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ABSTRACT

The Muslim Minority of Greece and the Greek Orthodox minority of Turkey were legally recognized as such by the Treaty of Lausanne (1923) which included provisions offering both panoply of multicultural rights. Yet, geographically situated in close proximity to the Greek-Turkish border, both communities have been vulnerable to the regional balance of power considerations and the chequered relationship between Greece and Turkey. Whereas they have been able to exercise some of their minority rights, particularly freedom of religion, they have been deprived at times of basic human rights. Therefore, they either voluntarily migrated or were obliged to migrate explicitly or implicitly ever since the date they were destined to be minority communities.

This paper intends to scrutinize the migration patterns of Western Thracian minority; the reasons behind the migrations from Greek Thrace to Turkey from the early 1930s until today. A period of almost eighty years is taken in order to better elucidate the motivations behind migrations which alternate between security, and seeking a more prosperous life accompanied with expectations of upward social mobility and a better future for their offspring. These two motivations, nevertheless have been determined by the state of bilateral relations between Greece and Turkey, their policies against the Western Thracian Minority and the living conditions in both countries. For example, the migration wave from Greece to Turkey between 1940-1945 is mostly due to the oppression of the Bulgarian occupation of Western Thrace, whereas that between 1946-1949 due to the Civil War in the region. Yet the massive migration between 1952 until 1959 is due to Turkey's free migration policy. The recurrent wave of migration in 1970s was triggered by Cyprus conflict whereas in the next decades by discriminations and violations of several human rights. On the other hand, late 1990s witnessed a return migration from Turkey back to Greece due to the democratization of Greek minority policy and the worsening economic situation in Turkey after successive economic crises. Today the Western Thracian minority of Greece is a fragmented community by migrations and there is hardly any family who do not have relatives in Turkey and/or in Germany. Part of the migrants became Turkish citizens whereas a significant number remain official Greek citizens who live and work with special permits in Turkey. Only a slight number hold citizenships of both Greece and Turkey. Migrants in Turkey usually belong to the middle bourgeoisie class with an high proportion of university graduate professionals.

BETWEEN GREECE AND TURKEY: MIGRATION PATTERNS OF WESTERN THRACIAN MUSLIM MINORITY

I. From Greece to Turkey and Back: Migration and Return Migration

Migration to Turkey(prior to 1923 Ottoman Empire) and back (return migration) has been an ever existing phenomenon ever since the onset of turmoils in the Balkan peninsula in late 18th century. Thrace, which is today divided between Greece, Bulgaria and Turkey, has been a passage route and settlement spot. This pattern has prevailed even after the delienation of Greek and Turkish borders post Lausanne. Ever since, migration to Turkey has had three patterns. Until 1990s, *permanent settlement* was widespread by having the Greek passports voluntarily confiscated or upon deprivation of citizenship by the notorious article 19. Yet, *settlement with school, work and tourist permits* while retaining Greek citizenship was also a common pattern, particularly for the migrants post 1980s. *Return migration* to Greece took place especially post 1998s when Turkey was undergoing several economic crises but in Greece economy was doing well and several democratization reforms were making life much better than before for the Muslim minority.

In the initial decade post Lausanne, migration to Turkey (1923-1939) was small-scale.¹ Both Greece's and Turkey's migration policy at the time aimed at prevention of migration from Western Thrace to Turkey in order to preserve the status quo. Turkey only made an exception for some migrants from Greek Thrace for the purpose of family unification by a government decree in 1932.² In this period, migration to Turkey could have been triggered because of some local frictions stemming from the settlement of Greek Orthodox refugees from Anatolia as the government confiscated considerable pasture land belonging to Muslims.³

During WWII, particularly during the Bulgarian occupation, and afterwards during the period of Civil War (1946-1949) migration escalated. By November 1941, a total of 33,074 Greeks and 12,486 Muslims had abandoned Thrace; Greeks to safer inland regions whereas Muslims to Turkey.⁴ Migration continued during the successive Civil War period but at a smaller

¹BOA, Doc Nr. 03010118082, 16.05.1926, **Prime Ministry Ottoman Archives** (Başbakanlık Osmanlı Arşivleri) Ankara, Turkey

² BOA Doc Nr. 030180102294418, 1932.

³ Stephen –P. Ladas, **The Exchange of Minorities Bulgaria, Greece and Turkey**, Mac Millan Company, New York, 1932, 478; Dimitri Pentzopoulos, **The Balkan Exchange of Minorities and its Impact on Greece**, Paris, Mouton, 1962, London, p.67. For example, Öksüz mentions 158 people migrating from a village in Western (Greek Thrace) settled in the regions of Tekirdag Hikmet Öksüz, “The Reasons for Immigration from Western Thrace to Turkey, 1923-1959, Turkish Review of Balkan Studies 2004, 249-278, 259.

