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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 Culture, Science, Education and Media

Rapporteur: Mr Constantinos EFSTATHIOU, Cyprus, Socialists, Democrats and Greens Group

A. Conclusions of the committee

1. The Committee on Culture, Science, Education and Media welcomes the report by Mr Antonio Gutiérrez, (Spain, SOC) on behalf of the Committee on Legal Affairs and Human Rights and its proposed draft resolution. The committee shares Mr Gutiérrez's well-thought out legal analysis and it considers that his report rightly goes to the roots and fundamental values of the European Convention on Human Rights (ETS No. 5, “the Convention”), that inspired its signatory States.
2. The committee also welcomes the fact that the report and the draft resolution go beyond the legal question. As the draft resolution quite rightly points out in its paragraph 11, it is necessary not only to “accept that the Convention is an international instrument binding on all Council of Europe member States” but also to “bolster pluralism, tolerance and a spirit of openness by proactive measures, taken by governments, civil society and religious communities, whilst respecting common values as reflected in the European Convention on Human Rights”.
3. Therefore, the committee fully endorses the proposed draft resolution but proposes to add a new sub-paragraph in paragraph 11, as indicated below.

B. Proposed amendment

Amendment A (to the draft resolution)

After paragraph 11.1, insert the following paragraph:

“design and implement educational and vocational programmes aimed at rooting human rights and fundamental freedom as enshrined in the Convention, and in particular the principles of gender equality and of non-discrimination based on religious beliefs, in the cultural and legal tradition of their countries;”

1. Reference to committee: [Doc. 13965](#), Reference 4188 of 4 March 2016. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 14787](#). Opinion approved by the committee on 21 January 2019.



C. Explanatory memorandum by Mr Constantinos Efstathiou, rapporteur for opinion

1. The legal question of the compatibility of Sharia law with the European Convention on Human Rights

1. As Plato said in his *Republic*, there is no point in talking about law (I could add the rule of law) or justice unless you place it in the context of Society. The latter should not be considered as an abstract concept but rather as a tangible and measurable reality.
2. The protection of human rights and the prevalence of the rule of law are the pillars of our European society that embraces all Europeans and is based on democracy and freedom. We aim to be a “democratic society” where all persons fully enjoy the human rights and fundamental freedoms which are inherent to their quality as human beings and share the same common values and principles with no discrimination based on their race, colour, language, sex, religion, beliefs, political affiliation, social status, sexual orientation or other considerations.
3. The universal respect of human rights, democracy and the rule of law can only be achieved if these values are universally recognised and if in all our States there are institutions and instruments to uphold them and ensure their effective implementation.
4. The preamble of the European Convention on Human Rights states that European countries “have a common heritage of political traditions, ideals, freedom and the rule of law”, and that they “take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration” which are mentioned, described and protected in the Convention.
5. In this context, the question whether Sharia Law is compatible with the European Convention on Human Rights and whether States Parties can be signatories to the Cairo Declaration on Human Rights in Islam is a crucial test for the resilience of our European democratic society and its institutions, as the Cairo Declaration challenges the foundations of what we call “democratic society” as they are proclaimed in the Preamble to the Statute of the Council of Europe (ETS No. 1), according to which individual freedom, political liberty and the rule of law are the “principles which form the basis of all genuine democracy”.
6. As Mr Johan Nissinen, the previous rapporteur for opinion, concluded in the memorandum he submitted to the committee in April 2018,² there is no doubt that an extended range of human rights which are enshrined in the Convention are denied by certain articles of the Cairo Declaration. The question therefore arises as to whether we can accept, within our European democratic society, a parallel “informal society”, which would be based on values and principles that contradict the essential values and principles whose legitimacy is sourced in the Convention.
7. The excellent and detailed report of Mr Gutiérrez comes to the same conclusion about the incompatibility of Sharia Law with the Convention, with very pertinent examples from the United Kingdom, Western Thrace in Greece and the Russian Federation. I welcome the fact that the rapporteur underlines the significance of the cases of the French Territory of Mayotte and Turkey,³ since these prove that religion can co-exist with the rule of law and the respect for human rights. No religion or “tradition” can be offended by the implementation of the rule of law or the application of human rights. Such an interpretation has been invalidated by history itself.

