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# **Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace**

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# Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace

Iris Boussiakou #

## ABSTRACT

The status of religious freedom of the Muslim minority in Western Thrace (northern Greece) is protected according to the Treaty of Lausanne and international human rights instruments. According to the Treaty the members of the Muslim minority have the right to elect their own religious leader (Mufti) and resolve disputes of a family and personal nature based on Islamic Law. The process of the appointment of the Mufti constitutes a point of friction between the state and the minority. The institution of the Mufti has become a political issue causing tension between the state and the minority and even among the minority members themselves. On the other hand, the argument persists that the application of Islamic law in family matters within the Muslim minority quite often leads to the violation of the provisions of the Constitution and international treaties regarding the principles of equality and non-discrimination. The paper, thus examines the proposition that the present minority regime inevitably leads to the violation of the provisions of the Constitution and international human rights norms regarding the principles of equality, non-discrimination and women's rights.

Keywords: minorities; religious freedom; international human rights treaties; cultural relativism; women's rights; equality; non-discrimination.

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# **Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace**

## **1. Introduction**

The protection of the religious freedom of minorities can be found in numerous international human rights treaties described as an international standard to be followed by all states. Following the end of the World War II, several international instruments contained references to freedom of religion, regarding the principles of equality, non-discrimination, tolerance and respect for other people's religion and faith. Such instruments include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

There is no international document providing protection for religious freedom exclusively. The only such document is the UN Declaration on the Elimination of All Forms of Intolerance and Religious Discrimination, which provides for the principle of religious freedom on a universal basis to be followed by all states of the international community.

The Greek Constitution respects the right to freedom of religion for all Greek citizens according to Article 3 , which can be analysed into two parts. First, the right to worship freely, in private or in public, any religion or creed whose practice is not contrary to public order and morals and secondly, the obligation

the Greek government has in providing protection to churches, synagogues, cemeteries and other religious foundations of the minorities.<sup>1</sup> The concept of “morality” can be the subject of various interpretations depending on historical and cultural factors. Thus, it might vary in each society, since there is no international standard, which might be accepted by all religions and cultures in the world (Steiner and Alston, 1996:166-240; Donnelly, 1989:118-124; Ayala-Lasso, 1997:87-94).

The members of the Muslim minority of Western Thrace enjoy their right to freedom of religion according to the Treaty of Lausanne (“Treaty”)<sup>2</sup>. The Treaty was signed on 24 July 1923, at the end of the Greek-Turkish War between the Allied Powers and Turkey at the Lausanne Peace Conference. The Treaty of Lausanne is the only treaty, which survived at the end of the League of Nations and still binding nowadays.

The Treaty is still considered to be an international document providing explicit protection of the Greek minority in Istanbul and reciprocally for the Muslim minority in Western Thrace. Meanwhile, the Treaty of Lausanne was designed under a different philosophy at the time of the League of Nations, which

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<sup>1</sup> For a more detailed analysis on the issue of religious freedom in Greece and the relationship between religion and the state see, Pollis (1992) and “The State, the Law and Human Rights in Modern Greece, Vol. 9, *Human Rights Quarterly*, 1987.

<sup>2</sup> The Treaty of Lausanne became part of domestic law according to Legislative Decree 25/1923(FEK (official government publication (National Gazette) A’ 311/30.10.1923).

provides collective rights for the minority group as a whole. It ultimately undermines individual rights and equality for the members of the minority.<sup>3</sup>

The religious freedom of the Muslim minority provides for the “religious equality” and “freedom of religious conscience” (Naskou-Perraki, 2000:40). The members of the Muslim minority of Western Thrace aim to preserve their own culture and religion by maintaining a separate system of personal and family law.

Religion is a very important, integrated feature of the culture and tradition of the Muslim minority in Western Thrace, which defines the cultural identity of the minority and builds its internal social structure (Anagnostou, 1997:5). Therefore, as Mayer argues “confrontation with modernity includes confrontations of human rights and traditional values on religious and ideological levels” (1997:1; See also Bassam, 1994:297-293).

The strong persistence on anachronistic views and practices prevents the development of individual human rights on a universal basis within the Muslim minority. The application of Islamic law in Western Thrace is often regarded as “retrogressive and anachronistic institution” (Anagnostou, 1997:5; Stavros, 1995: 23) that impedes the social and economic development of the minority.

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<sup>3</sup> In the memorandum on the continuing validity of conventional arrangements of the inter-war period, the Secretary-General of the UN specifically excluded the regime of the minorities established by the Treaty of Lausanne from extinction due to changes of circumstances or other reasons (Rozakis, 1996:103; Georgoulis, 1993:34-36).

The application of the Islamic law in family and personal law matters within the Muslim minority tends to ignore international human rights norms. It instead follows traditional practices, which ultimately violate fundamental human rights and freedoms. It therefore becomes significant to evaluate the relationship of Islam and human rights to ensure that none of the members of the Muslim minority, especially women are being discriminated based on religious or cultural criteria contrary to human rights norms.

The paper will consider two main issues in dealing with the jurisdiction of the Mufti and the Muslim courts in Western Thrace. Firstly, we need to consider whether the Muslim courts undermine the principles of equality and non-discrimination of Muslim women, Secondly, we need to examine, whether they involve norms and assumptions, which hinder social and economic integration.

The main focus is placed on the relationship between the state and the religious freedom of the Muslim minority in relation to the application of Islamic law in personal and family law matters cases between Muslims in Western Thrace. A critical analysis is provided of the relationship between Islamic law and the principles of international human rights affecting the status and rights of women.

The paper thus, examines the proposition that the present minority regime under the Treaty of Lausanne on the one hand, it provides for the protection of the religious freedom of the Muslim minority. On the other hand, it leads to the violation of the Constitution and international human rights treaties and



documents regarding the principles of equality, non-discrimination and women's rights.

An evaluation is made of the necessity to grant religious freedom to the members of the Muslim minority *vis-a-vis* the duty to ensure respect for the principles of equality and non-discrimination for the members of the minority, especially women's rights. Sex stereotyping is also an important element impeding women's rights and is often an implicit element in Muslim religion. Thus its treatment in international law will be examined in this paper. It is essential to reach a balance between the religious rights of the minority and to ensure compliance with the Constitution and current international human rights norms.