⁴ Aarbakke states the number as 12,486 based on Cengiz Orhonlu, (1964a). “Batı Trakya’da Türk nüfusu.” Türk Kültürü Araştırmaları, Ankara I(1): 59–87, cited in Aarbakke,32; Featherstone gives the number between 10-15,000 depending on figures of the Greek government, Kevin Featherstone (et.al), **The Last Ottomans: The Muslim Minority of Greece, 1940-1949**, Palgrave MacMillan, 2011, 109, Öksüz mentions 10,000 depending on an article in Trakya Newspaper (Western Thracian Minority Newspaper) 3 August 1959, No.773, cited in Öksüz, 272.

rate as from time to time Turkey closed the border.⁵ Some of the refugees returned to Greece after the end of civil war. The number of refugees fleeing the Civil War to Turkey is quite uncertain; it is highly likely to be between 6,000-10,000.⁶ During the Civil War period, flight to Turkey was carried out by Greek boats from the shore of Glyfada to the island of Imroz and from where they were sent to Sirkeci to be later distributed to other provinces of Anatolia. Between 1939 and 1960, 23,808 Muslims migrated from Western Thrace to Turkey.⁷ Yet, almost half of this number is regarded to have migrated between 1953 and 1960, when Turkey adopted a free immigrant policy.

The period between 1953 and 1960 Turkey adopted and implemented a policy of free immigration (serbest göçmen) for the kin in Balkans.⁸ This meant that with a free immigration visa obtained from the Turkish Consulate anyone could go and settle down in Turkey and get citizenship after a while. (Fieldwork notes). Depending on Trakya newspaper of the period, published in Ksanthi by the then MP Osman Nuri, the number of Western Thracian Muslim-Turk immigrants who settled in Turkey in this period was approximately 11,000.⁹ They were the most educated persons and the wealthiest minority members, the landlords (Ağa). A number of villages in the plain in Ksanthi province were almost emptied as a result of migrations. (Fieldwork, also mentioned by Aarbakke, 93) Their flight triggered a domino effect within the village and the neighbouring villages, and ordinary villagers who followed them, thinking 'if the Ağa goes, why should be stay? He must know it better than us'. As regards why the rich landlords left the state was back in Thrace and Turkey and Greece were experiencing their golden years of friendship two significant reasons are mentioned. To begin with, they were tired of the previous times of turmoil and conflict when they were intimidated by occupying forces, then communist guerillas and the state and did not believe in a safe future in Greece. Secondly, post 1956, they were scared that the 5-6 September events against the non-Muslim and Greek Orthodox minority in Istanbul would be retaliated against them in Greek Thrace. (Fieldwork notes)

⁵ Personal Communications; mentioned implicitly by Öksüz 259; mentioned in Kemal Şevket Batıbey, **Ve Bulgarlar geldi: Batı Trakya'da teneke ile alârm**, İstanbul, 2000; mentioned in oral histories in Rahmi Ali and Tevfik Hüseyinoğlu, **1946-1949 Yunan İç Savaşı'nda Batı Trakya Türk Azınlığı**, Komotini, 2009.

⁶ Öksüz presents a total number of legal and illegal immigrants to Turkey between 1946 and 1949 as 17,793, yet citing from a non-academic source (Öksüz, 274, from Ahmet Kayıhan, *Lozan ve Batı Trakya: 1913'te İlk Türk Cumhuriyeti*, İstanbul 1967, p. 32.) Depending on Public Record Office, London, United Kingdom, Featherstone gives the number as 2,000 but only for the year 1946. Taking this number as a base and considering the fact that the civil war lasted for 3 years, the number of 6,000 might make sense.

⁷ Aarbakke, 93

⁸ This policy was devised in order to ameliorate the poor demographics in Turkey and the supposedly ethnic kin from the Balkans was considered to serve this target well. From a seminar given by sociologist Prof Ferhunde Özbay, Boğaziçi University, May, 2012.

⁹ Trakya (Ksanthi), 3 February 1958, Nr.726. Numbers were taken from the then Turkish Consulate in Komotini. In 1954, 900 families migrated to Turkey on a special contract called 'taahhüt senedi' (as explained in Trakya Newspaper dated 26 April 1954, it is certified document confirming that the visitors' relatives in Turkey will take care of them during their stay; will provide them with food and shelter and that they will not stay in Turkey more than 3 months) and 678 families migrated as 'free immigrants' (serbest göçmen). In 1955, 1304 families migrated to Turkey as free immigrants including those who went to Turkey with a taahhüt senedi before and returned to take a free immigrant visa. In 1956, 1442 families (3662 individuals) migrated to Turkey with a free immigrant visa and 285 migrated to Turkey through illegal ways. In 1957, 935 families (2277 persons) migrated to Turkey with a free immigrant visa and 384 persons did so through illegal ways.

Upon the end of the free immigration period and the toughening of Turkey's migration policy post 1960, Germany became an attractive spot for many Western Thracians, particularly the very poor and the landless, to sell their labor in factories. Migration to Turkey was not intense as before, since 1960- 1970 is regarded as a peaceful period. After 1970s, as Turkey did not relax its migration policy, it attained an illegal pattern; swimming across the river Evros. This was preferred in order to be given refugee status after which it was easier to get Turkish citizenship than staying in the country with a three month or maximum one year work or student visa. (Fieldwork notes)The persons who wanted to migrate arranged a Greek taxi driver to take them to the border. They gave them their Greek identity cards in return, and a piece of cloth or a handkerchief to take to their families back, a signal that they arrived safely at the border. The persons would usually walk through shallow waters in a safe zone of the river and when they arrived at the Turkish side, would ask for asylum. No one ever drowned in the river during the escape, because the taxi drivers would show the safest way. Furthermore, as the identity cards of the refugees would be brought to Greek authorities by the human trafficker taxi drivers, such affairs were known and tolerated by the Greek authorities.

