appeal]

As to the basis of the first appeal, it consists of the assertion that the judgment under consideration has violated the law, the Constitution and the Islamic shari'a , as well as the rights of defense and the rights of the appellant, insofar as his probable interest in the outcome of the case is sufficient in order for his intervention to be admissible—[as it is in line with] such probable interests as apprehension for himself, the members of his family, his relatives and the society at large concerning the effect of systematic proselytism actively deployed for the purpose of the christianization and judaization of Muslims under the name of Baha'ism, [action] inadmissible in Islam, the seal of the religion of God.

As to the basis of the second appeal, it consists of the assertion that the judgment under consideration has misinterpreted and misapplied the law, violated the right of defense, drew the wrong conclusions and was insufficient in reasoning (because the court did not seek the state commissioners' views after the admission of the altered requests of the defendants after it became evident during the preliminary procedures that the plaintiffs had no cause which required them to alter their initial requests and consequently the court should have sought the state commissioners' views on the amended requests);

- [and the assertion that] the case law on which the appealed judgment based its ruling was delivered under an abrogated law of civil status which Law no. 143 of 1994 replaced (because the latter law came into effect after the constitutional amendment, [which added to] Art. 2 [of the Constitution to say] that the principles of Islamic shari'a are the primary source of legislation); [and that] this, with its corollary, made this case law no longer relevant;

- and, finally, [the contention that] the judgment under consideration ignored the unanimous view of the scholars (fuqaha) and the formal opinions (fatwa) issued by competent authorities concluding that the meaning of the freedom of belief is that the individual has the freedom to embrace his like of the fundamentals of any belief, under the condition that his embracing of such a belief does not imply interference with the public order of the state or its stability; [and thus also ignored that] Baha'ism is excluded from divine religions and that its practice infringes on the established order of the state, and therefore it should not be inscribed for children because this is against the public order.

[The Court]

Considering that the appellant in the first appeal no. 16834 of 52 H.J. intended, according to the proper adjustment made to his demands (which the court is authorized to make), primarily to annul the appealed judgment insofar as the inadmissibility of his intervention as a supporting party of the administration is concerned, and have his intervention declared admissible and, in addition, have the case dismissed; and that as a precautionary demand, he requested that either the appeal be transferred to the Supreme Constitutional Court or that he be permitted to initiate the procedures before the said court in order to determine the constitutionality of the issues he raises in his appeal in the light of Articles 2, 3, 40, 65, 68, 69 of the Constitution; and that the administration also demanded, in its appeal no. 18971 of 52 H.J., the annulment of the appealed judgment and the dismissal of the case.

As to the permission to intervene, which is the issue raised in the first appeal, it is a well established principle – enshrined in Article 126 of the procedural law – that anyone who has interest in the outcome of a litigation may intervene in support of one of the parties or to make a claim for himself in connection with the litigation. Such a demand for intervention may be made either in the same regular manner for filing a legal action or by a verbal request made and recorded during one of the court's sessions.

Although for intervention to be admissible, according to the precedents made by this court, the interest must be personal, direct and present, nevertheless in cases of annulment, and because the present case is closely related to legitimacy and the public order, the interest clause may take on a broad meaning to include any claimant who is in a particular legal situation connected to the ruling under examination and has a real interest in its outcome. This should not be cause to confuse such a demand with the hisba. Because in this case [unlike the hisba] the admissibility of the action or the demand for intervention remains conditional on the existence of a personal interest of the claimant. The precedents of this court also make it clear that the claimant's probable interest is sufficient for the admissibility of his intervention.

Considering that the appellant in the first appeal had an interest in intervening before the lower court because, had the court ruled in favour of the plaintiffs and decided that they have the right to have the word Baha'i written in the space assigned for religion on the ID and their daughters' birth certificates, it would have had an effect on him. For such an act implies recognition of the Baha'i religion contrary to the established opinions of scholars and to those opinions included in fatwas emanating from competent authorities, as well as to the provisions of the Constitution. It is probable also that such an act may also have effect on him, [and] his family members, as a result of proselytizing activities that harmfully target the Muslim religion. Such effects would threaten his interests, especially if courts continue to rule following the line of thought adopted in the judgment of the Administrative Court which has been appealed. Therefore, the court decides to admit his intervention as a party supporting the administration.

Considering that the appealed judgment was decided differently from this point of view, its ruling is therefore in contradiction to the sound interpretation of the law and must, as far as this part is concerned, be reversed.

As to the demands made in the second appeal to intervene in support of the administration in its request to have the appealed judgment reversed and the case dismissed, demands made by Adv. Assayyid 'Abdu'l-Rahman Mussa, Amna 'Abdu'l-Nabi 'Ali Bakr,

Murtada Mansur, Ahmad Sabir, Mu'nis 'Abdu'l-Hamid, Ahmad 'Afifi, Ashraf Fu'ad, Abdu'l-Latif Badr, Hamid Siddiq, Ahmad Dya'ul'Din and Muhammad 'Afifi 'Abdu'l-Hadi, the precedents of this court allow for the intervention before this higher court as a third party in support of one of the other parties or when the ruling will stand as evidence against the applicant of the intervention, if he was not notified. Therefore, the court decides to admit the abovementioned persons as intervening party in support of the administration in its request to dismiss the case.

