



**Doc. 14787 – Compendium of written amendments**  
22/01/2019

**(Revised version)**

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

| <b>Contents</b>           | <b>Page</b> |
|---------------------------|-------------|
| A. Draft Resolution ..... | 2           |

## A. Draft Resolution

1. The Parliamentary Assembly recalls, inter alia, its Resolution 1846 (2011) and its Recommendation 1987 (2011) on combatting all forms of discrimination based on religion, as well as its Resolution 2076 (2015) on freedom of religion and living together in a democratic society and its Recommendation 1962 (2011) on the religious dimension of intercultural dialogue. On those occasions, the Assembly examined the co-existence of different religions in a democratic society. It recalls that pluralism, tolerance and a spirit of openness are the cornerstones of cultural and religious diversity.
2. The Assembly reiterates from the outset the obligation on member States to protect the right to freedom of thought, conscience and religion as enshrined in Article 9 of the European Convention on Human Rights (ETS No. 5, "the Convention"), which represents one of the foundations of a democratic society. The right to manifest one's religion, however, is a qualified right whose exercise may be limited in response to certain specified public interests and, under Article 17 of the Convention, may not aim at the destruction of other Convention rights or freedoms.
3. The Assembly also recalls that it has on several occasions underlined its support for the principle of the separation of State and religion, as one of the pillars of a democratic society, for instance in its Recommendation 1804 (2007) on State, religion, secularity and human rights. This principle should continue to be respected.
4. The Assembly considers that the various Islamic declarations on human rights adopted since the 1980s, while being more religious than legal, fail to reconcile Islam with universal human rights, especially insofar as they maintain the Sharia law as their unique source of reference. This includes the 1990 Cairo Declaration on Human Rights in Islam, which, whilst not legally binding, has symbolic value and political significance in terms of human rights policy under Islam. It is therefore of great concern that three Council of Europe member States - Albania, Azerbaijan and Turkey - are signatories to the 1990 Cairo Declaration, as are Jordan, Kyrgyzstan, Morocco and Palestine, whose parliaments enjoy partner for democracy status with the Assembly.

### **Amendment 17**

(If adopted, amendment 25 falls)

**Tabled by Mr Tritan SHEHU, Mr Adnan DIBRANI, Mr Asim MOLLAZADA, Mr Oleksii GONCHARENKO, Mr Akif Çağatay KILIÇ**

*In the draft resolution, paragraph 4, third sentence, replace the words: "It is therefore of great concern that three Council of Europe member States - Albania, Azerbaijan and Turkey - are signatories to the 1990 Cairo Declaration, as are Jordan, Kyrgyzstan, Morocco and Palestine, whose parliaments enjoy partner for democracy status with the Assembly", with the following words: "It is therefore of great concern that Council of Europe member States, or countries whose parliaments enjoy partner for democracy status with the Assembly, are signatories to the 1990 Cairo Declaration."*

### **Amendment 25**

(Falls if amendment 17 is adopted)

**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, paragraph 4, last sentence, replace the words "are signatories to the 1990 Cairo Declaration, as are" with the*

following words: "have endorsed, explicitly or implicitly, the 1990 Cairo Declaration, as have"

**Amendment 1**

**Tabled by Mr Mustafa YENEROĞLU, Ms Emine Nur GÜNAY, Mr Ali ŞAHİN, Ms Serap YAŞAR, Mr Akif Çağatay KILIÇ**

*In the draft resolution, at the end of paragraph 4, insert the following sentence: "The Assembly recognises that the Republic of Turkey has made a reservation to the Charter of the OIC during its accession to state the fact that Turkey remains committed to the principles of democracy, rule of law, individual universal human rights as well as those of a secular state as enshrined in its constitution, and that this reservation also applies to the Cairo Declaration and its contents."*

5. The Assembly is also greatly concerned about the fact that Sharia law – including provisions which are in clear contradiction with the Convention - is applied, either officially or unofficially, in several Council of Europe member States, or parts thereof.