The third massive migration wave was in the late junta period corresponding to the Cyprus crisis. The situation of the Western Thracian minority aggravated in the period of dictatorship (1967-1974). It did not improve even after the establishment of democracy, when discriminations and oppression continued until mid 1990s, and culminated in certain periods, especially after 1974 with the intensified perception of irredentist threat from Turkey due to the Cyprus conflict. Furthermore, the decrease in the population of Greek Orthodox minority in Istanbul after 1964 served as a legitimate basis for the discriminations against Western Thracian minority. Several land expropriations deprived the minority of its major source of income. Curtailment in the freedom to exercise profession (i.e non recognition of Turkish university diplomas, denial of work permits) triggered migration among university graduates. Restriction on the purchase of immovables resulted in investments in kin state, to the detriment of the host state economy. The backward education system led to a new migration wave for those who wanted to study in Turkey, most of whom did not or could not return. Article 19 deprived about 50,000 minority members of citizenship. (Sule Chousein, *Minority Rights in Europe and the case of Muslim Turkish Minority of Greece*, Germany, Lampert, August 2011, 161)

Other reasons are more ordinary as can be a reason for any other migration, for example, to divorce a wife without having to pay compensation, to escape from the paternalistic and often suppressive family bonds, which did not change even after marriage. The Trakya newspaper between 1950 and 1960 covers a number of divorce notices by the then Muftis, calling the husband who had escaped to Turkey years ago to attend the divorce case at the Mufti Office on the date specified.

II. Western Thracian Muslim Turks in Turkey

Depending on the numbers presented by TUIK (Turkish Statistical Institute) based on population censuses¹⁰, in 1985, the number of Greek citizen Turk residents was 4,868. They were dispersed in the Marmara and Aegean region with a provincial concentration in Istanbul (1,976), Bursa (844), İzmir (738) and Aydın (620). In 1990, there is a blatant significant increase in the number of Greek citizen Turks in Turkey ,9,775, almost twice the number of the previous census. This fits well with the then situation of the Western Thracian minority as the period between 1985 and 1990 is the harshest period of state discrimination and oppression against the WesternThracian minority.

In 2000, the number of Western Thracian Turks in Turkey is 6,008, a very incremental rise of only 0,05% compared to that of 1990. This is an outcome of the democratization of Greece's minority policy, declared by the then Prime Minister Mitsotakis in 1991 (isonomia-isopolitia/ equal rights, equal citizenship) and its implementation post 1995. Following the abolition of discriminatory policies and practices such as lifting the ban on sale and purchase of immovables and the introduction of some positive discrimination measures in the realm of university education in the form of a special quota for Western Thracian minority member high school graduates, a special quota to hire minority members to municipalities as civil servants, a significant number of minority members returned to Greece from Turkey.

Migration to and settlement in Turkey have had positive and negative repercussion for the Western Thracian migrants and their relatives left behind. Above all, settlement in Turkey, provided the Western Thracian immigrants with a considerable upward social mobility. Simple peasants, who did not have chances of shifting their class status in Greek Thrace became petty bourgeoisie or worked as civil servants , thus moving to middle class bourgeoisie. The first generation immigrants usually became petty bourgeoisie, opened small grocery stores with the money they brought or small businesses, or became workers in factories or were self employed like drivers, or mechanics. Their children, the second generation immigrants received higher education and either became civil servants or were self-employed. Yet frequent economic crises in Turkey sometimes also meant loss of jobs or working conditions much worse than in Greece. Some Western Thracian families in Turkey migrated to Germany after 1990, when the Single European Act made free movement possible for Greek citizens. Some of those who had voluntarily foregone their Greek citizenships and those who were deprived of it by Article 19 were the losers in this migration game. Yet, majority of Western Thracians have kept their ties with Western Thrace either due to their settlement type almost in communes, and through family or relative visits. The Greek citizen Western Thracians in Turkey continue living their lives in-between Turkey and Greece, a lifestyle which puts into question identities and belongings, and yet offers them the unique ways of cultural richness and practical advantages.

¹⁰Based on statistics sent by email from TUIK dated 08.05.2013, <http://www.tuik.gov.tr/tuikkulmem/tuikkulmem.zul>.

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Mixed Muslim – Christian couples in Greece: To convert or not to convert?

