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The Legal Treatment of Muslim Minority Women under the Rule of Islamic Law in Greek Thrace

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Abstract

The treatment of women in the frame of Islam has become subject to lively debate, lately concentrated in domains of the West where Islamic law seeks recognition without Islam being the prevailing creed. The discussions often are focused on concerns whether Muslim women are confronted with discriminative treatment and impediments to their access to justice. In this context, Greece occupies a unique position. Greece constitutes the only European State that recognises officially a special Islamic jurisdiction. In Thrace, Mufti tribunals are considered the cornerstone of application of Islamic law and administration of Islamic justice. However, this regime has been repeatedly criticised for failing to safeguard Muslim women's rights. This article engages with the legal treatment of the women who belong to the Muslim Minority of Western Thrace. It examines the ways in which this religious normative regime affects their access to justice and the potential impacts that are generated from their subjection to the authority of the system thereof. The analysis is based on a methodology that combines the study of domestic and international legal scholarship with insights that were drawn from the study on representative case law of the local Sharia courts and of the competent civil courts.

Keywords: Muslim women; Islamic law; Mufti jurisdiction; Human Rights; Western Thrace; Greece

1. Introduction

The status of women in the context of the Islamic faith and their various rights have been subjects of detailed examination and lively discourse for many years.[1] Questions concerning their just treatment arise in most of the Muslim world where Islamic law is

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[1] Among others, see Ziba Mir Hosseini, Kari Vogt, Lena Larsen and Christian Moe (eds), *Gender and Equality in Muslim Family Law: Justice and Ethics in Islamic Legal Tradition* (Tauris 2013); Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man?* (Kluwer Law International 2000); Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text From a Woman's Perspective* (Oxford University Press 1999); Azizah Al-Hibri, 'Islam, Law and Custom: Redefining Muslim Women's Rights' (1997) 12(1) American University International Law Review 1; Amira Mashhour, 'Islamic Law and Gender Equality-Could There Be a Common Ground?: A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt' (2005) 27(2) *Human Rights Quarterly* 562.

applied and combined with the operation of religious courts.[2] Similarly, over the last decade or so there has been extensive debate over whether Islamic traditions should be recognised in non-Muslim majority legal orders where Muslim populations reside.[3] These debates, whilst generally involving discussions over the compatibility of Muslim law with the values of Western civil society, often focus on concerns whether Muslim women are confronted with discriminative treatment and impediments to their access to justice. Many recent studies observe the uneasy relation between Muslim women's rights and the practice of various Islamic foundations that claim competence in regulating the personal affairs of their adherents.[4] The growing presence of Muslims in those legal orders, combined with their relevantly increasing demands to exercise their religious commitments creates a conflicting environment, both in the social and legal sense, while, at the same time, keeping the debates over the accommodation and application of Islamic law on the agenda.

In this context, Greece occupies a unique position. Greece constitutes the only European State that has officially recognised and preserved the application of Islamic law for more than a century. The application of Islamic law in the national legal order represents an instance of official legal pluralism in which religious norms co-exist with the system of secular state laws. Religious bodies of special jurisdiction presided over by Muftis constitute the cornerstone of the administration of Islamic justice. These tribunals are considered the forum to which the Muslims of Western Thrace resort for the dissolution of their family law disputes and the regulation of their inheritance law affairs. As will be demonstrated, the regulatory framework of this regime appears to be ambiguous and the way religious tribunals operate directly impacts the legal sphere of the Muslim women who fall within its ambit. Therefore this normative structure has been repeatedly criticised for failing to protect Muslim women's rights. The criticism mainly

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[2] See, among others, Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt, and India* (Cambridge University Press 2013); Jan Michiel Otto (ed), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden University Press 2010); Martin Lau, 'Human Rights, Natural Justice and Pakistan's Shariat Courts' in Javaid Rehman and Susan Carolyn Breau (eds), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Martinus Nijhoff Publishers 2007) 359-379; Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of the Textual Development and Advocacy* (Amsterdam University Press 2007).

[3] See, among others, Mavis Maclean and John Eekelaar (eds), *Managing Family Justice in Diverse Societies* (Hart Publishing 2013); Rex Ahdar and Nicolas Aroney (eds), *Shari'a in the West* (Oxford University Press 2010); Andrea Büchler, *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws* (Ashgate 2011); Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation* (Ashgate 2010); Prakash Shah, *Legal Pluralism in Conflict: Coping with Cultural Diversity in Law* (Glass House Press 2005).

[4] See Sonia N Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah* (The Nuffield Foundation 2001); Samia Bano, 'Muslim Family Justice and Human Rights: The Experience of British Muslim Women' (2007) 2(2) *Journal of Comparative Law* 38; Natasha Bakht, 'Religious Arbitration in Canada: Protecting Women by Protecting Them from Religion' (2007) 19(1) *Canadian Journal of Women and the Law* 119; Sherene H Razack, 'Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages' (2004) 12(2) *Feminist Legal Studies* 129; Shaheen Sardar Ali, 'Authority and Authenticity: Sharia Councils, Muslim Women's Rights and the English Courts' (2013) 25(2) *Child and Family Law Quarterly* 113.

concentrates on the issues of gender discrimination and the breach of the right to a fair trial.[5]

This article engages with the legal treatment of women who belong to the Muslim Minority of Western Thrace as the latter is defined by the scope of the 1923 Treaty of Lausanne. More concretely, it seeks to show the ways in which this religious normative regime affects their access to justice and the potential impacts that are generated from their subjection to the authority of the system thereof. For this purpose, the article first describes the current statute that is the basis for the application of Sharia and outlines its essential features. Secondly, it briefly refers to the obligations of the Greek State as they derive from the accession into a series of international human rights conventions. It then proceeds to illustrate the mode of operation of the religious jurisdiction. Subsequently, the study addresses a number of key issues, namely, Islamic marriage and divorce, Islamic dower, and post-divorce maintenance and succession, as they are specifically handled by the Sharia tribunals of Western Thrace.

The following analysis is based on a methodology that combines the study of domestic and international legal scholarship with insights that were drawn from the study of representative case law of the local Sharia courts and of the competent civil courts.[6] This includes approximately 60 religious court decisions on Islamic divorce and maintenance from the 1980s until 2013. Specifically, the decisions belonging to the years 2011 and before were individually identified through the relevant literature and reassessed for the purposes of this study (targeted selection). The remaining part consists of the total of judgments issued in 2012 and the majority of those issued in 2013 on the same subjects. All the decisions were manually collected from the archives of the Courts of First Instance of Rhodope and Xanthi. This was possible because civil courts' archives, along with being complete and accurate, can be accessed by legal professionals upon permission provided by the authorities. In addition, useful knowledge was incorporated into the study from the empirical observations made by the author developed from his involvement in the religious jurisdiction as a legal practitioner in the region.

2. The Statute that Governs the Application of Islamic Law

It is aptly contended[7] and widely supported by the relevant jurisprudence[8] that the application of Islamic law in the Greek legal order has been introduced by a series of

[5] See, among others, Yannis Ktistakis, *Sacred Muslim Law and the Muslim Greek Citizens* (Sakkoulas 2006) [in Greek]; Lina Papadopoulou, 'Trapped in History: Greek Muslim Women under the Sacred Islamic Law' (2010) *vol V Annuaire International des Droits de l'homme* 397-418.

[6] For access to broader civil courts case law the online NOMOS Legal Information Database was consulted.

