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Resumo In the global arena where we live, we, citizens of the world, with different nationalities, backgrounds, creeds and cultures, share the same space nevertheless maintaining our identity and cultural heritage. A new concept of citizenship is laid on multiculturalist societies, without, in many cases, engagements of cultural fusion with the host country and, those particular values, creeds and cultural manifestations, that we inherit and cherish, are being maintained abroad. Tolerance and respect ...

Na aldeia global em que vivemos, nós, cidadãos do mundo, com diferentes cidadanias, credos e acervos culturais, partilhamos o mesmo espaço físico, mas mantendo a nossa identidade e herança culturais. Um novo conceito de cidadania emergiu, assente no multiculturalismo, muitas vezes, sem que haja homogeneização cultural com o país que nos acolhe e, por isso, valores, credos e manifestações culturais próprias do estrangeiro são acarinhadas e mantidas. A tolerância e respeito pelos outros são prin...

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THE SHARIA LAW (AND THE JURISDICTION OF THE MUFTI) IN THE EUROPE.
THE *MOLLA SALI* CASE.

A LEI DA SHARIA (E A JURISDIÇÃO MUFTI) NO ESPAÇO EUROPEU.
O CASO MOLLA SALI.

Marisa Almeida Araújo [1]
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Resumo: Na aldeia global em que vivemos, nós, cidadãos do mundo, com diferentes cidadanias, credos e acervos culturais, partilhamos o mesmo espaço físico, mas mantendo a nossa identidade e herança culturais. Um novo conceito de cidadania emergiu, assente no multiculturalismo, muitas vezes, sem que haja homogeneização cultural com o país que nos acolhe e, por isso, valores, credos e manifestações culturais próprias do *estrangeiro* são acarinhadas e mantidas.

A tolerância e respeito pelos outros são princípios a cumprir e proteger, nesta manta de retalhos cultural. Distinguindo a individualidade e autonomia de cada ser humano e, por isso, a *sua* herança cultural, a *sua* religião, os *seus* credos, na *sua* nova casa, aquela que escolheu como sua, mas, em todo o caso, e para qualquer uma das posições em que nos encontremos, dentro dos valores intrínsecos universalmente reconhecidos assentes na dignidade humana.

Ainda que hoje se possam identificar manifestações adversas a movimentos de globalização, como em políticas protecionistas muitas relacionadas com o terrorismo ou a gestão da crise migratória, é reconhecido que a itinerância de pessoas à volta do mundo tornou os países verdadeiros mosaicos culturais e, em muitos casos, por

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isso, desafios são lançados mormente ao nível legal na gestão de relações de conflito.

Neste contexto, o ano de 2018 terminou com uma decisão do Tribunal Europeu dos Direitos do Homem (TEDH), cuja análise critica nos propomos fazer. O busílis da questão está relacionado com a aplicabilidade da lei da Sharia – a lei religiosa Islâmica – e a jurisdição *Mufti*, em detrimento da aplicabilidade da lei do Estado onde o caso foi julgado, *in casu*, na Grécia. A decisão helénica trazida perante o TEDH está relacionada com a aplicabilidade da lei da Sharia, no Espaço Europeu, que o Estado admitiu e, para além disso, com solução material conflituante com a que resulta do Código Civil Grego.

O processo trazido perante o TEDH tem a particularidade de se tratar, primeiro, de um caso de direito internacional privado, uma vez que o conflito é plurilocalizado dando-se cumprimento ao princípio da *lex rei sitae* e, por isso, o mérito da questão está também (e ainda) a ser julgado noutro país (Turquia).

Por razões históricas e consequentes obrigações internacionais o sistema legal grego moldou-se e permite que cidadãos nacionais, da minoria religiosa muçulmana e residentes em Trácia possam, nas suas relações controvertidas, ver aplicadas as soluções da lei Islâmica, sob a jurisdição Mufti. Há, nestes casos, um verdadeiro sistema legal paralelo em que, em caso de conflito, a lei da Sharia pode prevalecer.

O Tribunal decidiu a 19 de dezembro de 2018 o caso *Molla Sali* vs. Grécia (Processo n.º 20452/14).

Não obstante, curiosamente, o Tribunal de Estrasburgo, nesta muito aguardada decisão, acabou por "*não decidir*". Mas, a controvérsia está lançada e o caso suscita interessantes questões sobretudo relacionadas com a aplicabilidade da lei da Sharia, e da jurisdição *Mufti*, com eventuais soluções díspares com a lei nacional do Estado.

