

UNIVERSITY OF MISKOLC
FACULTY OF LAW
DEÁK FERENC DOCTORAL SCHOOL OF
LEGAL SCIENCES

DOMOKOS TIBOR

DIFFERENCES BETWEEN THE RULES OF ISLAMIC AND
EUROPEAN LEGAL SYSTEMS
THEORETICAL AND HISTORICAL BACKGROUND

Theses of Phd dissertation

Deák Ferenc Doctoral School of Legal Sciences

Head of the Doctoral School: Prof. Dr. Erika Róth Jámborné

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Doctoral advisor: Prof. Dr. Pál Sály

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I. Aim of the doctoral thesis, hypothesis

The subject of the research is Islamic law, the Shariah, especially its approach and the interpretation of its most prominent rules.

From 2017 to 2019, I served as a policeman on the southern border of Hungary and had first-hand experience of migration. This motivated me, which also became the aim of my research, to examine whether or not the legal systems of Islam and the Member States that make up the European Union are compatible. Is there a possible solution that would allow in the future for certain segments of Sharia to be partially or fully incorporated into one of the legal systems that we know so far. I think it is important to stress that the purpose of this thesis is not to highlight or condemn any religion, culture or legal system.

My research is timely and important because in Europe, as a result of migration flows, there has been a large increase in the number of citizens coming from countries where Islam is not only a religion but also a legal requirement.

The diversity of Islam does not allow me to touch on all its branches in the course of this research, so I will focus on classical Islamic law, sometimes pointing out the intention that, although signs of modernisation appear, tradition suppresses them in a short time. The approach I take to Islamic law is a critique of the European (although an Islamic approach would also merit a separate study) and the familiar legal order yardstick.

Migration is not only an economic endeavour, but a political space in which ISIS aspirations are also found. Thanks in part to my preliminary studies, I conclude that the spirit of jihad is emerging on the continent and the aim is to impose Sharia, which is eternal because it is a divine revelation. It is also necessary to maintain the perspective that these people have in fact had to flee their homes and that they wish, as their people, to continue to be subject to Sharia law, without violating the legal system that has been established and accepted.

It must, however, always be borne in mind in this research that Europe is divided by tensions between Member States, by the economic situation and by political interests, and that there is only one bond that remains: the law. Europe is likely to face a major

provocation from migration and needs a resolution to preserve this cohesive bond while strengthening its identity.

II. Research phases, approach and sensitivity of the topic

In the interests of groundedness and consistency, I have tried to set up a structure that is logical and at the same time highlights the sensitivity and complexity of the topic. To this end, I have divided the thesis into four major sections.

First, I studied Europe. Not from the beginning, but from the First and Second World Wars, when the unity of Europe was only a dream. In the course of my research, I was greatly influenced by the theses of Coudenhove-Kalergi and Spengler, which showed me that the subject I was studying was not a new one. Then I cumulated the history of Europe from Napoleon Bonaparte, through the Neumannian aspect and the League of Nations till today's united Europe, the European Union. In the course of my research, I focused on secularisation, on the development of the Western legal system and its pillars.

Secondly, due to the complexity of the topic, I will examine the current situation in Europe. In this unit, the focus is on migration, its impact on law, health, society and nation states, not forgetting the problem of integration and the threat of Europe.

Thirdly, I have sought to understand the communities present in Europe, as well as those arriving from an Islamic religious and legal background. To this end, I analysed the formation of Islam, its historical aspects and Islamic law.

Fourthly, I juxtaposed the information that emerged in the first three major structural element, referring to the work of Samuel P. Huntington, who considered legal, political, but also cultural differences in his work. Huntington's writing has been a good guide for me so that I do not get lost in the details and the summary does not become partisan.

Since there is no difference between the legal systems of the EU Member States that would affect the possible outcome of the research, I use the term legal system in the singular in most cases in the dissertation. In order to fully map the development of the legal system, I also consider the social, economic, health, political and integration aspects of Europe. Migration is not only an economic endeavour, but also a political space in which ISIS aspirations are found. Thanks in part to my preliminary research, I conclude that the spirit of jihad is present on the continent and the aim is to enforce Shariah, which is eternal because it is a divine revelation. It is also necessary to maintain

the perspective that these people in fact had to flee their homes and that they wish, as their people, to continue to be subject to Sharia law, without violating the legal system that has been established and accepted.

