**Saeed Ahmed Hassan v. *Head of honorable El Azhar (Sheikh El Azhar)*& Others**

**Summary and Outcome**

On May 20, 2003, the Court of Administrative Judiciary in Egypt, issued a ruling canceling the decision of the *Head of honorable El Azhar (Sheikh El Azhar)* prohibiting the publication of three books written by the plaintiff. The Court decision was established on the fact that the decision of not publishing the books was established on contradiction with the law and legally not justified.

The plaintiff brought the case before the Court of Administrative Judiciary demanding (1) suspension of the implementation of the decision of *Sheikh El Azhar* of not publishing his books as an urgent request (2) Cancel the decision (3) payment of 100.000 Egyptian Pound as Compensation on the moral and physical damages. The plaintiff argued that the decision of Sheikh Al Azhar is contradicting with the laws, and his decision caused physical and moral damages.

The defendant asked the court to (1) not to accept the plaintiff’s demand from procedural aspects, based on that the plaintiff brought the case before the court after the specified legal period to bringing the case before the court, (2) dismiss the case based on the reasons mentioned in the report issued from El Azhar as the competent authority to issue the decision.

The defendant founded their argument on the report and recommendation issued from the Islamic Research Academy (مجمع البحوث الإسلامية), which concluded in its report that, the first book included scientific errors and conclusions contradicting the correctness. The second book just a confused Superficial talkative repeated by seculars in addition to the book is away from the methodology of scientific researches. The uselessness of the third book and the fact that it just confuses the reader.

**Facts**

The plaintiff wrote three books discussing issues related to Islamic thought, which address the topic of the incident of Israa *and Meraaj* -also known as prophet Mohamed's journey to Al-Aqsa or The Night Journey and Ascension to heaven- which is considered as a fixed and established belief in Islam. In addition to denying some fixed and Consensus Quotes that are recognized and agreed upon amongst scholars of the Islamic religion. The first book titled "Opinion on Islamic Though" The Second book titled “Facts of *Israa and Meraaj*” And the third book titled “Faith and *Israa and Meraaj*”

The plaintiff submitted a request to El Azhar to get permission to publish one of his books abroad (third book). Upon the refusal decision issued from El Azhar to not publish the third book, the plaintiff submitted a petition to Shiekh El Azhar to clarify that the book is considered as the third part of a book composed from three parts, so the plaintiff attached the other two books. Sheik El Azhar has referred the three books to the Islamic Research Academy (Majmaa Albohuth Al Islamia

/مجمع البحوث الإسلامية) for its review.

Based on a report issued from Islamic Research Academy concerning the publication of the three books that discussed some questions related to the Islamic thought, The defendant “*Sheikh El Azhar* ” issued a decision prohibiting the publication of the three books.

Therefore, and based on the decision of not publishing the books, on November 17, 1996, the plaintiff brought the case before the Court of Administrative Judiciary (محكمة القضاء الأداري), requesting to (1) urgently suspend the implementation of the decision of *Sheikh El Azhar* prohibiting the publication of his books as an urgent request (2) Cancel the decision (3) Payment of 100.000 Egyptian Pound as Compensation on the moral and physical damages.

**Decision Overview**

The ruling issued on 20 May 2003 by the first chamber within the Court of Administrative Judiciary (محكمة القضاء الأداري ) regarding the case recorded under the No. (1326) for the judicial year 51.

The Court addressed four main issues, that arose before it, (1) related to an error in procedures which represented in bringing the case before the court after the legal period. (2) linked to the request of suspending the decision of Shiekh El Azhar on urgent ground based on its contradiction with the law. (3) Cancel the decision (4) Request for compensation.

In Light of the main issues that arose before the Court, the court decided to reject the defendant’s request of dismissing the case upon the argument of procedures error existence which represented in bringing the case before the court after the legal period that the case must be brought within. The court founded its decision in this regard on the account that the case file and supporting documents did not determine the date of the plaintiff’s certain knowledge of the date the contested decision was issued.

Regarding the suspension request submitted by the plaintiff on grounds of the allegation of the illegitimacy of the decision issued by Shiekh El Azhar. At the hearing held on 31/12/1996, the court decided to refer the case to the Commissioners’ department to prepare a report of legal opinion on the case. This shows that the court implicitly rejected the urgent request to suspend the contested decision.

The Commissioners’ department submitted its report to the court with its legal opinion, recommending accepting the case on the procedural grounds but dismissing it based on its substance.

Regarding the main request that before the court which related to the suspension of the contested decision submitted by the plaintiff based on arguments of the illegitimacy of the decision of not publishing the plaintiff’s books. The court had accepted the argument of the illegitimacy of the decision as the court stated that “The contested decision, issued in contradiction with the law and based on an invalid basis” which led the court to dismiss the contested decision”.

The court founded its decision upon the provisions of Articles (47 and 49) of the Egyptian [constitution of 1971](http://constitutionnet.org/vl/item/msr-dstwram-1971-almnshwr-fy-aljrydt-alrsmyt-fy-12-aylwlsbtmbr-1971-alrqm-36-mkrr) related to freedom of expression and opinion and freedom of culture, artistic and literary creativity, as article 47 stipulated that “Freedom of opinion is guaranteed. Everyone has the right to express his opinion and publish it by saying, writing, photographing, or other means of expression within the limits of the law. Self-criticism and constructive criticism are a guarantee of the integrity of the national building" and article 49 stated that “The state guarantees to citizens freedom of scientific research and literary, artistic and cultural creativity, and provides the means of encouragement necessary to achieve this”.

