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# Managing religious law in a secular state

## The case of the Muslims of western Thrace, on the occasion of the ECHR judgment in *Molla Sali v Greece*

Vassiliki Koumpli*

**ABSTRACT** Diversity in the sense of multiculturalism –as regards both nationality and religion– is currently a reality in Greece. This phenomenon has no impact on the Greek legal system, which in principle applies to all Greek citizens and all persons residing in Greece without distinction. However, the exceptional recognition of direct application of religious law and jurisdiction –i.e. application without reference by conflict of law rules– to personal status matters of the Muslim minority of Western Thrace has given rise to important concerns as regards the applicable legal framework and its impact on the Greek legal order in the context of the current international environment, which provides enhanced protection of human rights. The paper provides a succinct illustration of the management of religious law by a secular state, Greece, as depicted in the particular case, also with reference to the *ad hoc* ECHR judgment in *Molla Sali v Greece.*

**Keywords:** Islamic law; Sharia; Mufti; Muslims of Western Thrace; human rights; discrimination; interreligious law; personal status.

## I. INTRODUCTION

Diversity in the sense of multiculturalism –as regards both nationality and religion– is currently a reality in Greece[1]. The increasing immigrants' influx during the last decades is

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[1] According to information available on the website of the Hellenic Statistical Authority (www.statistics.gr) based on the results of the latest census (2011), the resident population of Greece is 10.816.286, of which 9.904.286 people have Greek citizenship, 199.121 people are citizens of other EU countries, 708.054 people

gradually resulting in the establishment of a purely multicultural society. Without doubt, this phenomenon has given rise to serious socio-economic challenges; in principle, nonetheless, it has had no impact on the Greek legal system, which applies to all Greek citizens and all persons residing in Greece without distinction.

A blatant exception to this rule consists in the recognition of direct application of religious law and jurisdiction –i.e. application without reference by conflict of law rules– to personal status matters in two particular cases: in the case of Jews, on the one hand, and in the case of Muslims of Western Thrace (an area in North Eastern Greece), on the other hand. And if the first one has only had limited practical application and raised no particular legal and cultural concerns[2], the second one, on the contrary, has given rise to important concerns as regards the applicable legal framework and its impact on the Greek legal order in the context of the contemporary international environment. One may, in fact, notice that legal

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are citizens of other countries and 4.825 people are without citizenship or have no specified citizenship. As regards religion, Greece is a Christian state. To a vast majority estimated to a percentage of 96%, its population belongs to the Eastern Greek Orthodox Church. There is a small community of Roman Catholics (0.5%), and an even smaller one of Protestants (0.2%). There is also a small number (2,325) of Uniates (Greek {Byzantine} Catholics). In the eastern part of the northern part of the country (Thrace), there is a small minority population of Muslims (1.24%, about 140,000 people); such Muslims of Western Thrace are not homogenous, neither ethnically (50% Turkish origin, 35% Pomaks and 15% Roma) nor religiously (nearly 90% are Sunnis, whereas the rest are Sufi, and more particularly Bektashi). There also exist a small number of Jewish populations (0.05%). Smaller groups of almost every kind of religions and sects live all over the country: Jehovah witnesses, scientologists etc. See Polis (1992) 171-195; United States Department of State (2006); Tsaoussi, Zervogianni (2008) 215; Assimakopoulou (2014) 731.

[2] Israelite Communities in Greece are characterized as legal entities of public law and are governed by the provisions of Law 2456/1920 [On Israelite Communities. Government Gazette A 173] granting them a kind of self-administration in many matters. Law 147/1914 [On the applicable legislation to the annexed countries and their judicial organization. Government Gazette A 25] had already provided that the substantive law regulating the formation and the dissolution of marriage of Israelites was the Judaic religious law whereas state courts had jurisdiction over the relevant disputes. Article 4 of Law 2456/1920 transferred jurisdiction over all Israelites in Greece to the *Beth Din*, the rabbinical court of Thessaloniki. After the Holocaust of 1943, which resulted in the enormous decrease of the Hebrew population, and the enactment of the New Greek Civil Code, in 1946, this provision was abolished by virtue of Article 6 of the Introductory Law to the Civil Code [Mandatory Law 2783/1941. Introductory Law to the Civil Code]. Subsequent Law 1029/1946 [Regulation of marital relationships of Israelites. Government Gazette A 79] made an effort for this regime to be preserved, providing for the application of Judaic religious law to issues concerning the engagement, the conditions for marriage, the dissolution of marriage and the dissolution of the bond of *Halitsa*. The application of this law, however, entailed interpretation implications that ought to be resolved by a decision of Areios Pagos (the Hellenic Supreme Civil Court). Jews chose not to bring the issue to Areios Pagos, tacitly agreeing, thus, to be governed by the Civil Code and be subjected to Greek state courts as regards disputes about marriage formation and dissolution. Nevertheless, the jurisdiction of *Beth Din* still applies to Hebrews who are citizens of other states whose legislation recognizes the validity of Judaic religious law as well as to Greek Israelites, who, after having their divorce issued by a state court, may apply to the *Beth Din* for the spiritual dissolution of their marriage. See in this respect Papastathis (1998) 48; Assimakopoulou (2014) 738-739.

scholars have shown an enhanced interest in the matter[3] and case law has also extensively dealt with it.

