



Sharia Law in Europe: A Greek case before the ECtHR that may bring changes

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Introduction

As a result of the Treaty of Lausanne (1923), the Muslim population of Thrace in Greece was granted a special minority protection regime that applied sharia law to Muslim Greek citizens residing in that region. However, sharia is only applied to certain disputes of family and inheritance law by the local Mufti in Western Thrace who has special jurisdiction over these matters.

Permitting sharia law to apply within a “western” legal order, to a select group of citizens of the state, certainly represents a peculiar situation in which legal pluralism has survived for historical reasons. The case of the Islamic courts in Thrace opens up the field for further discussion on eventual reform of sharia law and courts, reforms that could range from the updating of sharia norms to entirely abolishing the Mufti’s jurisdiction in Thrace.

A case that has been heard by the Grand Chamber of the ECtHR on December 2017 and the forthcoming judgment may put to the fore new data on a series of questions: is sharia law compatible with human rights standards. Could sharia law coexist with civil law in Europe as a model of legal pluralism?

Since 1923, policies related to the Turkish-Muslim minority of Thrace are governed by the chapter of the Treaty of Lausanne on minority protection (art. 37-45). This legal protection system reflects for once more millet-like precept as the attribution of religious and linguistic rights is effectuated through religion. Since early times, and especially after 1964 and 1974, minority protection suffered from Greek-Turkish antagonisms through the notorious principle of (negative) reciprocity. However, the ‘Lausanne system’ survived unchanged. Thus the status of the minority of Thrace encompasses specific minority rights regarding religious freedom and linguistic rights in parallel to the general human rights:

- a. Three Muftis are based in Thrace and they have a special status as civil servants having a special jurisdiction over Muslims on family and inheritance matters.
- b. Minority schools offer bilingual education.
- c. Muslim community property (waqf) is administered by councils, which are not elected but appointed by the government since the times of the junta in 1967.

The Mufti as judge

The three current Muftis of Thrace (Komotini, Xanthi and Didymoteicho) have jurisdiction over Muslims of Greek citizenship in their respective administrative areas. The Muftis have dual responsibilities in the Muslim community as religious leaders and judges of sharia law.

Muftis have the status of a religious judge, competent to adjudicate family law matter such as divorces, pensions, tutelage (custody of children), alimony (nafaka), and the emancipation of minors, as well as inheritance disputes between Muslim Greek citizens within their jurisdictions.

The coexistence of sharia law with civil law, the sharia courts with civil courts endured until recently through a delicate balance that avoided the jurisdictional control of normative and procedural controversies. One of these pertains to supervision and control of Mufti decisions. The Mufti's decisions are ratified by the relevant one-member Greek secular Court of First Instance with jurisdiction and thus become enforceable (Act 1920/1991, art. 5 par. 3). However, civil courts systematically avoid addressing the merits when they ratify the Mufti decisions. Thus, effectively, there is no provision for appeal (or indeed cassation) in the cases judged by the Muftis. There is also the question of whether the procedures used in the Mufti courts comply with the right to a fair trial, whereas the equality of the litigants is not safeguarded (the male litigant is given a stronger position in Mufti courts compared with a female litigant). The Mufti system also does (did) not provide for a realistic choice of forums in most cases. There was no provision in the law to decide cases when one of the parties chooses the jurisdictional authority of the civil court and the other chooses the religious court. Although Muslims were free in theory to opt for civil court jurisdiction over their cases, very often the civil courts refer cases filed with them back to the Muftis as the exclusively competent jurisdictional organ.

The case

The Molla Sali case made more visible than ever the deficiencies of the system. The Muslim widow inherited all properties from her deceased Muslim husband according to the public will he drafted, in terms with the civil law. Later on, the sisters of the deceased objected the public will as null and void on the ground that as the deceased was a Muslim, he had the obligation to follow the Islamic inheritance law. The first instance court said that the deceased was free to choose the civil law, and therefore there was no legal issue as regards the public will. The court of Appeals upheld this view. However, the Court of Cassation (Areios Pagos) overturned the appeal and said that under the Treaty of Lausanne there is an objective protection for all Muslims in Thrace. Therefore, submission to sharia law and the jurisdiction of the Mufti is mandatory. Consequently, the public will drafted by the deceased is null and void, and sharia law should be the only applicable law.

The case was brought before the Court of Strasbourg¹. The applicant claimed: violation of article 6 ECHR for the Greek Court of Cassation denied justice, while there was no ground that civil law is not applicable; violation of Art. 1, Prot. 1, for partial loss of the inherited properties according to that judgment; violation of Art. 14, in combination to the previous articles, for discrimination on the ground of religion and sex: if the applicant were a male the lots of inheritance would be higher. If she were non-Muslim (and the deceased husband) sharia law would not be applicable.

The case of Molla Sali, has already brought changes within the Greek law. According to a fresh amendment to the law on the Mufti -in view to comply with the expected dictum of the ECtHR- the jurisdiction of the Mufti became optional, and both litigants have to agree upon his jurisdiction. Otherwise civil courts are by default competent to adjudicate any dispute between Muslims of Thrace. Moreover, Muslims have the right to draft a public will, by now

¹ ECtHR, *Molla Sali v Greece*, 20452/14, Grand Chamber. The judgment is expected in December 2018.

it is explicitly allowed. As regards the optional jurisdiction of the Mufti, a presidential decree is required in view to set procedural rules on the procedure before the Mufti's court. This decree is under way and expected to be in force soon.

It seems that the case will bring to the fore the question about freedom of option between the sharia and civil law and the discriminative content of sharia. It may bring also general viewpoints about the position of sharia law within the European legal order. In that case it will be the first time that the ECtHR will compare the sharia law norm to human rights standards under a concrete viewpoint (eventually in a more comprehensive way in comparison to the Refah partisi judgment).

Conclusion

The discussion on the status of the sharia law within the Greek and European legal order inevitably touches upon the issue of how to accommodate non-liberal laws of a minority in a liberal legal context. Conformity of Sharia law with fundamental human rights will be at stake. To move forward, this discussion must maneuver between the demands for integration, preservation of minority identity, and the relationship between individual and collective identity as potential fields of normative action. The Molla Sali judgment may trigger changes: Abolition of sharia courts, amendments of the law or changes from within the Muslim society? To what extent could alternative legal norms of private law be accommodated within a uniform legal order? Could an alternative, culturally accommodating structure of adjudication be seen as a democratic paradigm?

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