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This Project is funded
by the European Union's
Justice Programme 2014-2020

THE CASE *MOLLA SALI VS. GREECE*

ECHR 19TH DECEMBER 2018, APPL. 20452/2014

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General Overview

- This new decision of the European Court of Human Rights deals with a very country-specific issue, but at the same time it involves much more general problems.
- In fact, the core of the decision is the difficult balance between multicultural integration of legal orders stemming from different traditions, and the respect for human rights of the individuals in the matter of family and successions law.
- Such a challenge is posed by migratory flows to all European countries today: However the concrete facts of this case have nothing to do with contemporary migration, but refer to the peculiar situation of a Muslim minority in Greece, due to historical reasons.

Historical Context

- Pursuant to the Treaty of Lausanne of 1923 on the Exchange of Populations between Greece and Turkey, only the Turkish community of Western Thrace was allowed to remain in Greece and to continue to apply Islamic law (*Sharia*) under the Muftis' jurisdiction, instead of the Greek Civil Code, in family and successions matters, also in accordance with previous International Treaties and, more generally speaking, with the Ottoman premodern tradition of personal law.
- In 1926 Mustafa Kemal abolished Islamic law in Turkey and introduced a modern Civil Code, so that the Western Thracian Moslems became a unique fossilized relic of the Ottoman system. On the other hand, their statute was never extended to other Greek Muslim communities, such as the Turks of the Dodecanese (not involved in the Exchange because the Islands belonged to Italy in 1923, and were annexed by Greece only in 1947) or the recent immigrants.

Facts and Proceedings at Domestic Level

- Ms Molla Sali is the widow of a deceased Western Thracian Moslem, who had bequeathed to her, under a public will drawn up in accordance with the Greek Civil Code, all his estate.
- The deceased's sisters challenged the will, arguing that under Islamic law intestacy prevails on testacy and so the close relatives of the testator cannot be deprived of their rights on a three-quarters share of the inheritance.
- The challenge was dismissed by the local competent judges, but the Άρειος Πάγος (Supreme Court) considered the will devoid of effect because, pursuant to the mentioned International Treaties, the law applicable to the case was Islamic law, and not the Greek Civil Code.
- Therefore, the widow was deprived of three-quarters of the bequeathed property.

Facts and Proceedings at European Level

- Ms Molla Sali lodged a claim with the European Court of Human Rights for violation of art. 14 (prohibition of discriminations) read in conjunction with art. 1 of protocol n. 1 (protection of property) of the European Convention on Human Rights, complaining that she was deprived of her property only because her predeceased husband was a Muslim, and therefore because of an unacceptable discrimination on the grounds of religion.
- Some NGOs intervened in the procedure as third parties, mainly in order to outline the dangers of the application of Islamic law in Europe for the protection of human rights, and especially for those of women and children, having regard not only to the peculiar situation of Greece but also, e.g., to the growth of the Islamic arbitration tribunals in the United Kingdom.

Judgement of the Court

- The Court held that Ms Molla Sali has been discriminated on the grounds of her husband's religion and that such a discrimination was not justified by the legitimate aim of protecting the Thracian Muslim minority, being in any event not proportionate to the pursued aim.
- According to the Court, if a State has created a special status for the members of a religious community in order to protect them, the said State must also recognise to the concerned individuals the right to voluntarily opt for the application of ordinary law. Otherwise both the fundamental right not to be discriminated and the fundamental right to free self-identification would be infringed.
- Therefore, the Court found that art. 14 read in conjunction with art. 1 of protocol n. 1 of the Convention has been violated, and therefore invited the parties to reach an agreement with regard to the quantifications of the damages to be paid by the Greek State to Ms Molla Sali.

Impact of the Decision

- While the case was still pending, on 15th January 2018 Greece has reformed its domestic law on the status on Thracian Muslims, making the recourse to Muftis' jurisdiction and the application of Islamic law merely optional, and so possible only with the agreement of all those concerned.
- From this point of view the European judgement has just confirmed an internal evolution, and has recognised a compensation to Ms Molla Sali, whose case had been decided with final effect at the domestic level under the old system.
- But some commentators have remarked that, with regard to the situation of other countries, the Court's argumentation may indeed open the door to the application of Islamic law in Europe, also in merely internal situations, on a voluntary basis, as in the case of the mentioned arbitration tribunals.

Concluding Remarks

- We may thus hypothesize a scenario where such tribunals, and/or other similar forms of private ordering in migrant communities, could play an important role in family and successions matters, even comparable with that of the, more traditional, Ecclesiastic tribunals applying Canon law pursuant to the Concordats stipulated by some European States.
- Such developments could help the integration of communities, but it is very important that the States will ensure an effective right of opting out for all the concerned individuals, and especially for the most vulnerable ones.

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