Purpose of this paper is to provide a succinct illustration of the management of religious law by a secular state, Greece, as depicted in the case of the Muslim minority of Western Thrace, also with reference to the relatively recent –and much anticipated– judgment of the European Court of Human Rights (ECHR) in *Molla Sali v Greece*[4]. It adopts a holistic approach towards the issue examining in brief both its national and international law aspects and mentioning its implications in relation to different fields of law, such as human rights law and conflict of laws. This approach cannot avoid being comparative to some extent, given that it also highlights the distinctiveness and specialty of the Greek regime in comparison with other jurisdictions. Such regime, in fact, embodies a unique interreligious law technique in the sense that, firstly, the law is not uniform for all Greek citizens as well as all persons residing in Greece and, secondly, it designates special conflict of law rules to solve the relevant conflict[5]. Of course, the relevant issues cannot be analysed in depth in a paper like this, which, as a National Report, is destined to provide information in a descriptive way and within a limited framework; they are, however, adequately highlighted and provide food for thought to those interested to familiarize with the matter.

In this context, following this short introduction (I), the paper provides a critical overview of the design (II) and the impact (III) of the direct application of Islamic law and jurisdiction to the Muslims of Western Thrace. After this analysis, the report ends with some concluding remarks of the author (IV).

## II. THE DESIGN OF DIRECT APPLICATION OF ISLAMIC LAW AND JURISDICTION

The Muslim minority of Thrace historically emerged from the Ottoman Empire's demise and the creation of a new Turkish nation. The design of the direct application of Islamic

[3] See, for instance, in the English language Papastathis (1998); Tsaoussi, Zervogianni (2008); Tsitselikis (2012-2013); Assimakopoulou (2014); Tsavousoglou (2015); and in the French language Roucounas (1981); Tsourkas (1981-1982). Most important publications in the Greek language include the following: Bedermacher-Gerousis (1977); Tsoukalas (1988); Minaides (1990); Georgoulis (1993); Kotzambasi (2001); Papassiopi-Passia (2001); Tsitselikis (2001); Tsoukalas (2002); Kotzambasi (2003); Ktistakis (2006); Ktistakis (2007); Papadopoulou (2012); Pantelidou (2013); Kotzambasi (2014); Sakaloglou (2015).

[4] ECHR, *Molla Sali v Greece* (Application No. 20452/14) Grand Chamber (December 19, 2018) HUDOC. The Chamber of the European Court of Human Rights to which the case was allocated, announced, on 8 June 2017, that it has relinquished jurisdiction in favor of the Grand Chamber. The hearing at the Grand Chamber took place on 6 December 2017.

[5] See Gallala-Arndt (2017) 1020, 1023.

law and jurisdiction to the personal status matters of its members is associated with the participation of two categories of agents, whose role has been crucial in structuring and developing this special regime: the legislature and the courts. The following subchapters deal, thus, first, with its legislative design (A) and, second, with its judicial design (B).

## A. The legislative design

The special Islamic regime was established as a consequence of a series of international and national legal instruments which have been enacted since 1881 to date and actually retained the Ottoman *millet* system (which submitted non-Muslim citizens to their own religious laws and sometimes to their religious tribunals in their personal status matters[6]). This legislation is set out below in chronological order:

### 1. Convention of Constantinople (1881)

The Convention of Constantinople was signed between the Kingdom of Greece and the Ottoman Empire on 2 July 1881[7] and resulted in the cession of the region of Thessaly and a part of southern Epirus (the Arta Prefecture) to Greece. The Convention included the first provision on Muslim religious courts: Muslim population living in the new territories of the Greek State would enjoy freedom of religion and religious courts would have competence to decide on religious issues, which comprised those relating to their personal status, i.e. family and succession matters. The Law enforcing the Convention[8] recognized existing Muftis, but granted them only consulting, and no judicial, competences.

### 2. Treaty of Athens (1913)

The Treaty of Athens between the Kingdom of Greece and the Ottoman Empire was signed on 14 November 1913[9], and formally ended hostilities between them after the two Balkan Wars and ceded Macedonia –including the major city of Thessaloniki–, most of Epirus, and many Aegean islands to Greece. The Treaty contained provisions concerning the protection of the Muslims living in the areas conquered by Greece, mainly in Macedonia and Epirus.

[6] As to the *millet* status, see Gallala-Arndt (2017) 1022.

[7] Ratified by Law ΠΛΖ΄/1882.

[8] Law ΑΛΗ΄ of 22 June 1882. On spiritual leaders and Muslim communities.

[9] Ratified by Law ΔΣΙΓ΄/1913.

In particular, it was provided that the Mufti, the Muslim religious leader, would have competence over certain family and succession cases of those populations, which were regulated by the Sacred Islamic Law.

**3. Law 147/1914**

In order to enforce the Treaty of Athens, the Greek Government enacted Law 147/1914, which is still in force. According to Article 4 of such Law, which introduces a substantive law provision, issues pertaining to the formation and the dissolution of marriage, the personal relationships between spouses as well as the kinship of Greek Muslims are governed by their religious law.