## **2. The Appointment of the Mufti**

### *2.1. Procedure and Process of the Appointment of the Mufti*

Religious institutions within the Muslim minority of Western Thrace include religious education and the jurisdiction of the Mufti to decide cases of family and personal law matters based on Islamic Law. The study of the legal regime, which governs the position of the Mufti, brings into question a number of issues regarding the social and religious life of the Muslim minority.

The legal issues as well as their political consequences are essential points to examine. In the context of evaluating or measuring the protection provided by the Treaty of Lausanne for the religious freedom of the minority on a collective basis against the principles of equality and individual rights under international human rights law.

The institution of the Mufti developed according to the Islamic law during the Ottoman Empire and later on by the newly established Turkish state. The political and religious developments in Turkey played an important role both in the application of Islamic family law within the Muslim minority as well as in the structure of the legal framework regarding the position of the Mufti.

After the fall of the Ottoman Empire, Kemal Ataturk in the new state of Turkey made a strict separation of the state and religion by abolishing the Islamic law (Tsitselikis, 1999:275). Thus, after 1928 Islamic law was no longer applied in Turkey and the Mufti had no judicial powers but only exercised his religious duties.

The conflict between the conservative traditional Muslims (*sıdıritikoi*) and the secularist, Kemalists (*neoteristes*) Turks influenced the status of the Mufti. Thus, after 1928 Islamic law was no longer applied in Turkey and the Mufti had no judicial powers but only exercised his religious duties.

The protection of the religious freedom of the Muslim minority has been structured by a series of legislation, which started with the Treaty of

Constantinople in 1881 until the most recent Law No. 1920/1991.<sup>4</sup> The Treaty of Lausanne provides of the obligation for Greece to protect the religious identity of the Muslim minority.<sup>5</sup>

In particular, during the Lausanne Conference in 1923, at the end of the Greek-Turkish war, the prime minister of Greece, Eleftherios Venizelos did emphasise the importance for the protection of the religious traditions of the respective minorities for the peaceful and stable relations between the two states (Tsitselikis, 1999:277).

The post of the Mufti has developed into a legal and cultural institution for the minority as a form of protection for the expression of the minority's cultural and religious beliefs and values. The legal regime that provides for the Mufti nevertheless, remains one of the most controversial issues with the most potential for conflict between the minority and the Greek government and even within the minority itself.

Law No. 2345/1920 provided for the organisation and administration of the Muslim minority and the appointment of the Mufti. Despite the democratic proceedings for the appointment of the Mufti of Law No. 2345, the practice of the regime of the Ottoman Empire prevailed, thus the public authorities directly appointed the Mufti (*ibid*:287).

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<sup>4</sup> See, Treaty of Athens, 1913 (Law No. 4213/1913 (FEK A' 229/14.11.1913), Law No. 2345/1920 (FEK A' 148/1920), Treaty of Sevres, 1920 (Legislative Decree 29/1923 (FEK A' 311/1923).

<sup>5</sup> For an analysis of the respective obligations of Greece and Turkey for the protection of the religious freedom of both minorities see Georgoulis (1993: 31-36).

The minority and the state had apparently worked out a consensus situation. While not fully implementing Law No. 2345/1920 but generally respecting the spirit of the Treaty of Lausanne for the protection of the religious freedom of the Muslim minority. In this context, the state authorities would consult either the Turkish Consulate in Komotini or a Greek-Muslim MP, (*ibid*:287-88) to provide a recommendation for the appointment of a Mufti which they would nominate a candidate for the position of Mufti, which the state then confirmed in office.

In 1984 Mustafa Hussein was appointed Mufti of Komotini. In 1985 Hussein died and the Greek government appointed a Mufti, *ad interim*. When the latter resigned due to the strong reactions of the minority, a second Mufti was appointed, *ad interim* (*ibid*: 289).

Later, the President of the Republic confirmed the Mufti's post in Rodopi. On December 1990, the two independent Muslim Members of Parliament from Xanthi and Rodopi requested the state to organise the elections for the post of the Mufti in the two towns, as the law then in force provided.

However, faced with an absence of response from the authorities, the two independent MPs decided to organise elections themselves by show of hands at the mosques after the prayers. Mehmet Emin Aga was 'elected' in Xanthi, while Ibrahim Serif was 'elected' as Mufti in Rodopi (Tsitselikis, 1999:287-90; Soltaridis, 1997:178).

Four days later, the President of the Republic according to Article 44(1) of the Constitution, adopted a legislative act (*praxi nomothetikou periehomenou*) by which the manner of the appointment of the Mufti was changed. In particular, the Greek government introduced Law No. 1920/1991, which allowed the state to appoint the Mufti of the Muslim minority (Georgoulis, 1993: 61-67).

In any case, the elections that took place in 1990 in the mosques were not representative of all the members of the Muslim minority (Kottakis, 2000:95). On that day an informal committee composed of certain members of the minority organised those elections without a list of candidates, a ballot or even an election committee.

Due to the limited presence of Muslims in the mosques (Anagnostou, 1997:25), the informal nature of the election and the absence of requisite religious education of the candidates, the issue became highly political and divisive among some of the members of the minority and also between the state and the minority (Tsitselikis, 1999:325-326).

Mr Cemali told Human Rights Watch that the old law on electing the Mufti was never applied. One of the major problems is the ongoing controversy around the selection of the Mufti. Law No. 2345/1920 relating to the selection of the Mufti speaks about the election of all the Muftis. However no Mufti has been elected in Greece. In fact since 1400 in the Islamic world no Mufti was ever elected. I think that the law of 1990 is a very good one in fact. The old

system was not so good although the law was good but it was never applied. On the contrary the new law is good precisely because it is being applied.

## *2.2. The Cultural and Religious Institution of the Mufti*

Religious rights and institutions became the ground for ethnic claims and conflict not because they were violated but rather because the appointment of the Mufti adopted a symbolic dimension and became a political issue. It has recently become a “traditional habit” for the minority to elect its own religious leaders in violation of Law No. 1920/1991.<sup>6</sup>

Currently there are two Muftis in Xanthi and two in Komotini, one is appointed by the state and the other is elected by a number of Muslim activists of the minority.<sup>7</sup> The problem of the process of the appointment constitutes a source of political friction between Greece and Turkey. Consequently, the Greek government has repeatedly prosecuted the “elected” Mufti for “usurping of authority” under Article 175 and Article 176 of the Criminal Code.

