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Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories to the “Cairo Declaration”?

Committee Opinion¹

Committee on Equality and Non-Discrimination

Rapporteur: Mr Manuel TORNARE, Switzerland, Socialists, Democrats and Greens Group

A. Conclusions of the committee

The Committee on Equality and Non-Discrimination congratulates Mr Antonio Gutiérrez (Spain, SOC), rapporteur of the Committee on Legal Affairs and Human Rights, on his report examining the Cairo Declaration on human rights in Islam as well as the application of Sharia law in certain parts of the United Kingdom, Greece and the Russian Federation, in different circumstances in each of them.

The committee holds the view that where human rights are concerned there is no room for religious or cultural exceptions.

It believes that the issues covered in the draft resolution are of great complexity and should be addressed with the greatest legal rigour and political sensitivity and that, in its relations with non-member States, the Assembly should seek to promote democracy, human rights and the rule of law through dialogue and co-operation.

In the light of these considerations, the committee proposes some amendments.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 8, delete the following sentence: “The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too”

Amendment B (to the draft resolution)

After paragraph 11.1, insert the following paragraph:

“promote, within the multilateral organisations of which they are members or observers, the universal values of human rights, without any discrimination based, inter alia, on sex, gender, sexual orientation, gender identity, and religious faith or the lack of it;”

1. Reference to committee: [Doc. 13965](#), Reference 4188 of 30 June 2017. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 14787](#). Opinion approved by the committee on 21 January 2019.



Amendment C (to the draft resolution)

Replace paragraphs 14.2 and 14.3 with the following paragraph:

“review the Marriage Act to introduce the obligation for the celebrant of an Islamic marriage to register the marriage civilly;”

Amendment D (to the draft resolution)

Replace paragraph 14.4 with the following paragraph:

“remove the barriers to Muslim women’s access to justice and step up measures to provide protection and assistance to those who are in a situation of vulnerability;”

Amendment E (to the draft resolution)

In paragraph 14.5, replace the words “to encourage Muslim communities to acknowledge and respect women’s rights in civil law, especially in the areas of marriage, divorce, custody and inheritance” with the following words:

“to promote knowledge of their rights amongst Muslim women, especially in the areas of marriage, divorce, custody of children and inheritance, and work with Muslim communities, women’s organisations and other NGOs to promote gender equality and women’s empowerment;”

C. Explanatory memorandum by Mr Manuel Tornare, rapporteur for opinion

1. Preliminary remarks

1. I first wish to thank Mr Antonio Gutiérrez for giving prominence to questions of gender equality and women’s rights in his report and in the draft resolution which has been adopted by the Committee on Legal Affairs and Human Rights.
2. The draft resolution tackles mainly the following issues:
 - the compatibility of the Cairo Declaration on human rights in Islam with international human rights standards;
 - the work of Sharia councils in England and Wales, bodies which have no legal status and no legally binding authority;
 - the application of Sharia law to Muslim Greeks in Western Thrace, which is based on the Treaty of Lausanne and regulated by Greek law.
3. Each of these issues is very specific and complex and would have deserved to be examined in its own right. Since the common thread is the reference to Sharia, addressing these issues in the same report might give the impression that Sharia is gaining ground in Europe as a source of law. This is not the case: at the moment, no Council of Europe member States has Sharia as a source of law, with the exception of the specific situation of the territory of Western Thrace in Greece where Sharia law can be applied within limits that are set out in the law and provided that this does not lead to a violation of the European Convention on Human Rights (ETS No. 5, “the Convention”). The application of Sharia by Sharia councils in England and Wales does not produce legal effects. By the same token, no Council of Europe member State, whether or not subscribing to the Cairo Declaration, has given an indication of wishing to introduce Sharia law in its legal system.
4. The broader issue of the compatibility of Sharia law with human rights should be addressed with legal rigour as well as political sensitivity, avoiding the stigmatisation of Islam as such. Islam is the second most widely practised religion in Europe and the one followed by a majority of the population in some Council of Europe member States. The most pressing challenge is how to ensure that all Europeans, irrespective of their religious beliefs, feel part of the same community which values human rights and democracy above any other allegiances, and enjoy the same rights and opportunities, free of discrimination and prejudice.

5. For the preparation of this opinion, the Committee on Equality and Non-Discrimination heard Dr Ioana Cismas, lecturer at the York Law School and the Centre for Applied Human Rights, York, United Kingdom, a specialist of the Cairo Declaration, on 3 December 2018. It also consulted the minutes of the excellent hearings organised by the Committee on Legal Affairs and Human Rights for the preparation of the report by Mr Gutiérrez.