Summary of presentation for the 6th Biennial Hellenic Observatory PhD Symposium on contemporary Greece and Cyprus

London School of Economics, 6-7 June 2013

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Abstract

This paper draws on my doctoral research on religious practices in mixed Muslim – Christian intimate relationships in Greece. Data derived from in-depth interviews yields insight into the complicated dynamics between religions within intimate relationships under the influence of dominant culture and gender roles and the way these factors influence the social practices of mixed couples, the individual religiosity, the decision to convert to Islam or to Christianity and the negotiations about the religion and the naming of the children. In this paper, I am mostly concerned with how mixed Muslim – Christian couples perceive, integrate and reconcile the difference of religion. I examine the approaches towards religion and religious conversion. The answers the mixed couples give to these questions define their strategies of adaptation and their decision to convert or not to convert to their spouse's religion.

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Multiple Pluralities, Islamic minority legal orders in Greece: the case of Thrace

In central Europe the idea that sooner or later shari'a law would become a recognised source of law for some European citizens is received with distress and often initiates a fierce debate. In Greece Islamic law has been applied since the establishment of the modern Greek state and is officially endorsed by law. Despite the unitary, monistic Greek legal system, an Islamic personal law system, rooted in the legacy of Ottoman Empire, is recognized and applied for only part of the population that is Muslims of Greek citizenship, the majority of which are members of the Minority of Western Thrace, the only officially recognized minority in Greece. Islamic family law is applied by courts of special jurisdiction that is the local Muftis of Komotini, Xanthi or Didimotiho. Looking at the accommodation of Islamic law in Greece, this paper wishes to evaluate the challenge of modern legality by minority orders, that is namely forms of normative social regulation distinct to the state regulations, dispersed across a state's jurisdiction, exploring how a particular minority legal order operates and interacts with state law within an allegedly unitary secular legal system. For this purpose, with a focus on a unique as regards its establishment and conditions of operation religious body -the Mufti office of Komotini- and its special jurisdiction in divorce cases, I will discuss the accommodation of Islamic family law in Greece as a minority legal order officially endorsed by the state and evaluate the actual degree of state recognition.

My analysis sets off with the dominant European position of separation of religion and state and a short account of the Greek particularities with regard to the law and religion relation. Looking at the special jurisdiction of the Mufti's on family law matters and particularly Islamic divorce I will further examine the extent and input of Islamic law, the 'institutionalization' of the religious order and the degree of its interaction with state law in order to finally evaluate its accommodation within the Greek legal system.

Multiple Pluralities, Islamic minority legal orders in Greece: the case of Thrace

Introduction

The majority of European states have opted for an allegedly secularized law that claims exclusivity in regulating the lives of individuals, a law where doctrines of legal uniformity, liberal individualism and religious tolerance have a prominent place.¹ A uniform legal framework is provided for all residents of the state, even the non citizens. This is what has been named the territoriality model,² which however allows in practice certain variations and exceptions. Nevertheless, the embodiment of the rhetoric of legal uniformity and the assumption that law is conceptually (and morally) inextricably linked to the state, which reflects the dominant position in mainstream legal theories,³ ignores the fact that various legal orders other than the state have always been dispersed across the social spectrum and within the boundaries of a state's jurisdiction. The measuring of the law by this western perception of legality does not make these legal orders disappear but it instead results in their identification as minority legal orders which are under this "minority" prism adjusted, operationalized and reconstructed.

Drawing upon Maleiha Malik's definition of 'minority legal orders' I consider the Mufti office of Komotini as a basic agent around which an Islamic minority legal order operates and develops. I take Maleiha Malik's definition to consider minority legal orders as forms of normative social regulation that exercise authority over the lives of individuals, yet are distinct to the state regulations and "subordinate" in the light of the dominance of the state legal orders in terms of political power. This does not mean that they enjoy less authority and legitimacy across the individuals or communities that submit to them.⁴ The very existence of minority legal orders, be it religious or of other basis, undermines the basic assertion of official law as an idealised uniform legal control mechanism.⁵

Looking at the accommodation of Islamic law in Greece, this paper wishes to evaluate the challenge of modern legality by the minority orders dispersed across a state's jurisdiction exploring how a particular minority legal order operates and interacts with state law within an allegedly unitary secular legal system. For this purpose focusing on a unique, as regards its establishment and conditions of operation religious body, and its special jurisdiction in divorce cases, I will discuss the accommodation of Islamic family law in Greece as a minority legal order officially endorsed by the state evaluating in particular the actual degree of state recognition.

¹ Young M.I. (1995). 'Together in Difference: Transforming the Logic of Group Political Conflict', in Kymlicka W. (ed), *The rights of minority cultures*. Oxford:Oxford University Press, at 162.

² Sack, P. (1986). 'Legal pluralism: Introductory comments', in Sack, P and Minchin E.(eds) *Legal pluralism*. Proceedings of the Canberra Law Workshop VII. Canberra: Research School of Social Sciences, Australian National University, 1-16, at 5.

³ Melissaris E.(2009). *Ubiquitous law: legal theory and the space for legal pluralism*. Aldershot: Ashgate, at 23

⁴ Malik M. (2012). *Minority Legal Orders in the UK: Minorities, Pluralism and the Law*. London: The British Academy, at 5.

⁵ Menski W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge: Cambridge University Press, at 62.