Palavras-chave: Lei da Sharia; Jurisdição Mufti; Direito Internacional Privado; Direitos Humanos; Discriminação; Trácia Ocidental; TEDH.

Abstract: In the global arena where we live, we, citizens of the world, with different nationalities, backgrounds, creeds and cultures, share the same space nevertheless maintaining our identity and cultural heritage. A new concept of citizenship is laid on multiculturalist societies, without, in many cases, engagements of cultural fusion with the host country and, those particular values, creeds and cultural manifestations, that we inherit and cherish, are being maintained *abroad*.

Tolerance and respect for others are the main principles to accomplish and protect, in this cultural patchwork. Distinguishing the individuality and autonomy of each human being and, therefore, *his* cultural background, *his* religion, *his* creeds, in *his* new home, the country *he* chose as *his* own, aiming, in each case, and for all, the intrinsic values universally recognized to man based on the human dignity.

Although today we can recognize hostile indicators to globalization, such as some actual protectionist policies mainly dealing with terrorism or the migrant *crisis*, however, the fact is that itinerant movements around the world have made countries a true cultural mosaic and, in many cases, for that, challenges are modelled, especially legal ones dealing with controversial relations.

In this context, the year of 2018 ended with a decision of the European Court of Human Rights (ECtHR), whose critical analysis we propose to engage. The matter is related on the applicability of the Sharia law – the Islamic religious law –, and the *Mufti* jurisdiction, opposing the applicability of the national law of the State in which the case was judged, *in casu*, the Greek Law. The Hellenic Court admitted the applicability of the Sharia law and accordingly, the material solution of this Islamic rule in opposition to the Greek Civil Code.

The case brought to the ECtHR has also the peculiarity of being, first, a question of international private law considering a multiple localization of the *lex rei sitae* and, for that fact, the merit of the same case is still being judged, at the present moment, in another country (Turkey).

Considering historical reasons and international obligations, the Hellenic Republic allows Greek citizens, of the religious Muslim minority and residents in Western Thrace, to use, in their disputes, the Sharia law and the *Mufti* jurisdiction. There is, in these cases a real parallel legal system and the Sharia Law can prevail, even if in conflicted solutions.

The Court, sitting as a Grand Chamber delivered, on 19 December 2018, the judgment on the case of *Molla Sali* v. Greece (Application no. 20452/14).

Nevertheless, curiously, the Strasburg Court, in this most expected judgment, at the end decided, "*not to decide*". However, the controversy has been launched and the case raises interesting questions mainly whether, or not, the applicability of national legislation can be excluded and accepted the solution of the Sharia law and the *Mufti* jurisdiction in the European Space.

Keywords: Sharia law; Mufti jurisdiction; international private Law; Human Rights; Discrimination; Western Thrace; ECtHR.

Introduction.

The termination of World War I (WWI) culminated in several legal instruments related to the protection of the religious uniqueness of Greek Muslims (including the Treaty of Sèvres of 10 August 1920 and the Lausanne Peace Treaty of 24 July 1923).

The Treaty of Sèvres *"[…] officially ended the existence of the Ottoman Empire, and in its place, decided the boundaries of the modern state of Turkey. In addition, the Treaty of Sèvres called for the Ottoman Empire to give up all claims of external territory in the region*" (International Relations, 2016) and *"[…] provides an insight into the post-war relations and victors"* (Montgomery, 1972, p. 787).

It is true that both treaties are mainly related to territorial provisions after WWI and *"[t]he greatest changes between the two treaties are constituted by the territorial provisions. Whereas the Sèvres treaty provided for almost the total partition of the Ottoman and Anatolian territories, the Lausanne Treaty granted Turkey the Anatolian heartland, which is seen as the historic home territory of the Turkish people*" (Şentürk, p. 8). Nevertheless, we dedicate a particular focus on the legal dispositions concerning the protection of Muslim minorities in Greece (residents in Western Trace).

As the ECtHR points out *"[t]he 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)" (*Molla Sali* v. Greece, 2018, § 62).

Concerning the applicability of the Sharia law within the member States of the Council of Europe, the matter is mainly of international private Law. The Strasburg Court concluded that the Islamic rules "*[…] 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 international private 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*" (*Molla Sali* v. Greece, 2018, § 82).