An issue of political significance is the institutionalisation of certain “active” individual members of the Muslim minority within its legal and social order. The strong reaction of 1990 against the ‘appointed’ Mufti was not a direct reaction against Law No. 1920.

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<sup>6</sup> On the issue of the election of the Mufti in Islam see, Georgoulis, (1993:67).

<sup>7</sup> Human Rights Watch Report: The Turks of Western Thrace, 1 January 1999; [www.hrw.org](http://www.hrw.org), p. 9.

Such a reaction was merely expressing the frustration of certain groups, which have provided considerable influence over the religious and political hegemony over the Muslim minority (Tsitselikis, 1999:325). Differences still remain with the Muslim minority and between segments of the minority and the government over the means of the appointment of the Mufti.<sup>8</sup>

The position of the Mufti in Western Thrace made these religious leaders, targets of political interests and motives. The current legal regime of the position the Mufti allows this type of interference on an institutional basis. It may therefore be concluded that the post and process of the appointment of the Mufti adopts a political dimension. Both due to the critical position he holds within the minority both from a cultural and legal perspective.

In regard to the process of appointment of the Mufti, the Greek government claims that the Mufti is not only a religious leader but also has several administrative and legal functions. On this point, the Greek government argues that it must appoint Mufti. The argument is based on the fact that Mufti does not only perform religious duties for the Muslim minority but also performs judicial duties in family law matters. Consequently the Mufti constitutes a civil judge, and therefore the government argues that he must be appointed by the state rather than elected by the minority (Georgoulis, 1993:67).

The division within the Muslim minority on the procedure for the appointment of the Mufti seems to have a serious impact on the smooth conduct of its

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<sup>8</sup> *Supra.*

internal religious affairs. It seems that conflicting relations are fomented between members of the Muslim minority.

Some members of the minority accept the authority of the two officially appointed Muftis while others due to the political influence exercised by Turkey actively support the ‘unofficial’ Mufti.<sup>9</sup> One may assume that this provides an opportunity or chance to exercise some form of (political) control over the internal affairs of the minorities.

However, many members of the minority feel that a Christian government should not choose the religious leader of the Muslim minority. The views on this topic are divided on a political and legal level.<sup>10</sup> The Muslims of Western Thrace themselves, since 1923 until recently, never questioned the process of appointment of their religious leader merely because he was appointed by the state.

Islamic law provides that in non-Muslim states the Mufti can be appointed by the state as long as the government does not interfere in the religious duties of the Muslims. In Turkey the local prefect appoints the Mufti. The Turks, however, are not subject to the Islamic Law but they comply with the Turkish Civil Law (Soltaridis, 1997:89).

In any case, the Greek government is obliged to respect the religious rights of the Muslim minority according to the Treaty of Lausanne. As long as they do

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<sup>9</sup> U.S. State Department Reports: Greece Country Report on Human Rights Practices” *Section C: Freedom of Religion*, 1999 p. 22 (www.state.gov).

<sup>10</sup> Human Rights Watch “*supra* pp. 7-9.



not violate the principles of the Constitution and international human rights law (*ibid*:97-111).

### **3. The Duties of the Mufti**

According to the provisions of the Constitution and Law No. 1920/1991, the duties of the Mufti are both religious and civil. He functions as a religious leader of the Muslim minority through religious services and personal contact with the members of the minority. The Mufti also supervises the two religious minority schools in Western Thrace.

The institution of the Mufti as a religious leader and also his position as a civil judge poses a number of questions. The duties of the Mufti demand a certain degree of qualifications and competence. The standards for the post of Mufti vary so greatly that a candidate holding a high degree of Islamic Studies and an Imam can both be eligible for the same post. On the other hand, the Mufti also acts as a religious judge, which means he needs to have a substantial knowledge of Islamic Law.<sup>11</sup>

One can see that the criteria for applying for the position of the Mufti are both vague and general. On the one hand, the religious leader of the Muslim minority, empowered with judicial functions in his district must be a graduate of a high religious institution. On the other hand, a candidate of an inferior

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<sup>11</sup> Article 5, Law No. 1920/1991.

religious school, for example, an Imam with ten years service can equally qualify. Thus, the law itself creates serious problems in the legal status of the position of the Mufti.

It would seem reasonable to assume that wherever there are a substantial number of Muslim-Greek citizens, for the state to provide for the peaceful and effective exercise and enjoyment of their religious rights and duties. The Muslim-Greek citizens, who live permanently outside of Western Thrace (almost twenty five percent of the minority lives in Athens, Thessaloniki and the Dodecanese Islands)<sup>12</sup> do not have access to a Mufti (Tsitselikis, 1999:283).

In any case, those Muslims living outside Western Thrace enjoy the right to religious freedom under the Constitution and international human rights instruments, to which Greece is a party to. Similar as the rest of the Greek citizens.

#### **4. The Jurisdiction of the Civil Courts**

The members of the Muslim minority have the right to choose between the civil courts and the religious courts. The role of the Mufti primarily involves the task of reaching a satisfactory agreement or compromise between the two parties. The agreement reached by the Mufti is produced in the form of an opinion (*fetwas*) (Anagnostou, 1997:24; Georgoulis, 1993:20).

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<sup>12</sup> The Dodecanese islands were annexed by Greece according to the Treaty of Paris, 1947.

In Western Thrace, Muslims often object to the term “courts”. They claim that the Mufti does not judge in the “ordinary civil sense” of the term but his role is mainly “consultative and compromising” (Anagnostou, 1997:25). The application of Islamic law in Western Thrace is mainly based on the internal cultural and social organisation of the Muslim minority.

In order to reconcile the traditional system of legal jurisdiction of the Mufti with the basic principles of public order in Greece, Article 5(3) of the Law No. 1920, provides for an essential issue. The decisions of the Mufti cannot be enforced if they violate the provisions of the Constitution or international human rights norms. Thus, the civil courts must examine the decisions of the Mufti to ensure they are compatible with national legislation on the protection of human rights before such decisions are enforced (Tsitselikis, 1999:309).

