Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Sharia Law in Europe: Human Rights and Islamic Law in Greek Thrace

Question(s) at stake:

Whether the application by Greek courts of sharia law instead of Greek civil law to the applicant's deceased husband's will constituted discrimination and violated the applicant's right to property.

Outcome of the ruling:

The Grand Chamber of the ECtHR unanimously found a violation of Article 14 of the ECHR read in conjunction with Article 1 of Protocol No. 1 thereof. The different treatment of the applicant had no objective and reasonable justification.

Topic(s):

- Personal Status, Family and Inheritance
- State recognition of Groups and Their Practices

Keywords:

- Inheritance
- Matrimonial property regime
- Right to self-identification
- Widow/er
- Non-discrimination

Tag(s):

- Greek Muslim Community of Thrace
- 1923 Treaty of Lausanne

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Country:

Greece

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Molla Sali v Greece, App no 20452/14, 19 December 2018

Link to the decision:

https://hudoc.echr.coe.int/eng?i=001-203370

ECLI:

ECLI:CE:ECHR:2018:1219JUD002045214

Date:

19 December 2018

Jurisdiction / Court / Chamber:

European Court of Human Rights, Grand Chamber

Remedy / Procedural stage:

Judgment (Merits)

Previous stages:

- None

Subsequent stages:

- Judgment (Just Satisfaction)

Branches / Areas of law:

Public law, human rights law; Private law, family law, property law; Islamic law

Facts:

The applicant, Chatize Molla Sali, was married to Mr Moustafa Molla Sali, a member of the Muslim community of Greek Thrace, in an Islamic marriage. He died in 2008.

In 2003, the applicant's husband had drawn up a notarised public will in accordance with the Civil Code. In his will, he had bequeathed his whole estate to his wife. Following domestic legal proceedings before the Komotini Court of First Instance, the applicant became the owner of her deceased husband's property.

In 2009, the deceased's two sisters claimed three-quarters of the property bequeathed to applicant and confirmed by the domestic court by arguing that this was their share in the inheritance according to Islamic religious law. They asserted that the deceased belonged to the Muslim community of Thrace. Therefore, his estate was subject to Islamic religious law rather than to the Greek Civil Code's provisions and the deceased's will. In this regard, they contended that the application of Sharia law to Greek nationals of the Muslim faith was in accordance with the provisions of the treaties of Sèvres (1920) and Lausanne (1923).

The Rodopi Court of First Instance and the Thrace Court of Appeal ruled against the deceased's two sisters. Both courts held that a Greek Muslim contacting a notary to draw up a public will was exercising his right to dispose of his property, in anticipation of his death, under the same conditions as other Greek citizens.

From 2012 onwards, the deceased's two sisters began to be successful in their complaints before Greek courts. The reason was the Court of Cassation's judgment No. 1862/2013. That decision held that the law applicable to the deceased person's estate had been the Islamic law of succession, which formed part of domestic law explicitly applied to Greek nationals of the Muslim faith.

Consequently, the Thrace Court of Appeal considered itself bound by the Court of Cassation's judgment and ruled that the public will at issue was devoid of legal effect because Sharia law did not recognize any such institution. The applicant filed an appeal against this decision that was dismissed. Domestic proceedings were thereby concluded.

The applicant then submitted her complaint to the European Court of Human Rights. She was deprived of three-quarters of the property bequeathed to her, in favour of the deceased's two sisters. The applicant alleged a violation of Article 6 § 1 of the ECHR, read alone and in conjunction with Article 14 and Article 1 of Protocol No. 1. The state contested the applicant's arguments.

Ruling:

The Court dismissed the applicant's claim according to Article 6 of the ECHR. It accepted the case solely under Article 14 of the ECHR – prohibition of discrimination – read in conjunction with Article 1 of Protocol No. 1 thereof – protection of property. The first part of the decision concerned evaluating the admissibility requirements – the non-exhaustion of domestic remedies and victim status. Next, the *amicus curiae* opinions of third parties were provided. The second part of the decision considered the merits.

The merits of the case at issue began with the explanation of the threshold of Article 14 ECHR. The ECtHR reiterated that Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. Accordingly, the Grand Chamber of the ECtHR evaluated whether the applicant, a married woman who was a beneficiary of her Muslim husband's will, was in an analogous or relevantly similar situation to that of a female beneficiary of a non-Muslim husband's will (paragraph 138 of the decision at issue). After confirming that the applicant was in such a situation but had been treated differently, the ECtHR examined whether the difference in treatment had an objective and reasonable justification (paragraph 142 of the decision at issue). By doing so, the ECtHR took into consideration the following requirements: the pursuit of a legitimate aim and proportionality of the means used to the aim pursued. It concluded that the different treatment of the applicant had no objective and reasonable justification. Therefore, the state had violated Article 14 of the ECHR read in conjunction with Article 1 of Protocol No. 1 thereof.

