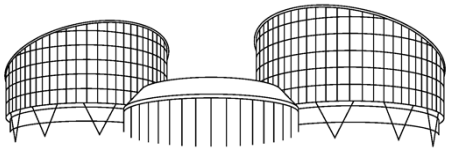

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF MOLLA SALI v. GREECE

(Application no. 20452/14)

JUDGMENT
(Merits)

STRASBOURG

19 December 2018

This judgment is final but it may be subject to editorial revision.

In the case of Molla Sali v. Greece,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Ganna Yudkivska,
Robert Spano,
Ledi Bianku,
Kristina Pardalos,
Julia Laffranque,
Paul Lemmens,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Carlo Ranzoni,
Mārtiņš Mits,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke, *judges,*

and Françoise Elens-Passos, *Deputy Registrar*,

Having deliberated in private on 6 December 2017 and 8 November 2018,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 20452/14) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mrs Chatitze Molla Sali ("the applicant"), on 5 March 2014.

2. The applicant was represented by Mr Y. Ktistakis and Mr K. Tsitselikis, lawyers practising in Athens and Thessaloniki respectively. The Greek Government ("the Government") were represented by their Agent's Delegates, Mr K. Georghiadis and Ms V. Pelekou, Advisers at the State Legal Council, and Ms A. Magrippi, Legal Assistant at the State Legal Council.

3. The applicant alleged a violation of Article 6 § 1 of the Convention, taken alone and in conjunction with Article 14 and Article 1 of

Protocol No. 1, in the context of a case concerning the inheritance rights to the property of her deceased husband.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 23 August 2016 the President of the Section decided, in accordance with Rule 54 § 2 (b), to give notice of the aforementioned complaints to the respondent Government. On 6 June 2017 a Chamber of that Section, composed of Kristina Pardalos, President, Linos-Alexandre Sicilianos, Ledi Bianku, Aleš Pejchal, Armen Harutyunyan, Pauline Koskelo and Tim Eicke, judges, and Renata Degener, Deputy Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was decided in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. Judge Pardalos, whose term of office expired in the course of the proceedings, continued to deal with the case (Article 23 § 3 of the Convention and Rule 23 § 4).

6. The applicant and the Government each filed written observations on the admissibility and merits of the case. Christian Concern, the Hellenic League for Human Rights and Greek Helsinki Monitor, which had all been given leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3), also submitted comments.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 December 2017.

There appeared before the Court:

(a) *for the Government*

Ms V. PELEKOU, Adviser, State Legal Council, *Agent*,
Ms A. MAGRIPPI, Legal Assistant, State Legal Council,
Ms M. TELALIAN, Director, Legal Department, Ministry of Foreign Affairs, *Counsel*,
Mr E. KASTANAS, Legal Adviser, Legal Department, Ministry of Foreign Affairs, *Adviser*;

(b) *for the applicant*

Mr K. TSITSELIKIS, lawyer and professor at the University of Macedonia,
Mr Y. KTISTAKIS, lawyer and assistant professor at the University of Thrace, *Counsel;*
Mr D. MEMET, lawyer, *Adviser;*
Mr O.F. CANKAT,
Mr T. UNAY. *On behalf of the applicant*.

The Court heard addresses by Mr Tsitselikis and Mr Ktistakis for the applicant, and by Ms Magrippi, Ms Telalian and Ms Pelekou for the Government, as well as their replies to the questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1950 and lives in Komotini.

9. The applicant's husband, Moustafa Molla Sali, a member of the Muslim community of Thrace, died on 21 March 2008. On 7 February 2003 he had drawn up a notarised public will in accordance with the relevant provisions of the Civil Code. He had bequeathed his whole estate to his wife, namely: one-third of a 2,000 sq. m plot of farmland near Komotini; one-half of a 127 sq. m apartment, a parking space and a basement in a block of flats in Komotini; one-quarter of a shop in Komotini with a surface area of 24 sq. m, and another shop measuring 31 sq. m in Komotini, which was subsequently expropriated in return for compensation that has already been paid to the applicant; and four properties in Istanbul.

10. By decision no. 12.785/2003 of 10 June 2008 the Komotini Court of First Instance, on the basis of a next-of-kin certificate submitted by the applicant, approved the will presented before it. On 6 April 2010 the applicant accepted her husband's estate by notarised deed. The Treasury was notified and the applicant registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees. It does not appear from the case file that the applicant had to pay any inheritance tax on the property transferred to her.

A. Proceedings in the Rodopi Court of First Instance

11. On 12 December 2009, meanwhile, the deceased's two sisters had challenged the validity of the will before the Rodopi Court of First Instance. They asserted a claim to three-quarters of the property bequeathed. They submitted that they and the deceased belonged to the Thrace Muslim community and that therefore any questions relating to his estate were subject to Islamic religious law (Sharia law) and the jurisdiction of the mufti, rather than to the provisions of the Civil Code. They contended that the application of Muslim customs and Sharia law to Greek nationals of Muslim faith was laid down in the provisions of Article 14 § 1 of the 1920 Treaty of Sèvres (ratified by decree of 29 September/ 30 October 1923) and Articles 42 and 45 of the Treaty of Lausanne (ratified by decree of 25 August 1923) (see paragraphs 65-68 below). They argued that the law of

succession applicable to Muslims was based on intestacy rather than testacy. Under Islamic law, where the deceased was survived by close relatives, the will only served to complement the intestate succession. Those provisions had continued to apply after the adoption of the Greek Civil Code, pursuant to section 6 of the Introductory Law to the Code, solely in respect of Greek nationals of Muslim faith living in Thrace.

12. By judgment no. 50/2010 of 1 June 2010, the Rodopi Court of First Instance dismissed the challenge brought by the deceased's sisters. It held that applying the Islamic law of succession to Greek Muslims in such a way as to prevent them from disposing of their property in anticipation of their death gave rise to unacceptable discrimination on grounds of religious beliefs. It found that the consequent inability of such persons to draw up a public will was in breach of Article 4 (principle of equality), Article 5 § 1 (free development of personality), Article 5 § 2 (principle of non-discrimination) and Article 13 § 1 (freedom of religious conscience) of the Constitution, as well as Article 14 of the Convention and Article 1 of Protocol No. 1. The court emphasised that even if it should be inferred from section 5(2) of Law no. 1920/1991 (ratifying the Legislative Act of 24 December 1990 on Muslim ministers of religion) that inheritance matters for Muslims were governed by Sharia law, such law should be applied in a manner compatible with the Constitution and the Convention. The incompatibility in the present case had stemmed from interpreting the Islamic law of succession in such a way as to deprive the persons concerned of some of their civil rights, against their wishes. The court added that although the application of Sharia law was based, *inter alia*, on international law, and in particular on the combined effect of Articles 42 and 45 of the Treaty of Lausanne, it should not result in the Islamic law of succession being applied in such a way as to curtail the civil rights of Greek Muslims, because the aim of the treaty had not been to deprive the members of that minority of such rights, but to strengthen their protection.

13. The court pointed out that a Greek Muslim contacting a notary in order to draw up a public will was exercising his right to dispose of his property, in anticipation of his death, under the same conditions as other Greek citizens. It was consequently impossible to annul the will or to override any of its legal effects on the grounds that a will of that kind was prohibited by Sharia law. Upholding the claimants' arguments would thus amount to introducing an unacceptable difference in treatment among Greek nationals on the grounds of their religious beliefs.

B. Proceedings in the Thrace Court of Appeal

14. On 16 June 2010 the deceased's sisters appealed against the aforementioned judgment.

15. On 28 September 2011 the Thrace Court of Appeal dismissed the appeal (judgment no. 392/2011). It emphasised, firstly, that the legislative provisions enacted pursuant to the Treaties of Sèvres and Lausanne had been intended to protect Greek nationals of Muslim faith and were in conformity with the Constitution and the Convention. That applied both to Islamic wills and to intestate succession, and the mufti had no jurisdiction in relation to public wills. The court held that since the testator was free to choose the type of will he wished to draw up in the exercise of his rights and therefore to draw up a public will in accordance with Article 1724 of the Civil Code, he was not obliged to follow Islamic law, which did not cover matters relating to such wills. Furthermore, the mufti had no jurisdiction over the testator's wishes, which could not be circumscribed. Otherwise, there would be discrimination on grounds of religion, which was unlawful under the general rules on prohibition of discrimination.

16. More specifically, the Court of Appeal noted that the decision taken by the deceased, a Greek citizen of Muslim faith belonging to the Thrace Muslim religious minority, to ask a notary to draw up a public will, choosing personally to decide how and to whom he would bequeath his property, fell within his legal right to dispose of his property in anticipation of his death, under the same conditions as other Greek nationals.

C. Proceedings in the Court of Cassation

17. On 23 January 2012 the deceased's sisters lodged an appeal on points of law.

18. By judgment no. 1862/2013 of 7 October 2013 and on the basis of a provision of international law, namely Article 11 of the 1913 Treaty of Athens, and provisions of domestic law, namely section 4 of Law no. 147/1914, section 10 of Law no. 2345/1920 (enacted pursuant to the 1913 Treaty of Athens) and section 5(2) of Law no. 1920/1991 the Court of Cassation allowed the appeal. It noted that section 10 of Law no. 2345/1920 (on the provisional Arch-Mufti and muftis serving Muslims residing in the territory) reproduced the contents of Article 11 § 8.1 of the Treaty of Athens, pursuant to which muftis exercised their jurisdiction over Muslims in the spheres of marriage, divorce, maintenance payments, guardianship, trusteeship, capacity of minors, Islamic wills and intestate succession. It emphasised that the law governing interpersonal relations among Greek nationals of Muslim faith, as laid down in the above-mentioned treaty ratified by Greece, was, pursuant to Article 28 § 1 of the Constitution, an integral part of Greek domestic law and prevailed over any other legal provision to the contrary. Examining the reasoning of the Court of Appeal's judgment, it concluded that that court's determination of the case had breached the relevant legislative provisions, because the law applicable to the deceased person's estate had been the Islamic law of succession, which

formed part of domestic law and applied specifically to Greek nationals of Muslim faith. It noted that the estate in question belonged to the category of property held "in full ownership" (*mulkia*) – public land which had belonged to the Ottoman administration, the full ownership of which had been transferred to private individuals and which had been governed by Sharia law during the Ottoman occupation – and that, consequently, the impugned public will had to be deemed invalid and devoid of legal effect on the grounds that Sharia law recognised no such institution.

19. The Court of Cassation remitted the case to the Thrace Court of Appeal.

D. Proceedings in the Court of Appeal following remittal of the case

20. By judgment no. 183/2015 of 15 December 2015 the Court of Appeal set aside the judgment delivered by the Rodopi Court of First Instance on 1 June 2010. In line with the Court of Cassation's judgment, it held that the relevant legislative provisions had been intended to protect Greek nationals of Muslim faith, constituted a special body of law and did not breach the principle of equality secured under Article 4 of the Constitution or the right of access to a court as guaranteed by Article 6 of the Convention. It pointed out that the law applicable to the deceased's estate had been Sharia law, because the property bequeathed belonged to the "*mulkia*" category, and that consequently the public will at issue was devoid of legal effect because Sharia law did not recognise any such institution. It emphasised that the judgments of the Court of Cassation were binding on the courts to which cases were remitted as regards the legal issues determined by those judgments. It therefore considered itself bound by the Court of Cassation's judgment of 7 October 2013 and could not overrule it, thus being unable to allow a request by the applicant to seek a preliminary ruling from the Court of Justice of the European Union concerning the interpretation of section 5(2) of Law no. 1920/1991 and of Article 45 of the Treaty of Lausanne. Since an appeal on points of law was lodged against that judgment, it was not immediately enforceable.