Thus, there is a contradictory situation. On the one hand, the Greek government must respect the religious rights of the Muslim minority according to the provisions of the Treaty of Lausanne. On the other hand, Law No. 1920/1991 requires that all decisions of the Mufti to be in accordance with the Constitution, especially in regard to the principles of equality and non-discrimination.

The Treaty of Lausanne might be seen to facilitate this type of contradictory situation, since it protects the collective rights of the minority rather than the individual rights of each minority. Under current international law, however, group rights cannot violate or deny the protection of individual rights.

Article 4 of the Constitution provides for the “equality of all persons” including the members of the Muslim minority. It is not always easy to reconcile the decisions of the Mufti with current human rights norms. In particular, since the application of Islamic family law quite often entails discriminatory provisions against women, which are contrary to international human rights principles protecting women’s rights (Mayer, 1997:92).

In every democratic state, all judges must comply and abide with the principles of the Constitution. Religious rules and customs of minorities cannot be enforced in violation of the national Constitution and individual human rights in favour of collective right of a minority group. Especially if they are contrary to international law human rights law (*ibid*). In any case, since the Mufti acts as a civil judge, he must act within the constitutional limits of his position (Stavros, 1995:23).

A certain degree of cultural tolerance is necessary. For example, the decision of the Mufti should not be rejected as contrary to public order in the case of a divorce issued between Muslims for reasons not found in Greek family law.<sup>13</sup> On the other hand, practices of Islamic family law, which are incompatible with human rights norms, especially in the case of women’s rights cannot be accommodated in the Greek legal system. The application or position of Islamic family law within the Muslim minority cannot go beyond the limits of public order or national legislation.

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<sup>13</sup> Decision No. 1723/1980

The civil courts must review the decisions of the Mufti to ensure they comply with human rights norms. The absence of disregard for fundamental legal rules during the judicial process of the religious courts in Western Thrace by the Mufti violates international human rights norms. Essentially, it brings into question the compatibility of the current legal system with international human rights standards. The fundamental provisions of the Constitution should be respected at all times and by all judges in Greece. This is especially true in the case for the right to a fair trial, provided by Article 20 of the Constitution, Article 6 of the European Convention on Human Rights (ECHR) and numerous international law provisions dealing with the right to a fair trial (Tsitselikis, 1999:321; Georgoulis, 1993:36).

In the case of the decisions of the Mufti, the members of the Muslim minority do not have access to the European Court of Human Rights. Therefore, the basic principle of the right to a fair trial and the effective accessibility to the courts are seriously breached.<sup>14</sup> The reason is that the case was decided on the basis of Islamic law principles, which cannot be reviewed in a civil court. In such a way, the litigants do not have the possibility of examining and possibly reforming the decisions of the Mufti on issues of family and inheritance law. Unless they decide to have their cases heard in a civil court.

The review of the decisions of the Mufti under the provisions of the ECHR will have important consequences in relation to the content of the Islamic Law and the relative provisions of the Law No. 1920/1991. There is a conflict here

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<sup>14</sup> See, also Article 13 of the ECHR; Tsitselikis (1999:322).

between accepting a set of discriminatory rules. Such rules ultimately burden half of the Muslim minority, Muslim women and a set of measures for the protection of the minority's cultural and religious identity.

As a matter of fact what actually happens is quite unorthodox, the violation of the fundamental rules of equality between the two sexes in favour of the respect of the protection of the minority's religious distinctiveness (Tsitselikis, 1999:316-323).

Every judge must respect certain fundamental rules during the proceedings of a trial, in accordance with the principles of the Constitution and the ECHR such as the right to a fair trial and the effective means to appeal. Therefore, the Mufti should check the compatibility of his decisions. In order to ensure they are in compliance with the Constitution and the fundamental rules of international law before this is done by the Greek civil courts.

## **5. The Relationship between Islamic Law and Fundamental Human Rights**

### *5.1. Islamic Restrictions on Women's Rights in the Muslim Minority*

In traditional societies, collective bodies and institutions seem to exercise control over individual behaviour and choices (Anagnostou, 1997:63). International law provides specific standards regarding the limitations placed

on human rights protections. However, in traditional societies, the framework of rights differs from that of international law. In the sense that limitations on rights are rather vague and broad in allowing a wide discretion in restricting human rights (*ibid*:58-59). According to human rights law, a certain degree of tolerance and understanding is required in respecting religious or cultural practices. Provided, however, that fundamental international human rights and norms are not violated.

International law does not permit human rights to be restricted according to the requirements of a particular religion. The use of Islamic family law matters in Western Thrace restricts human rights according to standards that cannot be justified under international law (*ibid*:64). Islamic family law practices may conflict with current international human rights standards and norms regarding the equality of the two genders<sup>15</sup> and the protection of the dignity of all human beings.

In such instances, a conflict may arise on the aspect between minority practices, rules and policies arising out of tradition, culture or religious values and the protection of human rights, including women's rights on a universal basis.

In traditional societies and communities, religious beliefs, moral values and legal principles, which specifically regulate family and personal law matters are held in a very high esteem. They are often regarded as constituting an essential

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<sup>15</sup> For example, see Article 2(1) of the Constitution, on a regional level see Article 5 of the Seventh Protocol of the European Convention on Human Rights.

part of the distinctive culture of a group of people, something, which cannot be surrendered or abandoned easily. This could be the case when religious beliefs, legal principles and family relations are closely connected, as they are in Islamic law.

Such cultural customs and rules of behaviour of a minority group might conflict with the accepted norms of public order or morals in the society they are living in. A certain degree of tolerance and respect is required regarding the various cultural and religious traditions of minority groups. As long as fundamental human rights are violated such as gender equality, the right to education, the right to change one's religion and freedom of expression. In such cases judicial intervention might be deemed appropriate and necessary (*ibid*:92).

The fundamental position of human rights, is that all human beings are equal in worth and dignity regardless of gender, religion or race. Modern human rights law acknowledges the existence of certain group rights. It nevertheless generally provides primary protection to the right of individuals and views a person's religious and ethnic background as part of the distinct identity of the particular individual.