[7] See Aspasia Tsaoussi and Eleni Zervogianni, 'Multiculturalism and Family Law: The Case of Greek Muslims' in Katharina Boele-Woelki and Tone Sverdrup (eds), *European Challenges in Contemporary Family Law* (Intersentia 2008) 209-239; regarding the dissenting opinions see Ktistakis (n 5) 89-114; Georgios Koumantos, *Family Law*, vol I (Sakkoulas 1988) 244 [in Greek]; particularly on the Treaty of

consecutive international treaties,[9] the last of which was the 1923 Peace Treaty contracted between Greece and Turkey in Lausanne, Switzerland.[10] Significantly, the Treaty of Lausanne, under the principle of exception from population exchange, resulted in the creation of minority communities in each signatory State. In a legal sense, it became the regulatory instrument of their protection and just treatment under the status of minorities. It afforded the people the right to adhere to their customs that involved personal status and family relations' self-regulation as a means of community autonomy.[11] Respectively, as regards the Greek polity, the existing Islamic construction is received as a manifestation of freedom of religion for the Muslim — or widely believed as Turkish — minority of Western Thrace, a large community of people,[12] which, in the vast majority, reside in the homonymous region of North-Eastern Greece. Practically, the religious regime in Thrace can be defined as a reverse form of, or as a regime in succession to, the former Ottoman *millet* system, where, in the case under investigation, the minority status is attributed to the Muslim community of Western Thrace.[13]

In the implementation of the above international obligations, the application of Islamic law in the Greek legal system is based on the stipulation of two domestic laws: Act 147/1914[14] and Act 1920/1991.[15] Thus, in the Greek context, Islamic law is recognised as national law.[16] However, it is worth noting that what is called domestic is actually the statute that introduces the applicability of Muslim law and the adumbration of the religious authority's jurisdiction. The Greek legal order, contrary to those of other States

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Lausanne see Athina Kotzampasi, 'The Scope of Application of the Sacred Muslim Law in the Family Legal Relations of the Greek Muslims' (2003) 44 *Elliniki Dikaiosini* 57, 63 [in Greek].

[8] See, for example, Greek Supreme Court (Areios Pagos) Judgments nos 322/1960, 1723/1980, 1041/2001.

[9] Namely, the Convention of Istanbul in 1881 ratified by Act ΠΛΖ/1882, the Athens Peace Treaty of 1913 ratified by Act ΔΣΙΓ/1913, the Treaty of Sevres in 1920 ratified three years later by the Legislative Decree of 29 September 1923 (FEK A' 311).

[10] Treaty of Lausanne was ratified by the Legislative Decree of 25 August 1923 (FEK A' 238).

[11] See Article 42 of the Treaty of Lausanne.

[12] There are no recent and reliable statistics on the exact number of the minority population; the estimations are predominantly based on data from old population censuses; see Konstantinos Tsitselikis, *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers* (Martinus Nijhoff 2012) 568-69.

[13] See similarly Konstantinos Tsitselikis, 'Aspects of Legal Communitarianism in Greece: Between Millet and Citizenship' (2012) 2(7) *Oñati Socio-legal Series* 106, 109 <http://ssrn.com/abstract=2050345> accessed 27 March 2015, where he defines this system as 'neo-millet'; see also Bryan S Turner and Berna Zengin Arslan, 'Legal Pluralism and the Shari'a: A Comparison of Greece and Turkey' (2014) 62(3) *The Sociological Review* 439, 445.

[14] Article 4 of this Act reads: 'The issues pertaining to the legal formation and dissolution of the marriages of those who adhere to the Muslim faith as well as the personal relations of the spouses and the kinship bonds are governed and judged by their Sacred Law.' (translation author's own)

[15] Article 5 para 2 of this Act reads: 'The Mufti exercises his jurisdiction between the Muslim Greek citizens of his district, in issues pertaining to marriage, divorce, maintenance, guardianship, custody, emancipation of minors, as well as Muslim wills and intestate succession.' (translation author's own)

[16] Zoi Papasiopi-Pasia, 'Problems Referring to the Field of Application of Interpersonal Law in Greece and the Jurisdictional Competence of the "Mufti"' (2001) 7B *Koinodikaion* 391, 396 note 13 [in Greek].

(eg Egypt, Tunisia, South Africa) does not codify the substantive religious law.[17] Therefore, what should be anticipated in Western Thrace to be administered is Sharia as derives from its primary sources but without any reference to certain documentation. On the other hand, its formal nature implies that this normative framework generates binding legal effects and that its regulations are enforceable. In addition, the scope of its application is restricted in terms of subjective and objective fields of applicability (partial application). Although not indisputable, contemporarily, Islamic law is accommodated in the Greek legal order as a source of law that regulates only a specified number of the legal affairs[18] of the Muslims of Western Thrace.[19] However, it is notable that the lack of clarity in the scope of the legal provisions allows their differentiated interpretations, which in turn results in confusion and legal uncertainty. It seems that much of the confusion is generated because of the mismatch between the extent of the applicable law (Act 147/1914) and the limits of the religious jurisdiction (Act 1920/1991).

It is no less significant to stress that, today, entering the religious regime is considered optional for the Muslims of the region.[20] Accordingly, they are able to opt for their preferred legal regime before the formation of social institutions such as marriage,[21] or even write testaments of civil law. This involves that the personal relations of the spouses will thereafter be governed by the law of their preference (including possible divorce). Similarly, their succession will take place in accordance with the provisions of their last will and not of their religion. This right of preference, even though not described in any law and contested by the Greek Supreme Court,[22] should be considered a manifestation of citizenship, a right that all Greek citizen Muslims of Thrace naturally enjoy. Like all Greek citizens, the Muslims of Western Thrace have (or should have) the inalienable right to take advantage of any benefit provided by the national legal order.

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[17] See Mashour (n 1); Sezgin (n 2) 46-49.

[18] In this respect, see Kalliroe Pantelidou, 'Observations with Regard to Judgement no 2138/2013 of the Greek Supreme Court' (2014) *Epitheorisi Politikis Dikonomias* 77, 80 [in Greek]. Pantelidou contends that, while both legal provisions include exclusive law where no extension by analogy is allowed, only matters that are commonly prescribed by the relevant articles of both laws should be governed by Islamic law.

[19] In the past, there was serious legal controversy regarding the scope of the Muftis' competence on individuals. For example it was disputed whether the Mufti jurisdiction also refers to Muslims of non-Greek citizenship that reside in the Greek domain or whether Muftis are competent to deal with issues of all Muslims of Greek citizenship and not exclusively with the members of the Muslim Minority of Western Thrace. As a result of this confusion, Muftis used to exceed their jurisdiction by adjudicating on issues of Muslims of foreign citizenship or even adjudicating on issues of the personal status of couples where one individual was not of Muslim faith. Still there are scholars who support the position that Muftis should exercise jurisdiction over all Muslims of Greek citizenship. See specifically Ktistakis (n 5) 35-47.

[20] See the Court of First Instance of Xanthi Judgment no 1623/2003; see also GP Arvanitis, 'The Optionality of the Religion-Based Laws in Greece' (1979) 3 *Elliniki Dikaiosini* 113, 114 [in Greek].

[21] For instance, when a minority Muslim couple decide to marry they can either choose to solemnise it according to the rituals of Islam or conclude it in compliance with the dictates of the Greek Civil law.

[22] For the recent developments see herein section 5, subsection 5.5.