E. Proceedings in the Court of Cassation concerning the Court of Appeal's judgment after remittal of the case

21. On 8 February 2016 the applicant appealed on points of law against the judgment of the Court of Appeal, and the hearing in the Court of Cassation was scheduled for 11 January 2017. She put forward a number of grounds of appeal.

22. In her first ground of appeal she submitted that the impugned judgment had been insufficiently reasoned as regards one specific point which she considered to have had a decisive influence on the outcome of the

proceedings, namely that it had ignored the question whether her husband had been a "practising Muslim", which was a precondition for the application of the special body of law.

23. The applicant's second ground of appeal was that section 5(2) of Law no. 1920/1991 and certain Articles of the Civil Code had been incorrectly interpreted and applied. She submitted that the impugned judgment had extended the scope of the provisions creating a separate body of law for Greek nationals of Muslim faith to members of the Muslim community who did not faithfully adhere to Islamic doctrine.

24. The applicant argued in conclusion that those grounds of appeal had not been encompassed in the legal issue determined by judgment no. 1862/2013 of the Court of Cassation. She pointed out that that judgment had concerned Greek nationals of Muslim faith in general and had not addressed the matter of the law applicable to non-practising members of the Muslim community.

25. In her additional observations, the applicant contended that the case, which concerned the drawing up of a public will, a possibility afforded to all Greek citizens regardless of religious considerations, fell outside the mufti's jurisdiction. The specific provisions concerning the Muslim minority could not, in her submission, be applied without violating the individual rights of Muslims as guaranteed under the Greek Constitution, as well as by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

26. By judgment no. 556/2017 of 6 April 2017 the Court of Cassation dismissed the appeal on points of law. It did not refer to the Convention in its reasoning.

27. As regards the applicant's first ground of appeal, it declared it inadmissible, finding that it was based on the extent of the deceased's religious sentiment as a Muslim, a criterion that had no legal effect. It added that the deceased's Greek nationality did not preclude the application of Sharia law.

28. As regards the second ground of appeal, the Court of Cassation held that the Court of Appeal's judgment had contained sound reasons, in line with the Court of Cassation's judgment no. 1862/2013. It emphasised that the Court of Appeal had assessed the facts of the case in the light of substantive law and had given sufficient reasons for its determination of the fundamental issue of recognising the invalidity of the will.

29. That judgment marked the end of the proceedings in respect of the property located in Greece.

30. As a result of the whole proceedings, the applicant was deprived of three-quarters of the property bequeathed.

F. Proceedings in the Istanbul Civil Court of First Instance

31. In 2011, meanwhile, the testator's sisters had applied to the Istanbul Civil Court of First Instance for the annulment of the will, in accordance with the principles of private international law enshrined in the Turkish Civil Code. They submitted that the will was contrary to Turkish public policy. Hearings were held on 9 February and 26 May 2016, but the court adjourned its consideration of the case on the grounds that the applicant still had to appeal on points of law against judgment no. 183/2015 of the Thrace Court of Appeal. The new hearing in the case was scheduled for 28 September 2017, and then adjourned until 18 January 2018. By the date of the present judgment the Court had yet to be informed of the progress of those proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

32. The relevant Articles of the Constitution provide:

Article 4

"1. All Greeks are equal before the law.

2. Greek men and women have equal rights and equal obligations.

..."

Article 5

"1. All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, in so far as they do not infringe the rights of others or violate the Constitution and moral values.

2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. ..."

Article 13 § 1

"Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs."

Article 20 § 1

"Every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law."

B. The Civil Code

33. The relevant Articles of the Civil Code provide as follows:

Article 1724

"A public will shall be drawn up on the basis of a declaration of the testator's final wishes, as received by a notary in the presence of three witnesses, or of a second notary and one witness, in accordance with the provisions of Articles 1725 to 1737."

Article 1769

"Any notary with whom a will has been deposited must, on learning of the testator's death, send a copy of the will to the registrar of the competent court of first instance, in the case of a public will ...

... The public will as transmitted to the registrar shall be opened during the court's first hearing [after receipt of the will]."

Article 1956

"The court dealing with the inheritance shall issue the heir, at the latter's request, with a certificate setting out his inheritance rights and the share of the estate bequeathed to him (inheritance certificate – *κληρονομητήριο*)."

C. The Code of Civil Procedure

34. Article 562 § 1 of the Code of Civil Procedure provides as follows:

"Any ground of appeal on points of law against a judgment delivered by the court to which a case has been remitted shall be inadmissible if it relates to a part of the judgment which is in conformity with the Court of Cassation judgment."

D. Islamic law of succession

35. Under the Islamic law of succession (*Farâ'idh*), intestate succession is the most common form of inheritance. Death results in the permanent cessation of legal relations between the deceased and third parties. Such third parties include the deceased's heirs, who are treated as creditors. Any creditors other than the heirs are accorded a higher rank and must be prioritised, failing which any inheritance in favour of the heirs is null and void.

36. Male heirs have double the share in the estate as compared with female heirs. They are treated as "autonomous" heirs and are entitled to the portion of the estate remaining after those entitled to fractional shares have received them. The widow and daughters of the deceased are deemed to be entitled to fractional shares in the estate. Six types of fractional shares are possible: one-half, one-quarter, one-eighth, one-third, two-thirds and one-sixth. Thus, the widow will receive one-eighth of the estate, if there are any children, and one-quarter if there are none. If the deceased's only child is female, she is entitled to half of the estate. If the deceased also has brothers and a mother, his daughter will receive one-sixth.

37. By judgment no. 152/1991, the Rodopi Court of First Instance ruled that the system of unequal shares in an estate under the intestate mode of

succession was contrary to Article 4 § 2 of the Constitution, which guarantees gender equality.

38. Sharia law also provides for an Islamic will, although this is more akin to a legacy. Such a will is drawn up by the mufti himself or is made orally before two witnesses. It enables the person concerned to bequeath up to one-third of his property to third parties (other than his heirs) for charitable purposes.

39. A mufti is a Greek civil servant holding the rank of Director-General of Administration who is appointed by presidential decree on a proposal by the Minister of Education and Religious Affairs (regarding the role of the mufti, see also paragraphs 50 and 77 below).

E. Provisions governing the application of Sharia law in Greek law and domestic practice

1. Legislative instruments

40. The protection of the religious specificity of Greek Muslims is based on a series of international instruments (see paragraphs 62-65 below), as well as on section 4 of Law no. 147/1914 of 5 January 1914 on legislation applicable in the ceded territories and their judicial organisation (enacted pursuant to the Treaty of Athens, to which section 4(2) of the Law refers), which provides:

> "All matters relating to the marriage of persons belonging to the Muslim or Jewish religion, that is to say all matters relating to the lawful contracting and dissolution of marriage and personal relations between spouses during their marital life, as well as kinship, shall be governed by religious law and adjudicated in conformity with such law.
>
> As regards Muslims, the special conditions applicable to them as provided in the latest treaty between Greece and Turkey are also in force."

41. When the Greek Civil Code was adopted in 1946, section 6 of the Introductory Law to the Code repealed section 4 of Law no. 147/1914 in respect of Greek nationals of Jewish faith only. However, section 8 of the Introductory Law to the Code maintained section 10(1) of Law no. 2345/1920, which was later superseded by section 5(2) of Law no. 1920/1991 (see paragraph 45 below).

42. Section 5(2) of Law no. 1920/1991 ratifying the Legislative Act of 24 December 1990 on Muslim ministers of religion provides:

> "The mufti's jurisdiction applies to Greek citizens of Muslim faith resident in his region, in the spheres of marriage, divorce, maintenance payments, guardianship, trusteeship, capacity of minors, Islamic wills and intestate succession, where such matters are governed by Islamic holy law".

43. Section 5(3) of the same Law provides as follows:

"Decisions given by the mufti in cases where his jurisdiction is contested cannot be enforced and do not constitute *res judicata* unless they have been declared enforceable by the court of first instance, sitting in single-judge formation, of the region for which the mufti is responsible, under a non-contentious procedure. The court will only consider whether the decision was given within the bounds of the mufti's jurisdiction and whether the provisions applied were in conformity with the Constitution. The court's judgment may be challenged before a bench of the same court, which shall adjudicate in accordance with the same procedure. The judgment of the bench shall not be open to ordinary or extraordinary appeal."

2. Case-law

(a) International treaties

44. The highest Greek courts disagree as to whether the Treaty of Athens is still in force and as to its scope. The Supreme Administrative Court has ruled that the provisions of the Treaty of Lausanne on protecting minorities are based on the principle of equal treatment of members of minorities and other citizens in the exercise of their civil and political rights. Consequently, in its view, Article 11 of the Treaty of Athens is not compatible with the aforementioned principle and is therefore no longer applicable (judgments nos. 1333/2001 and 466/2003). On the other hand, according to the settled case-law of the civil bench of the Court of Cassation, the Treaty of Athens is the legal basis for the protection of minorities in Greece, and the international obligation to apply Sharia law flows from that treaty (judgments nos. 231/1932, 105/1937, 14/1938, 322/1960, 738/1967, 1723/1980, 1041/2000, 1097/2007 and 2113/2009).

45. The civil bench of the Court of Cassation has also held that the status granted to Greek Muslims under the Treaties of Sèvres and Lausanne did not lapse as a result of the adoption of the Civil Code in 1946 (see paragraph 41 above). It has noted that only the part of section 4 of Law no. 147/1914 concerning the Jewish community, and not that regarding the Muslim community, was repealed. It has also found that although Law no. 1920/1991 repealed section 10(1) of Law no. 2345/1920 (see paragraph 41 above), it incorporated the contents of that provision into its own section 5(2). The Court of Cassation has emphasised that the aforementioned legislative provisions, which had been introduced pursuant to the Treaties of Sèvres and Lausanne, were intended to protect Greek Muslims, amounted to a special law applicable to interpersonal relations and were not contrary to Article 4 § 1 of the Constitution (principle of equality), Article 20 § 1 of the Constitution (right to judicial protection), or Article 6 § 1 of the Convention (see, for example, judgment no. 2138/2013 of the Court of Cassation of 5 December 2013).

46. The Civil bench of the Court of Cassation has accepted that Sharia law applies subject to its compatibility with the Constitution and with international law, a question that has to be decided by the domestic courts

when assessing the enforceability of decisions given by the mufti. In its aforementioned judgment no. 2138/2013 it held:

> "... it appears that Muslim family relations are subject to the rules of their religious tradition (in so far as they are compatible with higher-ranking legal rules, such as the provisions of the Constitution and contemporary international law). It also appears that one indispensable element of that tradition is the jurisdiction of their ministers of religion, who alone have competence either to adjudicate on the content of religious rules, or to interpret and apply them to each individual case."