The court founded its decision on the law provisions especially Art (2) [of law No. 103/1961](https://archive.org/details/130-1961/mode/2up) in concern of reorganizing El Azhar and its entities which stipulated that “El Azhar is the greatest Islamic scientific entity, undertake to maintain the Islamic heritage, its study, and dissemination, Carries faithfulness of the Islamic message for all peoples, It works to show the truth of Islam and its impact on the progress of human beings, the progress of civilization, and the guarantee of security, tranquility and rest of the soul for all people in the life and afterlife……….. ”. Art (15) of the same law stated that “The Islamic Research Academy is the high body of Islamic researches, studies all that linked to this researches. Work on renewal the Islamic cultural, strip it of curiosity, impurities, and the effects of political fanaticism, and sectarianism, expand the knowledge of it for each level and environment, and clarifying the opinion regarding the religious or social problems it finds related to the faith and carries the responsibility of calling for the path of God with wisdom and good advice………., The executive regulations of this law specify the duties of the Islamic Research Academy in detail, which helps to achieve the purpose of its creation”.

Art (38) of the [Executive Regulation](https://manshurat.org/node/46462) of El Azhar law stipulated that “The department of Islamic researches and culture is the technical body of the Islamic Research Academy, The Secretary-General of the academy is its manager”. Art (40) of the regulation which stated that “The department of researches and publishing will specifically undertake the following: Review the Holy Qur’an and the authorization of its printing and circulation, Examination of Islamic literature and works that address the Islam, and express its opinion in respect to its publishing, showing and circulation, following on everything written about Islam inside and outside, and reply on all that may prejudice Islam, ……… (9) Work in disseminating Islamic knowledge through books and Journals ".

In the merits of its ruling, the court stated that “whereas the constitutional provisions guarantee the right to express and publish their opinion through talking, writing or photography or other means of expression as long as it is in the limitation of the law”. The court continues by stating that “individual’s right to express their opinion is not limited to the correctness of this opinion nor should it be in line with the opinion of the majority and it doesn’t need to accomplish any benefit”.

The court in its merits stated that “the abovementioned constitutional trend is based on that, the right to express opinion freely is the only way to show it to the society and interact with it”. The court stated also that “this right is the base of every democratic organization. Therefore, it was necessary not to restrict the freedom of expression by legislations that constitute a Shackles and restrictions on its practices or impose sanctions aim to its suppression”.

As a result to what mentioned above, the court explicitly commented on “the authority” of The Islamic Researches Academy, especially – *inter alia*– to review the Islamic literature and works that address the Islam, and express its opinion in respect to its publishing, showing and circulation, Work in disseminating the Islamic knowledge through books and Journals; the court emphasized that “this authority is restricted by the Constitutional principles which are aligned with Islamic Shari'a which based on the freedom of expression and opinion, and it is debatable, even if it contradicts with the opinion of the majority of scholars”.

In respect to the first book “Opinion on Islamic Thought," the court has stated that “the report of The Islamic Researches Academy had concluded about the book, resulting in the rejection of publishing it, contradicts with the constitutional and legal principles upholding freedom of expression and opinion”, and that contradiction with the opinion of the majority is not sufficient for the Islamic Researches Academy to violate these constitutional principles.

In respect with the second book “Facts of Israa and Meraaj," the court stated that “what the plaintiff mention in this book which constitutes a new message on Israa and Meraaj and which contradict with the opinion of the majority, and which was the reason and behind of rejection of publishing it, is just an opinion expressed by the plaintiff in the book”, consequently the reasons of issuing the decision of invalidity to publishing and circulation was not supported by documents.

In its merits to issuing its ruling, the court stated that “The reports prepared by the competent authority - The Islamic Researches Academy- in respect to books written by the plaintiff, are not a valid basis of issuing the decision of *honorable* El Azhar by rejecting the publication of these books which considered as an opinion in Islamic Thought, and that the holder of these opinions has a right to publish them to be commented on”.

Therefore, the Court found and concluded that the contested decision, prohibiting the publication of the books, that were written by the plaintiff was "issued in contradiction with the law and based on an invalid basis”, which led the court to dismiss the contested decision.

In regards to the compensation request, the court stated that “it is proven from the case documents, that the error element is from the side of the defendant which was embodied in the prohibition of publication of the books (Opinion on Islamic Though, Facts of *Israa and Meraaj*, Faith and *Israa and Meraaj*), causing physical damage represented in preventing him from his intellectual outcomes, and morally, in refusing his intellectual production, and what associated with that from physical and moral damages as a result of seeking litigation to challenge the decision”. The court has estimated the compensation by 5.000 Egyptian Pound and held that this amount is adequate for reparation for the physical and moral damages.

The court judged to cancel the contested decision which included the prohibition of publishing the books. And obliged the El Azhar to pay 5000 E.P for the plaintiff as compensation.

**Decision Direction**

The judgment to cancel the contested decision prohibiting the publication of the three books shows that the Court expands the interpretation of constitutional rights related to the right to freedom of expression and that national laws and authorities are held accountable when they try to violate these rights.

**Global Perspective**

National Law or Jurisprudence

* Egyptian Constitution of 1971
* Law No. (103/1961) In concern of reorganizing Al Azhar
* Law No (250/1975) In concern of promulgating the executive regulation of El Azhar law.