



# Sharia Watch UK

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- [Council of Europe requests abolition of the application of sharia in Thrace](#) [1]

Author(s):

Parliamentary Assembly of The Council Of Europe [2]

[Source Item](#) [1]

 [PACE-Resolution-1704-2010.pdf](#) [3]

In January 2010 the assembly of the Council of Europe passed Resolution 1704 (2010) Final version which includes this provision:

18.5. allow the Muslim minority to choose freely its **muftis as mere religious leaders (that is, without judicial powers)**, through election or appointment, **and thus to abolish the application of Sharia law** - which raises serious questions of compatibility with the European Convention on Human Rights - as recommended by the Commissioner for Human Rights;

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- [Council of Europe requests abolition of the application of sharia in Thrace](#) [4]



[4]

**Source Item:**

[Council of Europe requests abolition of the application of sharia in Thrace](#) [5]

Author(s):

Parliamentary Assembly of The Council Of Europe [2]

**Summary:**

[PACE Resolution 2253 - Sharia, the Cairo Declaration and the European Convention on Human Rights](#) [5]

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 \(2007\)](#) [6] 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 Sharia is their unique source of reference. This includes the 1990 Cairo Declaration on Human Rights in Islam, which, while 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 (for the latter, with the limitation: "so far as it is compatible with its laws and its commitments under international conventions") - have endorsed, explicitly or implicitly, the 1990 Cairo Declaration, as have Jordan, Kyrgyzstan, Morocco and Palestine, whose parliaments enjoy partner for democracy status with the Assembly.

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 are incompatible with the requirements of a democratic society. The Assembly fully agrees that Sharia 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 thought, conscience and religion), Article 10 (freedom of expression), Article 12 (right to marry), Article 1 of the Protocol to the Convention (ETS No. 9) (protection of property) and Protocols Nos. 6 (ETS No. 114) and 13 (ETS No. 187) abolishing the death penalty.

7. In this context, the Assembly regrets that despite the recommendation it made in its [Resolution 1704 \(2010\)](#) [7] 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 issues and Islamic divorce proceedings 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 also exist in other Council of Europe member States.

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 on the principle that, where human rights are concerned, there is no room for religious or cultural exceptions.

10. The Assembly notes with approval the 2008 judgment of the United Kingdom's House of Lords addressing these principles.

[Resolution 1704 \(2010\)](#) [7]

18.5. allow the Muslim minority to choose freely its muftis as mere religious leaders (that is, without judicial powers), through election or appointment, and thus to abolish the application of Sharia law - which raises serious questions of compatibility with the European Convention on Human Rights - as recommended by the Commissioner for Human Rights;

A copy of this resolution can be download here: [PACE Resolution 1704 - abolish application of sharia in Thrace](#) [8]

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17807> [9]

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- [Council of Europe warns Britain sharia law conflicts with universal human rights and says it is 'greatly concerned' by its recognition in the UK](#) [10]

**Source Item:**

[Council of Europe warns Britain sharia law conflicts with universal human rights and says it is 'greatly concerned' by its recog](#) [11]

**Country:**

United Kingdom (UK)

**News Date:**

26/01/2019

**Summary:**

**Key points of resolution 2253 (adopted by the UK government:**

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- [UK named in Council of Europe sharia warning](#) [12]

**Source Item:**

[UK named in Council of Europe sharia warning](#) [13]

**Country:**

United Kingdom (UK)

**News Date:**

23/01/2019

**Summary:**

The body that oversees the European Convention on Human Rights has named the UK - along with Albania, Azerbaijan and Turkey - in a hard-hitting resolution highlighting conflicts between sharia law and universal human rights.

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- [Will Sharia Prevail Over Human Rights](#) [14]

Author(s):

[ECHR](#) [15]

[Parliamentary Assembly of The Council Of Europe](#) [2]

[ECLJ](#) [16]

**Source Item:**

[Will Sharia Prevail Over Human Rights](#) [17]

**Summary:**

These cases of openings to a justice parallel to that of the State raise several problems. The first is that the acceptance of parallel court decisions is an acceptance of communitarianism. This calls into question the unity of justice in a territory as well as the equality of men before the law, since depending on the religion of the former, the applicable law would not be the same. The applicability of the ECHR in the signatory countries is questioned or at least restricted in certain areas. Areas of “different right” (sometimes called “no rights” zones) where the signatory State would have accepted more or less officially that its right be derogatory.

