Islamic law in Western Thrace: An anachronism or a requisite solution?

by Fatih Alev, stud.mag.

In his book, *To be a European Muslim*, Tariq Ramadan assesses the circumstances for Muslims living in Europe by stating:

> "Muslims can freely practise their religion (the totality of the *´ibâdât* and a part of the *mu´âmalât*); the laws generally protect their rights as citizens or residents as well as believers belonging to a minority religion; they are also free to speak about Islam and to organise religious, social or cultural activities and nothing prevents Muslims from being involved in society or participating in social life…". (Ramadan, 1999:138)

While this is the situation in most cases, the issue of Islamic family law is now and then being discussed in EU-member countries with significant Muslim populations of immigrant background. Certain Muslim organizations and religious leaders are occasionally vocal of the need for a formal body that can resolve legal matters on the basis of Islamic law in the areas of, among others, marriage, divorce and inheritance. The critics often object to these proposals referring to secular principles and the importance of a common legal framework that encompasses all citizens regardless of ethnicity, religious conviction etc. Muslims in the United Kingdom have recently and so far, in conformity with the Arbitration Act of 1996, been successful in founding a private institution which provides legal mediation in accordance with Islamic family law.

The UK is, however, not the first EU member nation that has facilitated an alternative jurisdiction for its Muslim citizens. In the northeast of Greece, a religious minority, Muslims of Western Thrace have - since the Lausanne Treaty of 1923 - enjoyed the right to solve their legal issues through their *mufti*s.[1] There are two

[1] Western Thrace or simply Thrace is located between the Nestos and Evros. Together with the regions of Macedonia and Epirus, it is often referred to informally as northern Greece. It is also called Greek Thrace to distinguish it from Eastern Thrace, which lies east of the river Evros and forms the European part of Turkey, and the area to the north, in Bulgaria, known as Northern Thrace.
Thrace is divided into the three peripheral units (former prefectures): Xanthi, Rhodope and Evros, which together with the Macedonian peripheral units of Drama, Kavala and Thasos form the East Macedonia and Thrace Periphery.

jurisdictions, one based on Islamic Law and the other on civil Greek Code. This, in EU context, rather unique system of "concurrent jurisdiction" is today subject to debate among a number of Greek legal experts and human rights advocates.

Historical background

The mufti and the qâdi

In the Ottoman legal system there were two main authorities: The *mufti* (scholar in law) and the *qâdi* (the judge). The *mufti* was asked to respond to a given problem, and his response (called a *fatwâ*) could then be taken to court by the plaintiff or the defendant and presented to the *qâdi* as a legal opinion that could count in favour of either of the parties (Vikør, 2005). After the Greek annexation of Ottoman territories in 1881, the Greek authorities decided that the functions of the *mufti* and the *qâdi* henceforth should be taken care of by the "new" *mufti*. In other words the *mufti* was from now on both a scholar giving the fatwa and a judge bringing his opinion into effect. Later in the same year the office of the *mufti* was given an additional role when the Treaty of Constantinople was signed: He was now also a religious leader of the Muslim community (Tsitselikis, 2004a).

The Treaty of Lausanne: Population exchange and exemption

After the Turkish War of Independence (1919-1922), on July 24 1923, the Treaty of Lausanne was signed by The British Empire, France, Italy, Japan, Greece, Romania and the Serb-Croat-Slovene state on the one side and Turkey on the other. In effect the treaty was a bi-lateral agreement between Greece and Turkey. According to the treaty, Greek-Orthodox residents of Istanbul should be exchanged with Muslim residents in Grece.

Thousands of Greeks and Muslims of Turkish origin had to leave their territories which had been their lands for centuries. However, about 110,000 Muslims of Western Thrace and Greek-Orthodox of Istanbul were exempted from the population exchange. Before the Treaty of Lausanne, treaties of 1830, 1881 and 1913 between Greece and the Ottoman state imposed international obligations on Greece with regard to its Muslim minority population. Today the treaty of Lau-

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The region had been under the rule of the Ottoman Empire since 14th century and till the 19th century. Before the Balkan Wars of 1912–1913, Thrace had a mixed population of Turks and Bulgarians, with a strong Greek element in the cities and the Aegean Sea littoral. A smaller number of Pomaks, Jews, Armenians and Roma also lived in the region.
The author visited the area and talked to people there in the summer 2002.

sanne is the main legal document which regulates the minority rights of Muslims of Western Thrace (Tsitselikis, 2004a).