Judge Mits attached his concurring opinion to the judgment. This opinion was in a similar vein as the ECtHR's decision. However, it highlighted aspects that were not mentioned in the decision–the applicant's religion, a wife of Muslim faith, and

minority rights under international and European law.

Main quotations on cultural or religious diversity:

- “(…) the primary issue arising is whether there was a difference in treatment potentially amounting to discrimination as compared with the application of the law of succession, as laid down in the Civil Code, to those seeking to benefit from a will as drawn up by a testator who was not of Muslim faith.” (Paragraph 86)
- “(…). It thus follows, in the light of its objective and nature of the rights which it seeks to safeguard, that Article 14 of the Convention also covers instances in which an individual is treated less favorably on the basis of another person’s status or protected characteristics (…).” (Paragraph 134)
- “In conclusion, the applicant, as the beneficiary of a will made in accordance with the Civil Code by a testator of Muslim faith, was in a relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim testator, and was treated differently on the basis of “other status”, namely the testator’s religion.” (Paragraph 141)
- “The Government submitted that the settled case-law of the Court of Cassation pursued an aim in the public interest, that is to say the protection of the Thrace Muslim minority. Although the Court understands that Greece is bound by its international obligations concerning the protection of the Thrace Muslim minority, in the particular circumstances of the case, it doubts whether the impugned measure regarding the applicant’s inheritance rights was suited to achieve that aim. Be that as it may, it is not necessary for the Court to adopt a firm view on this issue because in any event the impugned measure was in any event not proportionate to the aim pursued.” (Paragraph 143)
- “The Court reiterates that according to its case-law, freedom of religion does not require the Contracting States to create a particular legal framework in order to grant religious communities a special status entailing specific

privileges. Nevertheless, a State which has created such a status must ensure that the criteria established for a group's entitlement to it are applied in a non-discriminatory manner (…).(Paragraph 155)

- "Moreover, it cannot be assumed that a testator of Muslim faith, having drawn up a will in accordance with the Civil Code, has automatically waived his right, or that of his beneficiaries, not to be discriminated against on the basis of his religion. A person's religious beliefs cannot validly be deemed to entail waiving certain rights if that would run counter to an important public interest (…). Nor can the State take on the role of guarantor of the minority identity of a specific population group to the detriment of the right of that group's members to choose not to belong to it or not to follow its practices and rules." (Paragraph 156)
- "Refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification. The negative aspect of this right, namely the right to choose not to be treated as a member of a minority, is not limited in the same way as the positive aspect of that right (see paragraphs 67-68 above). The choice in question is completely free, provided it is informed. It must be respected both by the other members of the minority and by the State itself. (…)." (Paragraph 157)
- "This is the first time the Grand Chamber has examined and found discrimination by association. In other words, the violation of Article 14 in conjunction with Article 1 of Protocol No.1 was established not because of the applicant's, but her husband's Muslim faith. Indeed, this is the central but not the only constitutive element of the case." (Concurring Opinion of Judge Mits)

Main legal texts quoted in the decision:

Domestic Law

- Articles 4, 5, 13, 20 of the Greek Constitution
- Articles 1724, 1769, 1956 of the Greek Civil Code
- Article 562 of the Greek Code of Civil Procedure
- Islamic Law of Succession
- Law No. 147/1914
- Law No. 2345/1920
- Law No. 1920/1991
- Law No. 4511/2018

European Law

- Charter of Fundamental Rights of the European Union
- Council Directive 2000/43/EC of 29 June 2000
- Council Directive 2000/78/EC of 27 November 2000
- Article 14 European Convention of Human Rights
- Article 1 of Protocol No. 1 to the European Convention of Human Rights

International Law

- Treaty of Athens (1913)
- Treaty of Sèvres (1920)
- Lausanne Peace Treaty (1923)

Cases cited in the decision:

European Court of Human Rights

- *Mazurek v France*, App. No. 34406/97, 1 February 2000
- *Thlimmenos v Greece*, App. No. 34349/97, 6 April 2000
- *Merger and Cros v France*, App. No. 68864/01, 22 December 2004
- *E.B. v France*, App. No. 43546/02, 22 January 2008
- *Weller v Hungary*, App. No. 44399/05, 31 March 2009
- *Carson and Others v the United Kingdom*, App. No. 42184/05, 16 March 2010
- *Brosset-Triboulet v France*, App. No. 34078/02, 29 March 2010
- *Fabris v France*, App. No. 16574/08, 21 July 2011

