

0900263 [2009] RRTA 350 (22 April 2009)

DECISION RECORD

RRT CASE NUMBER: 0900263

DIAC REFERENCE(S): CLF2008/135942

COUNTRY OF REFERENCE: Egypt

TRIBUNAL MEMBER: Greg Robinson

DATE: 22 April 2009

PLACE OF DECISION: Melbourne

DECISION: The matter is remitted for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

- 1 This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the Migration Act 1958 (the Act).
- 2 The applicant, a citizen of Egypt, arrived in Australia [in] October 2006 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2008. The delegate decided to refuse to grant the visa [in] December 2008 and notified the applicant of the decision and his review rights by letter [on the same date].
- 3 The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
- 4 The applicant applied to the Tribunal [in] January 2009 for review of the delegate's decision.
- 5 I find that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act and that the applicant has made a valid application for review under s.412 of the Act.
- 6 The applicant was represented in relation to the review by his registered migration agent, [name and company deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant]. [The migration agent] attended the Tribunal hearing and made written submissions, before and after the hearing, on behalf of the applicant.

RELEVANT LAW

- 7 Under s 65(1) of the Act, a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
- 8 Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied that Australia has protection obligations under the Refugees Convention.

- 9 Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

- 10 Australia is a party to the Refugees Convention and, generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

- 11 The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
- 12 Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
- 13 There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
- 14 Second, an applicant must fear persecution. Under s 91R(1) of the Act persecution must involve “serious harm” to the applicant (s 91R(1)(b)), and systematic and discriminatory conduct (s 91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s 91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it

may be enough that the government has failed or is unable to protect the applicant from persecution.

- 15 Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
- 16 Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be solely attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s 91R(1)(a) of the Act.
- 17 Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
- 18 In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
- 19 Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20 I have before me the Department's file relating to the applicant. It includes a copy of the delegate's decision

Delegate's Decision

21 The delegate provided a helpful summary of the applicant's claims:

- Coptic Orthodox Christians (Christians) are a minority among a majority Muslim population in Egypt and suffer severe discrimination in all aspects of life. He did not experience any problems in primary school as he attended a Christian school, he attended a Muslim secondary school where Christian students suffered discrimination and were punished more severely than Muslim students. Christian students also faced mistreatment at the hands of Muslim students and on one occasion he was threatened with serious harm after he tried to defend a fellow Christian student.
- He had a Christian cross tattooed under his right wrist when he was five or six years old and he had to be careful to hide this and any other religious symbols such as crucifixes since displaying Christian religious symbols could lead to serious harm.
- His mother experienced problems at her workplace because of her Christian religion as she worked in a Muslim office. In about 2001 his father became [an officeholder] at [a church] in Assiut. This made his family an increased target for harm by Muslims.
- In about August 2005 he began working in an insurance company in Cairo however stayed only one week due to harassment because of his religion and he returned home to Assiut. In October 2005 he began experiencing problems in his neighbourhood possibly because local Muslims discovered his father was a church [officeholder]. On one occasion he was stopped by five young Muslim men who swore at him and defiled his religion.
- He continued to face daily harassment by Muslims in the area. Concerned for his safety, he sought a student visa for Australia but this was refused. He continued

to face ongoing harassment and about June 2005 he was stopped by the same Muslim men who told him to attend the mosque and convert to Islam.

- When he refused he was attacked with a flick knife sustaining injuries to his right hand and stomach. He was taken to hospital and had an operation for a serious tendon injury and stitches to his stomach. After this incident he spent two months at his parents' home and only left to attend the doctor for treatment.
- Although it was a Christian hospital the doctor would not write a report due to fear of harm by police. He did report the matter to police as they do not provide protection to Christians and could instead manufacture a false charge and prosecute the Christian as punishment for reporting on a Muslim.
- In about August 2006 he again applied for a student visa for Australia as he feared for his safety in Egypt, he was granted the visa and left Egypt [in] October 2006. When he arrived in Australia he was able to wear his crucifix and did not need to hide his tattoo.
- Christians in Egypt are severely discriminated against in all aspects, including education, employment and police protection. They cannot practice their religion freely and are constantly harassed by Muslims trying to force their conversion to Islam and Christian houses, business and churches have been attacked leading to injuries and deaths of Christians.
- He initially did not apply for protection as he feared the Egyptian authorities would come to know of his application and he did not initially use an interpreter as he feared they may divulge his application. He has now applied for protection as he can no longer afford the overseas student fees – his father retired in 2006 and gave him all his savings but this has all been spent.

22 The delegate did not, however, accept that the applicant had a well-founded fear of persecution. While the delegate accepted that the applicant “may have faced some difficulties and discrimination whilst at high school and at university, I am not satisfied that the level of difficulty he advances is serious enough to amount to persecution.”

