



Sharia law applied to an inheritance dispute contrary to the will of the testator, a Greek belonging to the Muslim minority: violation of the Convention

In today's **Grand Chamber** judgment¹ in the case of [Molla Sali v. Greece](#) (application no. 20452/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention

The case concerned the application by the domestic courts of Islamic religious law (Sharia) to an inheritance dispute between Greek nationals belonging to the Muslim minority, contrary to the will of the testator (a Greek belonging to the Muslim minority, Ms Molla Sali's deceased husband), who had bequeathed his whole estate to his wife under a will drawn up in accordance with Greek civil law. The courts considered the will devoid of effect because the law applicable to the case was Islamic inheritance law. They ruled that in Greece, the latter law applied specifically to Greeks of Muslim faith. Ms Molla Sali, who had been deprived of three-quarters of her inheritance, submitted that she had suffered a difference in treatment on grounds of religion because had her husband not been of Muslim faith, she would have inherited the whole estate.

The Court found in particular that the difference in treatment suffered by Ms Molla Sali as the beneficiary of a will drawn up under the Civil Code by a Greek testator of Muslim faith, as compared with a beneficiary of a will drawn up under the Civil Code by a Greek testator not of Muslim faith, had not been objectively and reasonably justified.

The Court pointed out, *inter alia*, 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 a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification.

Lastly, the Court noted that Greece was the only country in Europe which, up until the material time, had applied Sharia law to a section of its citizens against their wishes. That was particularly problematic in the present case because the application of Sharia law had led to a situation that was detrimental to the individual rights of a widow who had inherited her husband's estate in accordance with the rules of civil law but who had then found herself in a legal situation which neither she nor her husband had intended.

Principal facts

The applicant, Chatitze Molla Sali, is a Greek national who was born in 1950 and lives in Komotini (Greece).

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On the death of her husband, Ms Molla Sali inherited her husband's whole estate under a will drawn up by her husband before a notary. Subsequently, the deceased's two sisters challenged the validity of the will, arguing that their brother had belonged to the Thrace Muslim community and that any question relating to inheritance in that community was subject to Islamic law and the jurisdiction of the "mufti" and not to the provisions of the Greek Civil Code. They relied, in particular, on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for the application of Muslim customs and Islamic religious law to Greek nationals of Muslim faith.

The two sisters' claims were dismissed by the court of first instance and the appellate courts: in September 2011, the Thrace Court of Appeal ruled that the decision of the deceased person, a Greek citizen of Muslim faith and a member of the Thrace religious minority, to call on the services of a notary to draw up an official will, personally designating the persons to whom he wished to bequeath his estate and deciding on the relevant procedure, was consonant with his legal right to dispose of his property after his death under the same conditions as all other Greek citizens.

However, the Court of Cassation set that judgment aside, ruling that matters of inheritance within the Muslim minority had to be dealt with by the mufti in accordance with the rules of Sharia law. The case was then referred to the court of appeal, which on 15 December 2015 ruled that the law applicable to the deceased's estate was Muslim religious law and that the impugned will was devoid of legal effect. Ms Molla Sali's appeal on points of law was dismissed on 6 April 2017.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) read separately and in conjunction with Article 14 (prohibition of discrimination), Ms Molla Sali complained about the application of Sharia law to her inheritance dispute rather than the ordinary law applicable to all Greek citizens, despite the fact that her husband's will had been drawn up in accordance with the provisions of the Greek Civil Code. She also claimed to have suffered discriminatory treatment on grounds of religion, and complained that she had been deprived of three-quarters of her inheritance. The Court decided to examine those complaints solely under Article 14 read in conjunction with Article 1 of Protocol No. 1.

The application was lodged with the European Court of Human Rights on 5 March 2014. On 6 June 2017 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 6 December 2017. The organisations Greek Helsinki Monitor (GHM), Christian Concern and the Hellenic League for Human Rights were given leave to intervene in the written procedure as intervening third parties.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Julia **Laffranque** (Estonia),
Paul **Lemmens** (Belgium),
Aleš **Pejchal** (the Czech Republic),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Armen **Harutyunyan** (Armenia),

Pauliine Koskelo (Finland),
Tim Eicke (the United Kingdom),

and also Françoise Elens-Passos, *Deputy Registrar*.

