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6 APOSTASY AND CONSEQUENCES FOR FAMILY LIFE UNDER JEWISH, CHRISTIAN AND ISLAMIC LAWS

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INTRODUCTION

Amongst the different contents of freedom of religion or belief, the freedom to convert remains the most controversial issue in Abrahamic religions and in all religions, in general. The right to religious freedom, as a right to change religion, challenges those religious traditions in ways that directly affect family issues. Where religious laws still have public relevance, apostasy, as the negative face of conversion, has legal consequences on family life. This chapter explores how religions deal with apostasy and how this choice made by individual believers can affect their life outside of the strictly religious sphere, particularly their status and life within their families. This issue is particularly crucial in the Muslim context, where freedom of religion or belief has not the same extent as in international law. Nevertheless, the case studies examined here – one concerning Judaism and two Islam – aim at showing that the problem does not exist only in Muslim contexts. Christianity, too, is uncomfortable with the idea of its members converting to another religion, but nowadays the related sanctions are merely spiritual, thus easing the accommodation of Christian denominations' tenets with the international standards of human rights.

THE RIGHT TO FREEDOM OF RELIGION OR BELIEF IN THE INTERNATIONAL LEGAL SYSTEM AND IN RELIGIOUS LAWS

Article 18 of the 1948 Universal Declaration of Human Rights (UDHR) defines freedom of religion as the possibility to manifest religion or belief in teaching, practice, worship and observance, either alone or in community with others, and in public or private.³ This right also includes the freedom to change religion or belief.

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- 3 Universal Declaration of Human Rights (UDHR), G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art 18.

Since the UDHR was approved, the international notion of freedom of religion or belief has taken shape as a complex reality, which highlights the faculties and rights of each individual in the sphere of the sacred. The collective form of the exercise of this freedom is guaranteed at the international and national level, as long as it represents one of the ways in which the individual's religion or belief is manifested. However, the *collective* dimension of freedom of religion ceases to offer a guarantee of protection when it becomes a form of constraint of the believer's *individual* freedom, as in controversies over conversion, where the individual's right to change religion clashes with the religious denomination's entitlement to prevent their adherents from apostatising.

Regional treaties on human rights, such as the European Convention on Human Rights (ECHR), reiterate the very same principles, stressing that freedom of religion or belief can be limited only "in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".⁴ The European Court of Human Rights' case law shows that Article 9 has a potentially wide scope and that any restrictions on the manifestation of religion or belief, such as the wearing of religious garments, can raise an issue under the Convention, as can controversies concerning the right to persuade someone to adopt a particular religion or to prevent them from changing their religion.⁵ The most important consequence of these postulates is that the right to freedom of thought, conscience and religion not involving a public manifestation may not be subject to state interference: conscience and thought remain untouchable. This non-coercion of conscience (*forum internum*) is an historical product of the concept of fundamental rights today enshrined in international law.

The UDHR gives no specific foundation to human rights in order to allow as wide a consensus as possible on human rights as "worldwide secular religion".⁶ This a meaningful expression, used to underline the UDHR drafters' will to make it observed by all people around the world as if it were a sort of faith. In other words, the standards set by the UDHR are a minimum upon which every culture and every group may agree. The Preamble to the 2012 Treaty of the European Union, by contrast, makes express reference to the cultural, religious and humanist inheritance of Europe, and it traces the genesis of the concept of fundamental rights back to the Judeo-Christian cultural environment. The Treaty makes it clear that the neutralisation of the importance of culture, and of religion as a component of culture, in the interpretation of the notion of human rights, is a myth. The notion of

4 European Convention on Human Rights, ETS 5, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990, respectively, art 9(2).

5 Murdoch J. 2012. *Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights*. Strasbourg: Council of Europe Publishing, 14.

6 Wiesel E. 1999. "Voices: A Tribute to Human Rights", in Danieli Y, Stamatopoulou E and Dias CJ (eds). *The Universal Declaration of Human Rights: fifty years and beyond*. Amityville: Baywood Publishing Company, 3.

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freedom of religion or belief, like that of human rights, depends also on the cultural and religious horizon of a particular community.

The precondition of the notion of religious freedom set in international law is the separation between temporal and spiritual matters. Judaism and Christianity are familiar with the notion of natural law and Noachide precepts, which makes it easier for them to support the international human rights notion. In Judaism and Christianity, the separation between the spiritual and secular powers is nowadays a common feature, but it is a distinctness of spheres that developed within these traditions historically and over time.⁷ In Christianity, the principle of “render-unto-Caesar”⁸ has grounded the self-sufficiency of temporal power from the spiritual one since Enlightenment.⁹ In a quite similar way, after the destruction of the Jerusalem temple, the principle of *dina de-malkhuta dina* required the Jewish people to obey their secular governors while keeping their orthopraxis and identity alive. In the end, it is possible to affirm that the notion of freedom of religion or belief at the international level shares a common cultural heritage with Judaism and Christianity, which has led to further development of the notion within those traditions.

In Islam, the notion of freedom of religion or belief is also known, but it is shaped in a different cultural background. A look at the Arab charters on human rights and the Preamble to the 1981 Universal Islamic Declaration of Human Rights (UIDHR) affirms that human rights in Islam are firmly rooted in the belief that God is the source of all human rights.¹⁰ Due to their divine origin, no ruler can curtail or violate in any way the human rights conferred by God. Under Article XIII of the UIDHR, “Every person has the right to freedom of conscience and worship in accordance with his religious beliefs”.¹¹ Thus, freedom of religion or belief is granted in the Muslim world, but within the framework of religious law. The 1990

7 See Witte J (Jr) and Alexander FS (eds). 2010. *Christianity and Human Rights*, Cambridge: Cambridge University Press; Novak D. 1998. *Natural law in Judaism*. Cambridge: Cambridge University Press.

8 See Bible. Matthew 22:21, Micah 12:17 Luke 20:25.

9 The Enlightenment was a European intellectual movement of the seventeenth and eighteenth centuries in which ideas concerning God, reason, nature and humanity were synthesised into a worldview. Central to Enlightenment thought were the use and celebration of reason, the power by which humans understand the universe and improve their own condition. The goals of rational humanity were considered to be knowledge, freedom and happiness. Particularly in religion, this search for the power of reason ended up in a strong affirmation of separation between church and state and an idea of toleration that led to the first formulation of freedom of religion of the modern times. See Duignan B. 2021. “Enlightenment: European History: Reason and Religion”, *Encyclopedia Britannica*, 14 October.