47. On the other hand, the criminal bench of the Court of Cassation has held that section 5(2) of Law no. 1920/1991 is a procedural provision which cannot create any substantive legal rule (judgment no. 1588/2011). It has ruled that the question of maintenance payments to a Muslim's wife and children should be settled by the civil courts and not by the mufti.

(b) Jurisdiction of the mufti

48. Studying the case-law of the courts of first instance on this subject, legal commentators have noted that those courts do not in fact perform a proper review of constitutionality, but in most cases formally ratify the mufti's decision. Between 2007 and 2014, for example, the Xanthi and Rodopi courts declared enforceable 390 decisions by the Mufti of Xanthi and 476 decisions by the Mufti of Komotini respectively, and refused to do so in 34 and 17 cases respectively.[1]

49. In an opinion issued on 3 November 1953 the plenary State Legal Council held that section 4 of Law no. 147/1914 – in so far as it related to the law of succession applicable to Greek Muslims – and a number of other provisions were no longer based on the international treaties in force on the date of adoption of the Civil Code and should therefore be deemed to have lapsed. The State Legal Council held that Article 11 of the Treaty of Athens had been tacitly abrogated by the subsequent Treaties of Sèvres and Lausanne. It added that the repeal of section 4 of Law no. 147/1914 and of certain provisions of other laws (governing matters pertaining to respect for the customs of the Muslim minority) as a result of the adoption of the Civil Code, which was applicable to all Greek nationals and all family-law matters, should not be considered contrary to the Treaty of Lausanne. Lastly, it noted that Turkey's repeal of the provisions applicable to its own minorities and Greece's acceptance of that situation supported the conclusion that the entry into force of a single Civil Code compatible with prevailing conceptions in western European civilisation was not in breach of the Treaty of Lausanne. Accordingly, when imposing inheritance tax, the tax authorities should take the view that Greek Muslims inherited in accordance with the provisions of the Civil Code.

---

[1] Information taken from the article "Competence of the mufti in family, personal and inheritance cases among Greek Muslims in the area of jurisdiction of the Thrace Court of Appeal", Georgia Sakaloglou, *Nomiko Vima*, vol. 63, p. 1366.

50. It also appears from the case-law of the Greek lower courts that the jurisdiction of the mufti and the application of Sharia law are limited by the constitutional and international obligations in force in the national legal system, requiring the State, in the event of a conflict between that law and civil rights, to secure the latter to Muslim Greek citizens by applying the Greek Civil Code (judgment no. 9/2008 of the Rodopi Court of First Instance).

51. By judgment no. 7/2001 the Thrace Court of Appeal ruled that matters of family law and inheritance law falling within the mufti's jurisdiction were strictly defined and circumscribed because they had given rise to an exceptional body of law an extensive interpretation of which could not be tolerated.

52. By decision no. 1623/2003 ordering interim measures, the Xanthi Court of First Instance held that where Greek nationals of Muslim faith opted to contract a civil marriage, all matters coming under family law, including those listed in section 5(2), were governed not by Sharia law but by the rules of ordinary law and fell under the jurisdiction of the ordinary courts. The Xanthi Court of First Instance also ruled that freedom of religion and the principle of equality afford all Greek citizens the right to choose whatever type of marriage they wish and, if they opt for civil marriage, the right to have the corresponding law applied to their situation.

53. By judgment no. 102/2012, the Xanthi Court of First Instance also ruled that the deprivation of the rights of Greek Muslim women or their unequal treatment could not be found to be justified by special circumstances or necessary on public-interest grounds overriding fundamental rights, gender equality and equality before the law. However, that judgment was overturned by the Thrace Court of Appeal (judgment no. 178/2015).

54. Moreover, in the instant case (see paragraph 15 above), the Thrace Court of Appeal has ruled that the mufti has no jurisdiction regarding inheritance by public will, and that the deceased's wishes cannot be restricted by the mufti's jurisdiction, as that would amount to discrimination on grounds of religion. It has also noted that Sharia law is a special body of law whose interpretation has the effect of depriving Muslims of their rights against their wishes (judgment no. 392/2011).

55. Since 1960, the established case-law of the civil bench of the Court of Cassation, for its part, has tended to apply Sharia law to intestate succession concerning property held "in full ownership" (judgments nos. 321/1960, 1041/2000, 1097/2007, 2113/2009, 1497/2013 and 1370/2014). By judgment no. 1097/2007 of 16 May 2007, the Court of Cassation held that the estate of Greek Muslims concerning unencumbered property was strictly governed by "Islamic holy law" and not by the Civil Code. Furthermore, on 7 February 2017 it reiterated that Sharia law was the only law applicable to Greek Muslims in the sphere of intestate succession.

3. National Commission for Human Rights

56. In a "written contribution" on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Greece, submitted in July 2016 to the United Nations Committee on the Elimination of Racial Discrimination, the National Commission for Human Rights pointed out that the authorities were continuing not to apply Greek civil law relating to marriage and inheritance to the Thrace Muslim minority, and that the application of Sharia law was incompatible with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. It expressed its concern as regards the Court of Cassation's judgment no. 1862/2013 in the present case (see paragraph 18 above), which it said had set a precedent liable to affect judicial practice in Greece and breached the right of members of the Thrace Muslim minority to make a will in accordance with civil law, a right which they had been able to exercise since 1946 (Annual Report of the National Commission for Human Rights, 2016, p. 239).

F. Law no. 4511/2018 amending section 5 of Law no. 1920/1991 ratifying the Legislative Act of 24 December 1990 on Muslim ministers of religion

57. The relevant provisions of Law no. 4511/2018, which came into force on 15 January 2018, read as follows:

Section 1

"1. The following subsection 4 shall be added at the end of section 5 of the Legislative Act of 24 December 1990 ...:

'4. (a) The cases mentioned in subsection 2 above shall be governed by the provisions of ordinary law, and shall only exceptionally come under the jurisdiction of the mufti, that is to say where both parties jointly request that he settle a dispute in accordance with Islamic holy law ... If one of the parties does not wish to submit the case to the mufti, that party may apply to the civil courts ..., which are deemed to have jurisdiction in all cases.

(b) A presidential decree issued at the behest of the Minister of Education, Research and Religious Denominations and the Minister of Justice, Transparency and Human Rights, shall establish the procedural rules governing the examination of the case by the mufti and the publication of the latter's decisions ...

(c) Inheritance matters relating to members of the Thrace Muslim minority shall be governed by the provisions of the Civil Code, unless the testator makes a notarised declaration of his or her last wishes ... explicitly stating his or her wish to make the succession subject to the rules of Islamic holy law.'

2. .Any wills drawn up before the entry into force of this Law in respect of which the property has not yet been transferred shall normally take legal effect at the time they are opened.

..."

58. The explanatory report on Law no. 4511/2018 pointed out that case-law and legal opinion had dealt with various aspects of the application of Sharia law and the issue of the hierarchy of certain provisions and their ranking in the domestic legal order, as well as their conformity with the Constitution and European human rights standards. This issue is still relevant, bearing in mind the developments in legal opinion and case-law on such matters and the interaction between the case-law of the Greek courts and that of the international courts.

59. The report acknowledged that the State had not acted on this matter for ninety-seven years, during which time conceptions, practices and traditions had evolved at both international and national levels.

60. The report pointed out that the State should not be a mere onlooker during a legal debate and should no longer leave it to the judiciary to resolve important issues that affected Greek citizens.

61. By the date of adoption of the present judgment the decree mentioned in section 1(4)(b) of the Law had apparently not yet been issued.

III. INTERNATIONAL LAW AND PRACTICE

A. Treaties

1. International treaties regulating the protection of the religious distinctiveness of Greek Muslims

62. The protection of the religious distinctiveness of Greek Muslims is based on three international treaties: the Treaty of Athens of 14 November 1913, which was intended to strengthen peace and friendship between Greece and Turkey, the Treaty of Sèvres of 10 August 1920 concerning the protection of minorities (concluded between, on the one hand, Greece, and on the other, the British Empire, France, Italy and Japan), and the Lausanne Peace Treaty of 24 July 1923 (concluded between, on the one hand, the British Empire, France, Italy, Japan, Greece, Romania and the Serb-Croat-Slovene State and, on the other, Turkey).

63. Article 11 of the Treaty of Athens provides:

> "8.1. The muftis, in addition to their authority over purely religious affairs and their supervision of the administration of *vakouf* [public] property, shall exercise jurisdiction between Muslims in matters of marriage, divorce, maintenance payments (*néfaca*), guardianship, trusteeship, emancipation of minors, Islamic wills, and succession to the position of Mutevelli (*tevliet*).
>
> 8.2. The judgments rendered by the muftis shall be executed by the proper Greek authorities.
>
> 9. As to matters of inheritance, the interested Muslim parties may, after agreeing thereto, resort to the mufti as an arbitrator. All methods of appeal practiced before the national courts shall be applicable to the arbitral decision thus rendered unless there is a clause expressly providing to the contrary."

64. Article 14 § 1 of the Treaty of Sèvres provided as follows:

"Greece agrees to take all necessary measures in relation to Moslems to enable questions of family law and personal status to be regulated in accordance with Moslem usage."

65. The Treaty of Lausanne provides, in particular:

Article 42 § 1

"The Turkish Government undertakes to take, as regards the non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities."

Article 43

"Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious observance, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order."

Article 45

"The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory."

2. Vienna Convention on the Law of Treaties

66. Article 30 (application of successive treaties relating to the same subject-matter) of the Vienna Convention on the Law of Treaties of 23 May 1969 provides:

"1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."

3. Council of Europe Framework Convention for the Protection of National Minorities

67. Article 3 § 1 of this Convention, which was adopted in 1995 and came into force on 1 February 1998 (and has been signed but not ratified by Greece), provides:

> "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice."

68. The explanatory report on the Framework Convention emphasises that Article 3 § 1 "firstly guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such. This provision leaves it to every such person to decide whether or not he or she wishes to come under the protection flowing from the principles of the framework Convention" (§ 34). The report specifies that that paragraph "does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual's subjective choice is inseparably linked to objective criteria relevant to the person's identity" (§ 35). It adds that paragraph 1 "further provides that no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice [and that t]his ... provision aims to secure that the enjoyment of the freedom to choose shall also not be impaired indirectly" (§ 36).