Decision of the Court

[Article 14 \(prohibition of discrimination\) read in conjunction with Article 1 of Protocol No. 1 \(protection of property\)](#)

Owing to the application of Muslim inheritance law to her husband's estate – which law in Greece applied specifically to Greeks of Muslim faith – Ms Molla Sali had been deprived of the benefit of the will drawn up in accordance with the Civil Code by her husband, and had therefore been deprived of three-quarters of the inheritance. The fact is that if her husband, the testator, had not been of Muslim faith, Ms Molla Sali would have inherited the whole estate. As the beneficiary of a will drawn up under the Civil Code by a testator of Muslim faith, Ms Molla Sali had therefore been in a situation comparable to that of a beneficiary of a will established under the Civil Code by a testator who was not of Muslim faith, but she had been treated differently on the grounds of the testator's religion.

The Government justified that difference in treatment by arguing that the settled case-law of the Court of Cassation pursued an aim in the public interest, that is to say the protection of the Thrace Muslim minority, relying primarily on Greece's duty to honour its international obligations and the specific situation of the Thrace Muslim minority. The Court was not convinced by Greece's justification based on Sharia law and its international obligations, *inter alia* for the reasons set out below.

First of all, the Treaties of Sèvres and Lausanne did not impose any obligation on Greece to apply Sharia law. More specifically, the Treaty of Lausanne did not explicitly mention the jurisdiction of the mufti, but guaranteed the religious distinctiveness of the Greek Muslim community. Moreover, there were divergences in the case-law of the Greek courts as regards, in particular, the question whether the application of Sharia law was compatible with the principle of equal treatment and with international human rights standards, which created legal uncertainty incompatible with the requirements of the rule of law.

Finally, several international organisations had expressed their concern about the application of Sharia law to Greek Muslims in Western Thrace and the discrimination which that had created, in particular, against women and children, not only within the minority as compared with men, but also *vis-à-vis* non-Muslim Greeks. In particular, in his report on the rights of minorities in Greece, the Commissioner for Human Rights of the Council of Europe had noted that the application of Sharia law to family and inheritance law cases was incompatible with the international obligations entered into by Greece, and had recommended that the Greek authorities interpret the Treaty of Lausanne and any other treaties concluded in the early 20th century in full compliance with the obligations arising under the international and European instruments for the protection of human rights.

Secondly, under the case-law of the Court, 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. Moreover, it could not be assumed that a testator of Muslim faith, having drawn up a will in accordance with the Civil Code, had automatically waived his right, or that of his beneficiaries, not to be discriminated against on the basis of his religion. A person's religious beliefs could not validly be deemed to entail waiving certain rights if that would run counter to an important public interest. Nor could the State take on the role of guarantor of the minority identity of a specific population

group to the detriment of the right of that group's members to choose not to belong to it or not to follow its practices and rules.

Lastly, 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 a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification. The negative aspect of this right, namely the right to choose not to be treated as a member of a minority, was not limited in the same way as the positive aspect of that right. The choice in question was completely free, provided it was informed. It had to be respected both by the other members of the minority and by the State itself. That was supported by Article 3 § 1 of the Council of Europe Framework Convention for the Protection of National Minorities, which read as follows: "no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". The right to free self-identification was not a right specific to the Framework Convention. It was the "cornerstone" of international law on the protection of minorities in general. This applied especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument required anyone to submit against his or her wishes to a special regime in terms of protection of minorities.

Moreover, the Court noted that Greece was the only country in Europe which, up until the material time, had applied Sharia law to a section of its citizens against their wishes. This was particularly problematic in the present case because the application of Sharia law had caused a situation that was detrimental to the individual rights of a widow who had inherited her husband's estate in accordance with the rules of civil law but who had then found herself in a legal situation which neither she nor her husband had intended. In that connection, the Court noted with satisfaction that on 15 January 2018 the law abolishing the special regulations imposing recourse to Sharia law for the settlement of family-law cases within the Muslim minority had come into force. Recourse to a mufti in matters of marriage, divorce or inheritance was now only possible with the agreement of all those concerned. Nonetheless, the provisions of the new law had no impact on the situation of the applicant, whose case had been decided with final effect under the old system in place prior to the enactment of that law.

In conclusion, the Court found that the difference in treatment suffered by the applicant, as a beneficiary of a will drawn up in accordance with the Civil Code by a testator of Muslim faith, as compared to a beneficiary of a will drawn up in accordance with the Civil Code by a non-Muslim testator, had had no objective and reasonable justification. There had therefore been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention.

Article 41 (just satisfaction)

The Court held that the question of the application of Article 41 of the Convention was not ready for decision, and reserved it. The Court invited the parties to submit to it in writing, within three months of notification of the present judgment, their observations on the question.

Separate opinion

Judge Mits expressed a concurring opinion which is annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.