10 See Arab Charter on Human Rights, adopted by the League of Arab States, reprinted in 18 Hum. Rts. L.J. 151 (1997); League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008; Universal Islamic Declaration of Human Rights (UIDHR), adopted by the *Islamic Council of Europe* on 19 September 1981/21 Dhul Qaidah 1401.

11 UIDHR, art XIII.

Cairo Declaration on Human Rights in Islam stresses these differences, implicitly recalling the doctrine that human rights are privileges that Allah gave to *adam* (the human being) and that they come directly from God.¹² Human rights are privileges fully granted from God only to Muslims. In particular, Islam roots the notion of fundamental rights in the God's Revelation to the Prophet Muhammad and bases it on three main postulates: (1) man and woman are equal in their natural differences, so that the law protects them both, but they are not necessarily equal in front of the law; (2) Muslims and non-believers are not exactly in the same position under the law; and (3) no principle of separation exists between religion and state. Moreover, individualism in Islamic law and in the Islamic tradition is not the same as in the Western world, since the status of an individual is defined in relation to the group of belonging, so that the rights of the believer are shaped in relation to the rights of the entire group of believers (*ummah*).¹³ While international law has aimed to found freedom of religion or belief and other fundamental rights on a non-religious norm, Islamic law grounds it in religious law. In an Islamic society, human rights need Islamic legitimacy.¹⁴

This particular notion of human rights in Islam has drawn controversy, especially in those countries, such as Egypt, which signed the UDHR. Formally, Egypt is bound to promote the international standards of human rights, but substantially religious rules are being given effect in its legal system, which violates those same standards.¹⁵ But in the Muslim world, there is an ongoing debate on these issues. In 2012, after the Arab Spring, the Grand Imam of al-Azhar Ahmad Al-Tayyeb issued a statement in which he affirmed that it was time for Islam to reflect on a notion of equality independent from religious belonging. According to the Quran, religion has to be a free choice. Therein, Al-Tayyeb maintained that the notion of religious pluralism must be implemented to avoid religious discrimination and to guarantee freedom of expression, even in religious matters, as the primary sign of democracy and that for this reason, all Muslim societies are invited to educate "young generations in the culture of freedom, the right to diversity, and respect for others".¹⁶

Since then, Islamic intellectual thinkers have been trying to stimulate internal reflection along the way indicated by al-Azhar. For example, in 2017 Morocco's High

12 Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation], art 10.

13 Moosa N. 1998. "Human Rights in Islam", *South African Journal on Human Rights* 14(4):512.

14 Freeman M. 2004. "The Problem of Secularism in Human Rights Theory", *Human Rights Quarterly* 2:379. Cfr. Almirzanah S. 2007. "On Human Rights and the Qur'anic Perspective: Freedom of Religion and the Rule of Apostasy", *Al-Jami'ah: Journal of Islamic Studies* 45(2):376.

15 Mohammed AS. 2021. *The Legal Framework of Apostasy in Egypt: A Manifestation of Secular Reconstruction of Sharia by a Modern State*, Master's thesis, American University in Cairo, 86ff.

16 At-Tayyeb A. 2011. "The Fundamental System of Freedoms", 1 November. Online at: <https://bit.ly/3EiYobJ>

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Religious Committee issued the *Sabil al-‘ulama* (“The way of scholars”),¹⁷ affirming that apostasy must no longer be treated as an act of betrayal of the community of believers, because it represents a legitimate manifestation of freedom of choice. In this sense, the punishment to be applied is not death penalty, but other forms, such as imprisonment for at least three years. Even though this declaration has no legal binding value on all Muslims around the world, it is certainly a good starting point to reopen the discussion around apostasy, understood as a conversion to another faith.

APOSTASY AND ITS CONSEQUENCES ON FAMILY LIFE: THE LEGAL RULES IN THE THREE ABRAHAMIC RELIGIONS

Apostasy entails the leaving of one’s religion and, sometimes, the entering into a new one. Given the importance of family law in religious legal systems, apostasy has consequences not only for the apostates themselves, but also for their families.

Judaism

Doctrine on apostasy

The majority position on conversion in Judaism is summarised by the maxim of Rabbi Shlomo ben Isaac (Rashi) (1040-1105): “Even though he has sinned, [still] he remains a Jew.”¹⁸ This point signalled the arrival of a debate over an issue – apostasy – which Judaism never had to confront for a long part of its history. In fact, there is no specific word in Hebrew to define an apostate. As one scholar of apostasy in Islam has noted, “Within Judaism there are many different terms that are used to designate what in theory does not exist: a person who has left Judaism.”¹⁹

In the ancient polytheistic context, idolatry was condemned, but it was not regarded as apostasy.²⁰ In the Hellenistic period, the term *apikoros* referred to those who no longer followed the commandments or who ridiculed the Torah and those following it.²¹ Literature of the Tannaitic period (10-220 CE) employed the terms *mumar* (“to change”, “to substitute”) and *meshumad* (“to destroy”, “to annihilate”). The former indicated persons who continued to live in a Jewish society, and who exchanged or substituted “the meticulous observance commanded therein [...] for

17 Oasis Center. 2017. “The Declaration of Muslim Ulama on Apostasy”, 3 September. Online at: <https://www.oasiscenter.eu/en/declaration-moroccan-ulama-apostasy>

18 Quoted by Stone SL. 2019. “Jewish Law. Dynamics of belonging and status”, in Bottoni R and Ferrari S (eds). *Routledge Handbook of Religious Laws*. London: Routledge, 160.

19 Roos L. 2020. “Leaving Judaism”, in Enstedt D, Larsson G and Mantsinen TT (eds). *Handbook of Leaving Religion*. Leiden: Brill, 64.

20 Ben-Sasson HH. 2007. “Apostasy”, in Skolnik F and Berennbaum M (eds). *Encyclopaedia Judaica*. Farmington Hills, MI: Thomson Gale, 2:269.