2. Beyond the legal issue, the cultural dimension of the problem

8. The question as to whether States Parties to the European Convention on Human Rights can be signatories to the Cairo Declaration does not cover all the issues at stake. Indeed, in stringent legal terms, there can be no doubt that the Convention and the commitments it entails are not subject to any limitations which could result from the provisions of the Cairo Declaration, as the latter does not generate legal obligations for the signatories. However, neither this acknowledgement nor the conclusion that the civil law of member States prevails over Sharia law solves all the problems.

2. Document AS/Cult (2018) 15. The present explanatory memorandum, and namely its section 2, is largely based on Mr Nissinen’s work.

3. Sections 5.3 and 5.5 of the explanatory memorandum.

9. The endorsement of the Cairo Declaration has a clear political relevance for all its signatory countries. As the vision of the fundamental human rights which inspires this text is not consistent with the vision underlying the Convention, the proper implementation of the latter can (and is most likely to) be hampered in many ways.

10. The European Convention on Human Rights (and in general the various systems which are intended to protect human rights at regional or universal level) have a “subsidiary role” to the protection of human rights under the national legal orders. If the endorsement of the Cairo Declaration reflects (as it seems logical to assume) the prevailing legal traditions of a country, there is a high risk that not only national policy makers (governments and national assemblies) and public administration (including police) but also the judiciary could have a distorted perception of what the Convention indeed requires of them and (willing or unconscious) resistance to its proper implementation would be a logical consequence.

11. In addition, the weight of the prevailing legal culture will also influence the training of lawyers (including through university studies); not to mention the social pressure that those “victims” of the violation of rights guaranteed by the Convention could suffer if their prejudice is justified by the Sharia: the “chilling effect” is evident to me.

12. In other terms, the protection of human rights is not only a legal issue, but also a cultural one. I would be tempted to say that it is primarily a cultural issue. The Convention is the result of centuries of nurturing the meaning of human dignity, equality and freedom. We have to act in order to consolidate this shared culture on human rights in and beyond Europe. The shared principles and rules enshrined in the Convention are not to be seen as a kind of external imposition: they have been chosen by the family of European democratic States as the foundations of our European societies; they need to be deeply understood, fully endorsed and be rooted in our daily lives; policy and decision makers, and indeed all members of the national communities, shall have no doubts that they are inherent to a democratic society because we consider that they are inherent to humanity.

3. Conclusions

13. We are speaking here of the basis on which the Council of Europe is built: these pillars are not negotiable and we shall stand for our common values together, with no hesitations. There can be no derogation from the implementation of human rights nor any challenge to the primacy of the rule of law. Otherwise there can be no future for Europe.

14. As the French Declaration of the Rights of Man and of the Citizen (1789) says in its opening statement: “The ignorance, the oblivion or the contempt of Human Rights are the only causes of public misfortunes ...” Our society needs to be based on, and must function with, institutions created only by law; unless there is a firm organisation of justice, there will be “no arts, no letters, no society and, which is worst of all, continual fear”.⁴ That is the end of civilisation as we know it.

15. States that are members of the Council of Europe and Parties to the Convention shall not maintain equivocal positions. It is necessary to call them not only to keep their distance from the Cairo Declaration as it stands now, but even to act in order to avoid that Islam as a faith could generate an insidious Islamism.

16. In this respect, I value that the draft resolution submitted by the Committee on Legal Affairs and Human Rights, in its paragraph 11, calls on Council of Europe member States and those whose parliaments enjoy partner for democracy status with the Assembly not only to “accept that the Convention is an international instrument binding on all Council of Europe member States” but also to “bolster pluralism, tolerance and a spirit of openness by proactive measures, taken by governments, civil society and religious communities, whilst respecting common values as reflected in the European Convention on Human Rights”.

17. To conclude, I fully back the excellent draft resolution. I would just suggest adding a new sub-paragraph to paragraph 11 of the draft resolution.

4. Thomas Hobbes (1588-1679), Book 1, “*Of Man, Being the First Part of Leviathan*”, The Harvard Classics, 1909-1914, Chapter XII.