4. United Nations Committee on the Rights of Persons with Disabilities

69. In its 2018 General comment No. 6 on equality and non-discrimination, adopted on 26 April 2018, the Committee on the Rights of Persons with Disabilities reaffirmed its view that the concept of "discrimination" includes discrimination against:

> "... those who are associated with a person with a disability. The latter is known as "discrimination by association". The reason for the wide scope of article 5 is to eradicate and combat all discriminatory situations and/or discriminatory conducts that are linked to disability. (§ 20)"

B. Findings of international bodies

1. United Nations

(a) UN Committee on the Elimination of Discrimination against Women

70. In its concluding comments of 2 February 2007 on Greece the Committee voiced its concern about the non-application of Greek legislation on marriage and inheritance to the Muslim minority, fearing that that situation amounted to discrimination against Muslim women in breach of the Greek Constitution and Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

71. In its concluding observations on the seventh periodic report by Greece, adopted at its fifty-fourth session (11 February – 1 March 2013), the Committee noted the following:

"36. The Committee is concerned about the situation of women in the State party in the area of marriage and inheritance. The Committee remains concerned about the inconsistent application of the State law in all communities. In this regard, the Committee is concerned about the non-application of the general law of the State party to the Muslim community of Thrace regarding marriage and inheritance ...

37. The Committee recommends that the State party:

(a) Fully harmonise the application of local Sharia law and general law in the State party with the provisions on non-discrimination of the Convention, in particular with regard to marriage and inheritance;

..."

(b) Human Rights Committee established under the International Covenant on Civil and Political Rights

72. In a document of 25 April 2005 entitled "Consideration of reports submitted by States Parties under Article 40 of the Covenant", the Human Rights Committee noted the following as regards Greece:

"8. The Committee is concerned about the impediments that Muslim women might face as a result of the non-application of the general law of Greece to the Muslim minority on matters such as marriage and inheritance (arts. 3 and 23).

The Committee urges the State party to increase the awareness of Muslim women of their rights and the availability of remedies and to ensure that they benefit from the provisions of Greek civil law."

73. In a subsequent follow-up document dated 23 January 2014, the Human Rights Committee reproduced the Greek Government's reply, as follows:

"**Application of Sharia law in family and inheritance law matters of members of the Muslim minority in Thrace (para. 8 of the Committee's concluding observations)**

59. The law provides for the potential application of the Sharia law in family and inheritance law matters of members of the Muslim minority in Thrace. The choice whether to use Sharia law or the Greek Civil Code in the above mentioned matters is made by the members of the Muslim minority themselves. As shown, over the last years, by cases involving women from the minority, this option is a fact of life in Thrace.

60. Members of the Muslim minority in Thrace are absolutely free to address themselves either to the civil courts or the local Muftis. In case they choose the former, the general legislation is applied. In case they choose the latter, the Sharia law is implemented to the extent that its rules are not in conflict with fundamental values of the Greek society and the Greek legal and constitutional order. The law provides that the courts shall not enforce decisions of the Muftis which are contrary to the Greek Constitution. In this respect, derogations from civil law provisions are minor: concepts such as polygamy, marriage below legal age without court permission, marriage by proxy, repudiation, etc. are not allowed, on the basis of the aforementioned principle.

61. Greece is firmly committed to strengthening the substantive review and control, by domestic Courts, of Muftis' decisions on these matters, thus ensuring that their

legal effect and/or implementation do not contravene the Constitution and the relevant universal and regional human rights treaties, particularly as regards the rights of women and children.

62. Bearing in mind the expressed preferences and visible trends within the majority of the Muslim minority on religious, social and legal matters, Greece will also consider and study possible re-adjustments with regard to the application of the Sharia Law in Thrace, taking hereby into account its legal obligations and the potential changes of the wishes of the Muslim minority itself.

63. Finally, it is important to clarify that in Greece there are no 'parallel legal orders' or 'separate societies', depending on the religious affiliation of Greek citizens. Muslim women of the minority are fully included in gender equality policies and participate in relevant programs implemented by the competent authorities."

2. Council of Europe

(a) Commissioner for Human Rights of the Council of Europe

74. Commissioner Thomas Hammarberg and his delegation visited Greece, including the Evros region, from 8 to 10 December 2008. In the course of this visit the Commissioner held discussions with State authorities and non-governmental, national and international organisations on certain human rights issues, including the rights of minorities. The Commissioner also met members of minority groups.

75. In his report the Commissioner highlighted the following points:

"...

III. Muftis and application of the Sharia Law in Greece: the Commissioner takes note of the very serious concerns that have been expressed by competent national and international organisations about the application to Muslim Greek citizens in Thrace of the Sharia Law in family and inheritance law matters by Muftis who are appointed by the Greek state. Given the issues of incompatibility of this practice with European and international human rights standards, the Commissioner recommends its review by the authorities, institutionalising at the same time an open and continuous dialogue with representatives of the Muslim minority on all matters affecting their everyday life and human rights, in accordance with the Council of Europe's standards.

...

33. The Commissioner has noted that in 2007 the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about 'the non-application of the general law of Greece to the Muslim minority on matters of marriage and inheritance', thus leading 'to discrimination against Muslim women, in contravention of the Greek Constitution and article 16 of the [Convention on the Elimination of All Forms of Discrimination against Women] ...

34. The Commissioner is aware that the decision to proceed to the application of Sharia Law in family and inheritance law matters may be taken by members of the Muslim minority in Thrace, who have, in principle, the right to choose between Greek civil law and Sharia Law. It is to be noted, however, that exceptions occur in matters relating to inheritance law, where Sharia Law is strictly applied. The Commissioner is also informed that Sharia Law should be implemented, as a matter of principle, to the extent that its rules are not in conflict with the Greek statutory and constitutional

order. In fact, Law 1920/1991 (on Muftis) provides that the domestic courts, in cases of dispute, shall not enforce decisions of the Muftis which are contrary to the Greek Constitution. A recent legal expert report, however, has cast very serious doubts over and raised grave concerns about the effectiveness of the review and control of the Mufti judicial decisions which is carried out by domestic civil courts.

35. The Commissioner shares the comments of the above competent national and international human rights institutions whose reports have clearly indicated that the Sharia Law-related practice as outlined above, based notably on early 20th century treaties concluded between Greece and the Ottoman Empire and later Turkey, raises serious issues of compatibility with the undertakings of Greece following the ratification of the post-1948, core international and European human rights treaties, especially those relating to the human rights of the child and of women, which should, in any case, be effectively applied and prevail.

36. On many occasions during the discussion that the Commissioner held in Alexandroupolis with the aforementioned members of the Muslim minority the wish for a prevalence of and application of the 'European standards' to the Muslim minority members was stressed. In these discussions, the Commissioner was given the impression that there are many Muslim minority members who do not wish to be subject, even with the right to choose, to Sharia Law and would very much welcome its abolition in Greece. At the same time, such a development could well pave the way towards a possible direct election of a Mufti by members of the Muslim minority, a prospect that appears also to be wished for by the majority of this minority.

VI. Conclusions and recommendations

...

41. The Commissioner wishes to underline in this context that any obligations that may arise out of the 1923 Lausanne Peace Treaty, or any other early 20th century treaty, should be viewed and interpreted in full and effective compliance with the subsequent obligations undertaken by the ratification of European and international human rights instruments."

(b) Committee on Legal Affairs and Human Rights of the Parliamentary Assembly

76. In a report issued on 21 April 2009 entitled "Freedom of religion and other human rights of non-Muslim minorities in Turkey and of the Muslim minority in Thrace (eastern Greece)", the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly noted the following:

"55. The implementation of Sharia Law can also raise problems, and the rapporteur is particularly concerned about information from one of the Committee's experts to the effect that 99% of the muftis' decisions are ratified by the Greek courts, even where they infringe women's and children's rights as laid down in the constitution or the ECHR."

77. On 27 January 2016 a motion for a resolution entitled "Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the 'Cairo Declaration' was transmitted to the Committee on Legal Affairs and Human Rights for report. At its meeting in Strasbourg on 19 April 2016 the Committee accordingly

appointed a rapporteur. In an introductory memorandum of 7 October 2016 the rapporteur noted the following:

"...

4. Application of Sharia law on all or part of the territory of a Council of Europe member State

4.1. Western Thrace in Greece

41. Under the Treaty of Lausanne of 24 July 1923, the Greek State recognised the existence of only one minority on Greek territory, namely the 'Muslim' minority of Western Thrace in north-eastern Greece. The 'Muslim inhabitants of Western Thrace' and the 'Greek inhabitants of Constantinople' were expressly excluded from the compulsory population exchange between Greece and Turkey that took place under the Convention Concerning the Exchange of Greek and Turkish Populations signed in Lausanne on 30 January 1923. Greek law allows Greek citizens who are Muslims and resident in Western Thrace to use Sharia law as a parallel legal system for private law. The law gives *muftis* judicial power to rule on disputes between Muslims concerning inheritance (Law No. 2345/1920).

42. Since 1990 there have been five *muftis* in Thrace: three officially appointed by the Greek State and two elected by the minority but not recognised by the Greek authorities, which has given rise to disputes and led the European Court of Human Rights to find violations of Article 9 of the Convention.

43. In theory, every Muslim citizen in Greece is able to choose freely between a *mufti* and a Greek court. However, this right to choose is interpreted very narrowly by the Greek Supreme Court, and the coexistence of this parallel legal system has been much criticised. In its Judgment No. 1097/2007 of 16 May 2007, the Greek Supreme Court acknowledged that for Greek Muslims inheritance of unencumbered property was strictly governed by 'Islamic holy law' and not the Greek Civil Code. Under 'Islamic holy law' it is not possible, amongst other things, to inherit through a will. ...

44. Furthermore, the application of Sharia law in Western Thrace is prejudicial to women. It should be pointed out that *muftis* have officiated at a number of Muslim weddings by proxy, without the express consent of the brides, who are sometimes even underage girls. As regards matters of inheritance, an application against Greece has been lodged with the European Court of Human Rights by a woman who is a member of the Muslim minority. The applicant is challenging the ruling of the Greek Supreme Court that the will of a deceased Muslim citizen in favour of his wife was invalid on the ground that it was against Sharia law.

45. Lastly, the Commissioner for Human Rights of the Council of Europe has clearly stated that he is 'favourably positioned towards the withdrawal of the judicial competence from *muftis*, given the serious, aforementioned issues of compatibility of this practice with international and European human rights standards'."

IV. EUROPEAN UNION LAW

78. The relevant provisions of the Charter of Fundamental Rights of the European Union (2000/C 364/01) read as follows:

Article 21

Non-discrimination

"1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited."

79. Furthermore, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation provides that:

Article 1

Purpose

"The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment."

Article 2

Concept of discrimination

"1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

..."

80. On 17 July 2008, in case no. C-303/06, *S. Coleman v Attridge Law and Steve Law* (ECLI:EU:C:2008:415), the Grand Chamber of the Court of Justice of the European Union addressed the question whether Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, should be interpreted as prohibiting direct discrimination, in that case on grounds of disability, only in respect of an employee who himself has the protected characteristic, or whether the principle of equal treatment and the prohibition of direct discrimination applied equally to an employee who is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition. In this connection, the CJEU concluded:

"56. ... Directive 2000/78, and, in particular, Articles 1 and 2(1) and (2)(a) thereof, must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favorably

> than another employee is, has been or would be treated in a comparable situation, and it is established that the less favorable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by Article 2(2)(a)."