21 Roos, “Leaving Judaism”, 56.

other practices".²² *Mumar* also referred to apostates before Hadrian's persecutions, when Jews converted of their own free will. *Meshumad* emerged with the beginning of persecution, during which Jews were forced to convert.²³ With the passing of time, when it became obvious that both free-willing and forced converts supported in different ways first the Roman and then the Christian persecutions, *meshumad* started being used to refer to any apostate.²⁴ Apostates have also been referred to as *poshe'a Yisrael* ("transgressor of Israel" or "rebellious Jew"), *kofer* ("denier") and – as regards persons ceasing to be (ultra-)Orthodox but still regarding themselves as Jews – *dati lesheavar* ("formerly religious"), *ex frum* ("pious", "observant") and *yotzim leshe'elah* ("those leaving to question").²⁵

The Jewish attitude towards apostasy – influenced by its confrontation with the rise of Christianity first and of Islam later – may seem "ambivalent and inconsistent",²⁶ but the position of Christianity itself changed over time, and its relationship with Judaism evolved accordingly. By the second century CE, Christianity's reconciliation with Judaism had definitely failed. Its transformation into a licit religion in 313 and a state religion in 380 opened an age of persecution and discrimination. Apostasy was motivated by the fear of massacre or expulsion, opportunistic reasons or everyday contacts which gradually led to the interiorisation of Christian beliefs and way of life. Conversion to Christianity was expected to improve the apostate's legal and social status, although it is well known that this was not always the case.²⁷

The emergence of Islam posed many of the same problems.²⁸ Mass conversions prompted the reflection on the apostate's Jewish status in the early Geonic period.²⁹ This era, in the late sixth through the mid-eleventh centuries, had a paramount importance in Jewish legal history. The Geonim led the Talmudic schools in Babylonia (conquered by Caliph Umar as early as 636), and their academies superseded the

22 Goldin S. 2014. *Apostasy and Jewish identity in High Middle Ages Northern Europe*. "Are you still my brother?" Manchester: Manchester University Press, 3.

23 Zeitlin S. 1963. "Mumar and Meshumad", *The Jewish Quarterly Review* 54(1):6.

24 Zeitlin, "Mumar and Meshumad", Goldin, cit., *Apostasy and Jewish identity in High Middle Ages Northern Europe*, 113.

25 Roos, "Leaving Judaism", 56. See also Belfon D. 2020 "Leaving Orthodox Judaism", in Enstedt, Larsson and Mantsinen (eds). *Handbook of Leaving Religion*, 150-151; Roos, "Leaving Judaism", 59-60; Shaffir W. 2000. "Movements in and out Orthodox Judaism: the cases of penitents and the disaffected", in Francis LJ and Katz YJ (eds). *Joining and leaving religion: research perspectives*. Leominster *Apostasy and Jewish identity in High Middle Ages Northern Europe*: Gracewing, 269-285.

26 Goldin, *Apostasy and Jewish identity in High Middle Ages Northern Europe*, 4.

27 Ben-Sasson, "Apostasy", 270-271; Roos, "Leaving Judaism", 57; Juster J. 1976. "The Legal Condition of the Jews under the Visigothic Kings. Parts I, II and III", *Israel Law Review* 11(2):259-287, (3):391-414, (4):563-590; Rabello AM. 1999. "The Legal Status of Spanish Jews during the Visigothic Catholic Era: From Reccared (586) to Reccesswinth (672)", *Israel Law Review* 3(4):756-786.

28 Ben-Sasson, "Apostasy", 270.

29 Blidstein GJ. 1976. "Who is not a Jew? – The Medieval discussion". *Israel Law Review* 11(3):388.

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Palestinian ones in terms of religious authority.³⁰ Their recognised leadership favoured the diffusion of the Babylonian Talmud in the Jewish centres in Europe.³¹ The Geonim faced three main legal dilemmas: (1) the status of children of Jewish-apostate couples, (2) levirate marriage, and (3) apostate women's dowries. These were areas where apostate status had effects on family life.

Effects on family

As regards the first issue, the children of marriages between Jews and apostates were regarded as Jews, provided that their parents had entered into a marriage in accordance with Jewish law. Apostasy of one of the parties after marriage did not render the marriage invalid. Likewise, the marriage of a Jew to a Jewish apostate (that is, somebody who left Judaism before getting married) was regarded as valid. When it was decided that the child was not a Jew, this decision did not depend on the parent's status as apostate, but on other circumstances. For example, the son of an apostate man and a non-Jewish woman was not a Jew, because Jewishness is determined by matrilinear descent.³²

Issues over levirate marriage were especially critical. Deuteronomy prescribes that either a widow whose husband has died without offspring marries her brother-in-law (the *levir*) (Deut 25:5-6) or the latter releases her through an act called *halizah* by virtue of which she can remarry, that is, marry someone else (Deut 25:7-10).³³ The question was whether the apostate *levir* was still required to release the woman. One *gaon's* reply left no hope: "This betrothed woman, who has fallen before an apostate *levir*, is chained and remains [so] forever. There is no solution for her and she cannot marry until he performs a [*halizah*]."³⁴ Nevertheless, most *Geonim* allowed the release if the *levir* was an apostate at the time of the marriage.³⁵ Finally, whereas apostasy could be a cause for divorce, the apostate woman's right to her dowry remained intact, and the husband could withhold only whatever she had seized from his property.³⁶

30 *Geonim* is the plural form of *gaon* (Hebrew for "excellency"). This is a "title accorded to the Jewish spiritual leaders and scholars who headed Talmudic academies that flourished, with lengthy interruptions, from the 7th to the 13th century in Babylonia and Palestine". See Editors of Encyclopedia Britannica. n.d. "Gaon, medieval Jewish Scholar", *Encyclopedia Britannica*.

31 See Brody R. 2013. *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture*. New Haven: Yale University Press.

32 Simonsohn U. 2015. "The Legal and Social Bonds of Jewish Apostates and Their Spouses according to Gaonic Responsa", *The Jewish Quarterly Review* 105(4):425-431.

33 Drori M. 2007. "Levirate Marriage and Halizah", in Skolnik and Berenbaum (eds). *Encyclopaedia Judaica*, 12:725.

34 Quoted by Simonsohn, "The Legal and Social Bonds of Jewish Apostates and Their Spouses", 422.

35 Bildstein GJ. 1976. "Who Is Not a Jew – The Medieval Discussion", *Israel Law Review* (11)3:380.

36 Simonsohn, "The Legal and Social Bonds of Jewish Apostates and Their Spouses", 423.

In Medieval Europe, there was a consensus amongst rabbinical authorities over the Jewishness of apostates, despite the development of different opinions.³⁷ One minority view in twelfth- and thirteenth-century France held that the marriage to an apostate was void. Another one argued that apostates could not dissolve a marriage contracted before apostasy, because they were disqualified from nullifying an act performed as (full) Jews. Yet another minority maintained that apostates remained Jews, but their children did not. One of the most debated issues was *halizah*. Most authorities did not accept the Geonic position allowing the release if the *levir* was an apostate at the time of the marriage.³⁸ It was also largely accepted that the apostates' right to inherit should be limited and that the rabbinical court had the power to deprive them of a part or all of their inheritance, and to assign it to the heirs who had not sinned.³⁹