In contrast, the Islamic Law grants special benefits to males and disadvantages women in family disputes divorces, inheritance and child custody (Naskou-Perraki, 2000:53). For example, in a case of divorce whereby a man can simply divorce his wife in an extrajudicial manner but an equivalent right to



Muslim women is refused. Another practice in Islamic family law, which might constitute discrimination against women, exists in the law of inheritance. The general rules are that women are entitled to half the share of men (*ibid*).

The process of divorce according to Islamic law as well as the relationship between the spouses seems to discriminate against women. Especially having regard to the principle of equality and the free development of the human personality. On the issue of divorce, a husband is entitled to divorce his wife unilaterally and without showing cause and even without the need to recourse to any court or extraneous authority is clearly discriminatory, since it is not available to other spouse (*Ibid.41*). However, a wife is not entitled to a divorce, except by judicial order on very specific and limited grounds.

Islamic Law permits polygamy where a man can marry up to four women, in contrast with the Greek legal order and public morals.<sup>16</sup> There have been very few instances where male members of the Muslim minority were bigamous. Polygamy is not accepted within the context of the Greek and European public order. Having regard the nature of marriage and the family where parties, the husband and wife are considered to be of equal status. (See, *supra*, n. 58).

The concept of monogamy is based on a set of fundamental principles of family law and legal order within the Greek society. The husband's entitlement under Muslim law and in actual practice might be discriminatory for it allows one of the spouses to take further partners with full legal recognition. Therefore,

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<sup>16</sup> Article 356 of the Criminal Code; see also Soltaridis (1997:178).

fundamentally changes the nature of the family unit, as it has developed in the Greek legal and social context.

According to Islam, women should stay at home isolated within the domestic sphere. Certain rules of Islamic law tend to restrict certain aspects of women's lives such as employment, physical movement and appearance. Accordingly women must cover themselves and limit their physical movement and economic activity outside the house. The husband has the sole financial responsibility of the family whereas the wife has the role of childbearing. Primarily, women have a major role to play in socialising the children as 'good Muslims and to transmit cultural values in general (Moghadam, 1994:100-102).

These kinds of principles and values play an extremely significant role in the socialisation of both women and men. In most Muslim societies, Islamic rules and practices have been rigorously maintained (Nicolaisen, 1983:7).<sup>17</sup> The notion of women's inferiority is deeply embedded in the character and behaviour of both women and men from early childhood. According to Islamic law, women are not permitted to participate in public life and must not mix with men even in public places

Such views anachronistic as they may seem, are based on culture and religion, which can further impede the integration of the Muslim women into the Greek society. The notion of equality has different connotations for different people in different cultures and societies. The status and rights of women in the Muslim

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<sup>17</sup> Regarding the rights of women in Islam and the relationship between human rights and Islam, see Farrag (1990:133-143).

minority have been influenced significantly by the application of Islamic family law. The principle of equality is based on two aspects of Islamic tradition, one 'egalitarian' and the other providing for 'gender and religious discrimination'.

In this traditional religious context "men are considered as a group the guardians and superior to women as a group and the men of a particular family are the guardians of and superior to the women of that family" (Mayer, 1997:95-96) Islamic law also states that women are disqualified from holding general public office which involves the exercise of authority over men. Nevertheless, employment in the public field within the Muslim minority in Western Thrace has become common and even necessary for many women due to increasing demands of modern society (Anagnostou, 1997:27; Mayer, 1997:96).

Basic education in Greece is mandatory for nine years for both sexes, but is interesting to examine how feasible such a right is within the Muslim minority. Due to cultural and religious factors, Muslim girls often receive very little education.<sup>18</sup> However, it might be argued that such views are influenced by traditional structure of society which requires that women should be kept surrounded, subordinated and excluded (Mayer, 1997: 79, 95-96).

Such issues bring into question the constitutionality of the application of Islamic family law in the Muslim minority of Western Thrace. They further

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<sup>18</sup> On the issue of education of the Muslim minority, see Tsitselikis (1996).

raise the issue between the members of the Muslim minority preserving their cultural and religious identity on one side, and the relation between individual rights and collective identity on the other.

### *5.2. The Development and Current Application of Islamic family law in the Minority*

In regard to the principles of equality and non-discrimination, the members of the Muslim minority can choose to have their case either heard by the Mufti in a religious court or by a civil judge in the civil courts. One could say that according to this system the principle of equality between the two sexes is protected.

In the case of the women in the Muslim minority such an optional system might not be very effective. Since they mostly stay at home isolated from the majority society with very little education, which limits their chances to make their own choices in family matters.

Thus, one might need to consider the reality of this type of “choice” or “option” every Muslim woman has and the actual reality of obedience to the Mufti (*ibid*: 19-20). In most cases, they will have chosen to have their case heard by the Mufti according to the minority’s religious and cultural traditions.

The freedom of choice on such matters is usually restricted by the social and religious composition of the Muslim minority. Most often the members of the Muslim minority usually prefer to resolve their case by the Mufti.

Under these circumstances, the choice of the members of the minority between the Islamic law and the Civil law legislation does not necessarily arise from the religious faith of the minority. But it seems to result from the social and religious practices established within the minority. In Western Thrace, Islamic law has been incorporated with local conditions and civil principles governing the cultural and social life of the minority (Anagnostou, 1997:25).

The Muslim minority has its own distinctive way of living which developed within a context of local culture and customs. It is argued that the decisions of the Mufti do not always reflect a strict application of Islamic principles. They quite often take into considerations civil law principles, which have gradually blended with what is “socially acceptable and legitimate” in the Greek society (Anagnostou, 1997:24).

There seems to be a gradual shift between civil and religious jurisdiction reflecting a change in social identities and patterns. For example, in cases of family and inheritance disputes, the two spouses in dividing family property following a divorce often take their case to the civil court. Provided they cannot reach an agreement through the Mufti.