Finally, this raises the question of the acceptability of certain principles or values. The former PACE Rapporteur explained in her note that *“The Court has ruled that Sharia law is in compatible with the European Convention on Human Rights, but obviously this does not mean that there is absolute incompatibility between the Convention and Islam”*

**This distinction between Sharia and Islam to consider the former as incompatible with the ECHR contrary to the second is not obvious. At the beginning of her note, she states precisely that “Sharia law is understood as being ‘the path to be followed’, that is, the ‘law’ to be obeyed by every Muslim.” If Islam “ordained a law” (Surah 5, verse 48) to every Muslim and “assigned a path” (id.) is sharia, then sharia becomes something consubstantial to Islam. A Muslim may not be a good Muslim if he does not apply the Sharia. There would thus be an incompatibility between the ECHR and Islam, which is not surprising as the need to create human rights in Islam testifies.**

[1] [18] CEDH, *Refah Partisi (The Welfare Party) and others v. Turkey* [GC], n° 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003, § 123.

[2] [19] Committee on Legal Affairs and Human Rights, *Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the ‘Cairo Declaration’?* Introductory Memorandum, AS/JUR (2016) 28, 7 October 2016, § 6. All following passages are excerpts from this note, which contains all sources, [accessible here](#) [20].

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- [Human rights in the North Caucasus\[Chechnya\]](#) [21]



[21]

**Source Item:**

[Human rights in the North Caucasus\[Chechnya\]](#) [22]

Author(s):

[Parliamentary Assembly of The Council Of Europe](#) [2]

**Summary:**

The Committee on Legal Affairs and Human Rights notes with regret that the specific recommendations addressed to the competent Russian authorities in [Resolution 1738 \(2010\)](#) [23], which was adopted unanimously with the participation of the Russian delegation, have remained largely unimplemented.

In the Chechen Republic, the authorities continue to nurture a climate of pervading fear in an atmosphere of personalisation of power. The Head of the Republic has made public threats against political opponents and human rights activists, even in other parts of Russia and beyond. The deterioration of the situation of women in the Chechen Republic through the rigid enforcement of religious norms has continued. The Head of the Chechen Republic actively promotes the application of rules based on Chechen customary laws, *adats*, and interpretations of Sharia that discriminate against women.

The committee thus observes that the situation in the North Caucasus region with regard to safeguarding human rights and upholding the rule of law still remains one of the most serious in the entire geographical area covered by the Council of Europe. Systematic human rights violations and the impunity of their perpetrators are bound to foster the further rise of extremism.

....

3.5. in the Chechen Republic, the authorities continue to nurture a climate of pervading fear in an atmosphere of personalisation of power. The Head of the Republic has made public threats against political opponents, human rights activists and their families, even in other parts of the Russian Federation and beyond;

3.6. the deterioration of the situation of women and girls in the Chechen Republic through the rigid enforcement of religious norms has continued. The Head of the Chechen Republic actively promotes the application of rules based on Chechen customary laws, *adats*, and interpretations of Sharia that discriminate against women and girls in family law matters, in violation of Russian law. Domestic violence and purportedly “traditional” practices harmful to women and girls, such as arranged and early marriages, and even so-called honour killings, are widespread and tolerated by the regional authorities.

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- [Compatibility of Sharia law with the European Convention on Human Rights: can](#)

## States Parties to the Convention be signatories of the “Cairo Declaration”? [24]



[24]

### **Source Item:**

[Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of](#) [25]

Author(s):

Parliamentary Assembly of The Council Of Europe [2]

### **Summary:**

The European Court of Human Rights, in its judgment on *Refah Partisi v. Turkey*, found it “difficult to declare one’s respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.”

Whilst no Member State of the Council of Europe has formally enacted Sharia rules, informal Islamic tribunals reportedly apply such rules, in particular in the field of private law (e.g. family, inheritance, contracts and torts law) to willing members of Muslim communities in several Member States.

The Cairo Declaration on Human Rights in Islam of the member states of the Organisation of the Islamic Conference (OIC) affirms the validity of the Sharia as guidance for OIC member states in the field of human rights. The Declaration does not recognise equal rights of men and women and of persons with different sexual orientations, limits freedom of expression and of religion only in such a manner as would not be contrary to the principles of the Sharia and stipulates that there are no other crimes or punishments than those mentioned in the Sharia. Three States Parties to the European Convention on Human Rights have adhered to the Cairo Declaration.

In view of the above, the Assembly resolves to investigate the compatibility of Sharia law, including its informal application, with the ECHR and the implications for State Parties of adherence to the Cairo Declaration.

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- [Compatibility of Sharia law with the ECHR: can States Parties to the Convention be signatories of the ‘Cairo Declaration’?](#) [26]

#### ECHR Judgement Summary:

Noting that the Welfare Party had pledged to set up a regime based on sharia law, the Court found that sharia was incompatible with the fundamental principles of democracy as set forth in the Convention. It considered that "sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it". According to the Court, it was difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly diverged from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervened in all spheres of private and public life in accordance with religious precepts.