2. The Cairo Declaration

6. The Cairo Declaration is not in line with the main international human rights instruments. As Mr Gutiérrez points out in his report:

- it omits freedom of association and freedom of religion and expression;
- it allows discrimination based on sex/gender;
- it does not mention the prohibition of discrimination on grounds of sexual orientation or gender identity;
- it does not recognise the universal nature of human rights;
- it makes human rights subject to the provisions of Sharia law, which is also considered the sole source of reference for interpreting the declaration.²

7. Sharia law is not a set of fixed norms but a dynamic concept open to interpretation which can evolve. It is not uniformly interpreted or comprehensively applied in all its aspects in the countries where it is a source of law.

8. As the European Court of Human Rights has emphasised in its judgments, some provisions of Sharia law are not compatible with the European Convention on Human Rights.³ The report prepared by Mr Gutiérrez lists the most problematic aspects which relate above all to inequality between women and men in the areas of family law, inheritance and personal status; freedom of religion and expression; and the admissibility of cruel, inhuman and degrading punishment in the field of criminal law.

2.1. Cairo Declaration and Council of Europe member States

9. The title of the report asks whether Council of Europe member States, which are all Parties to the European Convention on Human Rights, can also be signatories of the Cairo Declaration. In legal terms, the answer is clear: they can. In the event, Turkey is the only Council of Europe member State that was a member of the Organisation of the Islamic Conference (OIC) when it approved the Cairo Declaration. Albania and Azerbaijan joined the OIC later. Albania and Azerbaijan joined the Council of Europe after joining the OIC: the question of any incompatibility was never raised in negotiations regarding membership, nor was it raised in the work of the Parliamentary Assembly within the framework of that procedure.

10. This is not surprising since, as underlined by the rapporteur, the European Convention on Human Rights and the Cairo Declaration are different types of instrument: the former is a legally binding treaty whereas the latter is merely a political declaration with no legal effects. The reference to Sharia law in the Cairo Declaration has no consequences in Albania, Azerbaijan and Turkey, being secular States in which Sharia law does not constitute a source of law.

2.2. Cairo Declaration, Sharia and partners for democracy

11. Jordan, Morocco and Palestine, whose parliaments enjoy partner for democracy status with the Parliamentary Assembly, were members of the OIC when it adopted the Cairo Declaration. The Kyrgyz Republic joined later. Their endorsement of the declaration was not mentioned as being a problem during the procedure for granting them that status.

12. Withdrawing support to the Cairo Declaration would have a highly symbolic value but no practical impact, as Sharia is included as a source of law in the legal systems of Jordan, Morocco and Palestine.

2. Articles 24 and 25 of the Cairo Declaration.

3. See the analysis provided by Mr Gutiérrez in his report, paragraphs 26-30.

2.3. Promoting tangible progress

13. From the outset, the Council of Europe and its Parliamentary Assembly have engaged with the partners for democracy in a spirit of dialogue and co-operation: the aim is helping to bring legislation and policies of these countries more closely into line with human rights standards as set out in the main international instruments, including the European Convention on Human Rights.

14. Engaging in a spirit of dialogue should not be understood as readiness to compromise over values and standards. Constructive criticism is possible and is even more effective when it seeks to have a tangible impact on laws and policies. In this context, dialogue, training, the provision of expertise and exchanges of experience between elected representatives through inter-parliamentary co-operation activities are the best means of bringing about change.

15. In 2018, for example, the Committee on Equality and Non-Discrimination discussed topics such as the participation of women in politics and combating violence against women with parliamentarians from Morocco, Jordan and Palestine at two events organised in Rabat on 5 July and in Paris on 20 September respectively. These exchanges of views gave participants the opportunity to discuss recent legislative progress in the South-Mediterranean region, learn about the political and societal challenges and promote Council of Europe instruments such as the recommendations of the European Commission for Democracy through Law (Venice Commission), Assembly resolutions and the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention"). Efforts must continue in this direction, with an emphasis on tangible reforms. And these are possible in areas such as family or personal status law, where Sharia is the basis of the normative framework.

16. In parallel, the Assembly should invest in the role which its partners for democracy, and more so Albania, Azerbaijan and Turkey as Council of Europe member States, can play within multilateral organisations like the Organisation of Islamic Cooperation to further promote the respect of human rights outside the Council of Europe region.

