

How Do Courts Deal With Tensions Between Religion and Other Human Rights?

Your honors Judges Bybee and Guevara,

Delegates & Guests of the Symposium:

It is an honor to join you today and appreciate your invitation to represent my country in the symposium.

I want to mention that I graduated from this great school last April with the LLM program; it was a remarkable experience for me.

My Friends,

Since the discussion is about religion as one of the human rights I would rather give you a small introduction about the perspective of religion as a human right in Islam.

Islam, and other religions brought by the messengers of God, not only include concepts of human rights and apply them, but they offer a deeper dimension and broader of human rights since these concepts exist before in the heavenly religions.

As Islam acknowledged the freedom of belief and choosing the religion, founding the general rule of: (There is no compulsion in religion) there is no conflict between the concept “human rights” and “religion as a human right”. On the contrary, Islam encourages the work of mind and Islam emphasizes the freedom of thought so vilified inactivated human mind.

Islam did not lose sight of human rights, on the contrary we can find in Quran the same principles that the universal declaration of human rights have, for example “The Quranic verse "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women".(virse1, Nisa’) this is the same of article one of the Universal Declaration : “ all human beings are born free and equal in dignity and rights....”

Sharia (Muslims religious law) is concerned to save the five constituents of the human being: religion, soul, mind, progeny, and possessions. These concerns are for the benefit of all people and protecting them.

In Jordan, the formal sources of the Jordanian law are the legislation, the Islamic Jurisprudence which is : (an expansion of the Sharia Islamic law—based directly on the

Quran and Sunnah—that complements Sharia with evolving rulings and interpretations of Islamic jurists)¹, the Sharia's provisions, the custom, and the rules of justice.²

When we say the religion of the state is Islam that doesn't mean that other religions are oppressed, on the contrary in the Jordanian constitution: The State shall safeguard the free exercise of all forms of worship and religious rights in accordance with the customs observed in the Kingdom.

As an example for that; The Jordanian constitution took care of the other religions need to have their own schools, it states: (Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they comply with the general provisions of the law and be subject to the control of Government in matters relating to their curricula and orientation.)

In addition they have their own courts that the constitution granted to them:, and the constitution explained all that, it states (the Religious Courts shall be divided into:(i) The Sharia Courts (ii) The Tribunals of other Religious Communities), (The Tribunals of Religious Communities are those for the non-Moslem religious communities which have been or will be recognized by the Government as established in the Hashemite Kingdom of Jordan.)

The Religious courts have jurisdiction over all matters of "personal status". This includes most family law matters such as marriage, divorce, child custody, adoption, guardianship and Waqf (that is the Islamic charity).

Shari' a (Muslim religious law) applies to Muslims in these areas and a Shari'a court system exists to adjudicate disputes. Various Christian religious "Councils" within the main Christian Sects (including Greek Orthodox, Roman Catholic, and Armenian Catholic) handle similar cases involving members of their church communities. The civil courts administer cases of other religious groups, including Protestants, usually applying the religious law of the closest religious community.

The Tolerance of religions in Jordan:

The Jordanian National Charter, which was adopted in June 1991, highlights the commitment of Jordanian authorities to protect the rights, integrity and basic freedoms of the individual, as specified in the United Nations Universal Declaration of Human Rights and all other international treaties in this regard. Furthermore, the Jordanian National Charter states that all Jordanian men and women are equal under the law, and that there shall be no

¹ FARLEX, THE FREE DICTIONARY, <http://encyclopedia.thefreedictionary.com/Islamic+jurisprudence> (last visited Mar. 30, 2013).

² AWAD A. ALZOBEE, ENTRANCE TO LAW 134-137 (2d ed. 2003).

distinction between them in rights and obligations regardless of difference in race, language or religion.

Tolerance of religions is one of his Majesty King Abdullah concerns and awareness, and we can understand its importance from his Majesty's remarks at the plenary session of the 68th United Nations General Assembly in New York, and here I quote:

(In the Last month, Jordan hosted more than one hundred eminent Muslim scholars from around the world. Their work affirms the true teachings of Islam, and builds on Jordan's long-standing, inter-faith and intra-religious initiatives: which are: The Amman Message, A Common Word, and World Interfaith Harmony Week.