Source: "Annual Report 2003 of the European Court of Human Rights, Council of Europe"

Copy of the report from the ECHR website ([https://www.echr.coe.int/Documents/Annual\\_report\\_2003\\_ENG.pdf](https://www.echr.coe.int/Documents/Annual_report_2003_ENG.pdf))

[26]

#### Source Item:

[Compatibility of Sharia law with the ECHR: can States Parties to the Convention be signatories of the 'Cairo Declaration'? \[20\]](#)

Author(s):

Parliamentary Assembly of The Council Of Europe [2]

#### Summary:

##### 2.1. Sharia law

5. For the purposes of this study, it is essential to define Sharia law, its sources, its legal force and its problematic aspects in terms of the European Convention on Human Rights.

6. Sharia law is understood as being 'the path to be followed', **that is, the 'law' to be obeyed by every Muslim**. It divides all human action into five categories - what is obligatory, recommended, neutral, disapproved of and prohibited - and takes two forms: a legal ruling (hukm), designed to organise society and deal with everyday situations, and the fatwa, a legal opinion intended to cover a special situation. Sharia law is therefore meant in essence to be positive law enforceable on Muslims. Accordingly, it can be defined as 'the sacred Law of Islam', that is, 'an all-embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects'.

##### 2.1.1. Sources

7. The prescriptions of Sharia law originate in the Qur'an, held to be a work that is 'perfect and unchangeable'. 6 The Qur'an constitutes the primary source of law and consists of 114 surahs or chapters, themselves divided into 6,219 verses, which are sentences or groups of sentences expressing one or more revealed thoughts. 7 However, an Islamic exegesis (tafsir) of the Qur'an is necessary for abstruse passages, and this has given rise to a number of schools.

8. The Sunna, the traditions and practices of the Prophet, is another original source, relating the religious deeds and sayings of the Prophet Muhammad as narrated by his disciples (Sunni branch) or by the imams (Shia branch).

9. In addition to these two basic texts of Islamic law there are secondary sources such as consensus (ijma'), analogical deduction (qiyas) and individual reasoning based on the general principles of Islam (ijtihad), which have produced a plethora of interpretations. Added to these are spontaneous sources such as local custom ('urf) and judicial practice ('amal).

10. Fiqh, the temporal interpretation of the rules of Sharia law, brings together all the rules that had been systematised by the end of the fifth century after the Hijra. There are various schools of Islamic jurisprudence. They include the four Sunni schools: the Hanafi school of Abu Hanifa, the Maliki school of Malik ibn Anas, the Shafi'i school of Muhammad ibn Idris al-Shafi'i and the Hanbali school of Ahmad ibn Hanbal. There are at least two main Shia schools: the Ja'fari and the Zaydi.

##### 2.1.2. Legal nature

11. While most States with Muslim majorities have inserted a provision referring to Islam or Islamic law in their constitutions, the effect of these provisions is symbolic or confined to family law. Admittedly, these religious

provisions may have a legal effect if raised in the courts and a political effect if they intrude into institutional attitudes and practices. 9 However, the authority of Sharia law is derived directly from the Qur'an, and traditional Islamic law contains no effective provisions concerning its position in the pyramid of norms. 10

2.1.3. Sharia law: problematic rules in relation to the European Convention on Human Rights

12. **In this study I shall be looking at the general principles of Sharia law in relation to the European Convention on Human Rights** and particularly Article 14, which prohibits discrimination on grounds such as sex or religion and Article 5 of Protocol No. 7 to the Convention, which establishes equality between spouses in law. In this context, reference should also be made to other provisions of the Convention and its additional protocols - such as 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 (protection of property) and Protocols Nos. 6 and 13 prohibiting the death penalty. Here we shall find some problematic features that warrant further analysis.

13. In Islamic family law, men have authority over women. Surah 4:34 states: 'Men have authority over women because God has made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because God has guarded them. As for those from whom you fear disobedience, admonish them and forsake them in beds apart, and beat them. Then if they obey you, take no further action against them. Surely God is high, supreme.' While wives clearly have a duty of fidelity, husbands do not. In Sharia law, adultery is strictly prohibited. Legal doctrine holds that the evidence must take the form of corroborating testimony from four witnesses<sup>15</sup> to prove an individual's guilt. These witnesses must be men of good repute and good Muslims. The punishment is severe and degrading, namely 'a hundred lashes'. In the case of rape, which is seldom committed in public before four male witnesses who are good Muslims, punishing the rapist is difficult if not impossible. In practice, this obliges women to be accompanied by men when they go out and is not conducive to their independence. While divorce by mutual consent is enshrined in Islamic law, the application has to come from the wife, since the husband can repudiate his wife at any time. There is also the question of equal rights with regard to divorce arrangements such as custody of children.

14. For division of an estate among the heirs, distinctions are made according to the sex of the heir. A male heir has a double share, whereas a female heir has a single share. The rights of a surviving wife are half those of a surviving husband.