Village mosque outside Komotini (Gümülcine)

The "Hundredandfiftyers"

The Treaty of Lausanne also included a list of 150 *personae non gratae* (the so-called *Yüzellilikler*, "Hundredandfiftyers"). These were leading pro-Ottomans known to be oppositional to the ruling elite of the newly emerged Turkish Republic. They were regarded as a threat by the Republic and were expelled to neighbouring countries. Thirteen of these settled in Western Thrace. Most remarkable among the expelled "Ottomans" was the former *Şeyhülislam* (Sheikh ul-Islam, the chief *mufti* of the Ottoman state), Mustafa Sabri Efendi. He was known to be a harsh critic of the Republic. He settled in İskeçe (in Greek: Xhanti) and wrote regularly in two newspapers, *Yarın* (Tomorrow) and *Peyam-ı İslam* (Islamic News). He was extremely offensive towards the reforms that were undertaken by the Turkish Republic which he regarded as a betrayal of Islam. Ultimately, as a result of growing pressure from Turkey, the Greek government expelled Mustafa Sabri Efendi and other critics from Western Thrace in 1931[2].

Already during the Ottoman Era the Muslim population in Western Thrace was relatively more conscious of their traditions and was protected against the influence of Western culture and ideas. It is very likely that these few Ottoman intellectuals played an important role in the maintaining and reinforcing of a primarily

[2] http://azinlikca.blogspot.com/2009/02/bat-trakyada-150likler-i.html (in Turkish)

Muslim identity in the population. These factors may presumably explain why the Greek government refused to accommodate Turkey's suggestion that Islamic Law in Western Thrace should be abolished. As it is referred to from "Sharia and Muslim Greek Citizens" by Yannis Ktiskatis:"…Turkey abolished in 1926 the sharia and asked Greece to do likewise in 1931, but Greece refused to do so for its 'Turkish minority'" (Greek Helsinki Monitor, 2006:38). The likelihood of a much stronger opposition from the Muslims of Western Thrace than had been seen in Turkey probably caused the Greek authorities to refrain from making any changes to the minority rights of the Muslims.

"Neo-millet" system in contemporary Greece

In the Ottoman *millet* system religious minorities would form their own *millet* communities that could regulate their own affairs, including legal matters, internally according to their own rules. This system was completely abolished in Turkey in 1926, despite the provisions of the Lausanne Treaty which clearly stated that the two countries "ought to adopt measures so as to ensure that all matters pertaining to the personal status of the minorities would be resolved in accordance with their religious customs" (Tsaoussi, 2008:211). In order to do so the minorities were asked to consent to the repeal of their special status, which they apparently did. However A. Bedermacher-Gerousis claims "that the consent of the minority was null and void and thus Turkey acted in violation of the international obligation arising out of the Convention of Lausanne." (Tsaoussi, 2008: 212, note 9)

What seems to be a remarkable paradox is that Turkey with its predominantly Muslim population has abolished the millet system, whereas Greece as a Greek-Orthodox nation has chosen to preserve it in Western Thrace. With Tsitselikis' words:

> "The legal regulation of Muslims' personal status according to the shari´a in Thrace transforms the old fashion *millet* into an enclave of post-modern religious society, creating in effect a "neo-millet", in which Greek civil law has a secondary force." (2004b:130)

The appointed and elected *mufti*

There are two *mufti*s appointed by the Greek government, one in Komotini (in Turkish: Gümülcine) and the other in Xhanti (in Turkish: İskeçe), and one deputy *mufti* in Didimotiho (in Turkish: Dimetoka). The appointment of the two *mufti*s in

1991 has caused immense opposition from the Muslim minority. They in turn have elected their own *mufti*s in both cities. The elected *mufti*s do not have an official status and have been prosecuted and occasionally imprisoned by the Greek state for some years until both cases were brought in the European Court of Human Rights of Strasbourg alleging violation of article 9 of the European Convention on Human Rights. The court found that article 9 had been violated by the Greek state and that the elected *mufti*s should not be prosecuted. (Tsitselikis, 2004a,b).