The scholars said that there is no single prescribed model for an Islamic state. But they affirmed that the modern Islamic state should be a civic state, founded on institutions, and with an inclusive constitution based on the rule of law, justice, and freedom of opinion and faith. The modern Islamic state should uphold equality, across the ethnic and religious spectrum. The scholars decisively condemned the incitement of ethnic and sectarian conflict. They recognized this evil for what it is: A threat to the Muslim World, and indeed, all humanity.

Jordan has called upon the Organization of Islamic Cooperation to adopt these recommendations, which are critical guiding principles amid the turbulence and transformations across our region.

This month we in Jordan also convened an international meeting to address challenges to Arab Christian communities. They are an essential part of our region's past, present and future. Jordan has been an historic model of coexistence and fraternity between Muslims and Christians. We will continue to do our utmost to protect our Arab Christian communities and minorities. And we call on all countries to join us in our stand for diversity, tolerance and mutual respect.)³

End of the quote.

After this brief review of the Religion tolerance in Jordan let us go through the judicial system in Jordan and the legal resources for religion as a human right, which as Judges rely on to decide in the cases we have in courts:

The Universal declaration of human rights stated that: (Everyone has the right to freedom of thought, conscience and religion)

³ <http://en.ammonnews.net/article.aspx?articleno=23156#.UmGgi1Tna72>.

The Jordanian constitution stated that: Islam is the religion of the state, and the State shall safeguard the free exercise of all forms of worship and religious rights in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality.⁴

The public order or morality have no set definition or criterion and exposure to the public order or morality, which might be committed by exercising a form of worship and religious right is not an easy subject to decide. It is the judge duty to decide if the act is inconsistent with public order or morality and this is a challenge for the judges.

The criminal code sets different penalties for different acts of assaulting Prophets of religions or attacking the places for different religious groups of worship or disturbing other people gathered to worship.⁵

Also it sets a penalty for anyone who assaults another one's faith or his feelings toward his faith and publishing in anyway what considered an assault to faiths and religions.⁶

And all writings and every speech or action intended to or result in stirring up sectarian or racial strife or inciting conflict between sects considers a crime.⁷

In the Jordanian courts, a group of lawyers brought a suit in front of the courts suing Google for the video it posted on YouTube which assault prophet Mohammad peace upon him, and now the court is hearing the witnesses' testimonies.⁸

Tension between the freedom of religion and other human rights might occur when expressing the religion and faith which might conflict with the freedom of speech as a human right; the courts in Jordan now are more opened in understanding the freedom of speech and they are practicing their role in applying those rights and ignoring any rule contradict with those rights, and I want to mention a very important rule by the Criminal Court on May 2011 which Suspended the application of a legal provisions in the penal code because they contradict the provisions in the Constitution, which guaranteed freedom of expression and opinion .

This precedent opened the door for other court not to hesitate in suspending the application of a provision in a law if it is contradict with the human rights set in the constitution.

⁴ CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN, 8 Jan. 1971, as amended Feb 7, 1976, Jan 9, 1984, and Oct 1, 2011.

⁵ Law No. 16 of 1960 (Penal Code and its Amendments), Al- Jarida Al-Rasmiyya, 1 June 2003, §3 (Jordan).

⁶ *Id.*

⁷ *Id.*

⁸ <http://www.ammonnews.net/article.aspx?articleno=168160>.

The challenge that courts have is when to apply the human rights conventions and treaties. The Jordanian Constitution set that: 33- 2- Treaties and agreements which entail any expenditures to the Treasury of the State or affect the public or private rights of Jordanians shall not be valid unless approved by the Parliament; and in no case shall the secret terms in a treaty or agreement be contrary to the overt terms.

The Jordanian constitution does not have any article sets the position and value of the international treaties and conventions after their publication in the official Gazette. The Supreme Court in its decision clarified the confusion of when to apply the international treaties and conventions by saying: “the international conventions and treaties transcend the national laws conflicting with them.”⁹

This is the challenge for the courts in applying the treaties and conventions of human rights. As long as the national law setting the rules of the human right issues then the courts are obliged to apply, but if the current laws do not mention the human rights then judges can not apply the treaties, since the human right treaties can't be applied unless it has been published in the official gazette or the national laws set the same rules of the treaty's.

In the Jordanian judiciary, according to the latest information, the application of international conventions and treaties, including human rights conventions is (156) cases since 1960 until this moment in criminal, civil cases, and in the (Administrative Court).

In 2011, Jordan established the constitutional court which helps in supervising the constitution applications by other courts and considers a huge step toward developing the judicial work.

⁹ 38/1991 (Supreme Court) (Jordan).