The development and maintenance of the cultural and religious identity of the Muslim minority in Western Thrace, stems from at least two main sources. First, there is the institutional existence of the religious jurisdiction of the Mufti and secondly, the social and cultural changes, which occur at the individual and family level. It is generally agreed that compliance with the Mufti's judgements is based on the desire of the members of the Muslim minority to preserve their cultural and religious identity. Instead of the imposition of religious rules and practices by the minority group itself upon the individual members.

The institution of the Mufti constitutes an essential social and religious element of the Muslim minority. Religion in Western Thrace defines the cultural identity and practices of the minority within its social structure (Anagnostou, 1997:5). The maintenance of traditional family relations through the application of Islamic law in family law matters has contributed towards an "intense religiousness" of the minority. It has further contributed among many other factors (e.g. poor education, economic discrimination, unemployment) in preventing the positive integration of the members of the minority in the Greek society (Tsitselikis, 1999:323-324).

The application of Islamic law principles by the religious courts in Western Thrace can result in the violation of human rights in areas where Islamic family law restricts women's rights and places them to an inferior status to that of men (*ibid*:18-20). As Abdullah Ahmed An-Nai'im has suggested Islamic law needs to be "re-interpreted in the light of changed social and intellectual reforms in

the contemporary world” (quoted in Mayer, 1997:95). The principles of equality and non-discrimination need to be firmly established within the context of Islamic law. Restrictions based on gender and religions are not permissible under current international human rights law.

For example, in a European public order it is difficult to accept Muslim religious rules and practices in cases of family law whereby a man can simply divorce his wife in an extrajudicial manner. Nevertheless, an equivalent right to Muslim women does not exist. These kinds of matters bring into question the constitutionality of the Muslim courts and the significant legal aspects involved within them. For example, they involve the cultural and social integration of the Muslim minority in the Greek society, the cultural-religious preservation and the relation between individual rights and collective identity.

### *5.3. The Cultural and Social Composition of the Muslim Minority*

Religion defines the social norms and family practices of the Muslim minority and reinforces its cultural identity. The central concept of the Muslim culture is the family, a central institution and transmitter of religious identity, which women are the main carriers of social practices and religious identity. In Muslim societies, Islamic rules seem to govern family relations and women's roles. They have have been structured within a framework where cultural values and religious beliefs are highly respected and maintained based on traditional practices and customs.

Law No. 1329/1983 reformed the Greek legal system in compliance with international and European human rights standards (Tsitselikis, 1999:315; Vathrakokoilis, 2000:57). In particular, Law No. 1329/1983, firmly established the principle of equality between the two sexes and abolished the concept of the male as the “head of household”. It replaced it with the concept that both spouses are “equal and mutually” responsible of their duties and obligations in the family unit. It further more abolished gender discrimination and the dowry system and institutionalised divorce on the basis of mutual consent (Tsitselikis 1999: 315-316).

Such anachronistic views based on culture and religion further impedes the integration of the women of the Muslim minority into the Greek society. The rules, which establish the principle of equality between the two sexes and the protection of the dignity of every human being, are fundamental rules according to Greek legislation and international human rights treaties.

Within the social context of the Greek society, the religious practices of the Islamic law come in direct conflict with legal protection of the principles of equality, non-discrimination and the equal protection of the law. Such principles are firmly established within the Greek constitution and legislation. These kinds of distinctions provided in Islamic law between different groups of persons are seen as the ‘natural order of things’ (Mayer, 1997:96).

Due to the high degree of religiousness within the Muslim minority in Western Thrace arising from local culture and tradition, they mostly result in the inferior



treatment of women. Such actual patterns of discrimination, on the basis of religion or culture need to be abolished in order to prevent violations of international human rights, including women's rights.

It is quite commonly accepted in many Muslim communities, including the Muslim minority of Western Thrace, that women should not go out to work and earn a living and that the husband should be solely responsible for the family's income (*ibid*:26). For example, Islamic law obliges a husband to support his wife. Muslim women do not usually work outside home due to religious and cultural reasons, which require women to stay at home within their family and community.

The Mufti of Komotini has stated that Islam does not forbid women from working, if they are in all-female workplace environment and do not associate with workers from the opposite sex (*ibid*:27). On the other hand, in the case of the Muslim minority of Western Thrace, they have an increased dependence on agricultural tobacco family business. Thus, Muslim women began working as unpaid family members in the tobacco business.

Muslim women became an important source of income while remaining isolated within the domestic domain, in accordance with the religious traditions and culture (*ibid*). Under these circumstances, the relation between Islamic law, women's work and religious norms was re-defined. In this context, the right to develop one's personality was promoted among many Muslim women in the

minority. Accordingly, it has increased the chances of an effective and equal participation in the social, political and economic life of the Greek society.

Nevertheless, in the cultural structure of the minority, the principles of equality and non-discrimination based on individual human rights have not yet been effectively incorporated (*ibid*). In particular, Muslim women in Western Thrace are subjected to traditional and community values on a collective level. This leaves them with very few opportunities to act as autonomous individuals. In the sense of making their own decisions, especially in personal and family matters. Such restricted social conditions render the element of voluntarism in religious courts practically ineffective.

The existence of the jurisdiction of the Mufti must be reviewed, since within its own context it violates the fundamental rules of human rights, including the individual rights of the members of the minority under international human rights law protecting the rights on an individual basis (Tsitselikis, 1999: 318-324). What needs to be emphasised here is that although the Treaty of Lausanne provides for the religious rights of the minority, it does so on a collective basis. This ultimately undermines individual rights of the members of the minority on religious and the principles of equality and non-discrimination.

On the one hand, what needs to be achieved is the protection of the religious and cultural tradition of the minority within its internal legal order and on the other hand, the compliance with fundamental rules of human rights. It is for the

benefit of the members of the Muslim minority to maintain their distinctive identity (*ibid*).

The application of Islamic family law within the Muslim minority runs counter-productive to the minority's development and effective integration within the Greek society. The application of Islamic law in relation to family and personal law issues does not allow the members of the Muslim minority of Western Thrace to evolve and fully integrate within the Greek society.

The integration of the Muslim minority in Greece does not necessarily entail the abandonment of the Islamic religion and culture. Religious practices of the minority, which contain inherently discriminatory practices against women, should not be extended into civil law matters. Such practices violate the Constitution and the international human rights treaties, which the Greek government is a party.