17. In this connection, it should be recalled that there have been calls for a revision of the Cairo Declaration. This avenue remains to be explored but it would be a mistake to give excessive attention to the Cairo Declaration. According to Dr Cismas, only one signatory of the declaration, Saudi Arabia, has ever invoked it to justify lack of compliance with international obligations.⁴ Efforts should be rather channelled into promoting compliance with human rights law and the recommendations of human rights mechanisms.

3. Application of Sharia law in Council of Europe member States

18. The report by Mr Gutiérrez describes the specific situations in which Sharia law is applied, legally or informally, in certain parts of some Council of Europe member States. I would advise in favour of the deletion of the sentence "The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too" in the draft resolution (*Amendment A*) since there is no mention of it in the report. This is to avoid that this sentence, taken out of context, is used to fuel fears about a possible spreading of the application of Sharia law in Europe and is maliciously used by political forces to stigmatise Islam and Muslims.

3.1. Application of Sharia law by Sharia councils in England and Wales

19. Mr Gutiérrez's report describes in detail the questions arising from the activities of Sharia councils in England and Wales. The draft resolution reiterates the main recommendations which were made by the Independent review into the application of sharia law in England and Wales presented to parliament by the Secretary of State for the Home Department, including its pragmatic approach not to ask for a ban of Sharia councils.⁵ I will not duplicate the information contained in the main report but will add some considerations. This particular issue, however, would have deserved a report on its own, as it is extremely complex and politically sensitive and raises important questions regarding equality and non-discrimination.

20. The evidence collected by the Independent review shows that over 90% of those using the services of Sharia councils are women, in most cases seeking an Islamic divorce. The main reason for this is that currently the celebrant of Muslim marriages cannot register marriages civilly, unlike the celebrants of Christian

4. In her presentation, Dr Cismas said that Saudi Arabia had twice invoked the Cairo Declaration to justify its non-application of provisions of the United Nations International Covenant on Civil and Political Rights.

5. [The independent review into the application of sharia law in England and Wales](#).

and Jewish marriages. At the same time, many Muslim couples do not celebrate two marriages, a religious and a civil one. When only an Islamic marriage is celebrated, the couple is considered in the eyes of United Kingdom law as merely cohabiting.

21. While Muslim men can unilaterally end an Islamic marriage, women are required to obtain a decision. In this sense, the Independent review found that Sharia councils respond to a need. Its main recommendation is therefore to try to address the need by ensuring that Islamic marriages are also registered under civil law, so that a divorce can be obtained before the proper courts.

22. It should be noted that, when “pronouncing” a divorce, Sharia councils also deal with aspects such as dowry forfeiture, financial remedies, arrangements for children and issues regarding future behaviour and conduct. These are sensitive areas in which decisions taken according to Sharia law risk being discriminatory towards women.

23. The Independent review believes that, as long as the need for an Islamic divorce remains, banning Sharia councils would send them underground, making discriminatory practices and human rights violations even harder to detect. It recommends, instead, creating a system of self-regulation of Sharia councils, including a code of practice, and that compliance of Sharia councils with such a scheme be monitored.

24. This approach was not unanimously shared by all the members of the Review panel. A dissenting opinion is included in the report, arguing that a State-endorsed regulation would give legitimacy and a quasi-legal status to the councils: “The creation of state endorsed regulation sends the message that certain groups have separate and distinct needs and further that sharia councils are an appropriate forum for resolution of their family disputes. In short it would perpetuate the myth of separateness of certain groups.”

25. Introducing the right/obligation to register the Islamic marriage civilly, although necessary, would not necessarily end recourse to Sharia councils. Women may continue to address themselves to Sharia councils irrespective of whether their marriage was civilly registered or not, of their own will or because of the expectations or pressure of their families or communities. Even if the Independent review reiterates that Sharia councils should not be called “courts” or “tribunals” and their members should not be referred to as “judges”, “the power of Sharia councils lies in how they are perceived by their communities”.⁶

26. Hence the need to put an emphasis on dialogue, awareness-raising and information campaigns. This work should be conducted extensively, hand in hand with women’s organisations, other non-governmental organisations (NGOs) and civil society, to inform Muslim women of their rights and promote their empowerment. I therefore propose an amendment, which adds to the need for awareness-raising campaigns the element of women’s empowerment (*Amendment E*).