**4. Law 2345/1920**

Law 2345/1920[10] was also enacted so as to fulfill the obligations set out in the Treaty of Athens and provided that Muftis have jurisdiction over matters concerning marriages, maintenance, custody, guardianship, emancipation of minors, Islamic wills and intestate succession, as long as such matters are governed by the Sacred Islamic Law. It remained in force until 1991 when it was repealed by Law 1920/1991[11].

**5. Treaty of Lausanne (1923)**

The Treaty of Lausanne, signed on 24 July 1923[12], officially settled the conflict that had originally existed between the Ottoman Empire and the Allied French Republic, British Empire, Kingdom of Italy, Empire of Japan, Kingdom of Greece, and the Kingdom of Romania since the onset of World War I. It established the obligatory population exchange between Christian Greek populations who were situated in the borders of the new Turkish nation, with the Islamic Turkish populations who lived in Greece, the Greek minority of Constantinople and the Islamic minority of Thrace being excluded from the scope of its application. Section III of the Treaty (Articles 37-45) contains provisions on the protection of such minorities. Turkish nationals belonging to non-Muslim minorities shall enjoy the same civil and political rights as Muslims and the same treatment and security in law and in

[10] Law 2345/1920. On the temporary chief Mufti and Muftis of the Muslims of the State and on the management of the property of Muslim Communities. Government Gazette A 148.

[11] Law 1920/1991. Ratification of the Legislative Order of 24 December 1990 "On Muslim Religious Officers". Government Gazette A 182.

[12] Ratified by Legislative Decree of 25 August 1923. Government Gazette A 238.

fact as other Turkish nationals (Articles 39-40). According to Articles 42 and 45 of the Treaty, Turkey and Greece undertook to adopt measures so as to ensure that all matters pertaining to the personal status of minorities would be resolved in accordance with their religious customs. There is no provision for the establishment of religious courts or the jurisdiction of the Mufti. Moreover, there is no provision restricting the possibility of a future different regulation of those issues provided that such decisions would be taken by special commissions in which the minority would be represented. In case no consensus could be reached, the issue would be decided by a European arbitrator[13].

**6. Law 1920/1991**

Law 1920/1991 governs the institution of Muftis, the Muslim religious leaders. There are currently three Mufti Offices in Greece located in Western Thrace: in Komotini, in Xanthi and in Didymoteicho. Muftis are appointed by virtue of a presidential decree issued following a proposal by the Greek Minister of National Education and Religious Affairs. Muftis shall be Muslim Greek citizens who either hold an Islamic theological school degree or have been Imams for at least ten years, and have been distinguished for their moral and theological education. They are granted religious, administrative as well as judicial authority: a) they solemnize or ratify religious marriages between Muslims and issue expert religious opinions (*fetwas*) on matters related to the Sacred Islamic Law, b) they appoint, supervise and retire the Muslim religious servants and c) under the procedural law provision of Article 5 of said law 1920/1991, they have jurisdiction over exclusively enumerated issues: marriage, divorce, maintenance, custody and guardianship matters, the emancipation of minors, Islamic wills as well as the intestate succession of Greek Muslim citizens who reside within their district, provided that Islamic law is applicable, as will be analyzed below[14].

**7. Law 4511/2018**[15]

Law 4511/2018, which was enacted on 15 January 2018 and adds a new paragraph to the abovementioned Article 5 of Law 1920/1991, states that matters concerning the formation and dissolution of marriage, maintenance, custody and guardianship, the emancipation of

[13] Applying this provision, Turkey abolished religious law in 1926. See *infra* III.A.

[14] See *infra* II.B.1. on the judicial authority of the Mufti.

[15] Law 4511/2018. On Muslim Religious Officers. Government Gazette A 2.

minors, Islamic wills and intestate succession are governed by Greek substantive and procedural law.

The Mufti jurisdiction ceases to be obligatory and exclusive solely on the basis of the religion of the parties. Only exceptionally may such disputes be brought to the jurisdiction of the Mufti provided that both parties submit an application to him stating that they want to resolve their dispute under the Sacred Islamic Law. Succession matters, in particular, are also in principle regulated by Greek law unless the testator solemnly declares before a notary public his will to subject succession matters to the Sacred Islamic Law. Such declaration can be freely revoked in accordance with the relevant provisions of the Civil Code[16]. Law 4511/2018 explicitly establishes a presumption of jurisdiction of Greek civil courts clearly stating that, in any case, if any of the parties refuses to subject its case to the Mufti jurisdiction it can appeal to civil courts under the common substantive and procedural legislation.

Allegedly, the Greek Government enacted the law in order to avoid a negative ruling in the *Molla Sali v Greece* case, which, at the time, was still pending before the ECHR. This practically introduces an opt-in regime as to the subjection of a dispute to Islamic law and to the Mufti jurisdiction, according to which Muslims shall have the right to directly appeal to Greek courts, whereas Islamic courts will still be available, but only upon request[17]. In other words, and from a different perspective, it also introduces conflict of law rules providing for choice-of-law and choice-of-court agreements and clauses in family and succession matters respectively.