Appointed Mufti of Komotini (Gümülcine), Cemali Meco (right)

Iris Boussiakou offers this explanation for the resistance of the Muslims: "…many members of the minority feel that a Christian government should not choose the religious leader of the Muslim minority." (2008:12). Thus today both cities have two *mufti*s, one who is appointed with official duties and another who has been elected by the Muslim minority without official duties, but who in the eyes of the Muslims is a religious and cultural representative of the community.

Duties of the *mufti*

The *mufti* is in effect functioning as a judge. He can make decisions in matters pertaining marriage, divorce, pensions, alimony, emancipation of minors and custody. (Tsitselikis, 2004a)

In addition, the *mufti* is in charge of collecting the *zakât* (obligatory charity):

"According to Islamic law and tradition, the *mufti* has the duty to implement the *zekaat* (charity action) in order to guarantee the minimum standards of livelihood for the poorest members of the community. Thus, the *mufti* takes the initiative to organize the *zekaat* aiming at gathering of money from the wealthier members of the community and its redistribution to the poorest ones." (Tsitselikis, 2004b:112)

Elected Mufti of Komotini (Gümülcine), Ibrahim Serif (sitting)

Islamic jurisdiction – voluntary or obligatory?

Formally in the legal areas mentioned above the Muslims are free to choose either the civil court or the *mufti*'s office. However, "In practice the *mufti*'s jurisdiction has become obligatory…" since "…Muslim women are entrapped by social dynamics: in case of recourse to the Greek civil court they would be seen as of least loyalty towards the minority." (Tsitselikis, 2004b:112-113)

The presumption above is shared by almost all researchers in the field of Islamic law in Western Thrace. This could also be interpreted the other way around: If the values of a minority sociologically are assumed to be carried forward by women, they would not necessarily have a highly individualistic desire to solve their matter at any expense i.e. at the court of "the Christians" as many Muslims commonly regard the civil court. Surely there are exceptions, but the assumption that women altogether would have preferred the civil court were they not socially expected to choose the *mufti*, seems to be generalizing. The women's own religious conviction and dedication to religious principles is a parameter that also needs to be taken into consideration.

On the other hand, according to Dia Anagnostou "The *Mufti*'s decisions do not reflect a strict application of Islamic theological principles (*sharia*) to family disputes but also involve consideration of civil law principles which with time have blended with what is locally considered socially acceptable and legitimate." (1997:24)

Furthermore, a new trend can be spotted among the Muslims of Western Thrace: In inheritance disputes and in division of family property in case of a divorce, the two parties will first try to reach an agreement through the *Mufti*'s mediation. If that does not bring about a satisfactory solution to both parties, then they will take the case to the Civil Court. "Most Muslims now consistently appeal to civil courts in order to settle inheritance disputes, which have gradually come under the scrutiny of the civil judge and in the domain of civil jurisdiction." (Anagnostou, 1997:24)

The control mechanism of the Civil Court

The Civil Court is in charge of controlling the limits of the jurisdiction of the *mufti*'s decision without looking into the merits of the case. In case the *mufti*'s decision is appealed by a Muslim to the Civil Court, only the application of the decision will be controlled. Moreover, the constitutionality of the *mufti*'s decision is controlled by the Civil Court and the Court of Appeal. (Tsitselikis, 2004a)

However, "…in case that the civil court intends to control the constitutionality of the *Mufti*'s decision, the civil judge is not aware of the content of the Islamic law rules and therefore unable to consider it." (Tsitselikis, 2004a:104)

This could constitute a problem, since the requirement of the gender equality provisions of the ECHR (European Convention on Human Rights) seems not to be in harmony with certain parts of Islamic family and inheritance law.