As to the first plea of the administration concerning the non-admissibility of the case based on the inexistence of a negative decision, the papers in the case show that the concluding statement of the plaintiffs (the respondents in the appeal), as adjusted, requests the stay and the annulment of the negative decision of the administration concerning its refusal to fill the space assigned for religion in their ID cards and the birth certificates of their three daughters Bakinam, Farah and Hana. This constitutes a negative decision according to Article 10 of the law of the State Council promulgated by Act no. 47 of 1972. The said article provides in its last paragraph that "the refusal of the administration or its desistance from making a decision it ought to make according to law and regulations is considered to be a negative administrative decision." Consequently, this plea is unfounded and should be dismissed.

The second plea of the administration concerns the inadmissibility of the case because it has not been logged according to the procedures prescribed by law – [that is] that the plaintiffs ought to have addressed their grievances to the committee indicated in Article 46 of Law no. 143 of 1994 concerning civil status, which is the competent body to examine similar grievances. However, careful reading of Articles 46 and 47 of the aforementioned law shows that the legislation confined the competence of that committee, as shown in Article 47, to decisions regarding requests for changes or corrections of information on records of births, deaths and family or unreported births and deaths after the passage of one year of their occurrence. Changes of this information must be decided by the said committee alone. But, changes or corrections of information related to nationality, religion, profession, marriage, annulment of marriage, reconciliation, divorce, divorce absolute, judicial separation of husband and wife and proof of paternity must be decided either by a judicial decision or documents issued by a competent authority, without need for a decision from the above mentioned committee.

Considering that the present case is about information related to data to be inscribed in the space assigned for religion on the civil status documents of the respondents and their daughters, such information is not among those for which the committee mentioned in Article 46 is competent to deal with. Therefore, the plea of the administration in this respect is unfounded and must be dismissed.

Considering that there is no basis for the issue the administration is raising with regard to seeking anew the state commissioners' views after the plaintiffs changed their demands at the lower court because the established case law of this court confirms that, once the case is communicated to the competent court in accordance with the sequence steps indicated in Articles 26, 27, 28 of the law of the State Council, there is no need for such a court to seek anew the state commissioners' views. There are consequently no grounds for the appellant's allegations with regard to the invalidity of the court's ruling on not seeking the state commissioners' views after the change of the plaintiffs' closing statement. At any rate, the plaintiffs' closing statement, whether the initial or the amended, concerned their

demand to affix Baha'i as a religion on their daughters' birth certificates or on their own ID cards. Consequently, this allegation must not be taken into account.

As to the merits of the appeal, it is clear from the provisions regarding the freedom of belief in successive Egyptian constitutions that they originated in Articles 12 and 13 of the Constitution of 1923. The former stipulated that the freedom of belief is absolute, but the latter stated that the State protects the freedom of practicing the rites of religions and beliefs in accordance with the observed customs of Egypt, on condition that they do not violate the public order or morals. The travaux préparatoirs indicate that these two articles were originally one in the draft prepared by the committee in charge of the general principles who was guided by a model proposed by Lord Curzon, the Minister of Foreign Affairs of Britain, the country that occupied Egypt at the time. The draft ran as follows: "freedom of religious belief is absolute. All inhabitants of Egypt may practice with complete freedom in public or private the rites of any confession, religion or belief provided these rites do not violate the public order or the public morals." This text gave rise to strong opposition from the members of the constitutional committee, because it was so general that it covered all religious rites. Meanwhile, the religious rites that needed to be protected were those of the recognized religion, namely the three heavenly religions: Islam, Christianity and Judaism. It was then decided to confine the provision to the protection of these religions so that there will be no possibility to create another religion. These provisions were divided into the two aforementioned Articles: 12 and 13. The former provided for the freedom of belief and the latter provided for the freedom of practicing religious and belief rites etc.… These two articles remained in force until the Constitution was replaced by that of 1956, which combined the two provisions in one, which became Article 43: "The freedom of belief is absolute and the state protects the freedom of the practicing of religious and belief rites in accordance with the customs observed on condition that they do not violate the public order and morals." The same provisions appeared later under Article 43 of the Constitution of 1958. The same provision was prescribed again under Article 34 of the Constitution of 1964. Finally it has become Article 46 of the present constitution which reads as follows: "the state guarantees the freedom of belief and the freedom of practice of religious rites".

It is clear from the above that all Egyptian constitutions guaranteed the freedom of belief and the freedom of religious rites, as they constitute fundamental principles of all civilized countries. Every human being has the right to believe in the religion or belief that satisfies his conscience and pleases his soul. No authority has power over what he believes deep in his soul and conscience.