## B. The judicial design

The judicial design of the special Islamic regime is developed at three distinctive levels. On may notice, at the first level, a religious judicial system based on the jurisdiction of the Mufti (1), at the second level, a national judicial system based on Greek courts (2) and, at the third level, an international judicial system mainly based on the European Court of Human Rights (3), as follows:

### 1. The role of the religious judicial system

[16] Presidential Decree 456/1984. Civil Code. Government Gazette A 164.

[17] As to the amendments regarding the judicial authority of the Mufti, see *infra* II.B.1.

Under Law 1920/1991, the Mufti has been judging the cases brought before him according to Islamic law, namely the Sharia, which is based mainly on the Qur'an and the Islamic tradition. Both the process before the Mufti and his judgments are in the Turkish language, the latter being subsequently translated into Greek. Given that there are no appellate religious courts, the decisions of the Mufti cannot be revised. They do not constitute final judgments, however, unless they are declared enforceable by the competent Court of First Instance, which shall examine a) whether the Mufti acted within the field of his competence and b) whether the Islamic law applied contravenes the Constitution[18]. The Court of First Instance is not competent to examine whether the provisions of Islamic law were properly applied to the particular case. Remarkably, Law 1920/1991 contained no provisions concerning the application of procedural rules, the whole process being, thus, unstructured and informal.

Under Law 4511/2015, the subjection of a case to the jurisdiction of the Mufti upon both parties' application is considered final and precludes the jurisdiction of ordinary courts as regards the particular dispute, as mentioned above. According to the new regime, too, the Mufti judgments still do not constitute final judgments unless they are declared enforceable by the competent Court of First Instance, which shall examine a) whether the Mufti acted within the field of his competence and, moreover, b) whether the Islamic law applied contravenes the Constitution, and in particular Article 4 paragraph 2 thereof (stating that Greek men and women have equal rights and obligations) and the European Convention on Human Rights. In contrast with the previous legislation, the new enactment makes, thus, an explicit reference to the constitutional principle of equality and the European Convention on Human Rights obviously underlining their importance also, and particularly, as regards the implementation of Islamic law. There is also a novelty as regards the safeguard of procedural rights and guarantees, since the new enactment provides for the upcoming issuance of a presidential decree, which shall introduce for the first time the necessary procedural rules concerning the Mufti jurisdiction, and in particular a) the process of the filing of the relevant application by the parties, which must contain an explicit and irrevocable declaration of each party regarding its option to subject the dispute to the Mufti jurisdiction, b) the representation of the parties by lawyers, c) the process of service to the respondent, d) the particular process of the hearing before the Mufti and the issuance of his

[18] This control of unconstitutionality was introduced for the first time by Law 1920/1991.

judgments as well as e) all issues concerning the organization and the functioning of the Mufti office. Nevertheless, to date, more than one year after the enactment of Law 4511/2018, such presidential decree has not been issued, essentially preventing the effective implementation of the new regime.

**2. The role of the national judicial system**

The role of the national judicial system consists in the declaration of enforceability of the judgments of the Mufti, on the one hand, and, more extensively, in the interpretation of the relevant legislative framework, on the other hand.

*(a) The declaration of enforceability of the Mufti judgments*

Even though the competent Courts of First Instance ought to control the unconstitutionality of the Mufti judgments before ratifying them, in practice these courts have been abstaining from such a substantive control and, in essence, limiting their authority to the automatic ratification of such judgments[19].

*(b) The interpretation of the legal framework*

By contrast with the declaration of enforceability of the Mufti judgments, where case law played a limited role, the vagueness of the relevant legislative framework has lead in its extended interpretation by Greek courts on issues such as the legal basis, the subjective scope and the material scope of the jurisdiction of Mufti.

As to the legal basis of the jurisdiction of the Mufti, according to the case law of the Council of State (the Hellenic Supreme Administrative Court)[20], the Treaty of Lausanne (1923) constitutes the only binding convention for Greece, since it was meant to repeal the Convention of Constantinople (1881) and the Treaty of Athens (1913). Given that the Treaty of Lausanne makes no reference to the jurisdiction of the Mufti, Greece has no international obligation to maintain this jurisdiction, which is based solely on a national legislative instrument, i.e. the procedural provision of Article 5 of Law 1920/1991. On the

[19] According to Ktistakis (2006) 158, since the enactment of Law 1920/1991 until 2006 the civil courts, which are supposed to examine whether the decisions of the Mufti are incompatible with the Constitution, denied enforceability in only 11 cases out of 2,679.