According to Eleni Zervogianni recent statistical data show that since 1991 only 11 cases out of 2,679 have been found unconstitutional. In her view "it is obvious that Greek judges do not really look into the substance of the decision in order to decide on their unconstitutionality." (Tsaoussi, 2008:119-220)

Although the jurisdiction of the *mufti* formally is under control by the Civil Court and the Court of Appeal, in practice this control mechanism only exceptionally interferes with the decisions of the *mufti*.

Unwritten law

One obvious reason why the judges of the Civil Court are not easily acquainted with Islamic law according to the Hanafi school of thought (which is the school almost all Muslims in Western Thrace follow) is the fact that the applied law is not a written one. It hasn't been standardized or codified. Unlike the tradition in Ottoman times where the *mufti* gave his opinion (*fatwâ*) on matters and the *qâdi* was utilizing both the diverse rules of the *sharî´a* and the *qânun* which was a specific set of rules decreed by the Sultan, the "new" *mufti* of Western Thrace issues only a *fatwâ* and has not any authoritative text as a supplement, issued by an "Islamically" recognized political authority.

On the other hand, there are apparently different approaches to the status of the *mufti*. The Muslims of Western Thrace often, in objection to the term 'courts' claim that the *Mufti* does not try cases in the conventional and civil sense of the term but his role is mainly consultative and compromising (Anagnostou, 1997:25)

"Concurrent jurisdiction" – a model to be revised?

The U.S. Department of State's Bureau of Democracy, Human Rights, and Labor states in its *2009 Human Rights Report: Greece*: "Many NGO and media reports characterized Shari'a as discriminatory against women, especially in child custody, divorce, or inheritance cases." [3] In Greece today there are critics of the present model who want it abolished or reformed. The NGOs and media are depending on the expertise of the researchers.

In the following we will look at how the main researchers in the field of Islamic law in Western Thrace have assessed the applicability and practicality of a system that is unique in Greece, the EU and elsewhere. The studies that have been benefited from in this paper have different approaches and conclusions.

The most extensive critique of the implementation of Islamic law in the domain of Greek legal system is raised by *Yannis Ktiskatis*. He states (the quotes are apparently translated from Greek and paraphrased by the authors of the parallel report) that

> "In the European continent, only Greece continues to implement the sharia for its citizens … which in the way it is interpreted and applied by Holy Courts in Western Thrace represents the most anachronistic form of modern Islam ……The study makes clear that, contrary to Greek

[3] http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136034.htm

> state claims, 'no provision of the Treaty of Lausanne (not even Article 42 para.1) makes obligatory the implementation of the sharia or the functioning of Holy Courts for the minority members'….Greek courts cannot review the merits of decisions which are based on an unwritten law that Greek judges ignore, while they are also written [the mufti decisions] in a language (Ottoman Turkish) that they cannot read, and whose translations are not always reliable" (Greek Helsinki Monitor, 2006:37-38).

After having listed several problems with the decisions made by the *mufti*s such as approval of children marriages, women's limited possibility of acquiring divorce, lack of consideration of children's best interest in custody cases, Ktiskatis concludes that due to the marriages of children Muslim divorces are five times as high as Christian divorces (Greek Helsinki Monitor, 2006:39). It has not been possible to ascertain exactly what suggestion Ktiskatis has, if any, as an alternative other than the abolition of the concurrent jurisdiction.

Another critical evaluation of the concurrent jurisdiction is offered by *Aspasia Tsaoussi* and *Eleni Zervogianni* who, on the grounds that the concurrent jurisdiction has unfortunate consequences for women, suggest that there is a better alternative.

City mosque in Komotini (Gümülcine)

They propose that Greek citizens, regardless of their religion, should turn to mediation to settle their family disputes. And they briefly explain why the mediation would work:

"we aim to illustrate that the core principles of mediation satisfy the deeper moral and religious concerns of both communities in bicultural Western Thrace. Thus, they serve and accommodate the shared values of the two competing and coexisting systems." (Tsaoussi, 2008:223)

Their point of departure is the almost similar values which the minority and majority have in common and that it would be possible to address the sensitivities of both communities in a single juris-

diction system by adopting the model of "Alternative Dispute Resolution" (ADR). This suggestion seems to combine mediational aspects of Islamic law with the secular principle which demands one jurisdiction for all citizens. They offer the following Islamic argument for a model of mediation.