However, even considering the question of international private Law in the *Molla Sali* case, the applicability of the Sharia Law (and the jurisdiction of the *Mufti*) surpasses that international query and, in the case, the key question is in the internal conflict of the Sharia law with the Greek domestic legislation[3]. A *sui generis* case of an internal plural legislative conflict, which, we can say, is rather *peculiar* in the European legal context and, also because of that, we awaited a clear position from the ECtHR.

The historical background of the Hellenic Republic makes Greek's legal system a specific one and is the "*[…] sole EU Member State which provides for the application of Sharia law in its territory for more than a century*" (Anthimos, 2018). Concerning the religious minorities, the Sharia law, and the jurisdiction of the *Mufti*, races with the domestic law and, in some cases, with different material solutions and, even though, the holy Islamic law prevails.

In fact, the question, in all, is much wider, because, in the Greek legal context the Islamic rules are recognised as a national law (Tsavousoglou, 2015, p. 244).

The *Molla Sali* case is one of those, controversial, examples taken before de ECtHR.

The procedure was taken to Strasburg by a Greek national, Mrs. *Molla Sali* (the applicant), on 5 March 2014 and the main question was the applicability of the Sharia law, rather than the provisions of the Greek Civil Code, in a matter of the validity of the will of Mrs. *Molla Sali*'s husband.

The applicant is the widow of Mr. Moustafa *Molla Sali* and the only heir in his (public-notarised) will, with estate in Greece and Turkey.

The two sisters of the Mrs. *Molla Sali*'s late husband contested the validity of the will – made in accordance with the Greek Civil Code – since, according to the Thrace Muslim community, which the family is a member; any questions related to his estate should be submitted to the Sharia law and the jurisdiction of the *Mufti*.

Considering the deceased's estate in both countries (Greece and Turkey), and the principles of international private law, mainly *lex rei sitae*, the matter

[3] The applicability of Islamic law in the Greek legal system is based on the stipulation of two domestic laws: Act 147/1914 and Act 1920/1991 (Tsavousoglou, 2015, p. 244) and, since 2018, the Law 4511/2018.

related to the estate in Turkey is still being judged in the Istanbul Civil Court of First Instance. In Istanbul the argument, different from the one used in the Greek Courts, is related to public-policy principles.

The Turkish Court did not decide yet. A hearing was scheduled for 28 September 2017 but, afterwards, adjourned to 18 January 2018 however, by the moment the Grand Chamber decided *"[…] the Court had yet to be informed of the progress of those proceedings"* (*Molla Sali* v. Greece, 2018, § 31).

So, the *Molla Sali* case is bounded, for now, to the Greek decision and the inheritance dispute of the property rights in this country.

The Hellenic Court agreed to apply the f*arâ'idh* (Islamic law of succession) to the case and the applicant alleged, at the ECtHR, a violation of Article 6 § 1 of the Convention, alone and in conjunction with Article 14 and Article 1 of Protocol No. 1, in the matter of inheritance rights to the property of the applicant's deceased husband.

The first impact of the judgement was in the Greek's domestic law[4]. The (new) Law 4511/2018, "*grants the right to each party to seek Justice before domestic courts, and in accordance with Greek substantive and procedural law. The Mufti may exercise jurisdiction only if both parties file an application for this cause. Once the case is submitted to the Mufti, the jurisdiction of national courts is irrevocably excluded*" (Anthimos, 2018).

The Strasburg Court, after manifesting concern about the Greek domestic legislation admitting the applicability of the Sharia Law against the wishes of Greek citizens[5] of the religious minority in Thrace, also noted with satisfaction the Greek's new rule *"[…] abolishing the special regulations imposing recourse to Sharia law for the settlement of family-law cases within the Muslim minority came into force*" (*Molla Sali* v. Greece, 2018, § 160).

Nevertheless, and concerning the merit, since the (new) Greek law has no impact on the present case, the procedure continued in the *Molla Sali* case in the Strasbourg Court.

Insipidly the ECtHR *"[…] treated the matter [merely] as a property case involving discrimination by association […]"* (Uitz, 2019) and, at the end, decided "*not to decide*".

The circumstances of the case of *Molla Sali* v. Greece.

The deceased, Mr. Moustafa *Molla Sali*, a member of the Muslim community of Thrace died in 2008. In 2003, he had drawn up a notarised public will and determined that his whole estate should be for is wife, Mrs. Chatitze *Molla Sali*.

The sisters of Mr. Moustafa *Molla Sali* challenged the validity of the will, either in Greece and Turkey, claiming three-quarters of the property, bequeathed

[4] However, without applicability on the *Molla Sali* case.