[20] Council of State 1333/2001. (2001) Armenopoulos p. 1263; Council of State 466/2003. NOMOS. See also Matthias (2007) 427 et seq. See also the legal opinions of the Legal Council of the State 390/1953 and 112/2009.

contrary, Areios Pagos (the Hellenic Supreme Civil Court) has been regularly holding that Greece is internationally bound by the Convention of Constantinople (1881) and the Treaty of Athens (1913) to maintain the jurisdiction of the Mufti[21]. This opinion has been also adopted by the National Committee on Human Rights[22]. Under the regime in force before the enactment of Law 4511/2018 (establishing the exceptional jurisdiction of the Mufti), legal doctrine also argued that the competence of the Mufti was not exclusive, but concurrent, meaning that Greek Muslims could bring their case before the Greek civil courts if they wished to do so. The exclusive jurisdiction of the Mufti would be contradictory to religious freedom since the parties would always have to state their religion before the Courts in order to found their right of judicial protection. Moreover, only civil courts could provide the guarantees for fair trial and efficient legal protection. Given, also, that the jurisdiction of the Mufti was recognized as a form of minority protection, it could not be imposed on the members of the minority against their will[23].

Second, as to the subjective scope of the jurisdiction of the Mufti, as stated above, according to Laws 147/1914 and 1920/1991, the Mufti has jurisdiction only over Muslims who are Greek citizens[24]. Areios Pagos held that the Mufti jurisdiction and Islamic law apply to all Greek Muslims[25], except for the Muslims residing in Crete[26] and in Dodecanese[27], who are excluded from its scope of application. In analyzing the matter, legal doctrine has held various opinions as to the scope of application of the Mufti jurisdiction and Islamic law: a) it should be applied to Greek Muslims with the exception of those residing in Dodecanese[28]; b) it should be applied to all Greek Muslims irrespective of their place of residence on grounds of uniformity[29]; or c) it should be applied only to Greek

[21] Areios Pagos 231/1932. (1932) Themis p. 622; Areios Pagos 105/1937. (1937) Themis p. 641; Areios Pagos 14/1938. (1938) Themis p. 328; Areios Pagos (Plenary Session) 322/1960. (1961) Nomiko Vima p. 1121; Areios Pagos (Plenary Session) 738/1967. (1968) Nomiko Vima p. 381; Areios Pagos 1723/1980. (1981) Nomiko Vima p. 1217 etc.

[22] National Committee on Human Rights, Decision on marriages of minors (February 2005).

[23] Kotzambasi (2001) 28-29; Tsitselikis (2001) 593; Kotzambasi (2003) 70-71; Tsaoussi, Zervogianni (2008) 214; Sakaloglou (2015) 259.

[24] Areios Pagos 1041/2000. (2001) Helliniki Dikaiosyni p. 429. See also the legal opinion of the Legal Council of the State 347/2003.

[25] Areios Pagos 1723/1980. (1981) Nomiko Vima p. 1217.

[26] Areios Pagos 105/1937. (1937) Themis p. 641.

[27] Areios Pagos 738/1967. (1968) Nomiko Vima p. 381.

[28] See among others Sakaloglou (2015) 259.

[29] Ktistakis (2006) 35 et seq.

Muslims of Western Thrace given the local character of the legislative framework in question (applicable only to the Muslim minority of the annexed territories by the Treaty of Lausanne) and the fact that the three Mufti Offices operating nowadays are located in this area[30]. After the enactment of Law 4511/2018, this analysis is, of course, of practical importance only once the parties agree to submit their dispute to the jurisdiction of the Mufti.

Third, as to the material scope of the jurisdiction of the Mufti, as stated above, according to Article 4 of Law 147/1914 –introducing a substantive law provision– issues pertaining to the formation and the dissolution of marriage, the personal relationships between spouses as well as the kinship of Greek Muslims are governed by their religious law. Moreover, Article 5 of Law 1920/1991 –introducing a procedural law provision– stipulates that the Mufti has jurisdiction over the issues concerning marriage, divorce[31], maintenance, custody and guardianship, the emancipation of minors, Islamic wills as well as the intestate succession of Greek Muslim citizens. After the enactment of Law 4511/2018, the prerequisite for the application of such provisions is the decision of the parties to submit their dispute to the jurisdiction of the Mufti. The enumeration of the issues falling within the Mufti jurisdiction is exclusive, and no expansion of its jurisdiction is possible by analogy[32]. Case law has held that once the parties abstain from entering into a religious marriage, but they enter a civil marriage, they automatically opt out of the jurisdiction of the Mufti[33]. Furthermore, the proprietary effects of marriage[34] as well as adoption[35] clearly fall outside the scope of the Mufti jurisdiction. It was disputed whether matters concerning parental care and the contact of the parent with the child after divorce fall within the scope of the Mufti jurisdiction[36]. Under more recent case law, matters concerning parental care

[30] See among others Kotzambasi (2001) 17-19; Kotzambasi (2003) 64-66; Tsaoussi, Zervogianni (2008) 213; Kotzambasi (2014) 806-807, with further references. See also Single Member Court of First Instance of Thiva 405/2000. (2001) Dike p. 1097 = (2001) Nomiko Vima p. 661.

[31] Single Member Court of First Instance of Thessaloniki 19989/2014. (2015) Armenopoulos p. 989.

[32] Tsaoussi, Zervogianni (2008) 214.

[33] Single Member Court of First Instance of Xanthi 1623/2003. (2004) Armenopoulos p. 366; Single Member Court of First Instance of Xanthi 66/2017. NOMOS.

[34] Court of Appeal of Thrace 119/2006. (2006) Armenopoulos p. 1565.