My analysis sets off with the dominant European position of separation of religion and state and a short account of the Greek particularities with regard to the law and religion relation. Looking at the special jurisdiction of the Mufti's on family law matters and particularly Islamic divorce I will further examine the extent and input of Islamic law, the 'institutionalization' of the religious order and the degree of its interaction with state law in order to finally evaluate its accommodation within the Greek legal system.

Minority legal orders in a less secular place

The Ideal of Separation

Allegedly 'secularized' laws around Europe have been dominated by the popular idea of the separation of religion and state, and therefore religion and law, a doctrine which seeks to confine religion to the "private" realm.⁶ It is a common assertion of modern European democracies that state and consequently the law, allegedly separated from religion, is colour-blind⁷ and thus it assumes everyone's moral and political equality. Yet, the increasing presence of a Muslim population is a salutary reminder of the limits of the liberal state when it comes to recognising the views and values of 'others'.⁸ Despite the alleged segregation of law and religion, law is unavoidably influenced by ethical and religious concepts.⁹ Be it The Church of England or the Eastern Orthodox Church of Christ, the establishment of a state church and a dominant religion, shows there is something suspiciously religious at the very core of many European member states, despite secular claims. The separation of religion and state remains an ideal for many European states, not less for Greece.

Greek special arrangements

In contemporary Greece, religion is still closely interrelated to national ideology. The concept of Greek national inevitably coincides with the image of the Greek-speaking Orthodox Christian. This is also reflected in the absolute restriction on non adherents to the Greek Orthodox dogma to be appointed as President of the Hellenic Republic. The Greek Orthodox Church, organized as a national autocephalous Church, is a crucial component of the Greek nation, often claiming the role of the guardian of Greek national identity. As Polychroniou has noted the existence of prevailing religion as an inextricable part of national identity makes the "visibility" of heterodox beliefs problematic and requires people of different beliefs to keep their "difference" invisible not only in the public but in the private as well domain.¹⁰ Yet, there is one exception to that imposed "invisibility" and that is the case of Thracian Muslims.

⁶ Shah, P. (2007). 'Introduction: Socio-Legal Perspectives on Ethnic Diversity', in Shah, P. (ed), Law and Ethnic Plurality, Socio-Legal Perspectives. Leiden, Boston: Martinus Nijhoff Publishers, at 2

⁷ The colour-blind approach, launched (or at least deemed to be launched) by the Brown v. Board of Education American Supreme Court Decision which ruled against the segregated educational facilities for black and white children saw the equal but separate treatment as racial injustice.

⁸ Menski W. (2006). *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge: Cambridge University Press, at 5.

⁹ Shah, P. *supra* note 6 at 2

¹⁰ Papapolichroniou S. (2008). 'The interpretative Pluralism as a condition for the incorporation of minority rights in law: the example of religious minorities in Greece and the "prevailing" religion', in Christopoulos D. (ed), *The Unconfessed Issue of minorities within the Greek Legal Order*. Athens: Krtitki/KEMO, at 98-99 (in Greek)

The autochthonous Muslim minority of the Western Thrace¹¹ was the community that was exempted from the 1923 Greek-Turkish exchange of population¹² and allowed to stay in the Greek territory while being awarded according to the Treaty of Lausanne a respectable status of minority protection. The minority is officially defined on religious terms and its members are awarded protection primarily as members of a religious community and not as individuals.¹³ The members of the minority of the Western Thrace are exempted - on an optional or compulsory basis (positions vary in Greek legal theory and jurisprudence) - from the jurisdiction of Greek courts with regard to their inheritance and family law matters, and instead, they are subjected to the jurisdiction of the Mufti. The Mufti's initial role as divine interpreter of Islamic law, a legacy from the Ottoman Empire, has been fused with the function of the ottoman *kadi* that is that of a judge.¹⁴

Along the Mufti's numerous religious and social tasks, Greek law explicitly recognizes the Mufti's judicial competence to adjudicate in private disputes of inheritance and family matters such as marriages, divorces, personal relations of the spouses, family ties, etc of Muslim citizens, mainly the Muslims belonging to the minority of Western Thrace, and apply Islamic law. In practice in family law, the Mufti performs a wide range of tasks varying from issuance of marriage licenses¹⁵, and solemnization of marriages to mediating and adjudicating on issues of maintenance, children custody and appointment of guardian, the latter yet being questioned by the courts, despite previous recognition of competence.

Operating an Islamic minority legal order, The Mufti office of Komotini; the case of Islamic divorce

Mediation and Deliberation

The Mufti of Komotini, like the other two established Mufti offices in Greece, is in fact a religious institution that interprets and applies a body of religious 'law', a religious order, a set of norms that are binding on adherents. Among the bulk of cases

¹¹ While Turkey considers this minority a homogenous Turkish minority, see Tsitselikis K. (2012). *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Volume 5 of Studies in International Minority and Group Rights. Martinus Nijhoff Publishers, at 102

Greek trends divides it in three ethnic sub-groups, See Article on Greek Ministry of Foreign Affairs' Website *Issues of Greek- Turkish relations* (in Greek) at <http://www.mfa.gr/zitimata-ellinotourkikon-sheseon/> (last accessed 1-4-2013). It should be noted that such trichotomy is not mentioned in the English version of the article available here <http://www.mfa.gr/en/issues-of-greek-turkish-relations/> (last accessed 1-4-2013) claiming that ethnic Turks do not exceed 50 per cent of the population. For a significant part of the minority the terms of the self-identification are indeed national rather than religious as the members of the minority have been gradually nationalized and identify themselves with their kin-state, namely Turkey.