81. On 16 July 2015, in case no. C-83/14, *CHEZ Razpredelenie Bulgaria AD*, ECLI:EU:C:2015:480, the Grand Chamber of the CJEU addressed the question of discrimination by association on the grounds of ethnic origin relating to the interpretation of the Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and the Charter of Fundamental Rights of the European Union, in particular whether the principle of equal treatment should benefit only persons who actually possess the racial or ethnic origin concerned or also persons who, although not being of the racial or ethnic origin in question, nevertheless suffer less favorable treatment on those grounds. The relevant part of the judgment reads:

> "56. ... the Court's case-law, already recalled in paragraph 42 of the present judgment, under which the scope of Directive 2000/43 cannot, in the light of its objective and the nature of the rights which it seeks to safeguard, be defined restrictively, is, in this instance, such as to justify the interpretation that the principle of equal treatment to which that directive refers applies not to a particular category of person[s] but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favorable treatment or a particular disadvantage on one of those grounds (see, by analogy, judgment in Coleman, C-303/06, EU:C:2008:415, paragraphs 38 and 50)."

V. COMPARATIVE LAW

82. It appears from the documents available to the Court concerning the legislation of Council of Europe member States that Sharia law can be applied in all those States as a source of foreign law in the event of a conflict of laws in the context of private international law. In such cases, however, Islamic law is not applied as such but as the law of a (non-European) sovereign State, subject to the requirements of public-policy. Outside the sphere of private international law, only one State (France) has officially applied some provisions of Sharia law to citizens of one of its overseas territories (Mayotte). However, the application of those provisions was limited and ended in 2011.

83. In another State (the United Kingdom), in May 2016 the government commissioned an independent review into the application of Sharia law (in England and Wales) in order to consider "whether Sharia law is being misused or applied in a way that is incompatible with the domestic law in England and Wales, and in particular whether there were discriminatory practices against women who use sharia councils". In its report of February

2018, that independent review explained that "Sharia councils have no legal status and no legal binding authority under civil law. Whilst sharia is a source of guidance for many Muslims, sharia councils have no legal jurisdiction in England and Wales. Thus if any decisions or recommendations are made by a sharia council that are inconsistent with domestic law (including equality policies such as the Equality Act 2010) domestic law will prevail. Sharia councils will be acting illegally should they seek to exclude domestic law. Although they claim no binding legal authority, they do in fact act in a decision-making capacity when dealing with Islamic divorce."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

84. The applicant alleged a violation of Article 6 § 1 of the Convention taken alone and in conjunction with Article 14 and Article 1 of Protocol No. 1. Under Article 1 of Protocol No. 1, she submitted that by applying Sharia law to her husband's will instead of Greek civil law, the Court of Cassation had deprived her of three-quarters of her inheritance. Under Article 6 § 1, she complained that the Court of Cassation had refused in her case to apply the ordinary law applicable to all Greek citizens and had adjudicated the dispute on the basis of Sharia law, even though her husband's will had been drawn up under the provisions of the Greek Civil Code. Relying on Article 6 § 1 read in conjunction with Article 14, she also claimed to have suffered a difference in treatment on grounds of religion.

85. Being the master of the characterisation to be given in law to the facts of a case, the Court is not bound by the characterisation given by an applicant or a Government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 52, 2 November 2010, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/10, §§ 123-26, 20 March 2018, and the references therein).

86. The Court considers that since the main focus of the present case is the Court of Cassation's refusal to apply the law of succession as laid down in the Civil Code for reasons linked to the Muslim faith of the testator, the applicant's husband, the primary issue arising is whether there was a difference in treatment potentially amounting to discrimination as compared with the application of the law of succession, as laid down in the Civil

Code, to those seeking to benefit from a will as drawn up by a testator who was not of Muslim faith. It will therefore consider the case solely under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

Those provisions read as follows:

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... religion ... or other status."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. Non-exhaustion of domestic remedies

87. First of all, the Government objected that the applicant had not exhausted domestic remedies. They emphasised that in her appeal on points of law against the Thrace Court of Appeal's judgment no. 183/2015 of 15 December 2015 following the remittal of the case (see paragraph 21 above), the applicant had made new submissions which had not been dealt with either by the Court of Cassation's judgment no. 1862/2013 or by its case-law on the matter in question. The applicant had asked the Court of Cassation to decide whether there had been a violation of Article 6 § 1 and Article 14 of the Convention and Article 1 of Protocol No. 1 on the basis of those new submissions. Accordingly, she ought to have waited for the Court of Cassation's judgment on her appeal on points of law, and should only have applied to the Court if that judgment, which was eventually delivered on 6 April 2017, had been unfavourable to her.

88. The applicant submitted that the Court of Cassation's judgment of 7 October 2013 (see paragraph 18 above) had been final inasmuch as, under Article 562 § 1 of the Code of Civil Procedure (see paragraph 34 above), that court could not go back and re-examine the same grounds of appeal that she had already raised before it. Furthermore, she affirmed that she had been obliged to submit a fresh appeal on points of law in order to prepare her defence before the Turkish courts: the proceedings in Turkey had concerned the irrevocability (*τελεσιδικία*) of judgment no. 183/2015 of the Thrace

Court of Appeal, and the deceased's sisters had argued that the applicant had to lodge a fresh appeal with the Court of Cassation, a view shared by the Istanbul Civil Court of First Instance, which for that reason had adjourned its consideration of the case (see paragraph 31 above).

89. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. The Court also reiterates that it is incumbent on the Government pleading non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, in particular, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V; *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 others, § 74, 25 March 2014, and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 85, 9 July 2015). Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Prencipe v. Monaco*, no. 43376/06, § 93, 16 July 2009).

90. The Court notes that in the present case the applicant lodged her application with it on 5 March 2014. The judgment of the Court of Cassation allowing the action brought by the applicant's husband's sisters and remitting the case to the Thrace Court of Appeal was delivered on 7 October 2013. On 15 December 2015 the latter court came to the same conclusion as the Court of Cassation. Following an appeal on points of law by the applicant on 8 February 2016, the Court of Cassation dismissed her appeal on 6 April 2017. The Court considers that the objection as to non-exhaustion has in any case lost its relevance, because in any event it accepts that the last stage of domestic remedies may be reached after the application has been lodged but before its admissibility has been determined (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, 1 February 2011).

91. The Government's objection of non-exhaustion should therefore be dismissed.

2. Lack of victim status

92. Secondly, the Government invited the Court to reject the application on the grounds that the applicant lacked victim status. They submitted that the judicial decisions given in her case contained no indication that she had been subjected to a difference in treatment on the grounds of sex or religion.

The decision to apply Sharia law rather than the relevant Articles of the Civil Code had not been based on any reason connected with her personal status or her "different" religion, but on the nature of the property bequeathed ("property held in full ownership") and the fact that the testator had been a Muslim. Furthermore, the Government submitted that the applicant had not been entitled to inherit the property in question and had had no legitimate expectation of acquiring it under a will: she had not proved her status as a legitimate heir because she had failed to produce an inheritance certificate.

93. The applicant argued that she and her deceased husband had fulfilled all the conditions set out in the Civil Code regarding the drawing up of a public will. She added that both the Rodopi Court of First Instance, in its judgment of 1 June 2010 (see paragraph 12 above), and the Thrace Court of Appeal, in its judgment of 28 September 2011 (see paragraph 15 above), had ruled that the impugned will was valid and that the applicant had inherited her deceased husband's property. She had not only had an expectation of becoming an heir in the future, but also a real and legitimate expectation of fully enjoying her right of ownership of the bequeathed property.

94. Since the Court of Cassation delivered its judgment on 7 October 2013 (see paragraphs 18-19 above), the applicant has been unable to inherit three-quarters of the property bequeathed to her by her husband, even though the Komotini Court of First Instance approved the will and she accepted her husband's estate by notarised deed and registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees (see paragraph 10 above).

95. The Court considers that in the particular circumstances of the case, the Government's objection is so closely linked to the substance of the applicant's complaint under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 that it should be joined to the merits.

3. Conclusion

96. Noting that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

B. Merits

1. The parties' submissions

(a) The applicant

97. The applicant noted that the annulment of her husband's will by the Court of Cassation had radically altered the apportionment of the estate between herself and the deceased's sisters, since she had lost three-quarters of the property bequeathed, even though the Komotini Court of First Instance had approved the will and she had accepted her husband's estate. Accordingly, she had had a legitimate expectation that the civil courts would adjudicate on the basis of the Civil Code and that she would enjoy her property rights in respect of her entire inheritance.

98. She further submitted that neither the Court of First Instance nor the Court of Appeal had called into question her entitlement to the estate. Those courts had adjudicated on the basis of the will and the next-of-kin certificate which she had presented, and had not considered an inheritance certificate necessary, whereas according to the Government, this was a fundamental requirement and the Court of Cassation had immediately noted her failure to comply with it. Moreover, a few years before her husband's death his sisters had accepted their parents' inheritance arrangements, which had been made in accordance with civil law.

99. The applicant added that the term "property held in full ownership" used by the Court of Cassation to describe the impugned estate had legal effect only in cases where Sharia law was being applied by a mufti, and was not recognised under civil law.

100. She contended that the fact that a judicial practice contrary to the fundamental rights of members of the Muslim minority not opting for the application of Sharia law had continued for decades did not justify depriving her of the legitimate expectation that the rules of a law-based State would be applied to her situation.

101. The applicant submitted that no law in the Greek legal system denied Greek citizens of Muslim faith access to the civil courts, and that only a series of Court of Cassation judgments had deemed the jurisdiction of the muftis compulsory. However, those judgments were based on non-legal considerations treating the Muslim minority as a population to which Sharia law was mandatorily and exclusively applicable. In her submission, imposing on someone, against his or her wishes, a right protecting the religious minority to which he or she belonged encompassed an element of discrimination on grounds of religion and did not pursue a legitimate aim.

102. With reference to the *Thlimmenos v. Greece* judgment (no. 34349/97, ECHR 2000-IV), the applicant submitted that the system of protection for Muslims laid down in a special law could only be applied to them if it was optional. The law had to apply the same means to the same

types of situation, and the Civil Code afforded everyone, without exception, the right to draw up a public will. In the present case the testator had also enjoyed that right, and so too had she as his heir.

103. The applicant submitted that religion could only be used as a criterion if a special right was granted on that basis and activated in accordance with the wishes of the person enjoying that right, and not the reverse, that is to say at the discretion of the State. In her view, the automatic application of the special right by the courts according to religious criteria gave rise to a discriminatory difference in treatment.

104. Lastly, the applicant submitted that making access to the civil courts by members of the Muslim minority conditional upon forfeiting their status as members of that minority would amount to creating a segregationist system in which Sharia law would apply by default to all members of the Muslim minority. Such an approach would contradict the fundamental principle of the law of minorities allowing freedom of choice to accept or refuse the use of a special right intended to protect the minority. In her opinion, such a right could only be "activated" in accordance with the wishes of the person enjoying it and not at the State's discretion.

105. The applicant stated that if Sharia law was to retain its place within the Greek legal order as a body of law protecting the Muslim minority, it should not be imposed against the wishes of the person concerned, as had happened in the case of her husband's estate.