3. The Subsequent International Commitments of the Greek State

Alongside maintaining the application of Islamic law, Greece has signed and ratified a series of major international human rights instruments, such as the European Convention on Human Rights (ECHR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), as well as the International Covenant on Civil and Political Rights (ICCPR).[23] The accession to these agreements contributed to the liberalisation of many aspects of the general law and introduced a new set of obligations for the Greek State. Progressive as it was/is, it established, together with the Constitution,[24] new standards in terms of the treatment of men and women, affecting the entire spectrum of social, economic and political life. Accordingly, this wave of reformation has gradually been reflected in the Greek family law.[25] The law set forth by the relevant amendments was in congruence with the norms of the treaties thereof because, among others, it enshrined the principles of equality between spouses and the best interest of the child, qualities which both constitute the foundations of the modern domestic family law.[26] The Greek legal order acquired a hybrid and demanding nature. The case of the Muslims of Thrace offers a useful example of how challenging the co-existence of two legal spheres (secular and Islamic) of different, if not dissenting, spirits can be.

4. The *sui generis* Mufti Jurisdiction

The religious regime in Thrace rests on a controversial Mufti authority. The Muftis are granted by law multiple duties that include religious, judicial and administrative responsibilities.[27] In particular, in his district, the Mufti is the spiritual leader, the judicial authority as well as the head of his office, the latter considered as public service according to the law.[28] Of this complex of activities, in a strictly legal sense, the most interesting, yet problematic one is the administration of justice. In this context, the

[23] Greece has ratified the European Convention on Human Rights by Legislative Decree 53/1974, the Covenant on Elimination of Discrimination Against Women by Act 1342/1983 and the International Covenant on Civil and Political Rights by Act 2462/1997.

[24] Article 4 para 2 reads: 'All Greek men and women have equal rights and equal obligations'. (translation author's own)

[25] See Act 1250/1982, Act 1329/1983 and Act 2247/1996.

[26] See Efi Kounougeri-Manoledaki, *Family Law* vol I (Sakkoulas 2012) 9-17 [in Greek].

[27] Article 5 para 1 of Act 1920/1991 provides that Muftis exercise their duties as prescribed by the law as well as their religious duties that stem from the Sacred Muslim Law within the limits of their district. They appoint, supervise and retire the Muslim religious servants, solemnise or ratify religious marriages between Muslims and issue expert religious opinions (fetwas) on matters related to the Sacred Muslim law. In addition, they are granted the power to adjudicate on issues enumerated in the law between Muslims of Greek citizenship that reside within their district, as prescribed by Article 5 para 2 of the same Act.

[28] Article 7 of Act 1920/1991.

Muftis act as single-member religious tribunals (Sharia courts).[29] Their jurisdiction is a *sui generis* Greek conception, considering that in the Islamic administration of justice, the *Qadi* is the genuine judicial authority whereas the Mufti is the divine interpreter and qualified consultative theologist,[30] commissioned to provide legal assistance by issuing the *fetwa*.[31] According to the law, his jurisdiction comprises dispute-resolution of issues pertaining to Muslim marriages and divorces, the personal relations of the spouses, maintenance, guardianship, custody, kinship, emancipation of minors, as well as Muslim wills and intestate succession.[32] In this regard, Muftis adopt the Hanafi doctrine of Islamic thought (*fiqh*), which was also the prevailing tenet in the Ottoman Empire.

Although embodied in the legal order as domestic law, the particularity of Islamic jurisprudence as compared to the secular national legal system is connoted by the reservations that the law introduces for the implementation of the Mufti judgments. More concretely, as it is stipulated, Mufti judgments do not acquire force of precedent (*ne bis in idem*), nor can they be implemented unless declared enforceable by the competent Court of First Instance.[33] However, the regular court is not competent to review the judgments of the Muslim authorities, it examines only whether each decision has been issued within the limits of the religious jurisdiction and whether its provisions are in compliance with the Constitution (*clause of constitutionality*). Thereby the law assigns regular courts the duty to control the adjudicative activity of the religious courts, requiring it to be in line with the norms of the Constitution. The decisions of the Muftis are final and thus they are not appealable. This renders Islamic tribunals the only judicial authorities whose decisions cannot be substantially reviewed by superior courts.

The examination of the relevant legislation reveals that there are no certain rules to follow and there is no regulation that guarantees the applicability of the basic principles of procedural law for the process before the Muftis.[34] This is because Mufti jurisdiction is not part of the national system of justice administration and thus the Greek Code of Civil Procedure is not applied in the case of religious tribunals. This lack of regulation is translated into a number of procedural deficiencies that are easily perceivable from a

[29] Nowadays, there are three Mufti Offices (and Sharia Courts at the same time) in operation in Greece, in Komotini, Xanthi and Didymoteicho, all of them located in Western Thrace.
[30] However, see Simos Minaidis, *The Freedom of Religion of the Muslims in the Greek Legal Order* (Ant N Sakkoulas 1990) 351-52 [in Greek] where he contends that Muftis were awarded judicial powers at the time of the Ottoman Empire.
[31] See Wael Hallaq, *An Introduction to Islamic Law* (Cambridge University Press 2009) 9. Fetwa according to the Islamic faith is the legal opinion that a qualified theologian or jurist issues on matters pertaining to Islamic law.
[32] Enumeration extracted from the correlation of Article 4 of Act 147/1914 and Article 5 para 2 of Act 1920/1991.
[33] Article 5 para 3 of Act 1920/1991.
[34] Yannis Ktistakis, 'The Mufti, Sharia and the Human Rights; Theocracy or State of Law in Modern Greece?' (2007) 55 *Nomiko Vima* 228, 229 [in Greek]; Konstantinos Tsitselikis, 'The Jurisdiction of the Moufti as a Religious Judge. On the Occasion of Case No 405/2000 of the Court of First Instance of Thiva' (2001) 49 *Nomiko Vima* 583, 588 [in Greek].

lawyer's point of view, particularly when one participates in the process of litigation. The lack of formality is one of the aspects that draws attention when it comes to Islamic adjudication. It denotes that the procedures are not structured, a quality which often results in the emergence of multiple hearings, confusion and perpetuation of disputes. In addition, it is notable that the respondent barely receives adequate notification of a filed petition and thus the included arguments are not communicated, a malpractice which shows that the right of defence cannot be sufficiently safeguarded.[35] However, these are minor shortcomings compared to the lack of reasoning. It is observed that Mufti judgments do not demonstrate fair levels of substantiation of the provided regulations. If not all then certainly the vast majority of the decisions do not include any articulation of the rule that is applied to each individual dispute. In most cases, the text of the decision consists of a very brief citation of the facts of the case, followed by the judgment, which provides no reference as to how the tribunal has reached its conclusion.[36] Hence, one cannot truly understand or assess the regulation formulated by the religious authority.

5. The Impact of the Religious Jurisdiction on the Rights of Minority Muslim Women

5.1. The Process of Litigation

In Western Thrace, the way in which Islamic justice is dispensed gives rise to major concerns regarding its efficiency to confer a fair environment of litigation or deliver judgments that respect human rights. These issues are under investigation herein, both from a procedural and substantive law perspective, with particular focus on the Muslim women of the minority. Hereafter, this article focuses on certain practices of the Islamic tradition, inherent to the religious culture of the region that are of significance for the illustration of the legal treatment of the women thereof.