¹² For an overall appraisal of the population exchange see Hirschon R. (ed) (2004). *Crossing the Aegean : an appraisal of the 1923 compulsory population exchange between Greece and Turkey*. New York, Oxford: Berghahn, as well as Tsitselikis K.(ed) (2006), *The Turkish-Greek exchange of population, Aspects of a national conflict*. Athens: Kritiki/KEMO (in Greek)

¹³ Tsitselikis K., Christopoulos D. (2008). 'From the multicultural "great dream of Hellenism" of the beginning of 20th century to the "multicultural reality" of the beginning of 21st century', in Christopoulos D. (ed), *The Unconfessed Issue of minorities within the Greek Legal Order*. Athens: Kritiki/KEMO, at 36 (in Greek)

¹⁴ Soltaridis S. (1997). *The history of the mufti offices of Western Thrace*. Athens: Nea Synora-A.A.Livani, at 72 (in Greek); Ktistakis Y. (2006). *Sacred Islamic Law and Muslim Greek citizens*, Athens-Thessaloniki: Sakkoulas, at 32 (in Greek)

¹⁵ The Mufti possesses the power to issue the required by Article 1368 of Greek Civil Code marriage license and to perform the solemnization of a marriage as a religious minister under Art 1367 of Greek Civil Code and, therefore, there is a requirement that the ritual and rules of Islamic law applied should not conflict with public order.

handled by the religious body the most common matter is divorce.¹⁶ Despite the contractual character of marriage and divorce in Islam which do not require the recourse to a judge, a judge may intervene either to encourage a husband to divorce his wife or to dissolve a marriage deemed beyond repair.¹⁷ Islamic law permits divorce but as last resort.¹⁸ As divorce is seen as the “most abominable of permissible acts”,¹⁹ efforts to conciliate the parties and “save” or repair the marriage should precede a dissolution of the marriage. Therefore for the Mufti mediation is a preliminary step in every process.

The majority of divorce cases concern judicial dissolution *fesh-i Nikah*, in Ottoman Turkish, *faskh*, in Arabic, or divorce initiated by the wife at the expense of giving up her *mahr* (*Khul*). If there is no agreement on the divorce the Mufti would postpone the decision/deliberation of the dissolution to another hearing in order to achieve *musalaha* that is reconciliation between the spouses. *Musalaha* ends divorce procedures preserving the marriage. Mediation and reconciliation attempts are necessary in order to establish the seriousness and validity of divorce request before granting a divorce.

In many cases the spouses approach the Mufti having already decided to resolve the marriage. If *musalaha* is not possible as disagreement between the spouses is unbridgeable and the breakdown of the marriage irretrievable, the Mufti confirms the already agreed between the spouses divorce. The Mufti’s decision includes the terms agreed. Such terms vary from conditions on behalf of the wife to forego her *mahr*, to conditions on the husband to make payments in restitution of the wife’s waiving of her *mahr* and maintenance rights during the *iddat* period, as well as agreement on the custody of the children. The Mufti would also issue a talaq certificate when the husband seeks the divorce who is then obliged to pay the wife the *mahr*. A mere talaq enunciation of the husband will be of no legal validity in Greek law, as only decisions of the Mufti ratified by the First Instance Court produce legal results.²⁰

Performing an Islamic duty while keeping Interaction with the state

In handling divorce cases submitted before it the religious body seems to operate as an ‘internal regulatory framework’²¹ where Muslim individual problems are resolved within an Islamic framework of dispute resolution. Cases brought before the Mufti demonstrates an underlying understanding of an Islamic duty in supporting Muslims experiencing family problems. In effect what the Mufti does is that he combines open-ended advice and mediation sessions with formal deliberations on cases. More often than not, the Mufti draws parallels between the religious body’s practice and courts rules on divorce procedures, such as the freedom the parties enjoy in determining their

¹⁶ Unless otherwise specified, information derives from fieldwork carried out in the Mufti office of Komotini between 2012 and spring 2013.

¹⁷ Bowen J. R. (2011). “How Could English Courts Recognize Shariah?”, *St. Thomas Law Review*, 7: 3, 411–35, at 415

¹⁸ Baderin M. A. (2005). *International Human Rights and Islamic Law*, New York: Oxford University Press, at 151

¹⁹ Ahsan M. (1994). “The Muslim Family in Britain”, in King M. (ed), *God’s Law versus State Law, The Construction of an Islamic Identity in Western Europe*. London: Grey Seal, at 24.