However, it must always be borne in mind in this research that Europe is divided by tensions between Member States, by the economic situation and by political interests, and that there is only one bond that remains: the law. Europe is likely to face a major provocation from migration and needs a resolution to preserve this cohesive bond while strengthening its identity.

III. Summary of the research results

The researched topic is eternal, because as long as humans live, think and mobilise, they will see and experience the world differently. The particular environment, culture, religion or, as researchers so often refer to it, civilisation, greatly influences the individual's perception of the world, his or her view of education, politics, social status and, not least the perspective of law. As Oswald Spengler looked at it „the dead cultures of the past in their present analogous life”¹⁵ and we have to understand the basis of the future in the light of these senses. He was, among others, who first looked at the world by pointing out that there are offensive and defensive cultures, where the will of stronger, larger communities prevails.

We might ask: today, when the European Union has become a target for migratory groups, when Member States are already struggling with multiculturalism and parallel societies, which community or culture is becoming dominant or offensive and is overcoming the others?

It has become clear that migration is creating social, political, economic, health and, in this context, legal tensions, mainly because the minority is slowly becoming the majority, and the behaviour of Islamic culture is changing, and it is seeking political and economic power, all the while claiming that it is obliged to do so by law.

Nor can we ignore the fact that the European Union lost its global power on 31 January 2020, when Brexit took place. The independence of the United Kingdom supports Coudenhove-Kalergi's pan-European theory that Britain has always been economically, historically and geographically distinct from the European community.¹⁶ I dispute, however, the author's view that the solution is Eurasia or colonialism, although this is not far from the truth, since the problem is not referred to today as Eurasia, but as Euroislamization. In order to understand why I am arguing with the theses it is necessary

¹⁵ Salamon János [2011]: Könyv-A hanyatlás morfológiája- Oswald Spengler: A Nyugat alkonya, Magyar Narancs, Politikai-Kulturális Hetilap, 2011. 07. 28. in https://magyarnarancs.hu/zene2/konyv_-_a_hanyatlás_morfologiaja_-_oswald_spengler_a_nyugat_alkonya-76604 (2021.04.07.)

¹⁶ Ligeti Ernő [1962]: A Páneurópai mozgalom, „Korunk” Kiadása, Cluj-Kolozsvár. 6. p.

to look at the cultural, religious and secularisation processes that have shaped the political and legal differences to a large extent.

We must be aware that, throughout history, Europe's approach has been the result of a duality, the balance of which lies in the division of power. To avoid any misunderstanding, it is important to make it clear that it is not a question of "divide and rule", but of the fundamental idea that Jesus expressed in this way: „Render to Caesar the things that are Caesar's and to God the things that are God's.”¹⁷ This dualistic view will be the basis of secularization, in which the state and Christianity will independently seek the truth. From this point of view, Christian ideologies are reflected in the legal systems of many European countries. A unified secularisation creates a balance where the legal system responds to religious demands and applies them to the benefit of society at the level of rationalism. It became clear, and is felt in the present, that secularisation meant the abolition of theology and also the creation of the modern state, to which the appropriate legal system was attached. In the process of secularisation, what has happened is that the law of conscience has been removed from legal theory and the emphasis has been placed on a complex of rights and duties, enforced by the administration of human justice. The law thus established is always a response to a social need, always with the aim of seeing objective reality and acting accordingly. But in order for Europe to maintain a good balance in this dualistic vision, it must always bear in mind that justice is the divine sovereignty from which man benefits. Wherever we look, it must be said that in today's Europe, law is the body of valid and enforceable law. We are talking about a system of law that is adapted to a given social situation, that prescribes forms of behaviour, and that the creator of the law is sovereign. In other words, the nation states of Europe are sovereign because they declare law and enforce it through a complex, hierarchical process.