The hearings before the religious tribunals do not require representation by lawyers. When no legal assistance is taken up, disputants personally attend the procedures. Occasionally, and not being the rule, women are accompanied by their elder male or female relatives. Conducting litigation on personal matters in the absence of legal assistance and within a legal concept characterised by the deficiencies described above, can seriously impair the interests of women. Considering that the regime creates binding legal effects, legal assistance becomes even more essential. More concretely, because the process of litigation commences usually after the plaintiff submits a written petition,[37] Muslim women's participation becomes problematic already at this initial

[35] Ktistakis (n 34) 229.
[36] ibid 230.
[37] This petition represents a formal request for a hearing by the Mufti. It shall include a short description of the purpose of the hearing (divorce, maintenance, etc), and the applicant's complaints and requests

stage. This is because a significant number of Muslim women are not well educated or are illiterate.[38] Typically, the general lack of education is also reflected in Muslim women's knowledge of Islamic law. Thus it is quite apparent during the litigation procedure that they can demonstrate only very basic knowledge of their legal position and relevant rights. This can prove a considerable disadvantage when they negotiate regarding issues of personal relations, considering that they are entering an environment where they deal exclusively with males (clerks, secretaries, imams, etc.) and where their interests are in direct conflict with those of men. In addition, international experience in similar situations confirms that in such gendered conditions women may be confronted with prejudiced treatment emanating from conservative perceptions with regard to their position in Islam.[39] These elements constitute perils for their equal participation in the process of religious adjudication, while rendering Muslim women to occupy the vulnerable party position.[40]

5.2. Marriage and Islamic Dower

In the Muslim tradition, marriage retains a prominent position. From a spiritual point of view, it is an institution leading to the foundation of a family, which is considered the basis of Islamic society. In a legal sense, however, it serves as a contract that signifies the legitimacy of sexual intercourse and the inception of conjugal life for the procreation of children.[41] Muslim marriages in Western Thrace do not significantly differ, in terms of formation, from the traditional Islamic motive. Likewise, this institution holds an important position in the customs of the Muslim community and maintains its traditional Islamic nature. The marriage (*Nikah*) is officiated before the imam or the Mufti himself, in the presence of witnesses: two males or one male and two females. For administrative purposes, however, all religious marriages must be declared to, and registered with, the public registry upon the issuance of a relevant certificate from the Mufti Office.

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from the Mufti. Usually a sample is provided to the plaintiff from the secretary and it has to be filled in both in Greek and Turkish.

[38] Stergios Kofinis, 'The Status of Muslim Minority Women in Greece: Second Class European Citizens?' in Dagmar Schiek and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality* (Ashgate 2010) 125-140, 135; Symeon Soltaridis, *The History of the Mufti Offices of Western Thrace* (Nea Sinora-A A Livani 1997) 136 [in Greek]. For interesting insights regarding the education in Western Thrace and the high levels of illiteracy among the members of the Muslim minority, see Ali Huseyinoglu, 'The Development of Minority Education at the South-easternmost Corner of the EU: The Case of Muslim Turks in Western Thrace, Greece' (DPhil thesis, University of Sussex 2012); for a more sociological perspective see Natalia Ribas Mateos, 'Old Communities, Excluded Women and Change in Western Thrace (Thracian Greece, the Provinces of Xanthi, Rhodopi and Evros)' (2000) 60 *Papers* 119, 140-41.

[39] Bano (n 4) 59.

[40] Sardar Ali (n 4) 134, where she raises similar concerns regarding the treatment of Muslim women in the context of Sharia Councils in Britain and states that these religious bodies reinforce the patriarchal understandings.

[41] For a detailed definition, see Asaf A A Fyzee, *Outlines of Muhammadan Law* (4th edn, Oxford University Press 1974) 90-91; Jamal J Nasir, *The Islamic Law of Personal Status* (2nd edn, Graham and Trotman 1990) 41-42.

Furthermore, it is customary for the nuptial agreement to include provisions for the Islamic dower (*Mahr*). Hence, it is not surprising that Mufti decisions issued in marital disputes provide insights into the content of the nuptial contracts and particularly the Mahr that was agreed at the time of the marriage. It accrues then that traditionally the dower of women in Thrace is stipulated in gold coins (*liras*), other gold valuables or various objects dedicated for the use of the wife.[42] Examination of the judgments indicates that the total value of an average Mahr can be quite high, confirming its significance for the Muslim women in issue — on the one hand as one of the few proprietary benefits they acquire from their marriage and, on the other, as a protective feature of Islamic matrimonial law against the freedom of men to divorce.

Insofar as the marital relations of the spouses are concerned, their preference for a Muslim marriage turns out to be critical. Their decision entails substantial aftereffects related to the regulation of spousal life. The Greek family law and especially the law of marriage encompass principles protecting and enhancing gender equality, such as equality between spouses, administration of conjugal life by joint decisions, mutual obligation for maintenance, etc. By recourse to a religious marriage, the couple formally denounces the application of such principles. As a consequence, this sustains the survival of the patriarchal structure of Islamic families whereby women are allotted the ancillary role of the caretaker of the household, the children or even the wider family.[43] As a counterbalance, Muslim law allows women to demand full maintenance, including food, clothing and lodging, from their husband. As an extension of this right, Muslim women of the minority, on grounds of desertion, negligence, omission to pay the dower by their husband and so forth, are entitled to file a petition for maintenance. It is noteworthy that upon the acceptance of the petition the maintenance they are usually granted varies from 100 to 350 euros per month.[44] Unfortunately, due to the lack of reasons given in such cases, scant knowledge (if any) regarding the criteria that lead to the determination of such amounts is provided by the Mufti decisions. It is therefore questionable whether the actual specific needs of each woman are taken into consideration or not.

Furthermore, it is notable that debates have arisen regarding the practice of certain Muslim traditions, namely marriages by proxy and marriages of minors, and there has been criticism that the interests of young Muslim women in particular are not being

[42] See for example, the Sharia Court of Komotini Decision no 45/2003 enforced by the Court of First Instance of Rhodope Judgment no 248/2003, the Sharia Court of Komotini Decision no 70/1979 enforced by the Court of First Instance of Rhodope Judgment no 154/2004. For a comparative approach with regard to the Swedish legal order, see Mosa Sayed, 'The Muslim Dower (Mahr) in Europe — With Special Reference to Sweden' in Katharina Boele-Woelki and Tone Sverdrup (eds), *European Challenges in Contemporary Family Law* (Intersentia 2008) 187-208.

[43] See Kofinis (n 38) 135.

[44] Indicatively, see the Sharia Court of Komotini Decision no 07/2004, enforced by the Court of First Instance of Rhodope Judgment no 198/2004, Sharia Court of Komotini Decision 22/2004 enforced by the Court of First Instance of Rhodope Judgment no 264/2004, Sharia Court of Komotini Decision no 31/2011 enforced by the Court of First Instance of Rhodope Judgment no 148/2012.

protected. In both cases, the National Commission for Human Rights has articulated its reservations regarding the compatibility of these traditions with the national public order and the State's Human Rights obligations derived under international conventions (eg CEDAW).[45] It also stresses that in such practices, involving the lack of personal and immediate consent of women, marriages could be instigated against their volition (forced marriages). Eventually, after the intervention of the central administration, the long-lasting tradition of marriages by proxy was ended in 2002.[46] However, marriages of minors are still common practice.[47] National studies show that Muslim authorities often solemnise marriages of 16, 14 and even 13 year-old females.[48] Given that according to Islamic law, persons who have reached puberty are considered as having the capacity to marry,[49] and that puberty can be reached at a young age, marriage of minors is not prohibited. In some Muslim States, however, contracting a minor into marriage is subject to court permission.[50] This practice of permission is also notable in Thrace, whereby the Mufti has to provide a licence affirming the validity of such marriage. On the other hand, even though there are safeguards such as the provision for the acquiescence of the guardian and the above permission of the religious authority, it is really contestable whether the interests of the women in issue are taken into account. The celebration of a Muslim marriage is not a judicial act and thus it neither requires enforcement by the civil court nor particular justification. Hence, this renders it difficult to monitor whether the religious authority takes into account the interests of a Muslim minor to be married. Marriages of minors are allowed in the frame of (national) civil law as well. Yet, in contrast, they are concluded upon judicial licence that demands well substantiated reasons for such marriage, which guarantees the free will of the couple as well as verifies their spiritual/psychological maturity.[51]