- 23 The delegate considered the applicant's claims that he had suffered discrimination and harassment by Muslim employees at his workplace but found it "difficult to accept the claims as submitted by the applicant, that he left his employment after one week because of perceived threatening behaviour by Muslim employees." Even if the delegate accepted that claim, such discrimination or harassment was not, in the delegate's view, sufficient to amount to persecution in the relevant sense.
- 24 The delegate considered the applicant's claims to have been harassed by a group of Muslim men who told him to attend the mosque and convert to Islam. The applicant claimed that when he refused he was attacked with a flick knife sustaining injuries to his right hand and stomach and required an operation for injuries to his hand and abdomen. Relying on a report from Health Services Australia, the delegate accepted that the applicant had suffered those injuries. However, the delegate found it implausible that the applicant would be harassed on a daily basis without any apparent reason for him to be targeted in this way. The delegate did not accept that the injuries had been sustained in the circumstances claimed by the applicant.
- 25 Apparently relevant to the delegate was that the applicant had not submitted any evidence that he had reported the claimed assault to the police. The applicant claimed that he did not report the assault to police as the police in Egypt do not provide protection to Christians and he feared he could instead face false charges and prosecution as punishment for reporting on Muslims.
- 26 The delegate found that there was no evidence that the Egyptian state is unable or unwilling to protect its citizens for religious reasons and noted that the applicant had not sought police protection but, in the event that he needed state protection, the delegate was not satisfied that he would be denied such protection for a Convention reason. In making this finding, the delegate relied on country information which, in the delegate's view, indicated that the Egyptian government would "take steps to ensure that Christians are protected if they are under threats of religious violence." The delegate noted that Egyptian authorities had prosecuted police who had failed to protect Christians from religious violence.
- 27 The country information considered by the delegate included a report from the US State Department's International Religious Freedom report of 2007 ("the report") which stated:

On May 11, 2007, a group of Muslim citizens attacked Christians in the village of Bamha. In the ensuing violence, Muslims reportedly set fire to or looted 27 shops and homes of Christians and injured 12 Christians, 1 seriously. The police responded quickly to contain the incident and arrested approximately 60 people. On September 16 2006 in Awlad Azaz village, Sohag governorate, some minor injuries occurred when Muslim and Christian villagers clashed over land use near the Monastery of .Saint Shenouda. An SSIS official reportedly brokered a deal that resulted in the land being equally divided between Christians and Muslims.

- 28 The delegate noted that the report stated also that the National Council for Human Rights in Egypt is also responsible for the protection of human rights:

The quasi-governmental National Council for Human Rights (NCHR) is charged with furthering protections, raising awareness, and ensuring the observance of human rights and fundamental freedoms, including religious freedom. It is also charged with monitoring enforcement and application of international agreements. Five of its 25 reappointed members, as well as its president, are Copts.

- 29 The delegate quoted at length from the NCHR's third report, issued in January 2007, which referred to recommendations of its Citizenship Committee for:

changes in law and practice designed to ease sectarian tension, such as the passage of a unified law governing construction and repair of places of worship. The NCHR also called for spreading a culture of pluralism and tolerance, propagating respect for other religious groups through the media and religious institutions, and solving Christian grievances locally without giving cause for foreign intervention. The Citizenship Committee reported that the NCHR received 32 complaints of missing young Coptic women during the 9month period from March to December 2006. The NCHR referred these complaints to the Interior Ministry which, in most cases, replied that the women had eloped with Muslim men, converted to Islam of their free will, and had chosen to leave their families without prior notice because they feared reprisal on the part of their families. The NCHR also recommended training security officers to handle disputes arising from sectarian conflicts and emergencies. The report called for the removal of all the impediments that restrict the participation of Christians and women from politics and for the encouragement of young men and women to play a part in decision-making moving towards political reformation. The report stated that the NCHR had received a total of 57 formal complaints pertaining to religious freedom, which it sent to relevant authorities for action. The NCHR reported it received replies from government ministries and other bodies regarding 36 of the complaints.

- 30 The delegate rejected that Christians “in general” are subjected to forced conversion to Islam and found there to be no basis to accept that the applicant would be subject to forced

conversion in Egypt. In making this finding, the delegate had regard to the International Religious Freedom Report for Egypt of 2008 which stated that:

There were no reports of forced religious conversion carried out by the Government; however, there were again reports of forced conversions of Coptic women and girls to Islam by Muslim men.