Up to now, we have been able to say with confidence that Europe is made up of nation states and that there has always been a need for unity, because cultural differences between states have not been extreme, Christianity has been a common bond across borders, and governmental and political interests have been aligned. The former need

¹⁷ Bible, Mt 22, 21b

was primarily expressed in the Schengen Agreement and later embodied in the European Union.

The year 2015 brought changes in the life of the European Union. A Europe that had previously seemed united is divided by migration, which has become an economic burden space due to a lack of labour market integration, a health space due to COVID-19 infections, and a cultural space due to their religious identity. It is clear that legal regulation is the only way to resolve these tensions. At this point in the study, the question arises: is Europe strong enough to preserve its identity and enforce the legal order it has so far recognised and cherished?

Francis Fukuyama's view is uncanny when he talks about Europe as a geographical entity giving space to the struggle between liberal democracy and radical Islam.¹⁸ Looking at the pillars of Europe that is supposed to be so stable, the defensive attitude becomes clear, which also results in a weakening of its identity. Christianity as a cross-border relationship seems to be in decline. The aim is nothing less than to integrate incoming migrants as quickly as possible and make them part of the labour market. In this way, the economic crisis that has developed in the meantime can be offset. To this end, an Action Plan on Integration and Reception for 2021-2027 has been drawn up, which sets out steps and requirements that would make Europe a cradle of Islamisation. The ostrich policy has never led to results, as it is not leading to results now. By being at odds with itself, Europe is breeding a new social stratum, namely the Islamophobic communities. Perhaps I could even accept that the world's great powers do not see what is happening, but that they do not hear the Director of the Counter-Terrorism Centre sounding the alarm bell and reporting that jihadist communities are emerging in Europe. Islamic aspirations must be reckoned with: Muslims have realised that it is not possible to conquer Europe by force, only to weaken it, and have therefore shifted the struggle to the field of law, the field that still holds together Europe which is defensive and weak in identity. Taking advantage of the European legal systems and the fact that law in Europe is a reflection of a social demand, Muslim believers in Europe are focusing on the

¹⁸ Fukuyama, Francis [2006]: Identitás, bevándorlás és liberális demokrácia, Kellék 57. szám, (23-41), fordította: Szilágyi Botond. A fordítás az alábbi változat alapján készült: Francis Fukuyama: Identity, Immigration and Liberal Democracy. *Journal of Democracy*, 2006 (17):2, 5–20. in https://epa.oszk.hu/01100/01148/00046/pdf/EPA01148_kellek_2017_57_023-041.pdf (2020. 12. 28.) 24. p.

individual's fall from grace and are thus trying to influence society, which is demanding a review and possible change of the existing legal system. Good examples of this are the Sharia4EU initiatives.

The religious reforms of Muhammad, the true prophet of God, had an impact on the materialistic tribes, who were united by his militant action in the hope that they would be part of Allah's will. It is not by chance that Islam proclaims unconditional acceptance of the divine will and submission to it as the only human behaviour.¹⁹ While Europe is fighting for the sovereignty of the state, for the rule of law, in Islam God is sovereign and the struggle is for the status of the interpreter of God's revealed will.

Secularisation, which has changed Europe at its roots, has by far bypassed the Islamic world, where law is a divine revelation from which nothing can be taken or added. In this sense, what is fundamental in Europe is the total absence of legislation in Islam. At the same time, it must be seen that, since law derives from God himself, it cannot be limited to a single country, geographical area or people, because divine revelation applies to the whole world and is superior to any man-made legal system. Hence Sharia is infallible. The questions outlined above have been partially answered, for how can it eclipse that which is infallible and superior to everything and everyone.

The dissertation deals with issues such as the status of women, gender morality, marriage, inheritance and jihad, which are repeatedly and emphatically highlighted by the Prophet. The research also highlights slavery and capital punishment, mutilation of the body, which some Islamic states have banned by law, but no one punishes its use.

It was unbelievable to be confronted with the fact that Islamic law makes such a huge distinction between man and woman, free and slave. This discrimination is present throughout the exercise of rights, the requirements and the administration of justice. The stronger sex is always positively discriminated and also they can teach the wife in the home, receive a larger share of the inheritance and fight as a warrior of God for the propagation of the true religion.