5.3. Islamic Divorce

The caseload of the local religious tribunals reveals that in these cases Islamic divorce is the most complicated issue, having the most significant effects on the legal position of

[45] See the National Committee on Human Rights Decisions on marriages by proxy (May 2003) <www.nchr.gr/images/pdf/apofaseis/meionothtes/mousoulmanikos_gamos_dia_antiproswpou2003.pdf> [in Greek] accessed 1 April 2015; and marriages of minors (February 2005) <www.nchr.gr/images/pdf/apofaseis/meionothtes/apofasi_peri_telesis_gamwn_anilikwn_paidiwn_apo_moufti2004.pdf > [In Greek] accessed 1 April 2015.

[46] The Ministry of Internal Affairs issued a newsletter ordaining the public registrars to dismiss applications of registration of Muslim marriages officiated by proxy. See Ktistakis (n 5) 56.

[47] Giorgos Doudos, 'Fundamental Concepts of the Sacred Muslim Law' in Pythagoras Research Project, *Cultural Identities and Cultural Conflicts in Law of Family Relations, and the Perspective of Gender: A Comparative Approach* (Aristotle University of Thessaloniki Research Council) 247-259, 255 [in Greek]; Athina Kotzampasi, *Gender Equality and Private Autonomy in Family Affairs* (Sakkoulas 2011) 184-85 [in Greek]. Both authors refer to the case of an 11-year old Muslim girl from Thrace, which gained international dimensions after her legitimate (according to the Greek law) husband was detained in Germany by the German authorities upon charges of sexual abuse of a minor.

[48] Ktistakis (n 5) 52-53.

[49] For details see Fyzee (n 41) 93-94.

[50] Nasir (n 41) 47-49.

[51] See Article 1350 of the Greek Civil Code; see also Kotzampasi (n 47) 182.

the women in the region. Based on the observations of this study, and also the relevant literature,[52] it is well documented that divorces constitute by far the most frequent cases that Sharia courts deal with. It is striking that, according to recent statistics, Muslim minority members' divorces are five times more frequent than those pursued by their fellow Christians of the majority.[53]

Contrary to the doctrine of other creeds, Muslim family law does acknowledge the solubility of the marriage. Based on the perception that coercing spouses to continue a dysfunctional union would lead to extra marital activity — which is translated as committing a sin — Islamic law permits the termination of a non-functioning marriage.[54] Notwithstanding this, divorce is definitely not a desired outcome.[55] Institutionalising divorce and issuing the relevant certificate are two different matters. Therefore, it is considered that reconciliation of the disputant spouses should first be attempted. Accordingly, it is usual for the Mufti, before any discussion over the termination of a marriage, to attempt to reconcile the couple (*Musalaha*), and if deemed necessary, the deliberation of divorce is adjourned to another session. This provisional stage reflects the centrality of the institution of marriage under the Islamic faith, and the Mufti endeavours to communicate this significance to the parties in his venture to conciliate them. However, this is a process with underlying perils for women's interests, especially in cases where the divorce is discussed on the wife's request. This is because there are no guarantees that the wife will not be confronted with illicit exhortations (ie encouragement by the Mufti employing gender-based religious argumentation or false promises invoked by the husband in order to save the union) to alter her decision to end the marriage. The relevant scholarship affirms that, in similar occasions of mediation, efforts of reconciliation are commonplace. It is additionally stressed that these efforts take place in a male-dominated environment where patriarchal perceptions pertaining to the position of women in the marriage are reinforced and enacted in order to achieve a conciliation.[56] In the case under investigation, though, failure at this stage indicates the start of deliberation of divorce.

The examination of the local Islamic jurisprudence shows some particularities. More concretely, it is observed that although traditionally unilateral divorce (*Talaq*) constitutes an extra-judicial private practice, the religious bodies in the region require its exercise before the competent tribunals. The purpose of subjecting the right of the husband to divorce under these confines is twofold. Firstly, compelling husbands to declare their intentions before the Mufti is a measure that aims to restrict its abusive exercise. This proves that the original yet private and vocal separation by the pronouncement of Talaq is an act that is not encountered in the religious conventions in

[52] Ktistakis (n 5) 156.
[53] ibid 143.
[54] David Pearl and Werner Menski, *Muslim Family Law* (3rd edn, Sweet and Maxwell 1998) 279.
[55] Fyzee (n 41) 146-147; Pearl and Menski (n 54) 279.
[56] Bano (n 4) 58-59.

Thrace. Secondly, it is a way to guarantee the fulfilment of the husband's obligation to pay the dower of his wife (*Mahr*).[57] In this case, the Mufti is expected to not declare the rescission of the marriage unless the agreed dower is fully delivered to the wife. Nevertheless, this study could not ascertain whether the presence of the wife is required for the conclusion of this type of separation, nor if her opinion is of major importance. Rather, from the scrutiny of the case law in issue, it is certainly perceivable that the will of the husband is the only premise for the termination of the conjugal bond. In this regard, it is acknowledged that once the husband pays the agreed amount of dower, he has the absolute right to divorce, regardless of the wife's opposition or objection.

The overt dominance of the Muslim husband in these issues is nevertheless endorsed by a fetwa issued by the Mufti of Komotini.[58] He notes that, according to the Sacred Islamic family law, the right to divorce, if not provided to the wife and registered under the marital agreement during the celebration of the marriage, belongs to the husband. Only due to serious reasons may the husband divorce his wife, under the condition of payment of compensation for the termination of the marriage and the value of her nuptial gifts (*Mahr*).

Alternatively, Muslim women in Western Thrace have the option to pursue the dissolution of the wedlock under the condition of the consent of their husband (*Khul*). In practical terms, in this type of divorce the wife initiates the termination of the marriage while, in exchange for the agreement of her husband, she offers to return the dower that she has received or forfeits it on the occasion that it is deferred. In the Islamic jurisprudence of Western Thrace, it is still a matter of controversy whether the consent of the husband for divorce is considered necessary, even in the situation where the Muslim wife relinquishes the matrimonial rights to which she is legally entitled. The practice before the Sharia Court of Komotini shows that in most cases the Mufti would seek the approval of the husband. Contrary to this, international research reveals that in some Muslim countries religious authorities do not require the husband's consent in the instance of a Khul divorce.[59] To the extent that this is considered a widely adopted practice, it certainly proves to be in favour of Muslim women, an advantage that seems to be inapplicable in the Greek case.

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[57] This is a function that is endorsed by several Mufti decisions. For example see the Sharia Court of Komotini Decision no 45/2003, enforced by the Court of First Instance of Rhodope Judgment no 248/2003; the Sharia Court of Komotini Decision no 37/2011, enforced by the Court of First Instance of Rhodope Judgment no 147/2012.

[58] Fetwa no 173/00/Φ.56 dated 10/5/2000; see Ktistakis (n 5) 58.