15. In criminal cases, cruel, inhuman and degrading punishments are authorised by Sharia law, including death by stoning, beheading and hanging, amputation of limbs, and flogging. Apostasy results, firstly, in the apostate's civil death, with the estate passing to the heirs, and, secondly, in the apostate's execution if he or she does not recant. Lastly, **non-Muslims do not have the same rights as Muslims in civil and criminal [sharia] law**, which is discrimination on the ground of religion within the meaning of Article 14 of the Convention.

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- [ECLJ: Is Sharia compatible with Human Rights?](#) [27]

Author(s):

[ECLJ](#) [16]

[Parliamentary Assembly of The Council Of Europe](#) [2]

**Source Item:**

[ECLJ: Is Sharia compatible with Human Rights?](#) [17]

## Summary:

Is Sharia compatible with Human Rights? This concrete question is more and more important in Europe, particularly for women, and the Parliamentary Assembly of the Council of Europe (PACE) has tried to answer it.

Indeed, among the large Europe, there are territories where the sharia (or “Islamic law”) is applied. This raises a problem in view of Human Rights, in so far as these States are members of the European Convention on Human Rights (ECHR) and at the same time they apply or respect an Islamic justice opposed to the Universal Declaration of Human Rights (UDHR) and the ECHR.

Three member countries of the Council of Europe have ratified both the European Convention on Human Rights and the Cairo Declaration, which is a declaration of Human Rights compatible with the sharia. These countries are Albania, Azerbaijan and Turkey. One must add that the Russian Federation and Bosnia and Herzegovina have not signed the Cairo Declaration but are members observers of the Organization of the Islamic Conference and they have signed the ECHR.

This Cairo Declaration of 5<sup>th</sup> August 1990 stipulates inter alia that *“Islam is the religion of unspoiled nature”*. It does not contain a right to freedom of religion, does not confirm the equality before the law of all men regardless of their religion, and finally Article 25 stipulates that *“The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration”*.

Some of the principles stated in the Islamic law contravene the principles which are recognized as Human Rights, and first of all, freedom of religion. According to the sharia, a Muslim does not have the right to change his religion to another religion or to atheism. If he does so, he is an apostate, which generates his civil death (opening of his succession) and deserves a death penalty.

The Grand Chamber of the European Court of Human Rights had the opportunity to give an answer to that question of compatibility in 2003: it *“concurrs in the Chamber’s view that sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention”* [1] [28].

[Seized by several of its members](#) [29], the PACE will establish in the next few months a report on these incompatibilities, determine on which territories of members of the Council of Europe the sharia is applied and what consequences are to be drawn from it.

Mrs Meritxell Mateu (ALDE, Andorra) was the rapporteur of the Commission before she left the PACE. She wrote [a preliminary note](#) [20] under this procedure. This note defines sharia as follows:

*“Sharia law is understood as being ‘the path to be followed’, that is, the ‘law’ to be obeyed by every Muslim. It divides all human action into five categories—what is obligatory, recommended, neutral, Disapproved of and prohibited –and takes two forms: a legal ruling(hukm), designed to organise society and deal with everyday situations, and the fatwa, a legal opinion intended to cover a special situation. Sharia law is therefore meant in essence to be positive law enforceable on Muslims. Accordingly, it can be defined as ‘the sacred Law of Islam’, that is, ‘an all-embracing body of religious duties, the totality of Allah’s commands that regulate the life of every Muslim in all its aspects’.”* [2] [30]

Besides the different international instruments written and ratified by Muslim countries, the Rapporteur highlighted the members States of the Council of Europe in which sharia law is being applied, more or less legally: Greece, the United-Kingdom, Russia and Turkey.

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**Source URL (retrieved on 17/11/2019):**

<https://shariawatch.org.uk/?q=authors/parliamentary-assembly-council-europe>

**Links**

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- [10] <https://shariawatch.org.uk/?q=content/council-europe-warns-britain-sharia-law-conflicts-universal-human-rights-and-says-it-greatly>
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- [18] [https://eclj.org/religious-freedom/pace/la-charia-est-elle-compatible-avec-les-droits-de-lhomme-#\\_ftnref1](https://eclj.org/religious-freedom/pace/la-charia-est-elle-compatible-avec-les-droits-de-lhomme-#_ftnref1)
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- [20] <http://www.assembly.coe.int/Committee/JUR/ajdoc282016.pdf>
- [21] <https://shariawatch.org.uk/?q=content/human-rights-north-caucasuschechnya>
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- [23] <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17870&lang=en>
- [24] <https://shariawatch.org.uk/?q=content/compatibility-sharia-law-european-convention-human-rights-can-states-parties-convention-be>
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- [29] <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=22447&lang=en>
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