[35] Court of Appeal of Thrace 356/1995. (1996) Armenopoulos p. 41 = (1996) Helliniki Dikaiosyni p. 1368.

[36] Court of Appeal of Thrace 7/2001. (2001) Armenopoulos p. 692; Single Member Court of First Instance of Chalkis 1057/2000. NOMOS; Single Member Court of First Instance of Chalkis 3136/2007. (2008) Helliniki Dikaiosyni p. 1536.

are excluded from the Mufti jurisdiction[37]. Legal doctrine has also argued that only matters provided by both Article 4 of Law 147/1914 and Article 5 of Law 1920/1991 should fall within the Mufti jurisdiction and are, thus, regulated by Islamic law, i.e. marriage and divorce[38].

### 3. The role of the international judicial system

The ECHR had the occasion to deal with the compatibility of Islamic law with the European Convention on Human Rights both in general and in particular, with regard to the specific case of the Muslims of Western Thrace.

Initially, in its judgment in the case *Refah Partisi (the Welfare Party) and Others v Turkey*[39] the ECHR held that Sharia in its entirety is incompatible with the fundamental principles of democracy as set forth in the Convention. In particular, it considered that "…Sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it…". According to the Court, it was difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on Sharia, which clearly diverged from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervened in all spheres of private and public life in accordance with religious precepts.

Most importantly, on 19 December 2018 the ECHR issued its *ad hoc* judgment in the *Molla Sali v Greece* case[40]. Molla Sali, a Muslim Greek national, left his entire estate to his wife in his will, which was drawn up by a notary in accordance with Greek civil law. His two sisters contested the will on the grounds that he was a member of the Muslim community in

[37] Areios Pagos 2138/2013. (2014) Chronika Idiotikou Dikaiou p. 370; Court of Appeal of Thrace 489/2011 (unreported); Single Member Court of First Instance of Xanthi 102/2012. NOMOS. See Pantelidou (2013) 291 et seq.

[38] Kotzambasi (2003) 70; Ktistakis (2006) 87 et seq.; Pantelidou (2013) 300-301. At this point, it should be noted that the direct implementation of Islamic law as analyzed above is not excluded by the provisions of the Civil Code as regards the relations between spouses and the divorce. In fact, according to Articles 1416 and 1446 CC the provisions of the code on the relations between spouses and the divorce shall apply irrespective of the religion or dogma of the two spouses and the form of the celebration of marriage (civil or religious) unless otherwise provided.

[39] ECHR, *Refah Partisi (the Welfare Party) and Others v Turkey* (Applications Nos 41340/98, 41342/98, 41343/98 et al.) Grand Chamber (February 13, 2003) HUDOC.

[40] *Supra* note 4.

Thrace, and, thus, that Islamic law rather than Greek civil law governed inheritance in his case. Areios Pagos held that questions of inheritance in the case of Muslims fell within the jurisdiction of the Mufti, not of the civil courts. Mrs. Molla Sali brought the case before the ECHR, arguing that the Greek decision was discriminatory[41]. The ECHR unanimously held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention, read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the Convention on the grounds of the Mrs. Molla Sali's husband and her religion. The Court found that the difference of treatment suffered by Mrs. Molla Sali, as a beneficiary of a will drawn up in accordance with the Civil Code by a testator of Muslim faith, as compared to a beneficiary of a will drawn up in accordance with the Civil Code by a non-Muslim testator, had no objective and reasonable justification. It also noted with satisfaction that Law 4511/2018 came into force, holding, nonetheless, that its provisions have no impact on this case, which was decided with final effect under the old system in place prior to the enactment of that law.

## III. THE IMPACT OF DIRECT APPLICATION OF ISLAMIC LAW AND JURISDICTION

The special religious regime examined above has a significant impact on the legal order, at both national and international level, given its uniqueness (A) and the implications it entails (B).

### A. The uniqueness of the special religious regime

The Greek regime of direct application of Islamic law and jurisdiction to the Muslims of Western Thrace is unique in a number of aspects:

First, it constitutes a stronghold of interreligious law in modern Western jurisdictions. Interreligious law nowadays has a limited application, only prevailing in certain parts of the

[41] The two sisters' claims were dismissed by the Greek court at first instance (Multi-Member Court of First Instance of Rodopi 50/2010, unreported) and on appeal (Court of Appeal of Thrace 392/2011, NOMOS). The Thrace Court of Appeal found that the decision by the deceased, a Greek Muslim and a member of the Thrace religious minority, to request a notary to draw up a public will, determining for himself the persons to whom he wished to leave his property and the manner in which this was done, was an expression of his statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens. However, Areios Pagos quashed that judgment on the grounds that questions of inheritance within the Muslim minority should be dealt with by the Mufti in accordance with the rules of Islamic law. It, therefore, remitted the case to a different bench of the Court of Appeal for new consideration (Areios Pagos 1862/2013, Nomiko Vima 2014, 887). The Court of Appeal ruled that the law applicable to the deceased's estate was the Islamic religious law and that the public will in question did not produce any legal effects (Court of Appeal of Thrace 183/2015, unreported). Following an appeal on points of law by Mrs. Molla Sali on 8 February 2016, Areios Pagos dismissed such appeal on 6 April 2017 (Areios Pagos 556/2017, Helliniki Dikaiosyni 2018, 441).

world, such as Asia and Africa. It usually pertains to personal status issues, given that family relationships strongly reflect the values and ethics of a given culture, but, at the same time, they cannot hinder the functioning of the state since they represent a private space. This model, however, is incompatible with Western territorial law systems, where the citizens are subjected to uniform law which is centrally enacted and applies to all of them regardless of their religious affiliation[42].