[59] See Waheeda Amien, 'A South African Case Study for the Recognition and Regulation of Muslim Family law in a Minority Muslim Secular Context' (2010) 24(3) *International Journal of Law, Policy and the Family* 361, 362, 383. See also Javaid Rehman, 'The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq' (2007) 21(1) *International Journal of Law, Policy and the Family* 108, 120, where he respectively refers to the more recent innovative reforms in Egyptian law of personal status according to which it is provided that the consent of the husband is not a requirement for a Khul divorce.

Regrettably, for the women in Thrace, obtaining the consent of the husband may become a point of additional friction and escalation of tension. This is because there is always the possibility for a recalcitrant husband, pretending his interest in the marriage, to abuse his demands in exchange for his assent. In a potential gridlock many Muslim women would prefer to negotiate or offer a deal that would far exceed the limits of good faith. Most of the time, this is translated into financial agreements that exceed the value of the dower or even involve child custody.[60] Therefore, a divorce initiated by the wife often becomes an instrument of undue deprivation of assets for women. It is further observed that, due to the waiver of dowers of significant value, the Muslim women of the region are confronted with financial disempowerment, which, in turn, might negatively affect their already degraded position in the local patriarchal society.[61] In this respect, Bano in her research suggests that Muslim women are financially dependent on their husband and there is a close relation between the decision to leave the marriage and financial independence for them.[62] Women who are more dependent on their husband demonstrate less possibilities to leave the marriage. In other words, women who do not reach a settlement with their husband are more likely to remain in a non-functioning marriage.[63] In this respect, the economic imperative seems to operate as a suspensory factor and the described type of divorce is being transformed into a system of discouragement for Muslim minority women.

Moreover, Muslim law offers the option of the court's intervention to declare the rescission of wedlock (*Tefriq*). However, as Nasir notes, Tefriq is a subject of controversy amongst jurists, while at the same time its scope of application is quite diverse between the Islamic schools of law.[64] Fyzee underlines that the different schools of Islamic law demonstrate widely divergent opinions concerning the interpretation of the religious texts. He also adds that, whilst their jurisprudence recognises the possibility of the wife obtaining a divorce, they can attain unanimity neither on the grounds of rescission nor over the process to be observed.[65] In this respect, the Hanafi school of Islamic thought appears less favourable to women in matters of judicial dissolution of marriage. The Maliki school, on the other hand, embraces a more liberal position providing several grounds for judicial rescission which, contrary to the former, includes cruelty and maltreatment. A thorough review of the contemporary legislation in different Muslim

[60] Contemporarily any agreement regarding child custody has to be informal because these matters have been excluded from the Mufti jurisdiction after the (civil court's) jurisprudence shift. Therefore, any provision of a Mufti decision on child custody is dismissed by the civil courts and does not produce legal effects. This is the case even if the Mufti's decision is based on an agreement between the spouses.

[61] Kofinis (n 38) 134; see also Papadopoulou (n 5) 401.

[62] Samia Bano, 'Cultural Translations and Legal Conflict: Muslim Women and the Shari'a Councils in Britain' in Anna Hellum, Shaheen Sardar Ali and Anne Griffiths (eds), *From Transnational Relations to Transnational Laws* (Ashgate 2011) 165-186, 174.

[63] Tsaoussi and Zervogianni (n 7) 217; Efstathios Tsoukalas, 'The Family and Inheritance Law of the Muslims of our Thrace' (2002) 43 *Elliniki Dikaiosini* 1305, 1306 [in Greek].

[64] Jamal J Nasir, *The Status Of Women under Islamic Law and Modern Islamic Legislation* (Brill 2009) 134-35.

[65] Fyzee (n 41) 168-69.

countries allows us to infer that, in this method of separation, the court can declare the marriage terminated on the initiation of the wife in cases of injury, discord or maltreatment, the husband's failure to provide maintenance, impotence, imprisonment, physical defects, and so on.[66] The point of interest here is that when divorce is granted based on the husband's fault, the wife can retain her dower. Interestingly, considering the existing knowledge on the jurisprudence of the Greek Sharia courts, it is notable that this type of divorce is not adopted by the religious bodies in Thrace. Unfortunately, this seems to be the case even in occasions where women explicitly state to the court that they have been abandoned or maltreated by their husband.[67] In any case, this represents a legal irregularity of paramount importance that signifies divergence from the main corpus of Islamic law. Despite the explicit possibility provided by religious norms, the Muftis in Thrace seem to abstain from the application of Tefriq separation. Yet, this reluctance undermines the possibility of Muslim women to obtain a divorce on very serious grounds such as maltreatment, putting them in the difficult position of having to negotiate a divorce with their husband.[68] As a result, when a legal deadlock emerges Muslim women are confronted with implicit encouragement to resort to the Khul process, which involves waiver of their dower and leads to unjustified deprivation of their property rights.[69]

5.4. Post-divorce Maintenance

By virtue of Islamic law, a specified period of prohibition to remarry commences for Muslim women (*Idaat*) after the dissolution of marriage, during which, under certain conditions, they are entitled to maintenance. Nevertheless, it should be emphasised that this kind of maintenance is essentially, and by principle, different from the alimony provided to former wives in the frame of civil law. The so-called 'waiting period' shall be observed only if consummation has occurred during the spousal union and lasts only for three menstrual cycles of the woman or three months starting from the date that the marriage ended. Its main objective can be summarised as the ascertainment of the paternity of any child in the case of the wife being pregnant.[70] In contrast, the alimony of the national family law rests on the principle of fairness, whereby a woman incapable of maintaining herself through her income or property, under certain conditions, qualifies to seek alimony from the former spouse.[71]

However, the study shows that the above distinction might not always be clear to Muslim women in Thrace. They frequently expect or demand maintenance longer than that provided through the observation of the waiting period, or under premises that are

[66] See Fyzee (n 41) 169-77; Nasir (n 41) 125-42; Pearl and Menski (n 54) 285-86; Rehman (n 59) 119.
[67] See for example Sharia Court of Komotini Decision no 59/2009 enforced by the Court of First Instance of Rhodope Judgment no 138/2013.
[68] ibid.
[69] See similar concerns in Sardar Ali (n 4) 133.
[70] Nasir (n 64) 159.
[71] See Article 1442 of the Creek Civil Code.

not prescribed by the religious law. This confusion is also related to the lack of knowledge regarding the scope of the Mufti jurisdiction. The statute foresees that the jurisdiction of the Sharia courts in Thrace comprises the power to adjudicate maintenance only on the basis of religious law, that is the three-month waiting period, rendering the timescale beyond this outside their competence. Practically, this means that interested women, should they wish to pursue maintenance for longer than that prescribed by the religious term, have to resort to the civil jurisdiction. Moreover, it should be stressed that the latter, due to its different purpose and broader scope of applicability, offers more sufficient protection of women's rights.

5.5. Succession

The prevailing opinion suggests that the application of Islamic inheritance law in Western Thrace is limited.[72] It specifically refers to the immovable property of the deceased, which is known as full private ownership (*Mulk*), excluding that which has been determined by the former Ottoman administration as being of imperial or public ownership (*Arazi-i Emriye*).[73] On the other hand, the dissenting opinion argues that the total of the hereditary affairs of the minority members should be subjected to the civil law of inheritance.[74] The above limitation does not derive from the doctrine of the Islamic law of inheritance,[75] but comprises an interpretative distortion of the domestic jurisprudence that can hardly be extracted from the law. Nevertheless, this distinction is of no less importance for succession, considering that currently the described type of property represents, if not the majority, certainly an accountable part of local Muslims' real estate.