- 31 The delegate also considered that the applicant's delay in seeking protection was indicative of the applicant's fear not being well-founded.
- 32 In summary, whilst accepting:
- (a) instances of conflict between Muslims and Christians in Egypt;
 - (b) some level of discrimination against Christians in Egypt; and
 - (c) that the applicant had sustained injuries from a knife attack,
- the delegate did not accept that the attack on the applicant was for a Convention reason or that he would face persecutory treatment in Egypt or that he would be denied assistance or protection by the authorities should these be required.

Tribunal Hearing and Applicant's Submissions

- 33 The applicant appeared at the Tribunal hearing held [in] March 2009. The hearing was conducted with the assistance of an interpreter in the Arabic (Standard) and English languages. I summarise below the key issues that arose at the hearing.
- 34 I asked the applicant about the knife attack, noting that the delegate had not accepted that the knife attack was a result of his refusal to comply with demands that he convert to Islam. The applicant said that not all Muslims were thugs and not all of them approved of such acts. However, the motivation of the minority is religious and the government covers this up to avoid international criticism. It does not seriously try to stop it.
- 35 I asked why the applicant would be targeted in this way, but not his family. I noted that his father was [an officeholder] in the Church and his mother and sister would be identifiable as Christians since they would not wear Islamic dress. The applicant said that he could not explain this. He made the point that he had not tried to embellish his claims by saying that his family had been persecuted.
- 36 I asked the applicant how he maintained that the Egyptian government did not provide effective protection if he had not tested this by seeking such protection. The applicant said that Christians are afraid to report incidents because they are treated very badly if they do.

The police are predominantly Muslim and inside the police station they could be tortured and accused of false crimes.

- 37 The following country information is contained in RRT Case No. 0803410, to which I was referred by [the migration agent] :

EGYPT: Christians arrested, shops looted in village Religion Christian Muslim - General121059761211 Compass Direct, 21 November 2008. (CX214783)

...

Muslim villagers attacked the homes and shops of Coptic Christians in violence-prone Tayyiba, a town with 35,000 Christians and 10,000 Muslims, after 14-year-old Copt Mina William failed to dismount his donkey as a funeral procession passed.

William was watching the procession in Tayibba, 220 kilometers (137 miles) south of Cairo, with Nathan Yaccoub, also 14. William's failure to dismount violated a local custom of showing respect, Copts United reported, and members of the procession reportedly beat him before completing the procession. William suffered minor injuries.

After the funeral procession, the processional members began throwing stones at the homes of local Copts and attacking their shops before police broke up the crowd with tear gas.

A priest said members of the procession did not attack the youths for showing disrespect but as an excuse to lash out against the community's Christians for a previous episode of sectarian violence.

...

When the violence began, police presence increased significantly in the city. But rather than quell the unrest, police reportedly made matters worse for the Christians. After breaking up the crowd, officers detained 50 Copts and 10 Muslims.

A source told Compass that police arrested a disproportionate amount of Christians to create a false sense of equanimity and to pressure the Christians into "reconciliation" with the attackers so the Copts would not prosecute them. The arrested Christians have since been released.

In the two weeks since the attacks and looting, the increased police force in the village has harassed Copts through intimidation, "fines" and racketeering. Police have taken an estimated \$50,000 from village Copts, the source said.

Once police lifted the curfew, Coptic shopkeepers returned to their stores to discover that they had been looted. Sources said the perpetrators were

“supply inspectors,” local government inspectors who do quality control checks on goods. They gained access by smashing locks and doors of the shops.

The sources said supply inspectors plundered grocery stores, a poultry shop, an electronics store and a pharmacy.

According to Coptic weekly Watani, looters stole nearly \$2,000 worth of goods from grocer Bishara Gayed. Another victim of the looting, an owner of a poultry shop who declined to give his name, blamed supply inspectors for running off with his stock.

A local clergyman condemned the violence.

“It is unreasonable that a mistake by some 14-year-old should lead to all that rampage,” a village Coptic priest known as Father Augustinus told Watani. “Something ought to be done to halt all this.”

Orphanage Bulldozed

Numerous instances of sectarian violence have struck Tayyiba in the last few months.

Last month a Coptic Christian was killed over a dispute with a Muslim who wanted to buy his house. Violence escalated, resulting in damaged storefronts, 48 arrests and injuries sustained by three Christians and a Muslim.

...

“The village is like anywhere in Egypt,” he said. “In every place in Egypt we can say that in one minute everyone can be destroyed by fanatics, sometimes through the encouragement of security [forces].”

The Coptic Church has faced recent difficulties in other Egyptian cities, with government officials attempting to obstruct their religious activities. On Wednesday (Nov. 19), city officials in Lumbroso, Alexandria destroyed an unfinished but recently furnished Coptic orphanage owned by Abu-Seifein Church and worth 6 million Egyptian pounds (US\$1 million).