Second, in addition to the abovementioned consideration, Greece is the only EU Member State where an Islamic jurisdiction is recognized and the Sacred Islamic Law has been directly applicable as part of the Greek legal order, and not by reference by private international law[43].

Third, the law applied by the Muftis is based on the Sharia as this derives from its primary sources and is not written. On the contrary, most Islamic states do not apply Sharia *per se*, but they have either embodied the sacred law –with adjustments– in legislative instruments, such as civil codes, family codes etc., or regulated personal status matters by uniform laws, even though they still assign to religion a particular status (e.g. Jordan, Syria, Egypt, Tunisia, Morocco etc.)[44]. It should be also born in mind that where in such states interreligious law applies, it is mostly due to the presence of populations of different religions in the state, and not simply of a minority.

What is more, taking advantage of the relevant provisions of the Treaty of Lausanne[45], Turkey has abolished religious law altogether since 1926. The minorities consented to the repeal of their special status and family and succession law of the Turkish Civil Code – inspired by the Swiss Civil Code– entered into force for the Turkish population in its entirety[46].

Fourth, one may notice that the examined religious regime constitutes a "paradox of survival of legal pluralism". In fact, this Islamic regime is restricted only to the Muslims of Western Thrace (some 140,000 Greek citizens), while all other Greek Muslims or Muslims

[42] Gallala-Arndt (2017) 1020, 1023.

[43] Only France applied until 2011 some Sharia provisions to citizens of Mayotte, one of its overseas territories.

[44] Gallala-Arndt (2017) 1024, 1024. As to such legislation, see in detail Bergmann, Ferid, Henrich (1993) Syrien; *idem* (2008) Ägypten; *idem* (2009) Marokko; *idem* (2011) Jordanien; *idem* (2011) Tunesien.

[45] *Supra* II.A.5.

[46] See Bedermacher-Gerousis (1977) 639; Ktistakis (2006) 104; Tsaoussi, Zervogianni (2008) 211-212.

residing in Greece are subjected exclusively to Greek law. The jurisdiction of Greek courts over foreign Muslims residing in Greece as well as the law governing their personal status matters has been normally regulated by the relevant procedural law and conflict of law rules, as in the case of the rest of foreign citizens and residents of the Greek territory[47].

Fifth, it is remarkable that Greek courts regularly deny the application of Islamic law by reference by private international law as well as the recognition of court rulings based on Islamic law as being incompatible with the Greek public policy. When conflict rules result in the application of Islamic law, Greek civil courts tend to deny its application in the particular case as contrary to Greek public policy –undisputable elements of which are, of course, non-discrimination on the basis of sex, the pursuit of the best interest of the child and the principles of fair trial[48]. On the same grounds, Greek civil courts also reject the recognition of foreign court decisions which have applied Islamic law[49]. Nonetheless, as already mentioned, they declare the Mufti judgments enforceable automatically, without examining their merits[50].

### B. The implications of the special religious regime

Interreligious law appears to have clear shortcomings in terms of the preservation of legal certainty and the respect for human rights[51]. The application of the particular religious

[47] Family and succession are regulated by the Civil Code. In addition, Law 3719/2008 [Reforms concerning family, children, the society and other provisions. Government Gazette A 241] introduced civil partnership between opposite-sex couples. After the ECHR issued its judgment in *Vallianatos and Others v Greece* [(Applications Nos 29381/09 and 32684/09) Grand Chamber (November 7, 2013) HUDOC], such law was amended by Law 4356/2015 [Civil partnership, exercise of rights, criminal and other provisions. Government Gazette A 181] in order to also include same-sex couples. Foreign family and succession law can be applied in Greece in accordance with the provisions of private international law –which are included in the Civil Code and the relevant EU legislation–, subject however to potential public policy reservations. In the same spirit, foreign judgments concerning family law matters can be recognized and enforced in Greece in accordance with the provisions of procedural law –which are included in the Code of Civil Procedure [Presidential Decree 503/1985. Code of Civil Procedure. Government Gazette A 182] and the relevant EU legislation–, also subject to public policy reservations. Such conflict rules may, of course, lead to the application of a foreign law governing family relations that may be purely religious, i.e. non-state law, while foreign judgments seeking recognition and enforcement may have applied religious law, too.

[48] Tsaoussi, Zervogianni (2008) 220.

[49] See Court of Appeal of Athens 10719/1995. (1997) Helliniki Dikaiosyni p. 638; Single Member Court of First Instance of Athens 3020/1997. (1997) Armenopoulos, p. 206, both rejecting the recognition of a divorce by repudiation issued by a Jordan religious court. The judicial control of whether the Mufti judgment contravenes the Constitution is different from the control of whether such judgment contravenes the public policy. It has been argued that in the latter case private international law mechanisms enable the concrete examination of the particular dispute as well as the pragmatic balancing of interests by the judge. See in this respect Deliyanni-Dimitrakou (2009) 865 et seq.