Apart from the above limitation, the succession of Muslims in Thrace is congruent with the fundamental principles of the Islamic tradition. Thus, as a subject of divine revelation, succession is governed by rigid Koranic rules that no adherent shall circumvent by private will. Accordingly, it is provided that Islamic heredity is based on intestate succession whereas a testament as a legal instrument is recognised mainly as a means of bequeathing legacies.[76] The religious norms in this field promote a dissimilar treatment of men and women. Respectively, the estate of the deceased devolves to the inheritors according to fixed hereditary shares whereby Muslim women are entitled to a lesser share when compared to men.

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[72] Tsitselikis (n 12) 403; Ktistakis (n 5) 80.

[73] Georgios Nakos, 'The Legal Status of the Former Ottoman Lands in the New Territories and Especially in Thrace' (1988) (2) *Armenopoulos* 135, 136-37 (Legal Opinion) [in Greek].

[74] Peter Gottwald and Dimitrios Dimitriou, 'Regarding the Intestate Succession of the Muslim Greek Citizens' (1995) (10) *Armenopoulos* 1354 [in Greek]; see also Greek Legal Council of the State Legal Opinion no 390/1953 [in Greek].

[75] In the Muslim tradition there are no distinctions regarding the hereditary estate: NJ Coulson, *Succession in the Muslim Family* (Cambridge University Press 1971) 2; see also Pearl and Menski (n 54) 439-40.

[76] The Islamic will/testament is a legal institution that is recognised by the law as a means mainly for making legacies. See Joseph Schacht, *An Introduction to Islamic Law* (Oxford Clarendon Press 1991) 173.

Consequently, Muslim women of the minority are typically confronted with the same unequal treatment that Sharia reserves for them. However, despite the inclusion of the minority's hereditary affairs in the Islamic jurisdiction, in fact different practices have prevailed. In response to the discriminatory regulation of the religious law, their succession has conformed gradually with the provisions of civil law, although not in its entirety.[77] Today, it is observed that minority members usually resort to legal constructions such as *inter vivos* gifts and the (civil) testament. The first practice refers to the legal act of property transfer during the lifetime of the giver and the second occurs as a facilitation that stems from the optional character of the religious regime. By recourse to in-life gifts the interested party may proceed to the disposition of his or her property beforehand, endowing female beneficiaries property that under the religious norms they would not be able to acquire. As regards the latter, it is usual for Muslim women along with men, to redact testaments (last wills) before notaries. By extension, this affords equally for Muslim women the possibility to arrange their post-mortem property distribution in harmony with their private will. It also allows female inheritors of female ancestors to inherit equal shares with male heirs.

Nevertheless, there have been unfortunate developments as regards the testamentary succession of minority people. Specifically, the validity of wills redacted by the members of the minority has been contested by a series of judgments of the Greek Supreme Court (Areios Pagos).[78] The court upheld that the inheritance relations of the Muslims of Greek citizenship are governed by the Sacred Islamic law whereby principally a testament does not constitute a legitimate ground of succession. In so doing, however, the court seems to open Pandora's box, generating another round of controversy regarding the accommodation of Sharia in the national legal order, and in particular regarding the issue of whether it is optional or compulsory. Even though the judgments exclusively address the testators' immovable property, their importance is still not mitigated, especially when it comes to the rights of the respective female individuals. In particular, the judgments tend to ignore the self-evident right of preference between jurisdictions to which the Muslims of the region are entitled as Greek citizens equal before the law. Additionally, this creates a major problem concerning the validity of the thousands of testaments that have been already written (women's included) awaiting implementation. Yet, elaborated from a woman's perspective, it is apparent that the ruling of the court, as regards the freedom to dispose of one's property, leads to their further subordination. In this way, Muslim women are being denied the possibility to opt out of the existing religious regime, while becoming restricted in a succession mode

[77] There is still a number of Muslims who resort to the Mufti in order for him to stipulate (fetwa) how the inheritance shall devolve to the heirs.

[78] See the recent Greek Supreme Court Judgments nos 1497/2013 and 1862/2013. However, previously the Court of Appeal of Thrace (Judgment no 392/2011) had ruled in favour of the freedom of the members of the minority to write testaments of civil law, adding that there is no legal obligation to subject their hereditary affairs to Islamic law. See also the Court of First Instance of Rodophe Judgment no 9/2008 which considered the Greek Constitution and the ECHR as limitations to the application of Islamic law of inheritance.

that profoundly breaches the notion of gender equality. Specifically, they are being prevented from both demising and inheriting or, in other words, they can neither write testaments nor succeed on grounds of secular law.

6. Factors Underlying the Failure of Women's Rights to Receive Adequate Protection

The above illustration of Muslim women's treatment reveals that the failure to safeguard their rights is multifaceted. As shown, the deficiency largely stems from the way the religious courts operate and the position they adopt in the broad spectrum of their competence. Yet, this constitutes only part of the problem. The research also clearly finds that state law or state (civil) justice providers preclude Muslim women's access to justice. There are reasons for this: on the one hand, it is due to the maintenance of a vague and inadequate normative framework regulating legal pluralism and Islamic law, on the other, the reluctance of civil justice to exercise the required constitutionality control.

The regulatory framework related to the application of Islamic law fails to illustrate the substantive quality of a well-drafted, precise and perceivable law. Rather adversely, inadequacy promotes legal uncertainty, which, in turn, puts the proper legal treatment of the individuals that are subject to its force at stake. As a result, contemporarily we have a set of domestic laws[79] that address the same topic but which are unable to establish legal cohesion in order to satisfy a reasonable regulation of the existing legal plurality. In particular, the statute falls short of providing a clear definition of the legal relations that are subject to the force of the religious law. This is the case from both substantive and procedural points of view. More than a century after the introduction of Islamic law in the national legal order, neither legal scholars nor the judiciary have reached unanimity regarding the scope of Sharia and the limits of the Mufti jurisdiction. It is notable that, until around 2001, child custody was considered part of the Islamic jurisdiction. Since then, following the shift of jurisprudence,[80] civil courts do not ratify the custody provisions of Mufti decisions, although it appears to be stipulated in the law that these matters fall within the limits of the religious jurisdiction.[81] Notwithstanding the fact that these are positive developments from women's perspective, because in Islamic law child custody is governed by gender-based rules, they are also indicative of the legal fragmentation and variability in the conception and interpretation of the statute in force.

The unregulated and informal methods of justice administration reveal the legal vacuum that poor legislation on the accommodation of Islamic law has created. Individual aspects such as the lack of reasoning and the absence of the right to appeal are legal

[79] Namely, Article 4 of Act 147/1914 and Article 5 of Act 1920/1991.
[80] See Court of Appeal of Thrace Judgment no 7/2001.
[81] See n 15.

disruptions that deteriorate the legal position of litigants, and specifically the vulnerable parties of this religious order, that is Muslim women of the minority. In a legal framework where gender equality is not a prerequisite, the existence of procedural impediments and the lack of legal remedies suggest major violations of human rights. This is perhaps the reason for the emergence of the theory of *concurrent jurisdictions*. Particularly, part of the Greek legal scholarship suggests that religious jurisdiction, instead of being exclusive, may operate concurrently with the civil jurisdiction.[82] Mostly, it is conceived as another method of forum shopping or another level of optionality in that it is based on the assumption that Islamic law and Mufti jurisdiction might not always advance the protection of the fundamental rights of Muslim women as conceived in civil law. Therefore, it is argued that in such circumstances (eg divorce by seeking the consent of the husband to divorce) religious jurisdiction should be replaced by the jurisdiction of civil courts.[83] This theory does not prevail among the judiciary and it was only exceptionally adopted in the past.[84] Thereby it is illustrated that one cannot invoke the principle of optionality to opt out of the religious regime. Unfortunately, this is also to the detriment of Muslim women, who are not allowed to mobilise their cases according to their best interest.