Officials claimed the building did not have a license, although church leaders said the demolition came on orders from the religiously zealous Islamic mayor. Ali Labib, former head of police and state security in Alexandria, in his two-year tenure as mayor has refused license applications for new church construction or rebuilding, said a Cairo-based Coptic priest who requested anonymity.

...

Islam is a growing presence in Egypt’s public sphere. While the government has attempted to crack down on extremists, Islamic civil

groups that have drawn widespread support by offering cheap medical assistance and private lessons to school children include the Muslim Brotherhood, an Islamist organization with jihad in its credo that has been accused of violence.

The Muslim Brotherhood is well regarded by the average Egyptian, who equates the government with autocracy, corruption and repression, author and intellectual Tarek Heggy reportedly said. Over the last four decades, the Muslim Brotherhood has introduced its brand of fundamentalist Islam into Egyptian schools, mosques and media, he added.

EGYPT: Copts the victims of Islamisation says prize-winning Egyptian author, Adnkronos International Press News Agency (AKI), 10 November, 2008. (CX213984)

Otranto – Coptic Christians, women and other minorities are paying the price of increasing Islamisation in Egyptian society, leading author and intellectual, Tarek Heggy, has told Adnkronos International (AKI). The fundamentalist opposition Muslim Brotherhood was one of the groups responsible and was indoctrinating young people through its welfare work, Heggy said.

“I believe the major problem for the Copts in Egypt is related to the overall cultural environment. The more radical society becomes, the worse the situation gets. This is also true for Bahaiis,” Heggy said, referring to a smaller religious minority in Egypt which now numbers only a few hundred people.

...

Copts - who form some 10 percent of Egypt's population and the largest Christian community in the Middle East - have been the target of periodic attacks by Muslim hardliners in recent years.

The Islamisation of education in recent decades is a major cause of an intolerant mindset that has developed in Egypt, which the Muslim Brotherhood has helped create under the guise of aid to local communities, Heggy argued.

“The Muslim Brotherhood is well regarded by the average Egyptian, who equates the government with autocracy, corruption and repression,” Heggy said.

...

"The Egyptian government is handling the Muslim Brotherhood as a security issue alone," he said.

"But it is a cultural, social, political, educational, religious and economic problem."

...

The fundamentalist Wahabi influence has penetrated education in Egypt, where Arab literature, poetry and plays have been replaced with sacred Islamic texts in schools, Heggy said.

Up until the 1960s, Egypt was a truly Mediterranean society, but this has been gradually replaced by an Arab/Bedouin culture.

Besides schools, mosques and the country's media – radio and TV – have also been Islamised, he said.

“The four entities that have most influence on people have also been influenced by anti-secular cultures,” Heggy stated.

Egypt's 1971 Constitution defines Islam as the state religion and Islam as the main source of law.

“The Coptic problem is that of pressure on a minority, intolerance towards others and a lack of acceptance of pluralism. The more Egypt is influenced by the Wahabi interpretation of Islam, the worse it is for the Copts,” said Heggy.

Heggy last year published a controversial essay ‘If I were a Copt’ which highlighted the injustices Copts face in Egypt.

Copts have for over 50 years been barred from holding key administrative and political posts in Egypt. The Al-Azhar University in Cairo does not admit Copts to any of its faculties.

Apart from a donation made by Egypt's former president Gamal Abdel Nasser to the Cathedral of San Marco in Abbaseya, the Egyptian state has not financed any church since 1952. Copts also have difficulty in obtaining licences to build churches.

Heggy has lectured at many universities and research centres including University of California in Berkley and The Washington Institute for Near East Policy. He is also a board member or trustee of numerous institutions including the Egypt Bar Association, Egypt Writers Association, the MSA University and Girls College Ain Shams University in Cairo, and the Council for Supreme Education in Abu Dhabi.

EGYPT: Rights group says sectarian violence on the rise, Daily News Egypt, 27 October, 2008 (CX213268) by Sarah Carr

CAIRO: Rights group the Egyptian Initiative for Personal Rights (EIPR) says that the geographical scope of sectarian violence in Egypt increased between July and September 2008.

EIPR describes these incidents, as well as violations of religious freedom, in the form of interference by security bodies and discrimination on the

basis of religious belief, in its third quarterly report on freedom of religion and belief in Egypt, issued Monday.

Eight incidents of violence of a sectarian character are listed in the report, all of which involved clashes between Muslims and Christians.

In Naga Hamadi, Qena, a dispute which broke out after a Muslim man objected to a Christian parking his car in front of the Muslim man's home escalated into a fight involving a group of Muslims who broke into the Christian man's house and physically attacked his family.