To sum up, the prevailing view is that a Jewish apostate remains a Jew in terms of ties and obligations but may be denied some rights in the economic sphere as well as some symbolic or honorary acts.⁴⁰ Because it is not technically possible to cease to be a Jew and throughout history the door to the repenting has always been left open, there are no special requirements for re-entering. Nevertheless, some communities may require a ritual bath or an act of repentance. Marriage between a Jew and a Jewish apostate is valid, but apostasy is a cause for divorce.⁴¹ An apostate's testimony is accepted only if this attests that a man is dead, so that his wife can remarry without having to receive the *get* from her husband.⁴² A period of grieving over the death of apostates is not observed, unless they died suddenly because of a traumatic event. In that case, they are regarded as having repented at the point of death.⁴³

Christianity

Doctrine on apostasy

Apostasy was already sanctioned in the Old Testament and by Saint Paul in the letter to the Thessalonians.⁴⁴ The Great Church faced a phenomenon of mass apostasy during the third century. To avoid death and tortures, the new Christians abandon their new religion and returned to paganism. For this reason, they were called *lapsi*

37 Bildstein, "Who Is Not a Jew", 329; Goldin, *Apostasy and Jewish identity in High Middle Ages Northern Europe*, passim.

38 Bildstein, "Who Is Not a Jew", 375-381.

39 Bildstein, "Who Is Not a Jew", 382-384; Ben-Sasson, "Apostasy", 276.

40 Ben-Sasson, "Apostasy", 274.

41 Noy D. 2007. "Apostasy in Jewish Law", in Skolnik and Berennbaum (eds). *Encyclopaedia Judaica*, 2:276; Roos, "Leaving Judaism", 62.

42 Bill of Divorcement. See Westreich E and Westreich A. 2019. *Jewish law: marriage*, in Bottoni R and Ferrari S (eds). *Routledge Handbook of Religious Laws*. London: Routledge, 230-235.

43 Noy, "Apostasy in Jewish Law", 276.

44 See Bible, Deuteronomy 13:2-6, 7-12, 13-19; Dt 17:12; Dt 21:18-21 and Thessalonians 3-8.

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("fallen away", from the Latin *labor*). After the danger had passed by, they were readmitted into the Christian community in various manners, but generally through pardons letters or a confirmation of the baptism or by undergoing a penance. The persecutions stopped with the 313 Edict of Milan, issued by emperors Constantine and Licinius, and gradually the phenomenon of mass apostasy extinguished itself. Since then, apostasy in Christianity has been mostly a matter of the individual believer moving away from the Church and completely rejecting their faith.

In the Catholic Church, Canon 751 of the 1983 Code of Canon Law (CCL) sees apostasy, along with heresy and schism, as a very serious crime punished with excommunication, because it jeopardises the ecclesiastical community and puts the salvation of the faithful's souls at risk. From the Church's perspective, the freedom of a believer to choose a religious community to belong to ends where this individual choice endangers the global Church community. Apostasy does not just consist in religious indifference or in a cold approach towards religious practice. It must be a public and well-known departure from the Church.⁴⁵ "Public" means that the ecclesiastical authority must be aware of the apostate's behaviour. If rejection remains in the apostate's heart (*forum internum*), it is not a crime but only a sin, which can be expiated via spiritual sanctions.

Only a Catholic believer, sixteen-years old and with a proper intention, can commit apostasy. This can be done in cases of: (1) total rejection of faith; (2) conversion to other religions; (3) conversion to non-belief, agnosticism or agnostic political or philosophical doctrines; or (4) abandonment of the community through a written document sent to the ecclesiastical authority, in which the apostate expresses their free and unequivocal will. This last is "de-baptism", where the believer asks the Church to be cancelled from the baptism register. In the four cases above, the crime comes to being only when the ecclesiastical authority becomes aware of behaviour not compatible with the Catholic faith. According to the CCL, the Apostolic Constitution *Pastor Bonus* (no. 52), the 2001 *Motu Proprio Sacramentorum Sanctitatis tutela* and the 2010 *Normae de gravioribus delictis*, the Congregation for the Doctrine of Faith is competent to investigate the crime of apostasy. The penalty is time-barred after 20 years.

In 2009, Pope Benedict XVI's *Motu Proprio Omnium in mentem* reformed some of the rules concerning the way by which the ecclesiastical authority learns about the act of separation from the Church, but scholars share the opinion that the publicity of the conduct concerned still lies in the heart of this regulation.⁴⁶ As regards sanctions, apostasy is punished with the severest one, that is, excommunication *latae sententiae*. The penalty is imposed automatically on the apostate without a formal

45 Pope John Paul II stressed this difference in his apostolic exhortation *Ecclesia in Europa*. See John Paul II. 2003. *Ecclesia in Europa* [The Church in Europe], para 9.

46 See Ferrante M. 2012. "Il delitto di apostasia alla luce del motu proprio 'Omnium in mentem'" [The crime of apostasy in the light of the motu proprio "Omnium in mentem"], in AA.VV. *Questioni attuali di diritto penale canonico*, [Current Issues of Canon Criminal Law] Vatican City: LEV.

trial in front of the ecclesiastical court. A trial may take place only afterwards, in order to ensure that the Church acts according to the principle of justice, but the court decision would merely declare the punishment already inflicted on the apostate. In a similar way, Canon 1436 of the Code of Canons of the Eastern Churches (the *Codex Canonum Ecclesiarum Orientalium* (CCEO)) regulates apostasy in the same way, even if there is no automatic sanction and this may be imposed only after a proper trial, that is, *ferendae sententiae*.⁴⁷ Before the imposition of the sanction, the authority must admonish the apostate and give him a period for repentance.

Moving on to other Christian legal traditions, in the Orthodox Churches, apostasy is a serious conduct that can be prosecuted on the disciplinary level both by the ordinary bishop and by the Holy Synod. Bishops are responsible for the maintenance of the doctrinal standards of the clergy and believers who are under their jurisdiction.⁴⁸ In the Anglican Church, a believer who expresses ideas contrary to the Anglican doctrine and theology and consisting in the total repudiation of faith may be subjected to a disciplinary trial in the Church courts. The legal standing and effect of the court decision depends on the legal status of the Anglican church concerned in the secular legal system where it exists and operates. The acceptable standards of doctrine are defined by the organs of the Anglican Communion, and in particular of the Lambeth Conference.⁴⁹ In the Lutheran tradition, there is a core set of principles that must be shared by all believers, and teaching or preaching ideas contrary to it is regarded as repudiation of faith. Nonetheless, the concept of “pious opinion” allows a certain degree of freedom to believers in their individual speculation on theological matters, if it does not pose a danger to faith itself.⁵⁰

Effects on family

Because of the principle of separation between the religious and the secular spheres, in no Christian tradition does apostasy have legal consequences in civil matters, including the apostate’s family life. Apostasy remains a merely religious crime or a disciplinary issue, which brings about consequences only in the apostate’s spiritual life. The apostate can no longer receive the sacraments from the Church, including funeral rites, nor can they hold any Church offices. In the past, the situation was different, because of the public relevance of religion in Western societies. However,

47 Also called Catholic Churches of the Eastern Rite, or Uniate Churches. The Great Schism of 1054 broke the unity of the Great Church and separated what came to be known as “Orthodox Churches” (prevailing in Eastern Europe and Near East) from what came to be known as the “Catholic Church” (prevailing in Western Europe). With the passing of time, some Eastern communities re-established canonical communion with the Catholic Church, while being guaranteed the right to continue to retain their own liturgy and other specific characteristics, different from the Latin rite, which had developed across the centuries.