27. As I said at the beginning of this opinion, the challenge is how to ensure that all Europeans, irrespective of their religious beliefs, feel part of the same community which values human rights and democracy above any other allegiances. But this challenge will never be met unless all Europeans enjoy the same rights and opportunities, free of discrimination and prejudice.

28. Muslim women are often portrayed as victims of highly patriarchal religious or cultural traditions which confine them to a position of inferiority to men, in the family and society. Unfortunately, they are also the main target of Islamophobic, racist attacks and stereotyping, a problem which has grown with the threat of terrorism. They are victims of multiple and intersectional discrimination, as women and Muslims. All too often, however, it is forgotten that Muslim women can also be actors of change: the Muslim Women Network United Kingdom, for instance, offers guidance to Muslim women seeking to develop their role, and feminist movements within Islam exist both in Europe and outside.

29. Unfortunately, access to justice is a key area in which Muslim women face discrimination and barriers. This had already been described by the Committee on Equality and Non-Discrimination in the reports on “Equality and non-discrimination in the access to justice”⁷ and on “Multiple discrimination against Muslim women in Europe: for equal opportunities”.⁸

30. In its latest Concluding observations on the United Kingdom,⁹ the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concerns that the reform of legal aid which had been introduced in the United Kingdom in 2012 would have a negative impact on women’s access to

6. Baroness Cox, in the context of the parliamentary debate.

7. Doc. 13740 (rapporteur: Mr Viorel Riceard Badea, Romania, EPP/CD) and Resolution 2054 (2015).

8. Doc. 12956 (rapporteur: Ms Athina Kyriakidou, Cyprus, SOC) and Resolution 1887 (2012).

9. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GBR/CO/7&Lang=En

justice, amongst others, because it removed access to legal aid for litigation concerning, for instance, divorce, property disputes, housing and immigration matters. The Committee noted “with concern reports that these limitations may push women, in particular those from ethnic minorities, into informal community arbitration systems, including faith-based tribunals, which are often not in conformity with the Convention”. It therefore urged the United Kingdom: “(a) To ensure effective access by women, in particular women victims of violence, to courts and tribunals; (b) To continuously assess the impact of the reforms of legal aid on the protection of women’s rights; (c) To protect women from informal community arbitration systems, especially those that violate their rights under the Convention”.

31. It is well beyond my possibilities with an opinion to assess the impact of the legal aid reform in the United Kingdom but in general terms it seems to me that a fundamental way to reduce Muslim women’s reliance on Sharia councils is removing the barriers to their access to the formal justice system. This is why I propose *Amendment D*, which also mentions the particular vulnerability of women who have entered a marriage which is not recognised civilly and who need protection and assistance, especially if they want to come out of it.

3.2. Application of Sharia law in Western Thrace

32. As regards the application of Sharia law in Western Thrace, I would like to recall that the report on “Promoting the rights of persons belonging to national minorities”,¹⁰ which will be debated during the January 2019 part-session, mentions the Greek legal framework applying to the Muslim minority in Western Thrace and therefore provides a complementary background to the report by Mr Gutiérrez.

33. In addition, I would like to flag up that, after the adoption of the draft resolution by the Committee on Legal Affairs and Human Rights, the European Court of Human Rights made a Grand Chamber ruling in the case *Molla Sali v. Greece*, already mentioned in Mr Gutiérrez’s report.¹¹

34. In its judgment, the Court recognised a violation of Article 14 of the European Convention on Human Rights (non-discrimination), in conjunction with Article 1 of Protocol No. 1 to the Convention (ETS No. 9) (right to property).¹² The Court also pointed out that freedom of religion did 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 had created such a status had to ensure that the criteria established for a group’s entitlement to it were applied in a non-discriminatory manner. Furthermore, refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounted not only to discriminatory treatment but also to a breach of the right to free self-identification, which is of crucial importance in the field of protection of minorities.

4. Final remark

35. Some of the issues covered by the report of the Committee on Legal Affairs and Human Rights raise important questions as regards the promotion and protection of women’s rights across society, the rights of minorities, the prevention of multiple and intersectional discrimination and the fight against intolerance and stereotyping. I invite the Committee on Equality and Non-Discrimination to consider whether it should follow up on some of these issues with the preparation of a specific report.

10. Doc. 14779 (rapporteur of the Committee on Equality and Non-Discrimination: Mr Badea, Romania, EPP/CD).

11. Doc. 14787, paragraphs 43-44.

12. [https://hudoc.echr.coe.int/eng-press# "itemid":\["003-6284036-8193204"\]](https://hudoc.echr.coe.int/eng-press#).