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 Didimoticho. 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.
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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. 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, 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, 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. 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.

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.

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. It is a common assertion of modern European democracies that state and consequently the law, allegedly separated from religion, is colour-blind 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’. Despite the alleged segregation of law and religion, law is unavoidably influenced by ethical and religious concepts. 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. Yet, there is one exception to that imposed ‘invisibility’ and that is the case of Thracian Muslims.

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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.
9 Shah, P. supra note 6 at 2
The autochthonous Muslim minority of the Western Thrace\textsuperscript{11} was the community that was exempted from the 1923 Greek-Turkish exchange of population\textsuperscript{12} 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.\textsuperscript{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 kâdi that is that of a judge.\textsuperscript{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 licenses\textsuperscript{15} 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

\textsuperscript{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

\textsuperscript{12} 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/ellinotourkikon-shesion/ (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.


\textsuperscript{14} 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)


\textsuperscript{16} 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. 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. Islamic law permits divorce but as last resort. As divorce is seen as the “most abominable of permissible acts”, 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, faskan, 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.

Performing an Islamic duty while keeping Interaction with the state
In handling divorce cases submitted before it the religious body seems to operates as an 'internal regulatory framework' 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.
20 Such cases of unilateral pronouncements of talaq are rare, see Kiistakis Y. (2006). Sacred Islamic Law and Muslim Greek citizens, Athens-Thessaloniki: Sakkoulas, at 58- 65. (in Greek)
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.\footnote{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.}

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.

\textit{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,\footnote{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. (\textit{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})} 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.\footnote{See i.e. First Instance Court of Rhodopi Decision No 296/2002 (unreported )} 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.\footnote{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.} 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
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.  

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, 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. 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, 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, 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. 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.

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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.

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. 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.


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