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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”?

Addendum to the report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Antonio GUTIÉRREZ, Spain, Socialists, Democrats and Greens Group

1. Introduction

1. Since the adoption of the report on 13 December 2018,² two new matters have arisen: firstly, the judgment of the European Court of Human Rights in the case *Molla Sali v. Greece*,³ and secondly, the receipt of a letter from Mr Samad Seyidov, Head of the Delegation of Azerbaijan to the Parliamentary Assembly. Both give rise to some amendments to the draft resolution to be proposed by the Committee on Legal Affairs and Human Rights.

2. The Grand Chamber judgment in *Molla Sali v. Greece*

2. The case of *Molla Sali v. Greece* is discussed in paragraphs 32 to 44 of the explanatory memorandum. The European Court of Human Rights (“the Court”) has now found Greece to be in violation of the European Convention on Human Rights (ETS No. 5, “the Convention”) (Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention (ETS No. 9)) for having imposed on people belonging to the Muslim minority in Western Thrace the application of Islamic law, which was found to be discriminatory. The Court recalled that Greece was at the time the only country in Europe which applied Sharia law to part of its citizens “against their will” and noted with satisfaction that after recent legislative changes, Greek law only allows the application of Sharia rules with the consent of all parties concerned.

3. But the Court also ruled that “[a] person’s religious beliefs cannot validly be deemed to entail waiving certain rights if that would run counter to an important public interest”. Whether or not equal treatment of men and women is such an “important public interest”, or to what extent Muslim believers may voluntarily subject themselves to Sharia rules deviating from this principle, and how to ensure the truly voluntary nature of any such choices are questions that will remain to be examined in the process of implementation of this judgment.

4. It is therefore suggested that the Assembly call on the Greek authorities to rapidly and fully implement the above-mentioned judgment of the Court, whilst monitoring whether the recent legislative changes were sufficient to satisfy all requirements of the Convention.

1. Addendum approved by the committee on 21 January 2019.

2. [Doc. 14787](#).

3. Application No. [20452/14](#), judgment of 19 December 2018 (Grand Chamber).



3. The letter from Mr Samad Seyidov dated 14 January 2019

5. The rapporteur has received a letter dated 14 January 2019 from Mr Samad Seyidov, Head of the Delegation of Azerbaijan to the Parliamentary Assembly. In this letter, Mr Seyidov recalls that “Azerbaijan had been admitted to the Organisation of Islamic Cooperation (OIC) as a member in 1991”, after the 1990 Cairo Declaration on Human Rights in Islam had been adopted. The letter continues by noting that “Azerbaijan had not been involved in the preparation, coordination and adoption of this declaration”, and so cannot be considered a signatory to it.

6. Although not mentioned in the letter, Albania is likely to be in a similar situation.

7. It can also be noted, however, that the preamble of the [Statute of the Independent Permanent Human Rights Commission \(IPHRC\)](#), adopted by the OIC’s Council of Foreign Ministers in 2011, explicitly refers to the 1990 Cairo Declaration and “the provisions of article 5 and article 15 of the [OIC Charter](#) which stipulate that: ‘The Independent Permanent Commission on Human Rights shall promote the civil, political, social and economic rights enshrined in the Organisation’s covenants *and declarations* and in universally agreed human rights instruments, in conformity with Islamic values’”.⁴ The words in italics clearly encompass the Cairo Declaration.

8. Since all OIC member States participated in the adoption of the IPHRC Statute, Azerbaijan and Albania have thus agreed to using the Cairo Declaration as one of the reference texts for its activities, endorsing the promotion of the principles and rights enshrined within.

9. Mr Seyidov’s letter also mentions the revision process currently underway within the IPHRC to update the Cairo Declaration, to be renamed the “OIC Declaration on Human Rights”. All Council of Europe member States which are also members of the OIC should be encouraged to engage in this revision process so as to ensure that the future OIC Declaration on Human Rights is fully compatible with the European Convention on Human Rights, which is binding on all Council of Europe member States. States whose parliament enjoys partner for democracy status with the Assembly should also be encouraged to take part in this process.

10. It is therefore suggested that the draft resolution be amended accordingly and also the title of the report be changed in order to shorten and simplify it.

4. Proposed amendments

Amendment A

Replace the title of the report with:

“Sharia, the Cairo Declaration and the European Convention on Human Rights”

Amendment B (to the draft resolution)

In paragraph 4, last sentence, replace the words “are signatories to” with the words:

“have endorsed, explicitly or implicitly,”

and replace the word “are”, before the word “Jordan”, with the word “have” (English only).

Amendment C (to the draft resolution)

In paragraph 11.2, replace the words “accept that the Convention is an international instrument” with 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”

4. The IPHRC was formally created by the new [OIC Charter](#) which was adopted by the 11th Islamic Summit held in Dakar (Senegal), on 13-14 March 2008. For more information, please visit the [IPHRC’s website](#) and the list of the OIC’s human rights-related instruments and texts.

Amendment D (to the draft resolution)

Delete paragraph 12.1 and add the following words at the end of the first sentence of paragraph 12:

“consider distancing themselves from the 1990 Cairo Declaration by:”

And replace the word “make” by the word “making” in the new paragraph 12.1 and replace the words “consider performing” by the words “considering to perform” in the new paragraph 12.2.

Amendment E (to the draft resolution)

In 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, monitor whether the above-mentioned”