[5] The only country in Europe as the ECtHR noted.

to the applicant.

Before the Greek Court the sisters argued 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*" (*Molla Sali* v. Greece, 2018, § 11).

They stated that the Sharia Law was to be applicate to Greek nationals of Muslim faith according to 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)"* (*Molla Sali* v. Greece, 2018, § 11).

The sisters also claimed *"[…] 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*" (*Molla Sali* v. Greece, 2018, § 11).

The Rodopi Court of First Instance dismissed the contest brought by the sisters' concluding 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*" (*Molla Sali* v. Greece, 2018, § 13).

The appeal to the Thrace Court of Appeal was dismissed.

Afterwards the sisters lodged an appeal on points of law in the Court of Cassation. *"[U]nder 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*" (*Molla Sali* v. Greece, 2018, § 18) and the *volte face* begun.

The case was remitted to the Court of Appeal that *"[…] 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*" (*Molla Sali* v. Greece, 2018, § 20).

The applicant appealed on points of law against the judgment of the Court of Appeal and, after the hearing in the Court of Cassation in 2017 and judgement, and as result of the proceedings the applicant was deprived of three-quarters of the property in discussion.

The *Farâ'idh* and the Holy Islamic Law had been chosen.

Preliminary considerations of the ECtHR.

The Court analysed several legal instruments related to the protection of the religious distinctiveness of Greek Muslims (including the Treaty of Athens of 14 November 1913, the Treaty of Sèvres of 10 August 1920 and the Lausanne Peace Treaty of 24 July 1923). It is also mentioned the Vienna Convention on the Law of Treaties, mainly its Article 30, the Article 3 § 1 of the Convention for the Protection of National Minorities, adopted in 1955 and came into force in 1998 (1 February) and the United Nations Committee on the Elimination of Discrimination against Women.

Also from the United Nations the ECtHR considered the document from 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."

(*Molla Sali* v. Greece, 2018, § 72)

In addition, the UN subsequent *"[…] follow-up document dated 23 January 2014" (Molla Sali v. Greece, 2018, p. 18 § 73), considering the application of the Sharia law in family and inheritance law matters of the Muslim minority in Thrace.*

From the Council of Europe the Strasburg Court took into account the report Commissioner Thomas Hammarberg and the conclusion:

"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."

(*Molla Sali* v. Greece, 2018, § 75)

On another hand, the Court also considered a report issued on 21 April 2009 – "Freedom of religion and other human rights of non-Muslim minorities in Turkey and of the Muslim minority in Thrace (eastern Greece)", where the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly was concerned about the problems raised by the implementation of the Sharia Law, mainly concerned with children's and women's rights (*Molla Sali* v. Greece, 2018, § 76).

The Court also noted the motion for a resolution from 27 January 2016 *"[…] 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"* (*Molla Sali*

v. Greece, 2018, § 77). In the memorandum of 7 October 2016[6] from the rapporteur appointed on 19 April 2016 in a meeting of the Committee in Strasburg, in the application of the Sharia Law on all of the territory of a Council of Europe member State in the Western Thrace in Greece, was noted that the application of the Islamic Law was prejudicial to women and, in § 45 *"[…] 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'."* (*Molla Sali* v. Greece, 2018, § 77).

Considering the European Union Law, the ECtHR mainly addressed the Charter of Fundamental Rights, the Council Directive 2000/78/EC of 27 November 2000, related to non-discrimination provisions and the cases no. C-303/06, *S. Coleman v Attridge Law and Steve Law* (ECLI:EU:C:2008:415)[7] and no. C-83/14, *CHEZ Razpredelenie Bulgaria AD*, ECLI:EU:C:2015:480[8], both addressing questions of discrimination.

It was also taken into account the French Mayotte's and the UK's experiences on the matter of the accommodation of the Sharia law.

The merits.

The ECtHR decided that, since the focus of the case was the Court of Casstions refusal to apply the law of succession of the Greek Civil Code, the matter should be treated as a property dispute, involving discrimination (only) by association *("[i]t will therefore consider the case solely under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1)"* (*Molla Sali* v. Greece, 2018, §§ 86 and 122).

In this case the Court considered the violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 because of the applicant's husband faith.

But, even in the question of discrimination by association the Court *"[…] did not spend much time […]"* (Uitz, 2019).