²⁰ Such cases of unilateral pronouncements of talaq are rare, see Ktistakis Y. (2006). *Sacred Islamic Law and Muslim Greek citizens*, Athens-Thessaloniki: Sakkoulas, at 58- 65. (in Greek)

²¹ I borrow the phrase from the discussion on the function of Shari’a Councils in the UK in Pearl D. and Menski W. (1998). *Muslim Family Law*, 3rd edition, London: Sweet & Maxwell, at 396

own terms in a mutual consent divorce. In one case that a civil court remitted to the Mufti because it considered the Mufti's jurisdiction obligatory for Thracian Muslims, the Mufti adopted a solution which was provided by the Civil Code in a large interpretation of the shari'a law.²²

While the Mufti office emphasizes the practicality of its procedures and the safety felt by the parties in closed proceedings when family matters are resolved as opposed to the open courts, the religious body often shares a similar logic with family courts as elements such as the couple's prior separation or an irretrievable breakdown of the marriage are considered. Divergence from mainstream legal procedures is therefore not great. However procedures before the Mufti are admittedly not as predefined as in court procedures, there is much more flexibility and adaptation to the circumstances of the case.

The beneficiaries

An examination of divorce cases before the Mufti demonstrates that the individuals subjected to the jurisdiction of the Mufti according to the Greek legislation do not necessarily coincide with the beneficiaries of the services of the Mufti of Komotini. Despite the exclusion of non Greeks from the jurisdiction of the Mufti according to law and jurisprudence,²³ there are many non Greek Muslims that appeal to the jurisdiction of the Mufti, mainly for a religious divorce, and not in few cases the Greek courts have ratified such decisions.²⁴ There are of course those Thracian minority individuals that do not wish to abide with a religious order and thus perform civil marriages and then take any family matters that may arise to civil courts.

This reality reveals that despite being an officially recognised and endorsed by the state institution, for the Mufti and for a significant part of the individuals appealing to him, the Mufti derives its authority mainly from its religious affiliation and less from the state.²⁵ The Mufti's authority extends only to those who choose to appeal to him. While the Mufti's decision needs to go through the probate of the civil courts in order to produce legal results, there will be not any practical enforcement if the parties do not decide to comply with the decision and implement it. Thus any decision reached relies on the goodwill of the parties to agree to follow and implement. Sometimes the parties may not be interested at all in ratifying the decision of the Mufti before the Greek courts. As Soltaridis in the 90's reported, in practice very few divorce decisions

²² First Instance Court of Komotini 146/2002 and Mufti of Komotini Decision 21/2002. A case of custody of a minor, in which the Mufti did order the mother to undertake the custody instead of the father, not taking into account the particular rules of classical jurisprudence that rule custody on the basis of age and which the Mufti usually considers.

²³ See also Decision of deputy Minister of Internal Affairs, Public Administration and Decentralization F.97920/20138/31.10.2003 adopting the Legal Opinion 347/7.10.2003 of the Legal Council of the State (3d Section) [Nomokanonika 2005/2: 153]. According to the Ministerial decision - which remained in force a few weeks - the solemnization of a marriage before the Mufti regarding Muslims residing out of Thrace, between a Muslim and a non-Muslim, or between alien Muslims, would not be recognized by the state as legal. (*Note: Ministry of Internal Affairs, Public Administration and Decentralization is the full official name used for the Greek Ministry of the Interior. Here in shall be referred as Ministry of the Interior*)

²⁴ See i.e. First Instance Court of Rhodopi Decision No 296/2002 (unreported)

²⁵ Contrary to what is the dominant view of exclusive and compulsory jurisdiction, courts have started ruling on family matters of Muslims. See for instance First Instance Court of Rodopi (9/2008) To accept that Mufti's jurisdiction is compulsory amounts to a discriminative division between Greek citizens on religious grounds and an interference with freedom of expression and religious freedom.

of the Mufti are submitted to the First Instance Court· the majority of them may only be found in the registrar of the Mufti office.²⁶

A Separate Normative order, a Personal law system or an exceptional case?

Though in Europe, there is a tendency to treat personal laws as medieval institutions, Greece applies in practice a form of personal law system what Tsitselikis has named *neo-millet*.²⁷ The model of personal laws recognizes and accepts the application of a number of parallel legal systems in the field of family law, establishing an official legal pluralism.²⁸ It combines a uniform law with parallel personal laws. Yet, Greece is not an example of a genuine personal law system. Greece subjects only a group of Muslims to this system; the Muslims of the minority of the Western Thrace, rarely allowing its application to other Greek Muslims outside Thrace, excluding in any case Non-citizen Muslims which are to be ruled under the uniform state law. The state's special recognition is thus reserved only for groups perceived in specific minority terms and as the state decides which groups form a minority or not,²⁹ these personal laws are practically applicable in the very exceptional case of the Muslims of Thrace. This institutional choice of the Greek state reflects a fusion of the dominant in Europe model of territorial law with the system of personal laws.