(b) The Government

106. The Government submitted that the applicant could not have harboured any "legitimate expectation" of being recognised as inheriting all the property bequeathed in the will or, consequently, any right of ownership over her deceased husband's property. They pointed out that she had not presented any deed forming a basis for such a right, instead relying solely on her husband's will as published by the Rodopi Court of First Instance. However, such publication did not constitute official validation of the will, which had been voidable and had in fact been deprived of legal effect by judgment no. 183/2015 of the Thrace Court of Appeal. Nor had she received from the court the inheritance certificate provided for in Article 1956 of the Civil Code because the existence of her right of inheritance had manifestly been in dispute. The only justification which she had put forward for her right of ownership had been the disputed will. She had therefore lawfully inherited only one-quarter of the property in issue, and not the whole estate.

107. The Government contended that the conditions laid down in the Court's relevant case-law, in particular those relating to the lawfulness and foreseeability of the legal basis in domestic law underpinning such an expectation, had not been fulfilled in the instant case. In their view the Court of Cassation's decision depriving the will of legal effect on the basis of section 4 of Law no. 147/1914 and section 5 of Law no. 1920/1991 and

the relevant international treaties had been in line with its settled case-law and had been entirely foreseeable both when the will had been drawn up and at the time of the testator's death.

108. The Government submitted that the existence or non-existence of a "legitimate expectation" for the applicant to be recognised as the sole heir was inversely proportional to that of the deceased's sisters to be recognised as joint heirs by intestate succession under Sharia law. Just as the sisters could not be expected to have anticipated the Court of Cassation reversing its previous position by applying the Civil Code, it was impossible to accept that the applicant could not have foreseen the application of Sharia law in her case.

109. The Government submitted that the applicant had not been discriminated against in the instant case. The Court of Cassation had confirmed its established case-law and pursued the aim of protecting the Muslim minority in Greece by applying the special law of succession uniformly applicable to a specific category of property belonging to Greek Muslims. In doing so it had protected the specific nature of such property and of its owners, avoiding any infringement of the principle of equality. The settled case-law of the Court of Cassation pursued an aim of overriding public interest in a complex multidimensional area entailing, in particular, respect for and protection of the Thrace Muslim minority, a legitimate aim which was also connected with Greece's fulfilment of its obligations under international law. It was unthinkable that that aim could be achieved in any other way, in view of the complexity of the many parameters involved, which transcended the individual case.

110. The Government noted that the applicant had not personally suffered any discrimination on grounds of religion. None of the judicial decisions had referred to her religion as grounds for applying Sharia law to her situation or refusing to recognise her as inheriting all the bequeathed property. The application of Sharia law to the applicant's case had been based not on her own situation, but on the specific category of property concerned. The decision not to apply Article 1724 of the Civil Code had been based on the nature of the estate, which consisted of property "held in full ownership".

111. The Government invited the Court to draw a distinction between the present case and the case of *Refah Partisi (the Welfare Party) and Others v. Turkey* ([GC], nos. 41340/98 and 3 others, ECHR 2003-II). They submitted that in the instant case the Court was not called upon to consider *in abstracto* the application of a plurality of legal systems based on Sharia law, or its compatibility with fundamental rights. The present case had to be examined *in concreto*, having regard to such criteria as respect for multiculturalism in today's Europe and the difficulty of formulating policies applicable to religious communities. In view of the complexity of the "modern identity" of the inhabitants of Europe, the Court should conduct a

case-by-case examination of each rule of Sharia law applying to actual cases concerning Muslims residing in non-Muslim States. The complexity criterion should be especially decisive in a case such as the present one, since the domestic courts had referred to international treaties as being the basis of Sharia law.

112. The Government argued that the lower courts' decisions had not indicated whether the applicant had entered into a civil marriage with her deceased husband or whether her husband had been aware or had accepted that his will was indisputably null and void in the light of the case-law of the Court of Cassation. Nor had the deceased explicitly declared, regardless of the courts' assessment of any such declaration, that he wished to waive the implementation of Sharia law in his case. The Government inferred from this that in the five years prior to the applicant's husband's death, the persons concerned had taken no action to validly transfer his entire property to his wife. All those factors would have allowed the domestic courts to consider whether they were such as to differentiate the present case from those adjudicated over the past few decades. Although Sharia law did not recognise wills as a mode of inheritance, the Court of Cassation agreed that a will was valid if it was accepted by all those holding the status of heirs under Sharia law. However, in the instant case the consent of the deceased's sisters to the impugned will had been lacking.

113. Finally, at the hearing before the Court, the Government maintained that the provisions of the Treaty of Athens, which had been concluded before the incorporation of the Thrace region into Greece, had not applied, at the time of its conclusion, to the Muslim population of Western Thrace. They stated that the provisions on minorities set out in that treaty had lapsed, for two separate reasons: firstly, following the conclusion of the Convention concerning the Exchange of Greek and Turkish Populations of 30 January 1923 and the transfer to Turkey of all the Muslims settled in Greece, apart from those living in Western Thrace, the aforementioned provisions, which had applied in the regions ceded to Greece in 1913, had been rendered devoid of purpose; and secondly, those provisions had been abrogated by the Treaty of Lausanne of 24 July 1923.

2. Third parties

(a) Christian Concern

114. First of all, Christian Concern outlined the increasing influence of Sharia law in the United Kingdom by virtue of its application by the Islamic arbitration tribunals (Sharia Councils), of which there were now more than eighty-five. The operation of these tribunals had raised many problems, because it had allowed Sharia law to become a parallel legal system. The House of Lords had drawn attention to the conflict between Sharia law and

United Kingdom law and had described the Islamic Code as "wholly incompatible" with human rights.

115. Secondly, Christian Concern emphasised that Sharia councils could not, in the civil-law sphere, be treated as an alternative to the ordinary courts, allowing the application of a different set of norms to juridical acts concerning the private lives of a given minority. Sharia law was more than a normative regime, constituting an ethos which prescribed a global vision of the relationship between religion, society and the individual. The inherently discriminatory nature of Sharia law could not be ignored, particularly in so far as it related to women and non-Muslims. In conclusion, Sharia law was often incompatible with the rights guaranteed by the Convention, and individuals should therefore always have a right of appeal to the ordinary courts in order to benefit from the protection of domestic law.

(b) Hellenic League for Human Rights

116. The Hellenic League for Human Rights stated that there was serious confusion within the Court of Cassation concerning the provisions defining the scope of Sharia law. It also noted divergences between the Court of Cassation and the ordinary civil courts, on the one hand, and between the Court of Cassation and the Supreme Administrative Court, on the other. The contradictions in the national courts' approaches to the interpretation of the relevant domestic legislation undermined the requirement of legal certainty, a basic element of the rule of law.

117. The Hellenic League submitted that the obligatory implementation of religious law did not constitute differential treatment that was justified by the protection of the religious autonomy of the minority. The State's wish to preserve a given minority's autonomy and to enhance cultural pluralism could not justify, for the sake of protecting that minority, restricting the fundamental rights of those members of the minority who had decided not to follow its rules and practices.

118. The Hellenic League stated that European and international practice did not justify granting the Greek authorities a margin of appreciation tending towards the compulsory application of Sharia law. Recourse to Sharia Councils, which was provided for by law in some States (the United Kingdom and the United States) and some infra-State entities (Ontario Province in Canada and the territory of Mayotte), was an option and not an obligation for Muslims living there. Such councils operated as arbitration tribunals, whose decisions enabled the civil courts to take Sharia law into consideration in their own decisions, but recourse to them was not compulsory and did not undermine the application of civil law and the jurisdiction of the civil courts.

(c) Greek Helsinki Monitor

119. First of all, Greek Helsinki Monitor provided an overview of the Court's case-law on conflicts between provisions originating in different legal orders (citing *Pellegrini v. Italy*, no. 30882/96, ECHR 2001-VIII; *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 108-10, ECHR 2005-XI; *Lombardi Vallauri v. Italy*, no. 39128/02, 20 October 2009; and *Negrepontis-Giannisis v. Greece*, no. 56759/08, 3 May 2011). It submitted that respect for religious autonomy should not lead to uncritical deference to the decisions of religious bodies, particularly when those decisions clashed with fundamental legal principles protected by the Convention.

120. Secondly, Greek Helsinki Monitor outlined the position of the domestic courts and legal opinion regarding the application of Sharia law and the Islamic law of succession. Thus, although the Court of Cassation had always referred to the State's international obligations when overturning lower courts' findings that the application of Sharia law was contrary to the Constitution and the Convention, it had never set out any meaningful counter-arguments to those courts' findings in its decisions.

121. Thirdly, Greek Helsinki Monitor referred to the concerns of certain international bodies such as the UN Human Rights Committee (see paragraphs 72-73 above) and the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (see paragraphs 76-77 above).

3. The Court's assessment

(a) Preliminary remarks and method followed

122. The present case concerns the applicant's right to inherit under a will made in her favour, in accordance with the Civil Code, by a Greek testator of Muslim faith. Whereas the applicant's husband had decided, in a will drawn up in accordance with civil law before a notary, to bequeath his whole estate to her, the Court of Cassation considered that the Islamic law of succession should be applied to her case. This had the consequence of depriving the applicant of her rights under the will made by her husband, which was rendered without any legal effect. The Court has decided (see paragraph 86 above) to consider the case solely under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. In assessing this complaint the Court will first of all address the question of the applicability of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. It will then seek to establish whether the applicant, as the beneficiary of a will made in accordance with the Civil Code by a testator of Muslim faith, in this case her husband, was in an analogous or relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim testator, and whether she was treated differently. Finally, should both those questions be

answered in the affirmative, the Court will have to determine whether there was any objective and reasonable justification for the difference in treatment.

(b) Applicability of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1

(i) General principles

123. The Court has consistently held that Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols thereto. Article 14 has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among many other authorities, *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010; *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 158, 26 April 2016; *Biao v. Denmark* [GC], no. 38590/10, § 88, 24 May 2016, and *Fábián v. Hungary* [GC], no. 78117/13, § 112, 5 September 2017).

124. Furthermore, the concept of "possession" in the first sentence of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of material goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see *Parrillo v. Italy* [GC], no. 46470/11, § 211, CEDH 2015 and the references therein).

125. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (ibid., § 211**;** see also *Brosset-Triboulet v. France* [GC] no. 34078/02, § 65, 29 March 2010 and *Fabris v. France* [GC], no. 16574/08, § 51, ECHR 2013).

126. The fact that the domestic laws of a State do not recognise a particular interest as a "right" or even a "property right" does not necessarily prevent the interest in question, in some circumstances, from being regarded as a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Brosset-Triboulet*, cited above, § 71). A proprietary interest recognised by domestic law – even if it is revocable in certain

circumstances – can constitute a "possession" for the purposes of Article 1 of Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 105, ECHR 2000-I).

127. Finally, the Court reiterates that in cases concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular asset on a discriminatory ground covered by Article 14, the relevant test is whether, but for the alleged discrimination, the applicant would have had a right, enforceable under domestic law, in respect of the asset in question (see *Fabris*, cited above, § 52; see also, *mutatis mutandis*, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2005-X).