48 Doe N. 2013. *Christian Law: Contemporary Principles*. Cambridge: Cambridge University Press, 211.

49 Hill M. 2018. *Ecclesiastical Law*. Oxford: Oxford University Press, 20-21.

50 See Doe, *Christian Law*, 209-213.

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marriage – a sacrament in the Catholic tradition – was not automatically dissolved by the apostasy of one of the spouses, because in the Catholic Canon law a Catholic may marry a non-believer. Throughout history, canon law has not directly regulated other areas of law, such as inheritance, which traditionally has always been under secular jurisdiction.

Islam

Doctrine on apostasy

In Islam, apostasy (*irtidad* or *ridda*) is the full repudiation of the Islamic faith and every act or word incompatible with Islamic faith. The worst form is undoubtedly the conversion to another religion or to atheism, because this means separation from Islam, deemed to be the seal of the Revelation and thus, final and perfect. Apart from the express rejection of faith, apostasy in Islam can also assume the form of blasphemous words or acts ridiculing or vilifying the Prophet, the Quran or the core principles of Islam. In short, the expression “apostate” extends also to those who are heretic or guilt of blasphemy.⁵¹

Apostasy in Islam is a major sin, a conduct contrary to the Quran and the *sunnah*.⁵² It is punished with the flames of hell in the world to come, but it is also a crime in this one, because it jeopardises the community of believers. The apostate’s conduct can disrupt other Muslims and incite others to follow their path. That is why in Islam there is a great concern about the possibility of apostasy, which justifies the strict system to prosecute and punish this crime. By contrast, apostasy of others from their own religion and their conversion to Islam is encouraged.⁵³

The Quran is clear in condemning apostasy: it envisages a horrible spiritual punishment in many *suras*, while it is not so clear in defining the proper sanction in the human dimension. The *sunnah* reports one *hadith* of the Prophet, who said: “If anyone changes his religion, put him to death.”⁵⁴ A second *hadith* authorises the killing of a Muslim only in three cases: apostasy, adultery after marriage and manslaughter without a reason.⁵⁵ Relying on these sources, the main doctrinal

51 Cohn HH. 2000. “The Law of Religious Dissidents: A Comparative Historical Survey”, *Israel Law Review* 34(1):55.

52 Quran 2:217; 3:86-91, 177; 4:115; 16:106.

53 The 1981 Universal Islamic Declaration of Human Rights (UIDHR), the 1990 Cairo Declaration and the other charters on human rights in Islam are clear on this point by limiting the possibility to criticise Islam and the Prophet.

54 Another version of this *hadith* exists: “If anyone change his religion, behead him”. The essence of the content is the same.

55 Another *hadith* – “If anyone reverts from his religion (or, whoever changes his religion), put him to death” – is related to the episode of a Jew converted to Islam who wanted to return to his original faith. See Al-Alwani TJ. 2011. *Apostasy in Islam. A Historical and Scriptural Analysis*. Herndon: International Institute of Islamic Thought, 68.

schools agree on apostasy as a *hudud* crime whose punishment is in the hands of the head of the community.⁵⁶

After being sentenced by a tribunal, the apostate is normally granted a term of three days to repent and avoid death. The aim of this term of reflection, in proper conditions of detention, is to reunite the apostate to the community of the faithful and to show the community itself the mercy of Allah.⁵⁷ Each doctrinal school has a different position about the term: the Hanafis consider it not compulsory and only recommended; the Malikis, the Shafi'is and the Hanbalis hold that, in case of serious forms of apostasy, the apostate can be killed without granting the term to repent; the Shiites grant it only to the converted Muslim and not to one born in Islam, because the latter's betrayal is considered even worse. In any case, no particular legal formality is needed to readmit the faithful in the community. The death penalty is normally executed by sword beheading, and the apostate's body is not accorded Islamic funeral rites. Generally, if the apostate is a woman, she is sentenced to death, too, and if she is pregnant the sentence is executed after the childbirth. For the Shiites, instead, the woman must be put in jail and forced to repent through daily beatings and feeding of only bread and water.

An apostate may be punished only if they are pubescent (*balig*) and show sound mind (*'aqil*) and freedom of choice (*muhtar*). The Maliki school also requires a check to whether the apostate has been a proper Muslim, because only the good faithful can commit this crime.⁵⁸ Neither a drunk person nor a child may commit it.⁵⁹ In particular, the latter cannot be punished for apostasy until turning pubescent and confirming apostasy. The doctrinal schools have a different approach to child apostasy, since the child, especially if born in a marriage where the mother is not a Muslim, could be forced into a certain choice. On the other hand, all legal interpretations consider valid the child's conversion to Islam, which is regarded as the natural religion of every human being. According to Muslim scholars, each human being is born a Muslim and remains a Muslim unless and until they choose a different religion.⁶⁰ The child born in a mixed marriage must be raised as a Muslim, even forced to be Muslim, and if when they become pubescent, they insist on being an apostate, then they must be sentenced to death.⁶¹

56 The Hanafi and the Shafi'i schools dissent on this point. See Clarke B. 2009. "Law, Religion, and Violence: A Human Rights-Based Response to Punishment (by State and Non-State Actors) of Apostasy", *Adelaide Law Review* 30(1):119ff.

57 Quran 3:88-89.

58 A good faithful is the Muslim who conforms life to orthopraxis. See Peters R and De Vries GJJ. 1976. "Apostasy in Islam", *Die Welt Des Islams* [The World of Islam] 17:3-6.