Within this hybrid personal law system, the Mufti, an official institution of the Greek state,³⁰ operates as a special court of exceptional jurisdiction. This *sui generis* judicial system, inherited by the ottoman millet system and stemming from minority protection framework resulting from international treaties, provides an increased level of autonomy for the operation of the minority legal order. By recognising, at first place, the application of a parallel judicial system, the state shows commitment to respect and endorse this autonomy. However, the requirement that the Mufti's decision shall go through the civil courts' probate in order to produce legal results admittedly limits what at first appears as an extensive delegated autonomy. This may well be considered as a clear interference with the autonomy of the minority legal order and taken together with the appointment of the Mufti by the Greek state questions the recognition of Islamic law as a separate normative order.³¹ In the past decade the state has often claimed its right to pick and choose which issues do or do not conform to its allegedly liberal norms and implement a policy of severance.³² This

²⁶ Soltaridis S. (1997). *The history of the mufti offices of Western Thrace*. Athens: Nea Synora-A.A.Livani, at 183 (in Greek)

²⁷ see Tsitselikis K. (2004), 'Personal Status of Greece's Muslims: A Legal Anachronism or an Example of Applied Multiculturalism?', in Aluffi Beck-Peccoz R. and Zincone G. (eds), *The legal treatment of Islamic minorities in Europe*, Dudley : Peeters, at 130 and Tsitselikis K. (2012). *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Volume 5 of Studies in International Minority and Group Rights. Martinus Nijhoff Publishers, at 411 and 536

²⁸ This model of personal laws applied for centuries by the ottoman administration (*millet system*) and followed today by several states in Asia and Africa.

²⁹ The Muslim Minority of Thrace is the only officially recognized minority in Greece.

³⁰ The Mufti himself is a public servant.

³¹ The dispute that has arisen between the minority and the state over the appointment of the Mufti has to some extent affected the spiritual relationship between the Mufti and the local Muslims. Yet this is not to say that Muslims of the minority of Western Thrace do not appeal to the Mufti to solve their family disputes.

³² See Secretary General, Ministry of the Interior, Circular 21/20.09.2002, according to which marriage by proxy - through authorization as well as polygamy were deemed contradictory to public policy; as such, relevant legal acts conducted by the Muftis would be considered null and void and not subject to registration. Besides the personal law system the state applies to some extent what Maleika Malik has labeled as cultural voluntarism: a model of accommodation of the minority legal orders which allows them to function while the state reserves the right to

is demonstrated in some recent civil courts' judgments that excluded the Mufti's jurisdiction when the application of shari'a is considered to contradict basic human rights.³³

Conclusion

While in Europe, there is an apparent uneasiness with considering Islamic law as a well established field, even more to consider that for many people allegiance to it is not negotiable, in Greece an Islamic legal order is officially recognised and endorsed. This recognition is more than the usual reconstruction of religion as rights of worship and performance of ritual placed by the liberal state in rank order with all other rights, and obligations.³⁴ It means the accommodation of a hybrid personal law system along an allegedly unitary state law which allows the operation of an Islamic minority order. While the institution of the Mufti has been embodied in the state, it still maintains a broad autonomy that allows for a privatised space within which mainly matrimonial disputes are resolved. The Mufti, as a mechanism that operates, administers and enforces a religious minority legal order, pays a significant service to the preservation of a 'beleaguered' faith of a heterodox community in a non Muslim country while at the same time it offers alternate dispute resolution processes with limited state involvement. This does not however mean that there is no interaction and contact with the state and its law.

While the Mufti's operation reflects significantly a communal millet system, the Islamic legal order that the institution was deemed to preserve is reformed and reconstructed along its interaction with state law and the transformations of the Muslim local and non local community. Minority legal orders operation is thus significantly helpful in understanding that our allegedly homogenous established 'polities' are not threatened by the accommodation or the mere recognition of the existence of different legal orders. The Greek case also demonstrates that the mere recognition of a personal law system does not mean clinging on some unchanged religious norms and rigid dividing lines but rather a combination, adaptation, re-organization and reconstruction of different normative orders of, otherwise law abiding, individuals, orders that stem from and end in a rich plurality.

interfere when it deems right to protect 'liberal public policy principles', See Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law*. (London: The British Academy, 2012) at 6 & 39-44

³³ Such judgments clearly contradict positions expressed in past rulings of Greek courts. See for example Ruling 38/1989 of the Judicial Council of Xanthi reported in Mekos Z. (1991), *The competences of the Mufti and the greek legislation*, Athens-Komotini: Ant. N. Sakkoulas, at 89-92 and Ruling 14/1995 Judicial Council of Xanthi, Yperaspisi 1996, at 1335. (in Greek) where the Judicial Councils considered that the Qur'anic injunctions in conjunction with the regulatory provisions concerning the Mufti's jurisdiction superseded civil code's provisions. Such reasoning seems to rely on the idea that such provisions envisage a separate legal order enacted pursuant to international treaties which supersede any other provisions of domestic law. According to Article 28 of the Greek Constitution provisions of international treaties after being ratified by the parliament prevail over any other contrary provision of the law. The Greek Constitution (English version), available from the Greek Parliament website <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> (last accessed 25/4/2013)

³⁴ King M. (1994). *The Muslim Identity in a Secular World*, in King M. (ed), *God's Law versus State Law, The Construction of an Islamic Identity in Western Europe*, London: Grey Seal, at 108-110.

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