(ii) Application of those principles in the present case

128. In the present case, it should be established whether the facts of the case, that is to say the applicant's inability to inherit under a will made in her favour, in accordance with the Civil Code, fall within the ambit of Article 1 of Protocol No. 1.

129. The Court has already dealt with cases where, following a death in a family, close relatives had automatically acquired inheritance rights over the estate, pursuant to the relevant law (see *Mazurek v. France*, no. 34406/97, § 42, ECHR 2000-II, and *Merger and Cros v. France*, no. 68864/01, § 32, 22 November 2004). The present case, however, concerns the acquisition of inheritance rights as a result of a will drawn up in accordance with the Civil Code.

130. In the instant case, it should be noted that by a decision of 10 June 2008 (see paragraph 10 above) the Komotini Court of First Instance approved the will and that on 6 April 2010 the applicant accepted her husband's estate by notarised deed. The Treasury was notified of that deed. The applicant then registered the property transferred to her with the Komotini Land Registry, paying the corresponding registration fees. The Rodopi Court of First Instance and the Thrace Court of Appeal adjudicated the challenge brought by the deceased's sisters by validating the will, which the testator had freely chosen to draw up in accordance with the relevant provisions of the Civil Code. The only reason why the applicant did not have the inheritance certificate provided for in Article 1956 of the Civil Code was that the deceased's sisters had challenged the validity of the will as soon as it had been approved by the Komotini Court of First Instance (see paragraph 11 above). Thus, the applicant would have inherited her husband's whole estate had the testator not been of the Muslim faith**.**

131. In those circumstances, the Court considers that the applicant's proprietary interest in inheriting from her husband was of a sufficient nature and sufficiently recognised to constitute a "possession" within the meaning of the rule laid down in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *mutatis mutandis*, *Fabris*, cited above, § 54).

132. Consequently, the applicant's proprietary interest falls within the ambit of Article 1 of Protocol No. 1 and of the right to respect for property guaranteed therein, which is sufficient to render Article 14 of the Convention applicable.

(c) Compliance with Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1

(i) General principles

133. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, 24 January 2017, and *Fábián*, cited above, § 113). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical.

134. However, not every difference in treatment will amount to a violation of Article 14. Only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Fábián*, cited above, § 113 and the references therein). In this context, the Court reiterates that the words "other status" have generally been given a wide meaning in its case-law (see *Carson and Others*, cited above, § 70) and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Clift v. the United Kingdom*, no. 7205/07, §§ 56-59, 13 July 2010). For example, a discrimination issue arose in cases where the applicants' status, which served as the alleged basis for discriminatory treatment, was determined in relation to their family situation, such as their children's place of residence (see *Efe v. Austria*, no. 9134/06, § 48, 8 January 2013). It thus follows, in the light of its objective and nature of the rights which it seeks to safeguard, that Article 14 of the Convention also covers instances in which an individual is treated less favorably on the basis of another person's status or protected characteristics (see *Guberina v. Croatia*, no. 23682/13, § 78, ECHR 2016 and *Škorjanec v. Croatia*, no. 25536/14, § 55, 28 March 2017 and also *Weller v. Hungary*, no. 44399/05, § 37, 31 March 2009).

135. The Court also reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the

means employed and the aim sought to be realised (see *Fabris*, cited above, § 56).

136. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

137. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the latter was justified (see *Khamtokhu and Aksenchik*, cited above, § 65; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177).

(ii) Application of those principles to the present case

(a) Whether there was an analogous or relevantly similar situation and a difference in treatment

138. The first task is to ascertain whether the applicant, a married woman who was a beneficiary of her Muslim husband's will, was in an analogous or relevantly similar situation to that of a married female beneficiary of a non-Muslim husband's will.

139. The Court notes that during his lifetime the applicant's husband, who was likewise a member of the Thrace Muslim community, had drawn up a notarised public will in accordance with the provisions of the Civil Code, bequeathing his entire estate to his wife. It is beyond doubt that she expected, as any other Greek citizen would have done, that on her husband's death his estate would be settled in accordance with the will thus drawn up.

140. However, by a judgment of 7 October 2013 the Court of Cassation overturned the Thrace Court of Appeal's judgment of 28 September 2011 upholding the judgment of the Rodopi Court of First Instance. The Court of Appeal had held that since the testator was free to choose the type of will he wished to draw up in the exercise of his rights, and therefore to draw up a public will in accordance with Article 1724 of the Civil Code, he was not obliged to follow Islamic law, which did not cover matters relating to such wills (see paragraph 15 above). The Court of Cassation, however, found that the Court of Appeal had infringed the law on the grounds that the law applicable to the deceased's estate had been the Islamic law of succession, which was part of domestic law and which, in Greece, applied specifically to Greek Muslims. More particularly, it held that the estate in question belonged to the *mulkia* category, as a result of which the public will in issue was voided of all legal effect. In so ruling, the Court of Cassation placed the applicant in a different position from that of a married female beneficiary of

the will of a non-Muslim husband. In that connection, the Court also notes that several international bodies have highlighted this issue (see paragraphs 71-77 above).

141. In conclusion, the applicant, as the beneficiary of a will made in accordance with the Civil Code by a testator of Muslim faith, was in a relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim testator, and was treated differently on the basis of "other status", namely the testator's religion.

(b) Whether the difference in treatment was justified

142. The Court reiterates that its role is not to rule on which interpretation of the domestic legislation is the most correct, but to determine whether the manner in which that legislation has been applied has infringed the rights secured to the applicant under Article 14 of the Convention. In the instant case its task is thus to decide whether there was objective and reasonable justification for the difference in treatment in question, which had its basis in the application of domestic law (see, among many other authorities and *mutatis mutandis*, *Fabris*, cited above, § 63, and *Pla and Puncernau v. Andorra*, ECHR 2004-VIII, § 46).

– Pursuit of a legitimate aim

143. The Government submitted 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. Although the Court understands that Greece is bound by its international obligations concerning the protection of the Thrace Muslim minority, in the particular circumstances of the case, it doubts whether the impugned measure regarding the applicant's inheritance rights was suited to achieve that aim. Be that as it may, it is not necessary for the Court to adopt a firm view on this issue because in any event the impugned measure was in any event not proportionate to the aim pursued.

– Proportionality of the means used to the aim pursued

144. It remains to examine the question of the proportionality of the difference in treatment complained of to that aim.

145. The Court notes first of all that the application of Sharia law to the estate in issue had serious consequences for the applicant, depriving her of three-quarters of the inheritance.

146. The Court of Cassation and the Government justified that measure primarily on the basis of Greece's duty to honour its international obligations and the specific situation of the Thrace Muslim minority. The Court notes at the outset that the Court of Cassation applied Islamic inheritance law in the circumstances of the present case on the basis of a provision of international law, namely Article 11 of the 1913 Treaty of Athens, and provisions of domestic law, namely section 4 of Law

no. 147/1914, section 10 of Law no. 2345/1920 (enacted pursuant to the 1913 Treaty of Athens) and section 5(2) of Law no. 1920/1991 (see paragraph 18 above).

147. In its case-law, the civil bench of the Court of Cassation held that the status established for Greek Muslims had not been revoked by the enactment of the Civil Code in 1946, and that section 4 of Law no. 147/1994 had been repealed only in so far as it concerned the Jewish community, and not the Muslim community. It added that although Law no. 1920/1991 had repealed section 10(1) of Law no. 2345/1920, it had incorporated the contents of that provision in its own section 5(2). It held that the aforementioned legislative provisions had been intended to protect Greek Muslims, constituted a special law applicable to interpersonal relations and were not contrary to Article 4 § 1 (principle of equality) and Article 20 § 1 (right to judicial protection) of the Constitution or to Article 6 § 1 of the Convention (see paragraph 45 above).

148. The main consequence of the approach adopted by the Court of Cassation in inheritance cases since 1960 and followed by certain lower courts, to the effect that inheritance matters involving members of the Muslim minority should be governed by Sharia law, is that notarised wills drawn up by Greek nationals of Muslim faith are devoid of legal effect because Sharia law only recognises intestate succession, except in the case of Islamic wills.

149. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of the interpretation are compatible with the Convention (see *Radomilja*, cited above, § 149). This also applies where domestic law refers to rules of general international law or international agreements (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I and *Korbely v. Hungary* [GC], no. 9174/02, § 72, ECHR 2008).

150. At the outset, the Court notes that in the instant case the Court of Cassation based the application of the Sharia law on the nature of the estate, that is to say property "held in full ownership". However, as the Court understands it, the concept of *mulkia* is a concept of Islamic law which is only relevant where the deceased's estate is being settled by a mufti under Sharia law (see paragraph 18 above). In the Court's view, the justification which Greece derives from Sharia law or from its international obligations is not persuasive, for the following reasons.

151. The Court notes that there can be no doubt that in signing and ratifying the Treaties of Sèvres and Lausanne Greece undertook to respect the customs of the Muslim minority. However, in view of the wording of the provisions in question (see paragraphs 64-65 above), those treaties do not require Greece to apply Sharia law. Indeed, the Government and the

applicant agreed on that point. More specifically, the Treaty of Lausanne does not explicitly mention the jurisdiction of the mufti, but guarantees the religious distinctiveness of the Greek Muslim community, which was excluded from the population exchange provided for in that treaty and was expected to remain in Greece, where the large majority of the population was Christian. Nor did the treaty confer any kind of jurisdiction on a special body in relation to such religious practices. It cannot be overlooked, moreover, that during the hearing the Government stated that the provisions of the Treaty of Athens concerning the protection of the rights of minorities and those of the Treaty of Sèvres were no longer in force, as indeed they had already accepted in the case of *Serif v. Greece* (no. 38178/97, § 40, ECHR 1999-IX).

152. The Court also notes that section 5(2) of Law no. 1920/1991, which lists, *inter alia*, the mufti's area of competence in inheritance matters, refers solely to Islamic wills and intestate succession, and not to the jurisdiction of muftis over other types of inheritance. As is common in Greece, the notary whose services were called upon by the applicant's husband agreed to draw up the will as requested by the latter (see paragraph 9 above).

153. The Court further notes that – as was the situation in the present case – there are divergences in the case-law of the courts as regards, in particular, the question whether the application of Sharia law is compatible with the principle of equal treatment and with international human rights standards. Such divergences exist among courts of the same judicial branch, as well as between the Court of Cassation and the civil courts (see paragraphs 51-53 above) and between the Court of Cassation and the Supreme Administrative Court (see paragraph 44 above), but also within the Court of Cassation itself (see paragraph 47 above). The divergences create legal uncertainty, which is incompatible with the requirements of the rule of law (see, *mutatis mutandis, Baranowski v. Poland*, no. 28358/95, § 56, ECHR 2000-III, and *Beian v. Romania (no. 1)*, no. 30658/05, § 39, ECHR 2007-V (extracts), thus undermining the Government's main argument as set out above (see paragraph 146 above).