59 Saeed A and Saeed H. 2004. *Freedom of religion, apostasy, and Islam*. Aldershot: Ashgate, 51.

60 Ayoub M. 1994. "Religious freedom and the law of Apostasy in Islam", *Islamochristiana* 20:85-87.

61 Ayoub, "Religious freedom and the law of Apostasy in Islam", 85-87.

6. Apostasy and consequences for family life under Jewish, Christian and Islamic laws

Effects on family

As mentioned, the treatment of apostates is harsh, and doctrinal schools suggest that judges should use the doctrine of *shubha* (legal doubt), every time there is a certain degree of uncertainty in the proofs collected as prescribed by *fiqh*. These include the confession of the apostate or the declaration of two qualified witnesses reporting the very words or deeds that constitute apostasy. The term of repentance is very important for the apostate in order to avoid not only extreme punishment, but also specific consequences in civil and political life.

For purposes of Islamic law governing family and inheritance, as soon as the term of repentance begins, the apostate is legally incompetent and loses all of their financial and patrimonial assets, which are assigned to the Muslim treasury, because a Muslim cannot inherit from a non-Muslim (assets are legally treated as if they were *fay*, spoils of war taken without fighting). Also, all of their debts become payable.⁶² Nevertheless, some scholars maintain that the assets of the apostate must remain with family and shared amongst his/her legitimate heirs according to Islamic rules. The marriage of a male apostate is immediately declared void (*fash*) because a Muslim woman cannot be married to a non-Muslim man and, generally, a believer cannot be subjected to a non-believer. By contrast, if the apostate is a woman, her marriage is not *fash*, since a Muslim man can enter into a mixed marriage according to the Quran,⁶³ but this marriage would last only until the woman is executed according to the laws of apostasy described above. As for parental responsibility, apostasy – being regarded as a sort of civil death – is an obstacle to all personal status-based rights.⁶⁴ The apostate may not have any influence on children's life even in case of no execution.

Rules on apostasy have been enforced by all the 56 states of the Organization of Islamic Cooperation. Amongst them, there are many approaches to the theme. In Pakistan, Saudi Arabia, Sudan and Brunei very strict rules on apostasy have been implemented with capital punishment. Instead, in some others of them, apostasy is not often punished by death. More frequently, legal limitations on civil life are enforced, especially on marriage and inheritance like in Egypt, Jordan, Oman and Kuwait.⁶⁵

62 Quran 4:141: Allah will not allow non-believers to prevail on Muslims. The rule generally applies even if the non-Muslim is a member of one of the "Religions of the Book". Saeed and Saeed, *Freedom of religion. Apostasy in Islam*, 53; Peters and De Vries, "Apostasy in Islam", 8.

63 Quran 2:221. Mixed marriage is only possible between a Muslim man and a woman belonging to a monotheistic religion.

64 Mohammed, *The Legal Framework of Apostasy in Egypt*, 88.

65 See Law Library of Congress. Global Legal Research Directorate. 2014. Laws Criminalizing Apostasy in Selected Jurisdictions. LL File No. 2014-010795 LRA-D-PUB-000100, May.

APOSTASY AND ITS CONSEQUENCES ON FAMILY LIFE: CASE STUDIES

The legal regulation of apostasy in Judaism, Christianity and Islam is relevant not only in the internal life of the communities concerned, but also in the context of “etatisation”, a process of appropriation and integration of religious family laws by governments into national legal systems.⁶⁶ This section examines apostasy’s consequences on family life in contexts of state-enforced religious family laws: Jewish law in Israel and Muslim law in Malaysia and Egypt. The absence of Christian apostasy-related regulation in contemporary states’ legal systems does not offer a comparable case study.

Jewish law in Israel: The Shalit case

Benjamin Shalit was a Jewish-born Israeli citizen, who married a non-Jewish Scotswoman. In 1964, they had a son, who the 1949 Registration of Inhabitants Ordinance required to register in the population registry. Registration required a compulsory declaration of the parents’ religion and ethnic group. Shalit declared “no religion” because his wife and he were atheists and they were going to raise their son accordingly, and “Jewish ethnic group”. However, following the Ministry of the Interior Affairs’ 1960 directive, according to which Jewish religion and ethnicity had to go hand in hand, the registration officer changed their declaration and wrote “father Jewish, mother non-Jewish” under “religion”, and “no registration” under “ethnic group”. In 1967, the Shalits had a daughter, who had to be registered too – this time under the 1965 Population Registry Law, which had repealed and substituted the 1949 order while keeping the same requirements. The registration officer changed again Shalit’s declaration, this time writing “no registration” under religion and “father Jewish, mother non-Jewish” under “ethnic group”. The officer was nevertheless ready to amend the registration so that it would be the same as that of the son. In 1968, Shalit petitioned the Supreme Court to have the children recorded according to his declaration, maintaining that, firstly, the registration officer was not authorised to change his declaration and, secondly, religion and ethnicity were two separate things. He held that it was possible for one to be Jewish by ethnic group without being so by religion: being a Jew was a matter of self-identification with Israeli Jewish culture, history and values, in which he desired to raise his children.⁶⁷

This was the first time that the Supreme Court (normally sitting in panels of three judges) sat in a full bench of nine. The judges initially tried to avoid entering such a thorny issue, asking the government to delete the ethnic-group entry from the population registry, which was refused.⁶⁸ The complexity of the issue explains why

66 Sezgin Y. 2019. *Comparative remarks. Religious laws and marriage*, Bottoni and Ferrari (eds). *Routledge Handbook of Religious Laws*, 285-287.

67 Nesis LS. 1970. “Who Is a Jew – Shalit v. Minister of Interior et al. – The Law of Return (Amendment No. 2), 1970”, *Manitoba Law Journal* 4:53-56.

68 Nesis, “Who Is a Jew”, 56.

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it took them almost two years to deliver a judgment, which extended to 132 pages.⁶⁹ By a strict majority of five to four, the Supreme Court ruled in favour of Shalit. The majority examined the petition from the angle of Shalit's first argument and concluded that the registration official had to record entries according to the information provided.⁷⁰

The Shalit case raised a heated debate over who is a Jew, which led even to an amendment of the Law of Return. A new section (3A) was included to read: "(a) A person shall not be registered as a Jew by ethnic affiliation or religion if a notification under this Law or another entry in the Registry or a public document indicates that he is not a Jew, so long as the said notification, entry or document has not been controverted to the satisfaction of the Chief Registration Officer or so long as declaratory judgment of a competent court or tribunal has not otherwise determined."⁷¹ This prevented the future recording of declarations, like that of Shalit, in the population registry. Only in 2002 was the Population Registry Law amended and the ethnic-group entry dropped. This change was made necessary by the growing number of returning Jews, in particular from the former Soviet Union, who declared themselves as Jews without meeting the legal requirements to be classified as such.⁷²

Islamic law in Malaysia: The Indira Gandhi case

The Malaysian legal system is a combination of secular, religious and customary laws. As a federation, there are two legal levels: federal and state. The court system is composed of civil courts under the federal competence, Islamic Syariah Courts under the respective state's competence and native courts operating only in Sabah and Sarawak.⁷³ Syariah Courts have jurisdiction only over Muslims, on matters enumerated by the Constitution (that is, family and succession law when all the parties concerned are Muslim, along with some criminal offences) and in the territory of those states which have legislated on such matters.⁷⁴

69 Shava M. 1977. "Comments on the Law of Return (Amendment No. 2), 5730-1970 (Who Is a Jew)", *Tel Aviv University Studies in Law* 3:144.