Eyewitnesses and the victims of the attacks told EIPR researchers that the police had tarried in arriving at the incident — even though the police station is located nearby, and despite the fact that they had notified police as soon as the dispute broke out.

In addition, the victims of the attack say that they were pressured by the police into withdrawing the criminal charges they brought against their assailants: two of the injured Copts were detained in order to pressure the family into signing a reconciliation agreement.

The report adds that police forced the Christian family to hold their daughter's wedding (scheduled for the day following the attack) despite the fact that they wanted to postpone it.

Security reportedly held two members of the Christian family at the police station in a bid to impose a reconciliation settlement and abandon legal charges. Holding the wedding, one EIPR researcher told Daily News Egypt, was a symptom of that coercion.

Rights groups allege that sectarian tension in Egypt is inflamed by the police response to such incidents, which they say is often slow and inadequate.

The use of "reconciliation sessions" in response to such incidents rather than a criminal legal process — even where Christians have suffered physical injury or damage to their property giving rise to a legitimate legal claim — both encourages further acts of violence and leads to a feeling of vulnerability within Egypt's Coptic community, rights groups say.

On Oct. 8, EIPR reported on a sectarian incident in Samalut, Minya, which left one person dead and four injured.

In its press statement, EIPR urged "officials and church leaders to give due consideration to the rights of the victims and guarantee perpetrators do not escape punishment under the guise of reconciliation."

Interference by state security bodies resulted in three violations listed in the third part of the report.

The report refers to newspaper reports claiming that security bodies in Upper Egypt rejected applications made by the Imams of mosques requesting that they be allowed to hold the e'tekaaf (when worshippers retreat in mosques during Ramadan) and tahaggod prayers (which begin at night and last until dawn).

According to independent daily Al-Dostour, the Imams were told “these are acts which lead to large gatherings of people and transmission of Salafi ideology to them.”

Security bodies continued to prevent church custodians from renovating church buildings. The report describes the physical assault by a policeman of two women in the village of Dashasha, Beni Suef, while they were attempting to carry sand into the church in order to repair its water-damaged floor.

Security bodies have prevented the renovation of the church, which was built in 1895, for 11 years, according to church officials.

The report points out that incidents such as this occur despite the fact that under presidential decree 391 issued in 2005, churches may be renovated without prior permission: all that is required is that the church official notify in writing the relevant body in the governorate.

Legal developments mentioned in the report include the administrative detention of a Christian youth, Emad Adib Attiya Suleiman, because of his “involvement in a romantic relationship with a Muslim female.” The detention order says that the purpose of Suleiman’s detention was to “act as a deterrent.”

...

In September the Alexandria Appeals Court awarded custody of 14-year-old twin boys Andrew and Mario to their father, a Christian convert to Islam, in preference to their Christian mother.

This, EIPR says, is despite the fact that reports by psychologists and sociologists presented to the court had stressed the necessity of the boys staying with their mother.

The report’s final section lists reports concerning freedom of religion in Egypt produced by both Egyptian and international bodies during the period covered by the report.

It refers to the US State Department’s 2008 report on religious freedom throughout the world (issued in September) which stated that religious freedom in Egypt “declined” between July 2007 and 2008.

Egypt’s Foreign Ministry had issued a press statement repudiating the US report at the time of its release.

According to the extract of the statement included in EIPR's report, the US report contained "wrong and disorderly data, constituting an interference in matters which concern no-one except the Egyptian government and Egyptian society. It is inappropriate that foreign elements forcibly involve themselves with affairs at the core of internal Egyptian affairs."

EGYPT: In Egypt, Muslim-Christian divide seems wider, International Herald Tribune, The (IHT) www.iht.com, 2 August, 2008, (CX207035) by Michael Slackman

CAIRO: A monastery was ransacked in January. In May, monks there were kidnapped, whipped and beaten and ordered to spit on the cross. Christian-owned jewellery stores were robbed over the summer. The rash of violence was so bad that one prominent Egyptian writer worried it had become "open season" on the nation's Christians.

Does Egypt face a sectarian problem?

Not according to its security officials, who insist that each dispute represents a "singular incident" tied to something other than faith. In the case of the monastery and the monks, officials said the conflict was essentially a land dispute between the church and local residents.

"Every incident has to be seen within its proper framework; you study an incident as an incident," said an Interior Ministry spokesman who grew furious at the suggestion that Egyptians were in conflict because of their differing faiths. It is customary for security officials not to have their names revealed publicly.

"An incident is an incident, and a crime is a crime," he said.

But the Egyptian security apparatus is increasingly alone in its insistence.

As more and more conflicts pile up and as the tensions of daily life increase, many people in Egypt and around the region said the problem of sectarian clashes had become more urgent. They said that ordinary conflicts had become more bitterly sectarian as religious identity had become more prominent among Muslims and Christians alike.