Huntington pointed out that the West is the Roman-Greek heritage, living its daily life in the faith of Catholicism and Protestantism, in a religious spiritualism that is separated

¹⁹ Hajnal István: Mohamed, a próféta. Az iszlám születése. Rubiconline Történeti Magazin, alapítva 1989 in <https://rubicon.hu/cikkek/mohamed-a-profeta> (2021.02.13.)

from secular authority and whose unity is ensured by a legal order rooted in the Roman heritage, living in a multicultural society where the ideology of individualism is taking root.²⁰

Islamic expert Ali E. Hillal Dessonki said that Islamic law seeks to replace Western rules.²¹

When asked in a report whether Islamic law and the Western legal system can be brought closer together, János Jany gave the clear answer that „We can try, but we will only experience a failure.”²² Turkey is trying to break out of the grip of the Islamic world and dream of a secular state, all in order to be part of the European Union, but try as Turkey's leadership might, it is well known that in Islam religion and state are inseparable.

In my research on this subject, I have not come across any work that clearly states that the only way out of economic change, which has been greatly facilitated by migration, and a weakening European identity is through law. Scholars on the subject talk about dialogue, strengthening Christianity, multiculturalism, Roman tradition, natural law. No one says that the fundamental problem is, among other things, that we Europeans are not seen as equals, that the women of Europe are merely instruments, that European legal systems are not acceptable to them because they violate the Sharia. It is not possible to live in a European society that is at odds with itself. Law must be enforced and the state can enforce it.

In Europe, bigamy and polygamy are against the law, and marriage not only legalises sexual intercourse, but is a moral expression of the bond between two people, in which women and men are equal. Since it is an emotional bond and the equality of the two parties, there is less possibility of the marriage being concluded with a child. As much as I don't want to generalise, my research has shown that child marriage is a common

²⁰ Huntington, Samuel P. [2006]: A civilizációk összecsapása és a világrend átalakulása. Európa Könyvkiadó, Budapest, 2006. in <https://docplayer.hu/12196019-Samuel-p-huntington-a-civilizaciok-osszecsapasa-es-a-vilagrend-atalakulasa.html> (2022.02.10) 55-58. p.

²¹ Dessonki, A. H. [1982]: Islamic resurgence in the Arab world, New York, Praeger. 4. p.

²² Darvas Tamás [2016]: Az iszlám jog és a nyugati jogrendszer közelíthetetlen egymáshoz, Interjú Dr. Jany Jánossal, Arsboni, 2016. jún.1. in <https://arsboni.hu/az-islam-jog-es-a-nyugati-jogrendszer-kozelithetetlen-egymashoz/>

practice in Islamic communities, even in Europe. The Prophet Muhammad also married a child, so Islamic law allows for this possibility.

Dissecting further, and looking at marriage through the legal lens of Europe, I dare to say that women are subject to constant harassment in the Islamic world. The most important role of the woman is to satisfy the sexual needs of the man under all circumstances. Polygamy, among other things, according to some Islamic jurists, is necessary because during periods of female distress, breastfeeding or childbirth, the woman is not fit to perform her duties, and the Qur'an also prohibits sexual intercourse during the aforementioned periods, so another woman is needed to satisfy the man's needs. In the case of refusal to satisfy sexual needs, the husband may also use corporal punishment to such an extent that no external wound is inflicted or bone is broken. Furthermore, if a man is attracted to a woman and wants to marry her, but already has the four wives allowed under Islamic law, he can divorce any of them without justification to make room for the new wife. If I look at Islamic marriage very narrowly, it can also be called legalised prostitution, as women are kept by men for their sexual services. The married woman bears the marks of slavery, as she is restricted in her movements, can only travel with a male relative, can only travel with her body covered and cannot be out at night. These restrictions are said to have been introduced by Islamic law to prevent a woman from being harmed in the absence of her husband and from being desirable to other men. This kind of thinking alone speaks volumes about the relationship between men and women.