> "The Quranic solution to divorce provides the most characteristic example. In Islam, divorce is permissible only when serious differences arise which cannot be resolved through reconciliation. Divorce has to be the last resort, since the Prophet (*Pbuh*) has described divorce as the most detestable of all lawful things in the sight of God. Therefore, the Qur'an exhorts the parties to make a serious attempt at reconciliation in the following order: (1) The parties must try to settle their disputes and solve their problems between themselves; (2) If they fail, two arbitrators, one from the husband's side and the other from the wife's side, should be commissioned so that the differences between the two can be settled. (3) If the arbitrators' efforts also fail, divorce may be applied."

Konstantinos Tsitselikis attempts to encapsulate the whole matter in the following:

> "Applying Islamic law within the framework of a European legal order results in some incompatibilities. In some cases, there are contradictions between individual rights and principles of equality on the one hand and religious freedom on the other." (Tsitselikis, 2004b:121-122)

It is very clear that Tsitselikis in many of his conclusions is giving high priority to balancing various interests. He states that the model as it is now not only is to the disadvantage of citizens falling under the jurisdiction of the *mufti*, but also to the authority and importance of this very Muslim institution. Then he suggests a reassessment and reform of the institution of the *mufti* with equal regard to both for the religious traditions and freedoms of Muslims, but also for the fundamental values and individual rights of the European legal order. His last suggestion is regarding the *mufti*'s qualifications in the legal area. He is suggesting that in addition to the religious education the *mufti* candidate also should have qualifications similar to those required from the rest of the judges, in order to "avoid a debasement of his role". (2004b:122)

With the following statement in his conclusive remarks Tsitselikis reveals what is in the core of his thinking, again in his typical balanced style: "What should be in consideration is the social balance between legal imposition of norms, which are alien to the minority society and avoidance of creating social ghettos." (2004b:131)

Federation of Western Thrace Turks in Europe (ABTTF,) with headquarters in Germany, has sent a parallel report to relevant authorities in the wake of the release (11 March 2010) of the *2009 Human Rights Report: Greece* by the U.S. Department of State, Bureau of Democracy, Human Rights, and Labor states.

The report responds to many of the issues regarding the Muslims in Western Thrace that have been problematized by the U.S. report. In the section concerning women the report states:

"ABTTF would like to remind that limitation of the powers of the muftis (appointed) to religious duties and abolition of recognition of Shari'a by the government would be a breach of its obligations which are derived from international treaties of which Greece is a part.

Entrance with the inscription "Alhamdulillah" (Praise be to God)

> However, this does not necessarily mean that the Turkish Minority of Western Thrace disregard any concern about the application of Shari'a in the region, which is stated in the report in detail. ABTTF would like to remind that Islamic inheritance law does have a limited application in Western Thrace, and it is not a part of tradition in the Turkish Minority."[4]

From reading the various analyses, suggestions and conclusions it is obvious that there is room for change in the system of concurrent jurisdiction, when and if it happens in respect for the customs and religious principles of the Muslims of Western Thrace. The delicate nature of the subject and the involvement of foreign nations have created a kind of a deadlock.

[4] Federation of Western Thrace Turks in Europe (2010), Parallel Report by ABTTF on the 2009 Human Right Report: Greece. Not available for public use. Report obtained by special request.

Conclusion

In the light of the question posed in the subtitle "an anachronism or a requisite solution?" a well-reflected response might be: Neither of those. Islamic law in Greece sounds like a paradox in many ears, but for the local Muslims it is everyday practice with long historical roots, much longer than the modern history of Greece. In bridging their differences and in order to eliminate prejudices, the Greek and Turkish-Muslim communities need to communicate directly with each other. The very opposite opinions aired in public will not necessarily be helpful, but they can cause progressive forces in both communities to get together and in cooperation tailor a model that fits the social and cultural environment in contemporary Western Thrace.

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