"It is as if there is a struggle - each against the other - and it creates a sectarian atmosphere," said Gamal Assaad, a former member of Parliament who is a Coptic intellectual and a writer. "This tense atmosphere makes people ready to explode at any point if they are subjected to any amount of instigation or incitement."

Egypt is the most populous Arab country, with about 80 million people. About 10 percent are Coptic Christians.

For most of Egypt's Copts, the major flare-ups - the attack on the Abu Fana Monastery or riots in 2005 in Alexandria - are faraway episodes that serve only to confirm a growing alienation from larger society. For

most, the tension is more personal, a fear that a son or daughter will fall in love with a Muslim or of being derided as "coftes," which means "fifth column."

"We keep to ourselves," said Kamel Nadi, 24, a Copt who runs a small shop in the Shubra neighborhood of Cairo "Muslims can't say it, but it's clear they don't accept us. Here no one can speak the truth on this issue, so everybody's feelings are kept inside."

...

Many Egyptians around Cairo and in the south said that conflicts often arose over everyday matters - a dispute between farmers, an argument between students - but that once sparked, they deteriorated into sectarian name-calling, sometimes worse. That is partly because religious identity is paramount now, more important than a common citizenship, Assaad said.

Egypt is an authoritarian state held in line by a vast internal security force, about twice the size of the army. Certain topics are out of bounds. People know it is taboo to say openly that a sectarian problem exists. So they are cautious.

"We feel pressure, maybe not all the time, but we do," said Ashraf Halim, 45, a grocery store owner in the Shubra neighborhood in Cairo "We have liberty of speech, and religion, but it's as if somebody was telling us at the same time, 'Don't speak and don't practice your religion.' "

Halim's grocery is next to a hair salon with the word "Allah" atop the storefront in large Arabic letters. He responds in his own small way, with a picture of St. George on his dairy cooler.

"Me, I try to keep a certain distance from Muslims," said Halim. "We have simple relations: I give you this, you give me this. That's it. They don't want more than that, either."

The underlying tension in Egypt flares periodically around the country. There were riots when word spread of a Coptic play supposedly denigrating the Prophet Muhammad and again over plans to expand a church. The state treated each case as a security problem.

But the violence at the ancient Abu Fana Monastery in May elevated events to a new level. In a recent follow-up report, the National Council for Human Rights described the atmosphere in Egypt as an "overcharged sectarian environment" and chided the state, saying it "turns a blind eye to such incidents" and was "only content to send security forces after clashes catch fire."

...

38 [The migration agent] also referred me to RRT Case No. 071601913. I reproduce country information cited in that decision:

A report issued by the Center for Religious Freedom (Center for Religious Freedom, 1999, Egypt's Endangered Christians, Summary of Findings, June, accessed 1 November 2006 via <http://www.freedomhouse.org/template.cfm?page=1>) concludes that the religious freedom of Egypt's 6 to 10 million strong Coptic Christian community is compromised, and that " while generally able to practice its religion, [it] is threatened in varying degrees by terrorism from extreme Islamic groups, by the abusive practices of local police and security forces, and by discriminatory and restrictive Egyptian government policies". The report goes on to state that the Egyptian government had failed to "take adequate measures to prevent the persecution and abuse of Copts at the local level, whether the perpetrators are terrorists, members of the community, or the government's own security forces. The report concluded that "Copts are persecuted by radical Islamic groups and at times by local police and other security officials", stating that while the "Egyptian government does not have a policy to persecute Christians, it discriminates against them and hampers their freedom of worship, and its agencies sporadically persecute Muslim converts to Christianity", and that "The cumulative effect of these threats creates an atmosphere of persecution". This situation exists against a background whereby:

While Egypt has signed the International Covenant on Civil and Political Rights, which guarantees religious freedom, Islam is the state religion and the Constitution states that Islamic law is the major source of legislation. Egypt is also under attack by terrorist groups who want to enforce an Islamic state; but perhaps the more significant pressure for Islamization comes from militant but ostensibly nonviolent Muslims, such as those in the now-banned Islamic Brotherhood. As a result of such pressure, the legal system is increasingly incorporating Islamic law: for example, there is now a de facto law of apostasy. Sharia law in Egypt denies equal rights to Christians and non-Muslims in areas of conversion, marriage, and parenting.

The Report states that police at the local level frequently harass Christians, particularly converts, either out of sympathy with or fear of Islamic radicals, and that "While Egypt has no explicit law against apostasy, the influence of sharia law on the civil code is creating a de facto law. Converts from Islam to Christianity have been imprisoned and tortured by the police and charged with "insulting religion" or "disrupting national unity." In recent years, the security forces have tended not to deal with converts directly but to inform their families or others in the area, who have in turn mistreated and even killed the convert with impunity."