Family law is regarded as one of the most important social and legal functions in every society. The existence of a separate system of family law for the Muslim minority seems to conflict with the Greek unified system of family law where a set of rules applies, regardless of one's origin, ethnicity or gender.

It may also constitute a form of "social" segregation of the Muslim minority of Western Thrace. At this point, it needs to be realised that a basic uniform system has helped in the past to create a more cohesive society. It is still

needed today to help integrate minorities in general and the Muslim minority in particular, into the general framework of Greek legal and social values.

## **6. The Religious and Cultural Composition of the Muslim Minority**

### *6.1. Women's Rights under International Human Rights Law*

Numerous international and regional instruments have incorporated clauses prohibiting discrimination based on gender.<sup>19</sup> According to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>20</sup>, “the most comprehensive challenges mounted by states to the international norms guaranteeing women’s rights and their application have been couched as defences of religious liberty” (Sullivan, 1992: 798).<sup>21</sup>

In today’s society, equality of women is not always fully respected due to certain religious practices and customs (*ibid.*).<sup>22</sup> The principles of equality and non-discrimination may often conflict with religious traditions and customs. They are not prepared to give way to fundamental human rights and have accepted the application of personal status law into the general state law.

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<sup>19</sup> For example, see Article 2 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; Article 2 of the Universal Declaration of Human Rights and Article 2 of the UN Convention on the Rights of the Child.

<sup>20</sup> GA Res. 34/180/18.12.1979, Greece ratified the Convention on January 7, 1983. In regard to the text of the 1979 UN Convention with comments and analysis of the Convention see, Wallace (1997:18-33, *et seq.*)

<sup>21</sup> In regard to the rights of women in international law, see Tomasevski (1995:273-288).

<sup>22</sup> See also Tomasevski (1995:273-288).

The principle of equality is closely related to the principle of equal protection of the law. In the context of the Universal Declaration of Human Rights (UDHR), certain aspects of Islamic law, seriously affect women's rights. They seem to permit violations of the provisions of the UDHR (Mayer, 1997: 117). Any legal measures that might discriminate against groups of people using gender as ground for justification would violate the UDHR safeguards for the principles of equality and equal protection of the law.

It needs to be taken into account that the notion of 'equality' has different connotations for different people, in different cultures and societies. Similarly, the concept of "morality" can be the subject of various interpretations depending on historical and cultural factors. Thus, it might vary in each society. There is not an international standard, which can be accepted by all religions and cultures in the world (Natan, 1996:130; Sullivan, 1992: 819, et. seq.).

## *6.2. Islamic Family Law and the Human Rights of Women in the Minority*

The status and rights of women, in the Muslim minority have been significantly influenced by the application of Islamic family law. The principle of equality in Islamic law is based on two aspects of the Islamic tradition, one "egalitarian" and the other containing "gender and religious discrimination." (Mayer, 1997:79) The Islamic law seems to distinguish in a number of areas between the rights of Muslims and non-Muslims, men and women (ibid).

The *Shari'a* requirements of the traditional Islamic culture tend to de-emphasise the egalitarian features of Islam and reinforce the hierarchical features of the Islamic social and culture structure. Women are viewed as inferior to men and their rights are rather limited in the context of international human rights.

In contrast in the international community the principles of equality and non-discrimination extend to everyone equally independently among other factors of gender. International human rights standards demand respect for the principles of equality and non-discrimination and do not permit any restrictions against women.

Social and cultural conditions play a very significant role in the way people think about the principles of equality and non-discrimination (*ibid*:80). Islamic law seems to embody the idea that men and women have fundamentally different role. Therefore they should have distinct rights and responsibilities (*ibid*:119).

The members of the Muslim minority wish to promote their own culture, tradition and customs is by preserving the application of the *Shari'a* law in family and personal law status matters. In such a way, they claim to protect women by regulating their lives rather narrowly and strictly without any external influences. The structure of the Muslim family has been shaped on strong patriarchal premises.

The historical conditions under which the *Shari'a* rules developed must be considered, since they reflect the cultural conditions of traditional societies. The application of Islamic religion represents two important social elements of traditional societies: “men’s advantage over and financial support of women” (An’naim, 1990:20). *Shari'a* law developed during the pre-modern era, which was associated with traditional patriarchal family societies. It allowed men to control women’s lives by placing them to an inferior status against men within the family and society at large.

The fact that men are physically stronger than most women is not relevant in modern times where the rule of law and human rights prevail over physical power (*ibid*). Modern circumstances have helped to promote women’s economic independence. This means the advantages of physical might or financial power cannot be used as justifications for the authority of men over women. The provisions in most international human rights treaties demand respect for the principles of equality and non-discrimination and do not permit any restrictions against women.

According to the standards set in the CEDAW regarding the rights and status of women, women’s rights in Islamic law seem particularly “deficient and retrograde” (*ibid*). The Preamble of the Convention states that both parents have a role in the family and in the upbringing of children. It specifically provides for the role of women in procreation, which should not be used as a basis for discrimination against them. In contrast, Islamic law provides that

men and women have strictly divided rules and responsibilities in the family. It is quite often used as a justification for placing women to an inferior status of men.

Article 2 of the Convention requires that states take all necessary measures to eliminate all discriminatory laws, customs and practices. Islamic law seems to 'permit and justify' gender discrimination, since it contains provisions that allow legal distinctions based on gender. Furthermore, it imposes discriminatory measures against women, especially in family and personal law matters (*ibid:118*).

There are several other provisions within the Convention that conflict with Islamic law. For example, Article 16 requires that elimination of discrimination between men and women in the family and of ensuring that men and women have the same rights and responsibilities during marriage and at its dissolution. Islamic personal law actually entails discriminatory measures and practices against women (*ibid*). For example, according to *Shari'a*, women are mostly kept at home and are prevented from participating in many activities (*ibid*). Such practices violate the Convention's principles regarding the principle of equality between the two sexes and the prohibition of discrimination.

One might conclude that the application of Islamic family law within the Muslim minority in Western Thrace, which is inherently discriminatory against women. It violates the principles of the Constitution and international human



rights treaties regarding the principle of equality between the two sexes and the prohibition of discrimination, based on gender, religion or ethnic origin.