6. The Assembly recalls that the European Court of Human Rights has already stated in *Refah Partisi (The Welfare Party) and others v. Turkey* that "the institution of Sharia law and a theocratic regime were incompatible with the requirements of a democratic society". Sharia law rules on, for example, divorce and inheritance proceedings are clearly incompatible with the Convention, in particular its Article 14, which prohibits discrimination on grounds such as sex or religion, and Article 5 of Protocol No. 7 to the Convention (ETS No. 117), which establishes equality between marital partners. Sharia law is also in contradiction with other provisions of the Convention and its additional protocols, including Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 9 (freedom of religion), Article 1 of Protocol No. 1 (ETS No. 9) (protection of property) and Protocols Nos. 6 (ETS No. 114) and 13 (ETS No. 187) prohibiting the death penalty.

**Amendment 8**

**Tabled by Mr Pieter OMTZIGT, Ms Dora BAKOYANNIS, Mr Constantinos EFSTATHIOU, Ms Karin BROUWERS, Mr Valeriu GHILETCHI, Mr Martin WHITFIELD, Mr Ervin IBRAHIMOVIĆ, Mr Danail KIRILOV**

*In the draft resolution, paragraph 6, after the first sentence, insert the words: "The Assembly fully agrees that".*

**Amendment 10**

**Tabled by Mr Pieter OMTZIGT, Ms Dora BAKOYANNIS, Mr Constantinos EFSTATHIOU, Ms Petra STIENEN, Ms Karin BROUWERS, Mr Valeriu GHILETCHI, Lord Donald ANDERSON, Mr Martin WHITFIELD, Mr Ervin IBRAHIMOVIĆ, Mr Danail KIRILOV**

*In the draft resolution, paragraph 6, after the words "Article 9 (freedom of religion),", insert the words: "Article 10 (freedom of expression),".*

**Amendment 7**

**Tabled by Mr Pieter OMTZIGT, Mr Emanuelis ZINGERIS, Ms Dora BAKOYANNIS, Mr Constantinos EFSTATHIOU, Ms Petra**

7. In this context, the Assembly regrets that despite the recommendation it made in its Resolution 1704 (2010) on freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece), asking the Greek authorities to abolish the application of Sharia law in Thrace, this is still not the case. Muftis continue to act in a judicial capacity without proper procedural safeguards. The Assembly denounces in particular the fact that in divorce and inheritance proceedings – two key areas over which muftis have jurisdiction – women are at a distinct disadvantage.
8. The Assembly is also concerned about the “judicial” activities of “Sharia councils” in the United Kingdom. Although they are not considered part of the British legal system, Sharia councils attempt to provide a form of alternative dispute resolution, whereby members of the Muslim community, sometimes voluntarily, often under considerable social pressure, accept their religious jurisdiction mainly in marital and Islamic divorce issues, but also in matters relating to inheritance and Islamic commercial contracts. The Assembly is concerned that the rulings of the Sharia councils clearly discriminate against women in divorce and inheritance cases. The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too.
9. The Assembly calls on the member States of the Council of Europe to protect human rights regardless of religious or cultural practices or traditions.
10. The Assembly notes with approval the 2008 judgment of the United Kingdom’s House of Lords addressing these principles.
11. The Assembly calls on Council of Europe member States and those whose parliaments enjoy partner for democracy status with the Assembly to:
  - 11.1. 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;

**STIENEN, Ms Karin BROUWERS, Mr Valeriu GHILETCHI, Mr Aleksander POCIEJ**

*In the draft resolution, paragraph 6, after the words "Article 9 (freedom of religion)", insert the words: "Article 12 (right to marry)".*

**Amendment 12  
Tabled by the Committee on Equality and  
Non-Discrimination**

*In the draft resolution, paragraph 8, delete the following words: "The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too."*

**Amendment 20  
Tabled by the Committee on Political Affairs  
and Democracy**

*In the draft resolution, at the end of paragraph 9, after the words "practices or traditions", insert the following words: "on the principle that where human rights are concerned, there is no room for religious or cultural exceptions".*

**Amendment 6  
Tabled by the Committee on Culture,  
Science, Education and Media**

*In 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;"*

**Amendment 13**  
**Tabled by the Committee on Equality and Non-Discrimination**

*In 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;"*

- 11.2. accept that the Convention is an international instrument binding on all Council of Europe member States.