In the case of rape, it can also be said that they are riding the horse in reverse. In Islamic law, it is not the crime committed by the man that is the object of scrutiny, but the conduct of the woman, i.e. what conduct she has shown in order to be raped by the man. In Islamic jurisprudence, in most cases of rape, the woman was sanctioned on the grounds that her behaviour was seductive or provocative.

In contrast, European legal systems consider the woman as the victim and condemn the rapist. There is no question of provocative behaviour on the part of women, even though women in Europe are fond of showing off their bulging breasts. As there is equality between the sexes in Europe, the right to freedom of movement is one of the most important fundamental rights for women. On the other hand, according to Article 194

of the Hungarian Criminal Code (Act C of 2012), a person who restrains a woman by not allowing her to leave the house is guilty of violating her personal freedom. The German Criminal Code also punishes the violation of personal liberty by „whoever locks up another person or otherwise deprives him of his personal liberty.”²³

In the context of women, it is also important to talk about sex slaves who come from ISIS-occupied territories during the jihad, usually Yazidi, Christian or other religious women. The Sun, a UK media portal, interviewed a wife of an ISIS member who said that in Islam, raping Yazidi or slave women in ISIS territory is not a crime. Referring to the Quran, she said that they were made slaves on the basis of the Quran and are there to be used. In this sense, there is no such thing as rape in Islamic law.²⁴

In Europe, the weaker sex should not be allowed to become vulnerable or live in fear. Only the law can put an end to this by prosecuting the crime.

As much as Europe is an ambassador of peace, it has become an actor in a struggle, a battle, where the preservation of its identity is at stake. It is a difficult struggle, and it is important to highlight it, because people of second- and third-generation Islamic affiliation already hold citizenship of one of the European Member States. The doctoral dissertation also revealed that these generations have not been able to integrate and are present as a parallel society, entitled to the same rights as native European citizens. As a result of external Islamic influence, which is in the interest of ISIS, these generations are very easily radicalised because they are captivated by the idea and ideology of 'back to the roots', 'family', 'religion of their ancestors'. Huntington's theory has come true: they are responding to the challenge of the modern world, the developed Western world, with religious neo-fundamentalism, a world of which these generations can never truly be a part. As Zsolt Rostoványi said „All religious fundamentalisms are closely linked to the political and social issues and problems of the country or region concerned...the characteristic feature of religious fundamentalism is therefore its "hyper-politicisation", its criticism of the political leadership in power and its criticism of a hard society.”²⁵ In

²³ Büntetőjog.Info: Személyi szabadság megsértése

²⁴ White, Debbie [2019]: Married to monsters ISIS 'wife' defends sex attacks by jihadi husbands saying 'it's not rae in Islam', The Sun, 10 Mar. 2019. in <https://www.thesun.co.uk/news/8605839/isis-wife-defends-sex-attacks-by-jihadi-husbands-saying-its-not-rape-in-islam/> (2022.04.17.)

²⁵ Rostoványi Zsolt [2020]: Az iszlám és a 21. század, Kihívások és válaszok. L'Harmattan Kiadó. 282. p.

our case, in Islam, we are faced with a fundamentalist tendency where the Koran is interpreted letter by letter, which is fully accepted without questioning its authenticity or infallibility. Islamic fundamentalism views man's existence, his thinking, the law itself, in the totality of religion, so that there is no area - cultural, political, health, social, legal - on which religion does not have an influence or provide a solution. Fundamentalism provides an opportunity to criticise the powers that be, to demand change, and extremist groups are able to fight for it. In the background, in all cases, there is a religious inferiority complex, because they feel that their religion or worldview is not given enough attention, hence the need for (re)Islamization.²⁶

History repeats itself. The Prophet Muhammad was needed because the previous prophets sent by God could not adequately convey God's will because they were influenced by political, human goals, and fundamentalism as we know it today emphasises that the four caliphs who followed the Prophet still clearly proclaimed the will of Allah, and then after them the Islamic faith came under political influence.²⁷ Hence, the only solution left is to free Islam from different political, power and other perspectives. But what does this mean? It means building communities, the economy, politics - all the areas that determine people's lives - on an Islamic foundation. Jihad is not only legalised in Islamic law, it is the duty of all true believers.