- *Parrillo v Italy*, App. No. 46470/11, 27 August 2015
- *İzzettin Doğan and Others v Turkey*, App. No. 62649/10, 26 April 2016
- *Biao v Denmark*, App. No. 38590/10, 24 May 2016
- *Guberina v Croatia*, App. No. 23682/13, 22 March 2016
- *Škorjanec v Croatia*, App. No. 25536/14, 28 March 2017
- *Fábián v Hungary*, App. No. 78117/13, 5 September 2017

Commentary

Sharia Law in Europe: Human Rights and Islamic Law in Greek Thrace

The judgment in this case is a landmark ruling on the application of *Sharia* in Europe. According to the former ECtHR's President Guido Raimondi (2019), the *Molla Sali* case was a leading judgment in 2019 due to the prioritization of ordinary law over religious law. However, it met with criticism by legal scholars. As Cerna explained (The American Society of International Law 2019), many scholars understood the judgment at issue as a turnaround in ECtHR case law. In the case of *Refah Partisi (The Welfare Party) and Others v Turkey* (2003), the ECtHR held sharia law to be incompatible with the ECHR. Conversely, in the case at issue, the ECtHR did not consider sharia law outright.

By the time of the present judgment, Greece represented a unique case in Europe. According to the decision (paragraph 158), it was the only state party of the Council of Europe to officially recognize in certain parts of its territory the application of sharia law to a section of its citizens, even against their wishes. As in the present case, several members of the Muslim community of Greek Thrace did not want the application of sharia law to their situations. This attitude has met with the opposition of the religious and political elite of the Muslim minority of Thrace, who rejected any criticism of the Islamic jurisdiction (Tsitselikis 2019). Stravos (2019) indicated that specific family and inheritance matters in Greece have been – until recently – under the compulsory application of sharia law. In 2018, during the Molla Sali case proceedings**, Greece enacted a new law to terminate this compulsory jurisdiction in family law cases** (The American Society of International Law 2019).

The reason behind the compulsory application of sharia law in Greek Thrace dates back to the Ottoman Empire and pre-WWII treaties (for a comprehensive overview, see McGoldrick 2019). Thrace is located in southeast Europe and is the homeland of the famous gladiator Spartacus (McGoldrick 2019: 524). There is a long-standing history of Muslim communities in Thrace. The origins of the international protection of Greek Muslim communities in this area go back to the Convention of Constantinople between Greece and the Ottoman Empire (1881). After the Greco-Turkish war (1919-1922) and the fall of the Ottoman Empire, this population and their fundamental freedoms were regulated by the Peace Treaty of Lausanne (1923). This treaty involved the exchange of around 2 million people between Greece and Turkey: Greeks had to leave Turkey, while Turks had to leave Greece. Two groups of people were exempted from the exchange: the Greeks of Constantinople and the Muslims of Thrace. Despite the continuous modification of the applicable legal framework, the Thrace Muslim community has maintained a communal profile (Tsitselikis 2019). Interestingly, the ECtHR's judgment at issue (paragraphs 151-155) touches upon the compatibility of the 1923 Peace Treaty of Lausanne with the ECHR.

A prominent aspect of the relevant decision is the controversy between individual and group rights, especially laws regarding personal status. This was correctly pointed out by the Hellenic League for Human Rights in its *amicus curiae* submission. The ECtHR demonstrated an individual-based approach toward human rights by protecting the applicant, to the detriment of the autonomy of Greek Muslims. Following legal scholarship on this case (Iakovidis & McDonough 2019: 440-442; Stravos 2019), this analysis maintains that in so doing, the ECtHR created a new legal tool – discrimination by association. In light of the judgment (see paragraph 130), it is evident that the prohibition against discrimination pursuant to Article 14 of the ECHR has a broad scope. It encompasses individuals' own characteristics (sex, race, colour, etc*.*) and their position concerning other persons, groups, or goods. In other words, the concept of discrimination can be based on family relationships. According to Judge Mits (see Concurring Opinion, paragraph 7), the decision in the *Molla Sali* case represented the first time that

the ECtHR upheld discrimination by association.

The ECtHR's new tool of discrimination by association was essential for establishing the jurisdiction *ratione personae*. Greece had maintained in its petition that **the applicant had not personally suffered any discrimination on the grounds of sex or religion** (paragraph 110): "The application of sharia law to the applicant's case had been based not on her own situation, but the specific category of the property concerned." Thus, according to the state, the applicant did not have the status of victim required to lodge a complaint before the ECtHR. The ECtHR decided, in the admissibility part, to evaluate this issue on the merits. It was aware that the state's argument regarding the applicant's victim status was difficult to establish without the substantial evaluation of the controversy. This analysis notes that the state's argument would be difficult to refute if the ECtHR did not create the tool of discrimination by association. Without this tool, the case would be dismissed on procedural grounds – the absence of the victim status.