These human rights principles and norms are firmly established in international law. They seem to extend to the protection of women's rights in eradication all forms of gender discrimination. These measures are full aware of the complexity of the situation. Therefore they require states to take positive action in combating all forms of discrimination based on gender.

According to international human rights standards, the application of Islamic law within the Muslim women of Western Thrace demands major modifications to comply with current human rights norms. It might even need to be abolished and apply Greek family law and therefore having a uniform legal system based on European and international human rights.

## **7. Conclusion**

The central issue of analysis has been whether Muslim family law contains inherently discriminatory rules that violate human rights, especially women's rights. The application of Islamic law in the Muslim minority in Western Thrace seems to contradict the provisions of the Greek Constitution and legislation regarding women's rights. It thus, violates fundamental human rights, which do not allow the discriminatory treatment of women.

The remarks made regarding the application of Islamic Law within the Muslim minority in Western Thrace should be considered on one essential point. They need to be viewed and considered according to the examination of the special legal regime of protection of the religious identity of the minority and the position of the Mufti, through two different perspectives.

On the one hand, there is the need to protect the religious freedom of the Muslim minority, according to its own cultural and traditional institutions. On the other hand, there must be compliance with the fundamental rules of human rights on a European and international level, including the right to freedom of religion.

The position of the Mufti carries great political and social value within the Muslim minority, whose members are identified by strong religious bonds. The incompatibilities and the legal problems are not very difficult to solve. Care is needed to effectively contribute to the harmonisation of the internal and external relations of the minority. The social integration of the minority remains an absolute pre-condition, in the search for an effective implementation of a policy. This will particularly assist towards the preservation of its religious and cultural identity.

The institution of the Mufti might seem an institutional “fossil” of the past, the reformation of his duties in a society, which is constantly evolving. It might provide the opportunity required to detach the Mufti from the problematic,

which characterises the internal legal and social order of the minority on a political level.

In accordance with the legal context regarding the position of the Mufti in Western Thrace, any issues regarding his post and duties should be resolved on an institutional level. Most importantly the legal system needs to be reformed in order to meet the special needs of the Muslim minority. It may also prevent or abolish any political conflicts within the minority, between the minority and the Greek government as well as between Greece and Turkey.

The main aim of Law No. 1920/1991 was to ensure full equality of Muslim women and men and to harmonise the appointment of the Mufti with current democratic standards. By taking into consideration the special cultural and religious needs of the Muslim minority some form of reconciliation or balance must be reached. On the one hand between the religious freedom of the minority and on the other hand on the protection of human rights norms, including women's rights.

The Mufti retains an especially important role within the religious circles of the Muslim minority of Western Thrace where his position is socially required. It is essential to protect the distinctiveness of the Muslim minority. This is important to facilitate its harmonious social integration within the Greek society and to safeguard the peaceful relations between the minority and the majority.

The institution of the Mufti needs to be reconsidered due to the cultural traditions of Islam, which might not always be compatible with the fundamental human rights rules. The codification and the systematic study of the Islamic Law are necessary to serve two main purposes. First, it is necessary in order to ensure for the fair administration of justice and secondly, to uphold the respect for the rule of law and human rights in the Greek legal system.

Islamic Law can be applied as *sui generis* law without violating the fundamental human rights rules. Meanwhile it will contribute towards the maintenance of the religious and cultural distinctive identity of the Muslim minority. Similarly, it is open to the members of the Muslim minority to reject any decision or judgement by a religious court and seek adjudication in the Greek courts.

In search of a solution of the legal and cultural conflict between international human rights law and Islamic Law, the Mufti could be separated from his judicial powers. In particular, since the Muslim-Greek citizens have the option of resolving their cases by Greek civil law. The religious courts and the Mufti in Western Thrace could take the initial approach by offering counselling, mediation and arbitration resulting in a satisfactory settlement of the case.

Thus, the Mufti will no longer have to carry the heavy political weight neither will he attract any political aspirations from the people, who wish to manipulate and control the institution of the Mufti. In any case, Greek courts retain a certain degree of discretion, although limited to decline to apply any decisions

of the Mufti containing Islamic rules. They find manifestly contrary to public policy and the principle of equality.

Some members of the Muslim minority might feel that that such an altered version of Islamic law is not acceptable and that only the undiluted classical law should be introduced. It is worth emphasising that none of the reforms mentioned require the members of the minority to violate their religious duties. The proposed measures must take into account the value religion holds within the Muslim minority in Western Thrace. The members of the Muslim minority must feel confident that their religious, family and cultural values are protected and respected by the Greek legal system.

The religious suppression of minority rights can have serious consequences for the internal peace and stability of a state. As a matter of fact, all that is required is a modification of legal principles in order to reconcile Islamic law with current human rights standards. This might not be easy to achieve, since Islam does not make a strict separation between religious rules and legal principles. In any case, substantial efforts need to be made for the possible reconciliation between Islamic rules and human right. In such a way the positive integration and development of the members of the Muslim minority of Western Thrace could be achieved.

Special attention needs to be taken by those offering mediation. According to international human rights norms it is important in order to safeguard the principles of equality and non-discrimination to ensure that no gender-based

power is imposed upon women against their wishes. This may be achieved by taking into consideration the social position women have in the Muslim minority of Western Thrace. They are mostly restricted in the home environment having received very little education and living under the religious and cultural traditions of their community.

The application of Islamic law in Western Thrace does not seem to provide a uniform treatment of all citizens, since it discriminates against a large segment of Greek citizens, the Muslim women of the minority. The right to freedom of religion is absolute and no restrictions can be placed upon it. On the other hand, religious manifestations and practices may be restricted according to recognised international standards, *inter alia*, public order and the fundamental rights of others.

The right to gender equality in relation to marriage and family life is very specific and unqualified right in international law. The state is entitled to insist that no one should be subjected to gender discriminatory practices due to religious affiliation. It would be strongly advisable that the state authorities and the members of the Muslim minority of Western Thrace co-operate on this matter. This is essential in order to find a peaceful but effective means of solution where they can both agree and to avoid any conflicts and judicial interference on the religious freedom of the minority.

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