70 Gavison R. 2010. *The Law of Return at Sixty Years: History, Ideology, Justification*. Jerusalem: The Metzliah Center for Zionist, Jewish, Liberal and Humanist Thought, 65.

71 The Law of Return 5710 (1950). Online at: <https://www.knesset.gov.il/laws/special/eng/return.htm>

72 Davis U. 2003. *Apartheid Israel: Possibilities for the Struggle Within*. London: Zed Books, 221, endnote 29.

73 Chew Li Hua N. 2016. "Legal Pluralism and Conflicts in Malaysia: The Challenge of Embracing Diversity", in Bottoni R, Cristofori S, Ferrari S (eds). *Religious Rules, State Law, and Normative Pluralism – A Comparative Overview*. Berlin: Springer, 253.

74 See Adil MAM and Ahmad NM. 2016. "The Status and Implementation of Islamic Law in Malaysia", in Bottoni, Cristofori and Ferrari (eds). *Religious Rules, State Law, and Normative Pluralism – A Comparative Overview*, 263-276; Faruqi SS. 2020. "Between two shores. Courts, the Constitution and the Shariah", *Singapore Academy of Law Journal* 32:418-419 and 425.

Although scholars maintain that controversies involving non-Muslims should be outside the Syariah Courts' jurisdiction, there are civil court decisions stating otherwise.⁷⁵ This happens in the cases concerning two non-Muslims, one of whom converts to Islam. In such cases, there are conflicts of competence between civil and Syariah Courts. The latter affirm their own competence on the basis of a clause added to the Malaysian Constitution providing that the Federal High Courts "shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts".⁷⁶ The Indira Gandhi case is a judicial saga revolving around two distinct, but related issues: child custody, and children's unilateral conversion to Islam.

On 11 March 2009, Indira Gandhi's husband, K. Pathmanathan Riduan, converted to Islam, becoming known as Muhammad Riduan after his conversion. Unbeknownst to Gandhi, on 2 April he also converted their three children, respectively 12 and 11-years-old and 11-months-old, and later he was granted custody by a Syariah Court. Whereas the two older children remained with Gandhi, the youngest daughter Prasana – who at that time was still being breastfed – was taken and concealed by the father. On 11 March 2010, the Ipoh High Court (IHC) granted Gandhi full custody of the three children. On 30 May 2014, it annulled the Syariah Court's custody order, cited the former husband for contempt and ordered that he be arrested unless Prasana returned to the mother.⁷⁷

However, the Inspector General of Police (IGP) refused to act on the ground that there were two conflicting custody orders. This refusal led Gandhi to resume her judicial battle.⁷⁸ On 12 September, the IHC granted a mandamus order which compelled the IGP to return Prasana, but the Court of Appeal dismissed the order by 2 votes to 1 on 17 December.⁷⁹ This confirmed Malaysia's dominant trend, which makes matters relating to Islam fall exclusively under the Syariah Court's jurisdiction, even when one party is not Muslim.⁸⁰ On 29 April 2019, the Federal Court unanimously ordered the IGP to arrest Gandhi's former husband on contempt of court but, at the same time, it stressed that the existence of two conflicting custody orders excused the IGP for not taking action, and that the IHC should not have issued the recovery order.⁸¹ Prasana is still missing.

75 Chew Li Hua, "Legal Pluralism and Conflicts in Malaysia", 258-260; Faruqi, "Between two shores", 80.

76 International Commission of Jurists (ICJ). 2019. Challenges to Freedom of Religion or Belief in Malaysia. A Briefing Paper, March. The relevant portion is Clause 1A, which was added to Article 121 of the Malaysian Constitution in 1988.

77 "Timeline of key events in the Ipoh child custody tussle", *Malaysia News*, 1 December 2016.

78 Chew Li Hua, "Legal Pluralism and Conflicts in Malaysia", 258.

79 "Timeline of key events in the Ipoh child custody tussle".

80 Adil MAM and Saidon R. 2017. "Religion as a determinant of child welfare in custody cases in Malaysia and classical Islamic law: a comparative overview", *Islam and Civilisational Renewal* 8(1):41. See also Nair HL and Chuan GC. 2015. "The effects of conversion to Islam of a non-Muslim spouse on the custody of minor children. Thoughts and trends from a Malaysia perspective", in *Advanced Science Letters* 23(1):690.

81 Johari ZK. 2017. *Finding Malaysia. Making Sense of an Eccentric Nation*. Petaling Jaya: SIRD, 185.

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In the same year, Gandhi also challenged the validity of her children's conversion to Islam. Article 12 of the Malaysian Constitution stipulates that "no person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own",⁸² and that for the purpose of this clause "the religion of a person under the age of eighteen years shall be decided by his parent or guardian".⁸³ The issue at stake was whether the latter clause required both parents' consent.⁸⁴ On 25 July 2013, the IHC annulled the conversions and ruled that unilateral child conversions were unconstitutional.⁸⁵ It held that Article 12(4) had to be read in line with Article 8 on the principle of equality, and that parents had an equal right to determine their children's religion. The couple had entered into a civil law marriage, and it was in this wedlock that the children were born. Thus, they remained subject to civil law and could not be unilaterally converted to Islam by one parent without the consent of the other one.⁸⁶ Justice Lee Swee Seng further stressed Malaysia's commitments as a member of the international community.⁸⁷

However, on 30 December 2015, the Court of Appeal reversed the IHC's judgment by two votes to one, on grounds that civil courts were not competent in matters of conversion to Islam, which fell under the Syariah Courts' exclusive jurisdiction. This decision did not affect the oldest child, who had the right to choose her own religion, having turned 18 by that time.⁸⁸ As regards Malaysia's commitments under international law, the majority held that international norms should not be used as a guide to interpret the Constitution. They were statements of principle having no obligatory character and were not part of Malaysia's domestic law.⁸⁹

Finally, on 29 January 2018, the Federal Court decided unanimously that the word "parent" – in the light of Section 2(95) of the Eleventh Schedule of the Constitution – referred to both parents, and that children's religious conversion by one parent only was illegal.⁹⁰ Furthermore, the consent of the children themselves was required, since they had been brought up in a non-Muslim family for years before the father's conversion to Islam. In the case concerned, the father had converted them by presenting their birth certificates, but the children had not appeared before the

⁸² Federal Constitution of Malaysia, art 12(3).