Another critical aspect of the *Molla Sali* case was the elucidation of the **right of self-identification in the context of minorities**. It is well-established in international and European law that there is no binding definition of minorities. An influential definition was rendered in 1977 by the former U.N. Special Rapporteur on Prevention of Discrimination and Protection of Minorities, Mr. Francesco Capotorti. This definition contains objective and subjective aspects that include the self-identification of members of minorities as a group. In the case at issue, the ECtHR clarified that, according to Article 3 of the Council of Europe Framework Convention for the Protection of National Minorities (FCPNM), self-identification is a right of an individual nature that entails both positive and negative dimensions. The ECtHR has long-established case law on the positive dimensions of self-identification, including the landmark decision on *Gorzelik v Poland* (2004). The present judgment is a landmark case concerning **the negative dimension of self-identification**, *i.e.*, the right to choose not to be treated as a member of a minority group. Notably, the ECtHR differentiated here between the positive and negative dimensions (see paragraph 157 of the decision

at issue). The right to self-identify as a minority member is based on a subjective choice linked to the objective criteria relevant to the person's identity (see paragraph 68 of the case at issue). Conversely, the right not to self-identify as a minority member is based only on individuals' free and informed decisions (see paragraph 157 of the case at issue).

Finally, it is essential to note the cross-fertilization between European and international human rights law in the *Molla Sali* judgment. Regarding European law, the case at issue demonstrated an ongoing dialogue between the ECtHR and the CJEU. The ECtHR referred in the merits (paragraphs 80-81) to the CJEU's jurisprudence on equality and non-discrimination that upheld the notion of discrimination by association. Moreover, the FCPNM played an interesting role in the case. The FCPNM is a central instrument for protecting minorities in Europe, since it is legally binding for state parties. It guarantees the individual right to choose not to be treated as a member of a minority group. Using the FCPNM as a source of inspiration, the ECtHR has aligned the ECHR's content with the FCPNM. In this way, it has contributed to the unity of international human rights law.

(Last Update: May 2020)

Literature related to the main issue(s) at stake:

Case Relevant

- Iakovidis I, McDonough P, 'The Molla Sali Case: How the European Court of Human Rights Escaped a Legal Labyrinth While Holding the Thread of Human Rights' (2019) 8(2) Oxford Journal of Law and Religion 427
- Koumoutzis N, Papastylianos C, 'Human Rights Issues Arising From the Implementation of Sharia Law on the Minority of Western Thrace – *ECtHR Molla Sali v. Greece*', Application No. 20452/14, 19 December 2018 (2019) 10(5) Religions 300
- Puppinck G, 'Sharia: What Emerges From the Molla Sali v. Greece Judgment' (2018) <https://eclj.org/religious-autonomy/echr/charia--ce-que-rvle-la-dcision-de-la-cedh> accessed 24 February 2020

- Stavros S, ‘The European Court of Human Rights’ judgment in Molla Sali: A call for Greece to modernise its system for national-minority protection?’ (2019) <https://ohrh.law.ox.ac.uk/the-european-court-of-human-rights-judgment-in-molla-sali-a-call-for-greece-to-modernise-its-system-for-national-minority-protection/> accessed 8 April 2020
- The American Society of International Law (ed), *Introductory Note to Molla Sali v. Greece (Eur. Ct. H.R.)* (58, 2019)
- Tsavousoglou I, ‘The Curious Case of Molla Sali v. Greece: Legal Pluralism Through the Lens of the ECtHR’ (2019) <https://strasbourgobservers.com/2019/01/11/the-curious-case-of-molla-sali-v-greece-legal-pluralism-through-the-lens-of-the-ecthr/> accessed 24 February 2020

General Literature

- Leigh I, ‘Religious Adjudication and the European Convention on Human Rights’ (2019) 8(1) Oxford Journal of Law and Religion 1
- McGoldrick D, ‘Sharia Law in Europe? Legacies of the Ottoman Empire and the European Convention on Human Rights’ (2019) 8(3) Oxford Journal of Law and Religion 517
- Raimondi G,‘Opening speech by President Guido Raimondi’(2019) <https://www.echr.coe.int/ Documents/Speech_20190125_Raimondi_JY_ENG.pdf > accessed 01 May 2020
- Tsitselikis K, ‘Sharia in Greece: Part 1: Between Communal Autonomy and Individual Human Rights’ (2019) <https://islamiclaw.blog/2019/10/01/shari%ca%bfa-in-greece-part-1-between-communal-autonomy-and-individual-human-rights/> accessed 01 May 2020
- United Nations, ‘Minority Rights: International Standards and Guidance for Implementation’ (2010) <https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf> accessed 25 February 2020

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