Moreover, as mentioned earlier, the irregular application of Islamic law is an additional factor that undermines the access of Muslim women to just treatment. Ultimately, it becomes evident that Muslim women are being prevented from enjoying benefits that Sharia reserves to them. The inconsistency delineated here comprises a collateral element of divergent treatment in conjunction with the absence of reasoning and other legal remedies. Thus, it is noteworthy that, while participating in an adjudication process of an Islamic tribunal, nobody can be sure whether the law applied is the proper religious law or a version that resembles it, and whether, at the same time, incorporates individual interpretations of the presiding authorities. Therefore, it is evident that Muslim women's legal treatment is dependent on the wide and uncontrolled margin of appreciation of the Islamic authorities. Additionally, it is equally important to underline that it is not necessarily the imperative of Islamic law that produces the differentiated treatment of Muslim women but the practice of the religious bodies themselves.

As regards the clause of constitutionality, it should be underlined that it is a legal construction, creating a condition that postulates Mufti decisions to be in compliance with the Greek Constitution.[85] In the context of the religious regime in force, the clause of constitutionality proves to be the only substantial legal instrument in terms of protecting the rights of Muslim women. This is because the Greek Constitution, while

[82] Kostas Mpeis, 'Comments on the 405/2000 of the Court of First Instance of Thiva' (2001) 32 *Diki* 1098 [in Greek].
[83] Athina Kotzampasi (n 7) 69.
[84] See the Court of First Instance of Thiva Judgment no 405/2000.
[85] It is also a novelty, which was introduced by the more recent Act 1920/1991 and probably depicts the reservations that the legislators have had regarding the compatibility of the religious jurisdiction with the Greek public order.

being the supreme source of law in the domestic hierarchy of laws, enshrines and promotes gender equality[86] and the right to judicial protection.[87] Unfortunately, the reality shows that this measure has utterly failed to serve its objective. A recent national study commented that of a total of 2,679 Mufti decisions (in the period of 1991-2006) only one Mufti decision was dismissed by the civil courts on the grounds of contravention of the Constitution.[88] Similarly, on the basis of more recent data, of a total of 16 decisions of the Sharia Court of Komotini relating to the period of 2012-2013, none of these were dismissed. Undoubtedly, the results are striking. They illustrate the extent of the deficiency in protecting the fundamental rights of women, while also connoting the overall failure of the legal system of application of Islamic law in Greece.

7. Conclusion

In conclusion, the legal treatment of Muslim women in Western Thrace is largely dependent on the wide and non-reviewable appreciation of the presiding Islamic authorities. In addition, the failure of civil justice to safeguard the rights of women by means of constitutionality control results in the implicit endorsement of the existing legal disorder. As a consequence of this, legal pluralism in Western Thrace operates as an aggregate dysfunctional mechanism, a discriminatory and partly irregular legal context that is implemented through unregulated and informal religious adjudication that entails the deprivation of principal rights for the Muslim women of the region. Furthermore, this legal framework retains another level of differentiated treatment as well. Currently, the Greek legal order comprises a religion-based distinctive regulation of its female citizens status. This is reflected in the subjection to two normative orderings of divergent spirit and content (secular and religious). This divergence can be explained and becomes reasonable only under the premise of optionality, which has been endangered by the aforementioned rulings of the Greek Supreme Court. Moreover, it is the imperative of the Treaty of Lausanne that guarantees the enjoyment of civil and political rights by the minority members and necessitates no faith-based discrimination in the exercise of those rights.[89]

Additionally, the accommodation of a normative regime that operatively induces disparities in the treatment of men and women and/or inefficient access to justice, does not conform with the position of a State that is a contracting party to major international conventions/covenants (eg ECHR, CEDAW). The particularities of the Greek case lately have been observed by officials of international organisations, namely the Commissioner for Human Rights of the Council of Europe and the Committee on the Elimination of Discrimination against Women. Both the Commissioner and the Committee have

[86] See n 24.
[87] Article 20 para 1 of the Greek Constitution.
[88] Ktistakis (n 5) 158.
[89] Article 39 of the Treaty of Lausanne.

articulated their concerns regarding the disparities that Sharia law and the operation of religious justice cause in relation to equality of the sexes and the rights of children. Respectively, the Committee, in consideration of Greece's periodic reports of the years 2007 and 2013,[90] among others, confirms the discriminatory treatment of Muslim women as an outcome of an extensive application of Sharia in their family and inheritance relations. It finds this situation to be incongruent with the national constitutional order and Article 16 of the Convention, and urges the officials to strengthen the knowledge of Muslim women concerning their rights and the civil law alternatives. The Committee observes, moreover, that discrepancies in the treatment of Muslim women are persistent, particularly in the area of marriage and inheritance. In order to tackle the problems, it recommends the harmonisation of the application of local religious and general law with the provisions on non-discrimination of the Convention. In addition, it supports the enhancement of awareness of the detrimental aftereffects of early marriages, as well as the training of legal professionals (including the judiciary) and religious leaders on the norms and principles of the Convention. On the other hand, the Commissioner has put forward his position towards the revocation of Muftis' judicial powers while urging officials, in the meantime, to initiate the enhancement of judicial control of Mufti decisions.[91]

In this respect, in December 2010, a preparatory legislative committee presided over by prominent legal scholars, drafted a bill that envisaged, among others, the abolition of Sharia.[92] The committee underlined the disparities generated by subjection to the rules of Islamic law and the discriminatory treatment of the sexes, which, it asserted, is in conflict with the subsequent international commitments of the State and the principles of the Greek Constitution. However, it seems that this initiative received very little appreciation and was never brought before Parliament for discussion.

The sharp conflict of the existing situation with fundamental human and women's rights makes clear the need for revision of this dysfunctional religious regime. This is not an easy task however. Western Thrace is a region where there is polarisation and many aspects of minority interests are politicised.[93] The determination of a possible solution is only part of the challenge; efficient implementation is equally important for the viability of any project. A feasible and standing intervention requires sincere dialogue with the community in issue and presupposes that any initiatives of imposition would be avoided. Most importantly, however, any functional solution demands scientific research that, among other things, accounts for the agency of the individuals under

[90] Concluding comments CEDAW/C/GRC/CO/6, 2 February 2007 and concluding observations CEDAW/C/GRC/CO/7, 1 March 2013.
[91] Report CommDH(2009)9, 19 February 2009, by Thomas Hammarberg following his visit to Greece from 8-10 December 2008, Strasburg.
[92] See Introductory Report to the Bill, 'Amendment of Provisions of Family Law' (17 December 2010) <www.isotita.gr/index.php/info/1448> [in Greek] accessed 3 April 2015.
[93] See Konstantinos Tsitselikis, 'Seeking to Accommodate Shari'a within a Human Rights Framework: The Future of the Greek Shari'a Courts' (2012-2013) 28(2) *Journal of Law and Religion* 341, 351.

consideration, that is, Muslim women of the minority. Hence, any potential venture of revision should provide them the opportunity to articulate their positions. After all, successful establishment of a viable solution through collective and effective endorsement of human rights would enhance the notions of legal pluralism and multiculturalism and effect the improvement of the levels of legal culture in Greece.