⁸³ Federal Constitution of Malaysia, art 12(4).

⁸⁴ Shah DAH. 2018. "The Law and Politics of Religion and Constitutional Practices in Asia", *Asian Journal of Comparative Law* 13:207.

⁸⁵ "Timeline of key events in the Ipoh child custody tussle".

⁸⁶ Tew Y. 2016. "On the Uneven Journey to Constitutional Redemption: The Malaysian Judiciary and Constitutional Politics", *Washington International Law Journal* 25(3):682; ICJ, Challenges to Freedom of Religion or Belief in Malaysia, 20; Mansor WNW. 2016. "The Indira Gandhi Case and the advocacy of justice", *Islam and Civilisational Renewal* 7(1):124.

⁸⁷ Quoted by Tew, "On the Uneven Journey to Constitutional Redemption", 682.

⁸⁸ "Timeline of key events in the Ipoh child custody tussle"; ICJ, Challenges to Freedom of Religion or Belief in Malaysia, 21.

⁸⁹ Quoted by Tew, "On the Uneven Journey to Constitutional Redemption", 683.

⁹⁰ Faruqi, "Between two shores", 425.

Syariah Court nor uttered the profession of faith required by the law of the State of Perak.⁹¹ As regards the thorny issue of Syariah Courts' jurisdiction, the Federal Court maintained that civil courts' power of judicial review could not be removed by Parliament through a constitutional amendment, since under Article 121(1) "judicial power is vested exclusively in the civil High Courts" and the "jurisdiction and powers of the courts cannot be confined to federal law".⁹² Nevertheless, conflicts of jurisdiction between civil and Syariah Courts tend to be solved in favour of the latter, and cases like the examined one are the exception rather than the rule.⁹³

Islamic law in Egypt: The Abu Zaid case

Cases of apostasy affecting family life have also occurred in Africa. In a notable case out of Egypt, an accused professor, Nasr Hamid Abu Zaid, did not formally apostatise, but he was one of several Egyptian intellectuals accused of apostasy based on the ideas they expressed.⁹⁴ In 1993, a group of lawyers brought an action before the court demanding the dissolution of the marriage between Abu Zaid and his wife on the ground that a Muslim may not remain married to an apostate. In 1994, the Court of First Instance dismissed it on procedural grounds, because the plaintiffs were third parties and, as such, not entitled to bring the action. However, in 1995 the Court of Appeal reversed the ruling holding that every Muslim is entitled to bring an action in the case of infringement of *huquq Allah* ("God's rights"), which concern all matters related to public policy or the Islamic community (*ummah*), including marriage dissolution. The judges concluded that Abu Zaid was an apostate and dissolved his marriage.⁹⁵ In 1996, the Court of Cassation upheld this decision, arguing that nobody had the right to make proclamations contradicting the public policy or morals, reviling the sacred things or disdaining Islam or any other heavenly religion.⁹⁶ When this final judgment was issued, Abu Zaid and his wife had already moved to the Netherlands out of fear caused by death threats. He became a professor at the University of Leiden and lived in exile until he died in 2010.⁹⁷

91 ICJ, Challenges to Freedom of Religion or Belief in Malaysia, 22.

92 Quoted by ICJ, Challenges to Freedom of Religion or Belief in Malaysia, 15. See also Faruqi, "Between two shores", 450-451; Shah, cit., 208-209.

93 Faruqi, "Between two shores", 454.

94 Olsson S. 2008. "Apostasy in Egypt: Contemporary Cases of *Hisbah*", *The Muslim World* 98:98 and 106-108.

95 Bälz K. "Submitting Faith to Judicial Scrutiny through the Family Trial: The 'Abu Zayd Case'", *Die Welt des Islams* 37(2):135-140.

96 Olsson, "Apostasy in Egypt: Contemporary Cases of *Hisbah*", 103.

97 Dévényi K. 2017. "Apostasy in Modern Egyptian Law", in Dévényi K (ed). *The Arabist Budapest Studies in Arabic* 38. Budapest: Eötvös Loránd University Chair for Arabic Studies & Csoma De Kőrös Society Section of Islamic Studies, 6.

CONCLUSION

Freedom of religion or belief is a basic right under international and regional treaties on human rights, including the African Charter on Human and Peoples' Rights.⁹⁸ This is understood as an individual right, which includes the right to abandon the religion in which one was born. As such, it may clash with the religious community's entitlement to prevent their adherents from apostatising. The sanctions prescribed by Abrahamic religions vary according to the specific religious denomination, and historical and geographical context concerned. Such penalties may not be confined to the spiritual sphere but may also have legal effects on the apostate's civil as well as family life, because religious law influences or regulates family matters in a great number of countries all over the world.

As regards Africa, this issue is especially relevant in Muslim-majority countries. As of 2014, laws prohibiting and punishing apostasy were in force in 25 states, including eight African countries: Comoros, Egypt, Mauritania, Morocco, Nigeria, Somalia, Sudan and West Sahara.⁹⁹ Also, in 2019, the organisation Humanists International called upon the African Commission on Human and Peoples' Rights "to start more systematic work towards the abolition of blasphemy and apostasy laws across the continent", which "disproportionately impact humanists and atheists in their expression of their secular values".¹⁰⁰ Nevertheless, as this chapter has highlighted, members of majority and minority religions alike may become victims of apostasy charges that affect their family life. What is more, this legislation not only has implications on freedom of religion or belief,¹⁰¹ but it may also affect family life by violating the rights to marry, to found a family and to raise one's children according to one's religious or philosophical beliefs. Thus, the problem of apostasy must be understood as a matter of both religious freedom and familial rights.

98 African Charter, African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, art 8.

99 Theodorou AE. 2016. "Which countries still outlaw apostasy and blasphemy?", *Pew Research Center*, 29 July.

100 Humanists International. 2019. "Humanists call on African states to abolish blasphemy and apostasy", *Humanists International*, 9 May.

101 See Bagga F and Lowery K. 2019. *Apostasy, Blasphemy, and Hate Speech Laws in Africa*. Washington, DC: United States Commission on International Religious Freedom, December.