Significantly, the Report notes that:

In addition, any report from Egypt on the question of religious persecution must be done with the knowledge that people who say that there is persecution can put themselves in real danger, either from

terrorists or abusive local officials, or be liable under the law for possible capital offences. Any public statement must be judged against the knowledge that the speaker lives in a situation where it is illegal and can invite harsh punishment to "damage" "national unity or social peace," incite "sectarian strife," or, in the case of clergy, "insult or criticise" "an act by the administration."

While dated, this report is not contradicted by more up to date information. While various reports, for example the United States Department of State Country Reports on Human Rights Practices and Religious Freedom Reports for subsequent years discuss various measures taken by the Egyptian government to protect Coptic Christians and to reduce religious tensions, it is evident that underlying tensions remain and that discrimination and in some cases, persecution continue.

Other Evidence

- 39 A letter from [a doctor] of [a hospital] in Assiut, dated [deleted: s431(2)] March 2009, confirmed that the applicant has been assaulted with a sharp instrument, sustaining injuries to his abdomen and tendons in his fingers. He required surgery and was treated for a further two months.
- 40 In order to obtain this letter, the applicant required the assistance of his father in Egypt. The applicant made a statutory declaration [in] March 2009 in which he details the steps he took to obtain this assistance. He claims that his father became "highly alarmed" when he heard that he was seeking asylum as he was concerned that the Egyptian authorities would become aware of the application. The father was concerned at what would happen to his family if the authorities were to learn about the application, as well as being concerned for the applicant's welfare were he to return to Egypt in the event that the application did not succeed. It is for this reason that the applicant has requested non-Egyptian interpreters in this application for fear of news of his application making its way back to Egypt.
- 41 His father did not assist because of his fears for his family. The applicant then telephoned the hospital himself, but to no avail since it would not release such details over the telephone. Subsequently, the applicant's mother agreed (without the father's knowledge) to assist him and met the doctor who treated him.
- 42 Two letters in support of the application have been submitted. Father [deleted: s431(2)] of the [deleted: s431(2)] Coptic Orthodox Church wrote to the Tribunal, [in] March 2009, saying that the applicant is a member of the Church and has been living at the Diocese residence since [deleted: s431(2)] July 2008. Father [deleted: s431(2)] of the [deleted:

s431(2)] Church, wrote to the Tribunal [in] March 2009 and said that he had known the applicant since October 2006. The letter says that the applicant had to leave Egypt due to difficulties he faced because of his Christian beliefs.

- 43 A number of photographs were submitted. These show the applicant's father performing [deleted: s.431(2)] duties [deleted: s.431(2)] in a Coptic Church. A photograph of the applicant being baptized was submitted.

FINDINGS AND REASONS

- 44 The applicant's Egyptian citizenship was accepted by the delegate. On the basis of the applicant's Egyptian passport, I too accept that he is a citizen of Egypt. He is currently residing in Melbourne and is, therefore, outside of Egypt. I accept the applicant's evidence, supported by his Church, that he is a Coptic Christian. In the light of this, I am also satisfied for the purpose of s 91R(3) of the Act that the applicant's practice of his religion in Australia was otherwise than for the sole and dominant purpose of strengthening his claims to be a refugee.

A Well Founded Fear of Persecution?

- 45 I found the applicant to be a credible witness. His oral evidence was consistent with his written evidence and I accept all of his claims relating to factual occurrences. He did not try to embellish his evidence. For example, he did not claim that his whole family was subject to the physical harm that he had suffered. The delegate appeared to find that this made the claims implausible given that there was no apparent reason why the applicant would be singled out for such treatment. However, there is no requirement that persecution be applied consistently across its potential victims. I accept that the applicant was exposed to a particular group of Muslim thugs who decided to target and harass him and require him to convert to Islam. The country information supports a finding that this *could* occur; in combination with the applicant's oral evidence, and the evidence of the knife attack (which I also accept), I do not think it can properly be concluded that the circumstances described by the applicant are implausible. I elaborate my reasons for this finding below.
- 46 In my opinion, the country information set out above supports the conclusion that there is a long history of discrimination against, and persecution of, Christians in Egypt. The applicant agreed that not all Muslims or government officials engage in such discrimination and persecution; however, that does not preclude a finding that there are a sufficient

number of Islamic zealots whose actions, such as those perpetrated in Tayibba in 2008, make Egypt potentially a very unsafe place for Christians living in that country

