



Sharia Watch UK

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Author(s):

[ECHR](#) [2]

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ECHR Ruling:

"sharia law is incompatible with democracy and human rights"

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: http://www.echr.coe.int/Documents/Annual_report_2003_ENG.pdf

[5]

Source:

Annual Report 2003 of the European Court of Human Rights

- [Mainstream Islamism in Britain: Educating for the “Islamic Revival”](#) [6]



[6]

Source Item:

[Mainstream Islamism in Britain: Educating for the “Islamic Revival”](#) [7]

Author(s):

[Extremism Commission\(UK\)](#) [8]

[Damon L. Perry](#) [9]

Summary:

There is a distinct strand of Islamism in Britain comprised of a network of individuals and organisations, generally working within the parameters of the law, for what they see as an “Islamic revival”. The groups in this network, distinct from both violent and non-violent Islamist groups that reject participation in the democratic process, have been referred to as “participationist” Islamists¹ and as members of “the New Muslim Brotherhood in the West”.² They sometimes refer to themselves as part of a global “Islamic Movement” or as “Islamic revivalists”. This network or movement is actively engaged in British mainstream social and political life, and so for the purposes of this paper may be described as “mainstream” Islamists.

The first mainstream Islamist organisations, established by Jamaati and Brotherhood cadres in the 1960s and 1970s, include the Federation of Student Islamic Societies (FOSIS); the UK Islamic Mission (UKIM); the Muslim Educational Trust (MET); Muslim Welfare House; the Islamic Foundation; and Dawatul Islam UK & Eire. In the 1980s and 1990s came the Islamic Sharia Council; Muslim Aid; the Islamic Forum of Europe (IFE); the Association of Muslim Schools UK (AMS-UK); the Palestinian Relief and Development Fund (Interpal); and the Palestine Return Centre. In 1997, three important organisations were founded, the Muslim Council of Britain (MCB); the Muslim Association of Britain (MAB); and the Islamic Human Rights Commission (IHRC). In the 2000s, additional groups were established, reflecting a further diversification of Islamist interests, including Cage (initially called Cageprisoners); the Islam Channel; the Cordoba Foundation; Muslim Engagement and Development (MEND, initially called iEngage); and the Middle East Monitor

- [Reliance of the Traveller: Classic Manual of Islamic Sacred Law](#) [10]

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)

[10]

Source Item:

[Reliance of the Traveller: Classic Manual of Islamic Sacred Law](#) [11]

Summary:

This is a classic manual of fiqh rulings based on Shafi'i School of jurisprudence and includes original Arabic texts and translations from classic works of prominent Muslim scholars such as al Ghazali, al Nawawi, al Qurtubi, al Dhahabi and others.

Admin: This manual has been endorsed by Cairo's al-Azhar university as **"conforming to the practice and faith of orthodox Sunni Islam"**. It substantiates the [Council of Europe report](#) [12] that outlines some of the ways in which sharia is incompatible with democracy and human rights in that it:

- Sanctions death for apostasy
- Death by stoning for adultery and sodomy
- Discrimination against non-Muslims
- Jihad against non-Muslims to establish Islam
- In some cases, forced conversion to Islam
- Discrimination against non-Muslims
- Amputation of limbs
- It makes clear that penalties like amputation and stoning are also applicable to non-Muslims.

This resolution by the Council of Europe spells out precisely how sharia is incompatible with human rights and democracy:

*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.*

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25353> [13]

- [Council of Europe requests abolition of the application of sharia in Thrace](#) [14]



[14]

Source Item:

[Council of Europe requests abolition of the application of sharia in Thrace](#) [13]

Author(s):

[Parliamentary Assembly of The Council Of Europe](#) [15]

Summary:

[PACE Resolution 2253 - Sharia, the Cairo Declaration and the European Convention on Human Rights](#) [13]

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 \(2007\)](#) [16] 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 \(2010\)](#) [17] 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.

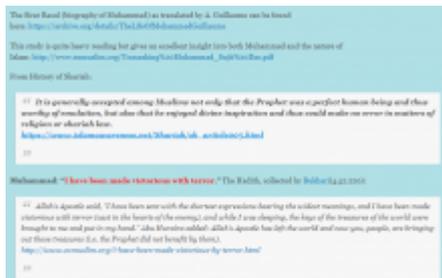
[Resolution 1704 \(2010\)](#) [17]

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](#) [18]

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17807> [19]

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- [Unmasking Muhammad](#) [20]



[20]

Source Item:

[Unmasking Muhammad](#) [21]

Author(s):

[Sujit Das](#) [22]

Summary:

Islam stands or falls on the credibility of Muhammad on which we do not have single evidence but unfathomable doubts because his conduct was immoral. But he successfully twisted the sense of morality of his followers, distorted their sense of 'Humanness' and linked "doing good" and "a service to God" to all ungodly things. Briefly, he had given a sacred aura to crime and terrorism.

- [Compatibility of Sharia law with the ECHR: can States Parties to the Convention be signatories of the 'Cairo Declaration'?](#) [23]



[23]

Source Item:

[Compatibility of Sharia law with the ECHR: can States Parties to the Convention be signatories of the 'Cairo Declaration'?](#) [12]

Author(s):

[Parliamentary Assembly of The Council Of Europe](#) [15]

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 witnesses¹⁵ 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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Links

[1] <https://shariawatch.org.uk/?q=content/echr-judgement-relating-sharia-law-2003>

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[6] <https://shariawatch.org.uk/?q=content/mainstream-islamism-britain-educating-islamic-revival>

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836571/Mainstream-islamism-in-britain-education-for-the-islamic-revival.pdf

[8] <https://shariawatch.org.uk/?q=authors/extremism-commissionuk>

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[10] <https://shariawatch.org.uk/?q=content/reliance-traveller-classic-manual-islamic-sacred-law>

[11] <https://www.amazon.co.uk/Reliance-Traveller-Classic-Manual-Islamic/dp/0915957728>

[12] <http://www.assembly.coe.int/Committee/JUR/ajdoc282016.pdf>

[13] <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25353>

[14] <https://shariawatch.org.uk/?q=content/council-europe-requests-abolition-application-sharia-thrace>

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

[16] <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17568&lang=en>

[17] <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17807&lang=en>

[18] <https://shariawatch.org.uk/downloadFiles/PACE-Resolution-1704-2010.pdf>

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

[20] <https://shariawatch.org.uk/?q=content/unmasking-muhammad>

[21] http://www.exmuslim.org/Unmasking%20Muhammad_Sujit%20Das.pdf

[22] <https://shariawatch.org.uk/?q=authors/sujit-das>

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