154. Moreover, the Court can but note that several international bodies have expressed their concern about the application of Sharia law to Greek Muslims in Western Thrace and the discrimination thus created, in particular against women and children, not only within that minority as compared with men, but also in relation to non-Muslim Greeks. Thus, the Council of Europe Commissioner for Human Rights, in his report on the rights of minorities in Greece, noted that the application of Sharia law to matters concerning family law and inheritance was incompatible with the international undertakings entered into by Greece, particularly after its ratification of the post-1948 international and European human rights treaties, including those relating to the rights of the child and women's rights. He recommended that the Greek authorities interpret the Treaty of

Lausanne and any other early twentieth-century treaty in compliance with the obligations flowing from the international and European human rights instruments (see paragraph 75 above). Other international bodies have made similar findings (see paragraphs 70-73 and 76-77 above).

155. The Court reiterates that according to its case-law, freedom of religion does 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 has created such a status must ensure that the criteria established for a group's entitlement to it are applied in a non-discriminatory manner (see *İzzettin Doğan and Others*, cited above, § 164).

156. Moreover, it cannot be assumed that a testator of Muslim faith, having drawn up a will in accordance with the Civil Code, has 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 cannot validly be deemed to entail waiving certain rights if that would run counter to an important public interest (see *Konstantin Markin*, cited above, § 150). Nor can 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.

157. Refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts 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, is not limited in the same way as the positive aspect of that right (see paragraphs 67-68 above). The choice in question is completely free, provided it is informed. It must be respected both by the other members of the minority and by the State itself. That is supported by Article 3 § 1 of the Council of Europe Framework Convention for the Protection of National Minorities which provides 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 is not a right specific to the Framework Convention. It is the "cornerstone" of international law on the protection of minorities in general. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities.

158. Lastly, the Court notes that the present case highlights the fact that Greece is the only country in Europe which, up until the material time, applied Sharia law to a section of its citizens against their wishes. This is particularly problematic in the present case because the application of Sharia law 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 then found herself in a legal situation which neither she nor her husband had intended.

159. In that regard, the Court notes that in the member States of the Council of Europe, Sharia law is in general applied as a foreign law within the framework of private international law. Outside that framework, only France has applied Sharia law, to the population of the territory of Mayotte, but that practice ended in 2011. As regards the United Kingdom, the application of Sharia law by the Sharia councils is accepted only in so far as recourse to it remains voluntary (see paragraph 83 above).

160. The Court notes 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 came into force. Recourse to a mufti in matters of marriage, divorce or inheritance is now only possible with the agreement of all those concerned (see paragraph 57 above). Nonetheless, the provisions of the new law have no impact on the situation of the applicant, whose case was decided with final effect under the old system in place prior to the enactment of that law (see, *mutatis mutandis*, *Söderman v. Sweden* [GC], no. 5786/08, § 107, ECHR 2013).

161. In conclusion, having regard to the foregoing considerations, the Court finds that the difference of 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 no objective and reasonable justification.

162. In the light of the foregoing, the Court dismisses the Government's objection as to the applicant's lack of victim status, and finds that there has been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

164. The applicant claimed 967,686.75 euros (EUR) in respect of pecuniary damage resulting from the violation of Article 1 of Protocol No. 1. In support of her claim she produced documents from the Greek tax authorities for the property located in Greece and expert reports drawn up in Turkey for the relevant property there. She also claimed EUR 30,000 in respect of non-pecuniary damage resulting from the

violation of Articles 6 and 14 of the Convention. She claimed EUR 8,500 in respect of costs and expenses.

165. The Government contended that the applicant's claims in respect of pecuniary damage were vague, unsubstantiated and excessive. They submitted that the expert reports presented by the applicant had been drawn up by a firm of foreign experts and concerned property which was not located in Greek territory and had not formed the subject of the proceedings in the Greek courts. Those proceedings had concerned a total of six properties, all located in Komotini, but the applicant had not demonstrated that she had sustained any pecuniary damage: she had simply referred to the property tax (*ΕΝΦΙΑ*) which she had paid (totalling EUR 373.76). Moreover, the amount on the basis of which the tax authorities had calculated the tax payable had been EUR 42,000, corresponding to the applicant's share of the estate. As regards the sum claimed in respect of non-pecuniary damage, the Government argued that it was not in conformity with the relevant case-law of the Court. Lastly, they submitted that the applicant's claim in respect of costs and expenses was likewise vague, unsubstantiated and excessive.

166. In the circumstances of the case, the Court finds that the question of the application of Article 41 of the Convention is not ready for decision. That question must accordingly be reserved in whole and the subsequent procedure fixed, having due regard to any agreement which might be reached between the respondent State and the applicant (Rule 75 § 1 of the Rules of Court). The Court gives the parties three months for that purpose.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's preliminary objection as to the applicant's lack of victim status, and dismisses it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1;

4. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision;
   accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the applicant and the respondent Government to submit, within three months from the date of notification of this judgment, their

written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Court the power to fix the same if need be.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 December 2018.

Françoise Elens-Passos Deputy Registrar	Guido Raimondi President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mits is annexed to this judgment.

G.R.
F.E.P.

CONCURRING OPINION OF JUDGE MITS

I. Introduction

1. I agree that the case has to be considered from the angle of Article 14 in conjunction with Article 1 of Protocol No. 1 of the Convention. I also fully agree with the outcome. However, by concentrating solely on the question of the will drawn up by the testator, the applicant's husband of Muslim faith, the case has lost an important aspect – that of the religion of the applicant, a wife of a Muslim faith, as well as the overall minority rights context.

II. Protection of a Muslim minority in Thrace

2. From the submissions of the parties it can be established that the applicant married her husband under Islamic religious law and that all persons involved in the domestic inheritance proceedings (that is to say, the applicant, her husband and the husband's two sisters) were members of the Muslim minority of Thrace. The applicant claimed, *inter alia*, that she had suffered a difference in treatment on grounds of religion (see paragraph 84 of the judgment).

3. The domestic courts found that the applicability of Sharia law, governing interpersonal relations among Greek nationals of Muslim faith, followed from the international treaty ratified by the Greece (see paragraph 18 of the judgment) and was intended to protect Greek nationals of Muslim faith (see paragraph 20 of the judgment). Likewise, the Government argued that the applicability of the special law of succession pursued the aim of, in particular, respect for and protection of the Thrace Muslim minority, which aim was connected with the country's fulfilment of its obligations under international law (see paragraph 109 of the Judgment).

4. Indeed, the international treaties concluded some one hundred years ago were aimed at protecting the Muslim minority in the territory of Thrace. The Treaty of Athens (endorsed by the Court of Cassation) refers to the "jurisdiction between Muslims in matters of ... Islamic wills" and "the interested Muslim parties". The Treaty of Sèvres refers to "Moslems" and the regulation of questions relating to family law and personal status in accordance with "Moslem usage". The Treaty of Lausanne (endorsed by the Government) refers to the "Moslem minority" (see paragraphs 63-65 of the Judgment).

5. Consequently, the whole point of the applicability of Sharia law in Thrace was to respect the distinct identity of the Muslim minority and to allow the application of a distinctive legal regime in the defined areas of interpersonal relations, including inheritance, among the members of this

minority. This is why the sisters of the applicant's husband, members of the Muslim minority, were allowed to claim their share of inheritance under Sharia law and why the applicant, a member of the Muslim minority, received a quarter instead of the whole inheritance. The Sharia law has its stringent rules and logic with respect to the protection of the members of family and relatives in matters of inheritance.

III. Finding of a discrimination in this case

6. As for a comparator, the Grand Chamber sets out to assess whether "a married woman who was a beneficiary of her Muslim husband's will, was in an analogous or relevantly similar situation to that of a married female beneficiary of a non-Muslim husband's will" (see paragraph 138 of the Judgment). The Grand Chamber confirms that she was, then expresses doubts as to whether the application of Sharia law in this case was suited to the aim of protecting the Thrace Muslim minority (see paragraph 143 of the judgment), and finds that there was no objective and reasonable justification for treating differently the applicant compared to a beneficiary of a non-Muslim testator.

7. This is the first time the Grand Chamber has examined and found discrimination by association. In other words, the violation of Article 14 in conjunction with Article 1 of Protocol No.1 was established not because of the applicant's, but her husband's Muslim faith. Indeed, this is the central but not the only constitutive element of the case.

8. If one follows the above logic concerning the special legal regulation applicable in Thrace geared to protecting the Muslim minority, then the proper comparator which the Grand Chamber should have used is whether "a married *Muslim* woman who was a beneficiary of her Muslim husband's will, was in an analogous or relevantly similar situation to that of a married *non-Muslim* female beneficiary of a non-Muslim husband's will".

9. As the Grand Chamber rightly points out in paragraph 154 of the judgment, several international bodies have expressed their concern about the application of Sharia law in Thrace and the discrimination thus created, in particular, against women and children within the Muslim minority and compared to non-Muslim Greek citizens. The point of concern of the international bodies is the situation of Muslim women as members of the Muslim minority in Thrace, that is to say, precisely such a situation as the one at issue (see paragraphs 70-77 of the Judgment).

10. Indeed, reducing the scope of the protection of the Muslim minority to the testator's Muslim faith gives rise to reasonable doubts, at the stage of assessing the legitimacy of the aim, as to the suitability of imposing Sharia law on him for the purposes of inheritance. This, however, disregards the historical events and the broader minority rights context that has led to the current situation. For the application of Sharia law was introduced in Thrace

in order to enable the Muslim minority to maintain its identity, in particular by following a separate legal regime. Hence it is a question not solely of the testator's Muslim faith, but also of the various related interests that this particular legal regime protects, including those of his Muslim wife and Muslim sisters. Therefore, the aim *per se* invoked by the Government is a legitimate one, but the question of whether it is achieved in the circumstances of this case falls to be examined under proportionality considerations.

11. I fully share the analysis of the Grand Chamber concerning the proportionality of the measures, in particular with respect to the right to self-identification as a member of minority (see paragraphs 156-157 of the judgment). It is commonly accepted that there are four elements characterising a minority under international law that can be discerned from national and international practices: objective characteristics, self-identification, the numbers of members of the minority, and its long-term presence on the territory concerned. As regards self-identification, nobody can be forced to belong to a minority and people must have a free and informed choice to make in this regard.[1] It is here that Greece, by denying the choice of not being subjected to the specific legal regime intended to protect the Muslim minority, fails to reach the legitimate aim of protecting the Thrace Muslim minority. This also applies to the applicant as a member of this minority.

IV. Conclusion

12. In view of the facts of the case, the Grand Chamber was not required to examine potential discrimination against the applicant on the grounds of her sex – either in relation to Muslim men, or non-Muslim women. Nor did it have to address the broader question of the consequences of applying a legal regime such as Sharia law, developed in an environment of different cultural and legal traditions, in the European legal space.

13. Instead, the Grand Chamber was called upon to assess whether the applicant had suffered a difference in treatment on grounds of religion. The preceding analysis leads me to a conclusion that there has been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 on the grounds of the applicant's *husband's* and *her* religion.

---

[1] Gudmundur Alfredsson "Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law" in Nazila Ghanea and Alexandra Xanthaki *(eds.) Minorities, Peoples, Self-Determination*, Leiden and Boston: Martinus Nijhoff Publishers, 2005, pp. 165-166.