**Amendment 26**  
**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, paragraph 11.2., replace the words: "accept that the Convention is an international instrument" by the following words: "engage in the process of revision of the Cairo Declaration launched by the OIC so as to ensure that the future OIC Declaration on Human Rights is compatible with universal human rights standards and the European Convention on Human Rights which is".*

**Amendment 21**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, at the end of paragraph 11.2, insert the following words: "and a source of inspiration for those whose parliaments enjoy partner for democracy status".*

12. The Assembly calls on Albania, Azerbaijan and Turkey, as well as Jordan, Kyrgyzstan, Morocco and the Palestinian National Council, all signatories to the 1990 Cairo Declaration, to:

**Amendment 18**  
(If adopted, amendment 22 falls)  
**Tabled by Mr Tritan SHEHU, Mr Adnan DIBRANI, Mr Asim MOLLAZADA, Mr Oleksii GONCHARENKO, Mr Akif Çağatay KILIÇ**

*In the draft resolution, replace paragraph 12 with the following paragraph:*

*"The Assembly calls on all signatories to the 1990 Cairo Declaration to:"*

**Amendment 22**  
(Falls if amendment 18 is adopted)  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, paragraph 12, delete the words: "as well as Jordan, Kyrgyzstan, Morocco*

and the Palestinian National Council, all signatories to the 1990 Cairo Declaration,".

**Amendment 29**

**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, at the end of paragraph 12, add the following words: "consider distancing themselves from the 1990 Cairo Declaration by:".*

12.1. consider withdrawing from the Cairo declaration;

**Amendment 9**

(If adopted, amendments 27, 2 falls)

**Tabled by Mr Pieter OMTZIGT, Mr Constantinos EFSTATHIOU, Ms Karin BROUWERS, Mr Valeriu GHILETCHI, Mr Danail KIRILOV**

*In the draft resolution, replace paragraph 12.1 with the following paragraph:*

*"withdraw from the Convention;"*

**Amendment 27**

(Falls if amendment 9 is adopted)

(If adopted, amendment 2 falls)

**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, delete paragraph 12.1.*

**Amendment 2**

(Falls if amendments 9, 27 are adopted)

**Tabled by Mr Mustafa YENEROĞLU, Ms Emine Nur GÜNAY, Mr Ali ŞAHİN, Ms Serap YAŞAR, Mr Akif Çağatay KILIÇ**

*In the draft resolution, replace paragraph 12.1 with the following paragraph:*

*"accelerate their efforts to revise the 1990 Cairo Declaration;"*

12.2. make use of all available means to make declarations, so as to ensure that the 1990 Cairo Declaration has no effect on their domestic legal orders that may be inconsistent with their obligations as Parties to the European Convention on Human Rights, as applicable; or

**Amendment 3**

(If adopted, amendment 23 falls)

**Tabled by Mr Mustafa YENEROĞLU, Ms Emine Nur GÜNAY, Mr Ali ŞAHİN, Ms Serap YAŞAR, Mr Akif Çağatay KILIÇ**

*In the draft resolution, delete paragraph 12.2.*

- 12.3. consider performing some formal act which clearly establishes the Convention as a superior source of obligatory binding norms.

13. The Assembly, while noting the legislative change in Greece which made the practice of Islamic sharia law in civil and inheritance matters optional for the Muslim minority, calls on the Greek authorities to:

- 13.1. monitor whether this legislative change will be sufficient to satisfy the requirements of the Convention;

- 13.2. allow the Muslim minority to choose freely its muftis as purely religious leaders (that is, without judicial powers), through election or appointment, thereby abolishing the application of Sharia law, as already recommended in Resolution 1704 (2010).