In fact the Court noted that even if it is true that the applicant's husband was a member of the Thrace Muslim community he also, during his life time, had drawn up a will according to the Greek Law (and in opposition to the Sharia Law). For that the applicant, as a Greek citizen, has expectation of the fulfil of her husband's last wishes settled in the notarised public will.

The ruling of the Hellenic Court, in fact, considering the estate in the *mulkia* category, placed the applicant in a different position comparing to other female widow beneficiary of a will (*Molla Sali* v. Greece, 2018, §§ 139 and 140), concluding

[6] Where the Case of *Molla Sali* under judgement in Greece was mentioned.

[7] From 17 July 2008.

[8] From 16 July 2015.

that there was a discriminatory treatment with no objective or reasonable justification.

The Court emphasizes the historical context and the international obligation, mainly from the Treaties of Sèvres and Lausanne, but it also highlights that the respect from Muslim customs do not require Greece to apply the Sharia Law, and it is not explicitly mentioned in the Lausanne Treaty. The same document do not confer any kind of special jurisdiction (*Molla Sali* v. Greece, 2018, § 151).

On the other hand the Court interpreted "*[…] 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*" (*Molla Sali* v. Greece, 2018, § 152).

In all the ECtHR concluded that, in case, there has been a violation of Article 14 of the Convention read in conjunction with Article 1 of the Protocol No. 1 to the Convention. However, decided that the question of the application of Article 41 of the Convention was not yet ready for decision and, accordingly, reserved the said question in whole.

In the concurring opinion, Judge Mits emphasized that, considering the Treaties, the applicability of the 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*" (*Molla Sali* v. Greece, 2018, p. 45).

Considering the historical context and the aim of the Treaties the goal is, as stated by Judge Mits, to enable the Thrace Muslim minority to maintain their identity (now) abroad and, in this case a parallel legal system but, it is also noted that "*[a]s 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. 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*" (*Molla Sali* v. Greece, 2018, pp. 46-47).

Concluding "*[…] there has been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1*, [but emphasizing] *on the grounds [not only] of the applicant's husband's* [but also, the applicant's own] […] *religion*" (*Molla Sali* v. Greece, 2018, p. 47).

Conclusions.

The decision of the ECtHR on the case of *Molla Sali* was most awaited but not only the Court made an insipid statement about discrimination (and only by association), at the end, decided, "*not to decide*".

In the words of Renáta Uitz, the most we can say about the case is that it "*[…] reinforces the protection of personal autonomy under the Convention, when expressed as an opt out from a special legal regime meant to protect minority rights*" (Uitz, 2019).

Even though the case is a fine example of the conflict that can arise between

the freedom of religion, the preservation of a cultural heritage and identity, and the obedience of these traditional institutions to human rights.

We can, and do recognize that the *Mufti* is important to the Muslim community, including in Thrace and can *"[…] facilitate its harmonious social integration within the Greek society and to safeguard the peaceful relations between the minority and the majority"* (Boussiakou, 2008, p. 39). Nevertheless, as Boussiakou points out, *"[t]he institution of the Mufti needs to be reconsidered due to the cultural traditions of Islam, which might not always be compatible with the fundamental human rights rules"* (2008, p. 40).

As the Court remarks the *"[…] 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"* (*Molla Sali* v. Greece, 2018, § 155).

Even though, in the era of globalization and multiculturalism, where all eyes were set in Strasbourg, waiting for a decision, our opinion is that the Court has lost an opportunity to judge in a much wider perception of the human rights in conflict.

Considering the case had a great deal of attention from social media and with considerable public impact it was awaited that the Court, in a proper judicial role that we expected, to open the judgement from more than a mere consideration of discrimation by association in a narrow argumentation that escaped the aim of the case in our view.

The existence of a plural legal system in Thrace can be seen as positive, despite the uniqueness in the European Union. The social claims of the minorities in Thrace could justify *"[…] a case of legal pluralism, but only provided it ensures the freedom of personal choice to submit to one or another judicial system and does not lead to any direct violation of fundamental rights"* (Tsitselikis, 2012/13, p. 352).

For all the reasons mentioned, the case was a useful, but lost, *tool* for the Court establish (some) criteria in the conflicting rights in discussion, and the applicability of the Sharia law within a human rights context in the European Space. Most of all considering the uniqueness of the Greek legal scheme and the demanding challenges of the coexistence of a dual system, one of them of a religious nature with, sometimes, dissenting positions.

It was a lost opportunity to commendably, make a decision and provide (some) guidelines to a much wider request the case, in our understanding, underlined.

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