All the facts listed so far have highlighted the causes of which we are experiencing the symptoms in the present. Following the migration that started in 2015, the number of crimes has increased. Migrants are approaching Europe armed and, if necessary, using physical violence. In Europe, in the Member States that have become the target areas for migration, migrants are more violent, they are also confronting and attacking the authorities. The emergence of parallel societies, which is the greatest enemy of integration, which leads to unemployment, which leads to an increase in robbery, burglary and burglary. According to police reports, an estimated 17,000 crimes are committed by people of the Islamic faith in Britain every year. In 2015, 47% of murders in the country were committed by Muslims. In Germany, the crime rate increased by

²⁶ Rostoványi, 2020, 281-283

²⁷ Rostoványi, 2016. = Rostoványi Zsolt [2016]: Fundamentalizmusok a 20-21. században. Köz-gazdaság 2016/3, Nemzetközi Intézmények és változó világgazdaság (225-240) in file:///C:/Users/BorMobilMegelozes/Desktop/phd/irodalom/fundamentalizmus.pdf (2022.03.12.) 232. p.

79% following migration, with 1,700 women being attacked, of which more than 500 were of a sexual nature. In Denmark, 2,000 migrants were prosecuted for rape offences in 2015, the true scale of which is only realised when we realise that 2,600 people were prosecuted for rape offences in that year. In the same year, rape offences in the Norwegian capital were committed exclusively by Muslims.²⁸ In the course of the research, I made particular reference to the fact that Islamic communities have taken over the arms trade, drug distribution and prostitution networks previously established by other ethnic groups.

It is clear that the European authorities and judiciary cannot deal properly with the Islamic communities on its territory and cannot always enforce the law. This kind of impotence results in or creates no-go zones that even the authorities approach with fear. One of these no-go zones, which was presented in this thesis, is the Molenbeek district in Brussels. There are also Islamic ghettos in Sweden, Germany and Britain. In the latter country, these zones are marked with signs to indicate that Sharia is in force in the area. The related literature speaks of these areas as autonomous entities, operating free from European authority. In England, these zones are governed by Sharia councils, which adjudicate on the basis of Islamic law. The largest proportion of judgments is on divorce, which discriminates negatively against women under Islamic law. It should be mentioned that these councils do not facilitate the work of the authorities, in fact they hinder it.

If Islamic law provides for the possibility of legalising unlawful behaviour in this way, the vision that Allah rewards those who obey His commandments is, as we have just seen, discredited by this behaviour. It is still better to exploit the imperfection of man-made law than to turn God's will into sinful human interest. From this point of view, Europe can be grateful for secularisation, because the courts do not challenge God's lawmaking, but each time they enforce man-made law or point out its shortcomings, which are subsequently made good by a new valid and effective law.

²⁸ Szöke-Kis Bernadett (nincs évszám): Iszlám migráció és integráció – Európai megoldáskeresés és jövőkép, Szemelvények a XXI. századi migráció témaköréből, MH Hadkiegészítő, Felkészítő és Kiképző Parancsnokság, Honvéd Vezérkar Tudományos Kutatóhely Kiadványa (187-220) in <http://real.mtak.hu/83709/1/szemelvenyek.pdf#page=188> (2022.03.12.) 196. p.

We can say that European legal systems do not tolerate discrimination or objectification of the weaker sex. It does not seek to obscure or conceal the beauty of women. It does not want to legalise violence or sweep problems under the carpet in a marriage. It gives citizens the self-determination of 'free will' based on a Christian ideology and states that everyone must be responsible for their actions, and that an oath on a holy book is not enough. At the same time, this ideal also guarantees the right of free choice for women. Europe does not want to apply physical, corporal punishment to crimes and always has human rights in mind.

IV. The author's related publications

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- [18] Domokos Tibor: Muslim ambitions in Europe. Jog és Állam 34. XIX. Jogász Doktoranduszok Országos Konferenciája (szerk.: Miskolczi Bodnár Péter), Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, Budapest, 2021, 29-40.
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