As to the freedom of practicing religious rites, this has the limitations that were explicitly mentioned in previous constitutions and were omitted in the present constitution, i.e. the condition of respecting the public order and morals. This omission does not mean the purposeful forfeiting of this stipulation and the permitting of the practice of religious rites even if they violate the public order and morals. The legislature considered that this stipulation is self-evident and a fundamental constitutional provision that must be observed without express mention. But, the religions whose rites are protected by this provision, as deduced from the travaux préparatoirs of Articles 12 and 13 of the Constitution of 1923, the origin of all the provisions that appeared in the successive Egyptian constitutions, including Article 46 of the present constitution, are the three heavenly religions: Islam Christianity and Judaism.

Considering that the Baha'i belief – as unanimously concluded by the Muslim "imams" as well as the rulings of the Supreme Constitutional Court and the Supreme Administrative Court – is not among the recognized religions, whoever follows it from among the Muslims is considered apostate "Murtad". Investigation of the history of this belief reveals that it began in 1844 when its founder Mirza Muhammad 'Ali (sic) entitled the Báb declared in Iran that he intends to reform Islam and redress the affairs of the Muslims. People were divided about this belief especially in its attitude towards the Muslim shari'ah . In order to put an end to this division, its founder called for a conference in 1848 that was held in "Badasht" in Iran wherein he revealed the concealed [purpose] of this belief and its complete separation from Islam and its shari'ah. The books of their belief, the most important of which are the Bayán, which was written by the founder of the movement, and the book that they call "The Aqdas", which was written by his successor Mirza Hasan 'Ali (sic) entitled Bahá'u'lláh, which he styled after the Koran, are overflowing with principles and tenets that confirm this declaration by their variance with the principles of the Islamic religion as well as their contradiction to all the heavenly religions. They absolutely and totally forbid the Jihad that is provided for in the Islamic shari'ah, because they want people and nations to submit to their executioners without any resistance, in return for poetic and sweetened words calling for the establishment of a world government, which is the main purpose of the Baha'i movement. This is one of the secrets of their ties with the colonialists, old and new, who embrace and protect them. Furthermore, they made up a "shari'ah" for themselves in accordance with their beliefs which forfeits the provisions of fasting, praying, family law in Islam and makes new and different provisions. The founders of this belief were not satisfied to come to an end with their claim of prophethood and divine message, (for they proclaimed that they were Messengers from God who receive revelation from the Most High Almighty in denial of Muhammad, God's blessing and peace be upon him. [He] is the seal of the Prophets and Messengers of God as is stated in the Koran: "Muhammad is not the father of any man among you, but he is the Apostle of God, and the seal of the prophets"), but went on to claim godhood for themselves. For this reason, the legislator promulgated Law no. 263 of 1960 concerning the dissolution of all existing Baha'i Assemblies and centres in the country and forbade at the same time individuals, establishments or bodies to perform any of the activities that these Assemblies and centres used to perform. This is the law that was brought before the Supreme Court under no. 7 of 2 J. C. on allegations of being unconstitutional, which case it was decided on 1st of March 1975 was unfounded and to be dismissed. This ruling is binding upon all the authorities of the state. In addition, that court also ruled that the said law does not violate the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10/12/1948 and which Egypt signed, because this declaration, despite its guarantee in Article 18 to give everyone the right to freedom of thought, expression and religion, [provides that] "this latter right should be understood within the limits of what is recognized i.e. what is meant by religion is one of the three religions: Islam, Christianity and Judaism".

Considering that the study of the provisions of Law no. 143 of 1994 and its regulations made by the Minister of the Interior, Decision no. 1121of 1995, shows that religion is an item of basic data that the legislation requires to be recorded on birth and death certificates, ID cards, family record, marriage and divorce records as well as other documents issued by the Civil Status Department issued in implementation of the aforementioned Law no. 143 of 1994 and its regulations: In light of this it is imperative to determine that what is meant by religions are those that are recognized, namely the three heavenly religions: Islam, Christianity and Judaism, on the grounds that they are the religions for whose rites the successive Egyptian constitutions guaranteed freedom. Other

than these (such as Baha'ism or others), which the scholars "fuqaha'" of the nation and the successive rulings of both the constitutional and administrative courts unanimously agreed are not among the heavenly religions, and which thus dissent from Islam as well as the religions of the book (Christianity and Judaism), their recording in either the documents of the Civil Status Department -[documents] which are mentioned in the civil status law, including the documents under consideration - or in any other official documents issued by the government administration that requires the mention of religion - is not allowed. This is established on the grounds that the legal provisions that regulate all these issues are considered part of the public order. Therefore no data that conflict or disagree with it should be recorded in a country whose foundation and origin are based on Islamic shari'ah. Consequently, the demands of the plaintiffs for the annulment of the negative decision of the administration regarding not writing the word Baha'i in the space assigned for religion in their ID cards and for their three daughters Bakinam, Farah and Hana are unfounded and must therefore be dismissed.

Considering that the court ruling under examination is inconsistent with these views, such judgment is contrary to law and thus must reversed.

Considering that the party who loses his case must bear the costs according to Article 184 of the procedures

FOR THESE REASONS

THE court decides to admit the two appeals as to the form and as to the merits of the case to annul the appealed ruling, dismiss the case and enjoin on the first and second respondents in the appeal nos. 16834 and 18971 of 52 J.S. to pay the costs.

President of the court Secretary of the court