- 47 Putting the role of Islamic zealots aside, the country information reveals a country in which the official law, under the 1971 constitution, is Islamic. I accept that the security organs of the State reflect its Islamic character. I find that they exhibit bias against Christians in the enforcement of laws. For example, I accept the evidence contained in the country information that the police respond slowly to complaints made by Christians and that they are reluctant to prosecute Muslims for crimes committed against Christians, opting instead to pursue “reconciliation agreements” as reported by the EIPR. I accept its report of witnesses to a Muslim attack on a Christian family in its home, who having notified the police whose station was nearby, saw that the police had “tarried in arriving at the incident.”
- 48 In the light of the country information generally, I accept the conclusion of the Freedom House report of 1999 referred to in RRT Case No. 071601913, that the “Egyptian government had failed to take adequate measures to prevent the persecution and abuse of Copts at the local level.” Similarly, I accept the Report’s conclusion that “Sharia law in Egypt denies equal rights to Christians and non-Muslims in areas of conversion, marriage, and parenting.” I find it significant, also, that that report was prepared in 1999. The situation appears to be worsening for Christians in Egypt. I accept as accurate the recent AKI report that the fundamentalist Wahabi influence has perpetrated education in Egypt, resulting in an “intolerant mindset” developing. I accept the observations of Mr Heggy, who is a well-respected commentator, concerning the spread of the Muslim Brotherhood’s influence and its role in promoting hardline Islamic thinking in Egypt. According to Mr Heggy, “the more Egypt is influenced by the Wahabi interpretation of Islam, the worse it is for the Copts.”
- 49 I accept, therefore, that it is not implausible that the applicant would have been attacked by a group of Muslim fanatics. I find that the physical harm caused by that attack amounts to serious harm. Also, I find that it was perpetrated because of his religion. I also find that the state of Egypt does not provide effective protection against this type of persecution. I accept that the Christians of Egypt are reluctant to pursue their rights since they are fearful of retaliation by the perpetrators of the crimes against them, and possibly by organs of the

State as well. I accept, therefore, the applicant's evidence that he did not report the knife attack on him given this fear.

- 50 In my opinion, protection is not effective if one is afraid to attempt to access it. Recalling that the official law of Egypt is Islamic, I find that the State is biased against non-Muslims. There is considerable evidence in the information set out above that this is the case. By allowing Christians to live under the threat of personal harm, and in circumstances where attempts to access protection are likely to worsen their situation, I find that the State of Egypt is, *de facto*, a party to the persecution and discrimination perpetrated against Christians in that country. The persecutory treatment of, or lack of effective protection for, a minority such as the Coptic Christians in Egypt plainly does not meet the "international standard" of state protection that was discussed by the High Court in *MIMA v Respondents S152/2003* (2004) 222 CLR 1.
- 51 I accept the applicant's claims that he was attacked by Muslims wielding a knife. On the basis of this past persecution, I find that there is a real chance of him being attacked by that gang, or another like it, if he were to return to Egypt.
- 52 Having accepted the applicant's claims that he suffered serious harm when he was knifed, and that the harm was inflicted for the Convention reason of religion, and that the State of Egypt does not provide effective protection against such harm, it is unnecessary to address the applicant's claims that he was discriminated against in employment and some other facets of life. At the hearing, I expressed some doubt as to whether such discrimination would amount to "serious harm". It is evident that [the migration agent] put a substantial amount of effort into providing extensive submissions on the subject, and I am indebted to her for this. However, whilst accepting that the applicant, and Coptics in general, experience discrimination in employment in Egypt, I refrain from making a finding on whether the applicant's experiences in this regard amount to persecution. The focus of the review has been on the physical harm suffered by the applicant. Having succeeded on that basis, there is no need for further consideration of his claims. Had he not succeeded on that claim, I would have sought more evidence on his other claims. Having not done so, it is not, in my opinion, appropriate now to make findings on them.
- 53 In summary, I find that there is a real chance that, were he to return to Egypt, now or in the reasonably foreseeable future, the applicant would be subject to serious harm, namely

serious physical ill-treatment and harassment, for a Convention reason. I accept that it has happened previously and that there is real chance it will happen again.

54 I therefore accept that the applicant has a well-founded fear of persecution. Further, I find that the applicant's Christianity is the essential and significant reason for the persecution.

55 I have considered the possibility of the applicant relocating within Egypt. There is nothing in the country information to suggest that some parts of Egypt are safer for Christians than others. Moreover, given that it is the State of Egypt which, by not providing a level of protection for Christians that meets international standards, is itself *de facto* responsible for the persecution of which the applicant is afraid, I find that the applicant is unable to find refuge anywhere in that country.

56 Finally, I have considered the delay of the applicant making his application. I accept that, notwithstanding that delay, his fears are real and well-founded.

CONCLUSIONS

57 I am satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

58 The matter is remitted for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: RCHADW