14. The Assembly, while welcoming the recommendations put forward in the conclusions of the Home Office Independent review into the application of sharia law in England and Wales, as a major step towards a solution, calls on the authorities of the United Kingdom to:

- 14.1. ensure that Sharia councils operate within the law, especially as it relates to the prohibition of discrimination against women, and respect all procedural rights;

**Amendment 23**

(Falls if amendment 3 is adopted)

**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, paragraph 12.2, delete the words ", as applicable".*

**Amendment 4**

**Tabled by Mr Mustafa YENEROĞLU, Ms Emine Nur GÜNAY, Mr Ali ŞAHİN, Ms Serap YAŞAR, Mr Akif Çağatay KILIÇ**

*In the draft resolution, delete paragraph 12.3.*

**Amendment 28**

**Tabled by the Committee on Legal Affairs and Human Rights**

*In the draft resolution, paragraph 13.1., replace the words "monitor whether this" by the following words: "rapidly and fully implement the Grand Chamber judgment of the European Court of Human Rights in the case of Molla Sali v. Greece and in particular, to monitor whether the above-mentioned"*

**Amendment 5**

**Tabled by Mr Mustafa YENEROĞLU, Ms Emine Nur GÜNAY, Mr Ali ŞAHİN, Ms Serap YAŞAR, Mr Akif Çağatay KILIÇ**

*In the draft resolution, paragraph 13.2, delete the words "or appointment".*

- 14.2. review the Marriage Act to make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony, as is already stipulated by law for Christian and Jewish marriages;
- 14.3. take appropriate enforcement measures to oblige the celebrant of any marriage, including Islamic marriages, to ensure that the marriage is also civilly registered before or at the same time as celebrating the religious marriage;
- 14.4. ensure that vulnerable women are provided with safeguards against exploitation and inform them about their rights to seek redress before the courts in the United Kingdom;
- 14.5. put in place awareness campaigns to encourage Muslim communities to acknowledge and respect women's rights in civil law, especially in the areas of marriage, divorce, custody and inheritance;
- 14.6. conduct further research on "judicial" practice of Sharia councils and on the extent to which such councils are used voluntarily, particularly by women, many of whom would be subject to intense community pressure in this respect.

**Amendment 14**  
**Tabled by the Committee on Equality and Non-Discrimination**

*In 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 15**  
**Tabled by the Committee on Equality and Non-Discrimination**

*In 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 16**  
**Tabled by the Committee on Equality and Non-Discrimination**

*In the draft resolution, 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 organisations and other NGOs to promote gender equality and women's empowerment".*

**Amendment 11**  
**Tabled by Mr Pieter OMTZIGT, Ms Dora BAKOYANNIS, Mr Constantinos EFSTATHIOU, Ms Petra STIENEN, Ms Karin BROUWERS, Mr Valeriu GHILETCHI, Lord Donald ANDERSON, Mr Danail KIRILOV**

*In the draft resolution, after paragraph 14.6, insert the following paragraph:*

*"The Assembly calls on the countries (member States and observer states) who are signatories to the Cairo Declaration, on Greece and on the United Kingdom to report back to the Assembly by the end of 2019 on the actions they have taken as a follow-up to this resolution."*

**Sub-amendment 1 to amendment 11**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In amendment 11, replace the words "signatories to the Cairo Declaration" with the following words: "members of the OIC".*

**Sub-amendment 2 to amendment 11**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In amendment 11, replace the words "by the end of 2019" with the following words: "by June 2020".*

**Amendment 19**  
**Tabled by the Committee on Political Affairs**  
**and Democracy**

*Replace the title of the draft resolution with:*  
*"Sharia, the Cairo Declaration and the European Convention on Human Rights".*

**Amendment 24**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*Replace the title of the draft resolution with:*  
*"Sharia, the Cairo Declaration and the European Convention on Human Rights".*