[50] *Supra* II.B.2.(a).

[51] Gallala-Arndt (2017) 1023.

regime was, thus, not without implications:

First, the unusual lack of clarity in the scope of the relevant legal provisions has allowed their differentiated interpretation as to the limits of the Mufti jurisdiction and the scope of application of the sacred law, which resulted in serious legal uncertainty[52].

Second, given that Islamic law applied by the Muftis in Thrace is not written judgments in many cases appear to depend on the personality of the particular Mufti. This has also significantly contributed to situations of legal uncertainty and, moreover, has prevented the development of such law alongside with the social evolution that took place the last century[53].

Third, it is to be noted form the point of view of conflict of laws that most of Sharia rules on divorce cannot be applied according to Regulation (EU) No 1259/2010 (Rome III)[54]. Article 10 of such Regulation defining the law applicable to divorce and legal separation stipulates that where the law applicable according to its provisions does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, then such law is excluded and the law of the forum shall apply[55].

Moreover, neither the Mufti judgments[56] nor the judgments of the Court of First Instance ratifying them[57] can be recognized in another Member State of the European Union on the basis of Regulation (EC) No 2201/2003 (Brussels IIbis) on the recognition and enforcement of matrimonial and parental judgments[58]. The same conclusion applies even after the

[52] *Supra* II.B.2.(b).

[53] Papadopoulou (2012) 718.

[54] Council Regulation (EU) No 1259/2010, of 20 December 2010, implementing enhanced cooperation in the area of the law applicable to divorce and legal separation, OJ 29.12.2010 L 343/10.

[55] It is argued that the court should examine whether there is *in concreto* discrimination in the particular case: Marazopoulou (2016), in particular para. 34.

[56] Vassilakakis (2016) 31. See also CJEU, Judgment of 20 December 2017, *Soha Sahyouni v Raja Mamisch*, C-372/16, RECLI:EU:C:2017:988. Cf. Andrae (2018) 243: according to Articles 109 et seq. of the German Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit –or Familienverfahrensgesetz– FamFG)) religious courts are considered similar to state courts only as long as they are equipped with state authority and enforcement power, not when their authority is limited to merely pronouncing the legality of a divorce petition when divorce itself takes place privately, initiated by one or both spouses.

[57] OLG Frankfurt, 16.1.2006. (2006) FamRBInt p. 77 = (2008) IPRax p. 352.

[58] Council Regulation (EC) No 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ 23.12.2003 L 338/01.

enactment of Law 4511/2018, in cases where the parties opt for their subjection to Islamic law and the Mufti jurisdiction[59]. This situation depicts how problematic the situation can be in a legal environment characterized by unavoidable interconnectedness.

Fourth and foremost, alongside with maintaining the implementation of the special Islamic regime Greece has signed and ratified a series of major international human rights instruments, such as the European Convention on Human Rights[60], the Convention on the Elimination of all forms of Discrimination Against Women[61], as well as the International Covenant on Civil and Political Rights[62], which, together with the Charter of Fundamental Rights of the European Union[63] and the Greek Constitution[64] –which ranks above international treaties[65]–, establish a coherent framework in terms of, among others, freedom of religion, equality, the protection of the best interests of the child as well as the guarantee of a fair trial.

Such an interreligious system of law which subjects the members of a religious community to their religious laws without giving them any possibility of opting out is clearly considered as a violation of their freedom of religion. In addition, refusing the members of a religious minority the right to voluntarily opt for and benefit from ordinary state law amounts both to discriminatory treatment and to a breach of the right to free self-

[59] See also Jayme, Nordmeier (2008) 369, and Jayme (2018) 277-278, with further analysis of private international law implications.

[60] Ratified by Legislative Decree 53/1974. Rome Convention on Human Rights. Government Gazette A 256.

[61] Ratified by Law 1342/1983. On the ratification of the Convention on the Elimination of all forms of Discrimination Against Women. Government Gazette A 39.

[62] Ratified by Law 2462/1997. Ratification of the International Covenant on Civil and Political Rights. Government Gazette A 25.

[63] Charter of Fundamental Rights of the European Union, OJ 08.02.2000 200/C 364/01.

[64] Of particular importance is Article 4(2) of the Constitution stating that Greek men and women have equal rights and equal obligations. Article 13(1) states that the freedom of religious conscience is inviolable, and the enjoyment of civil rights and liberties does not depend on the individual's religion. Article 21(1) and (3) of the Constitution, furthermore, stipulates that the family, as the foundation of the preservation and advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State, and the State shall care for the health of its citizens and shall adopt special measures for the protection of its youth. Under Article 8 of the Constitution, no person shall be deprived of the judge assigned to him by law against his will, whereas judicial committees or extraordinary courts, under any name whatsoever, shall not be constituted. Finally, Article 20 of the Constitution introduces the guarantee of a fair trial, providing that every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law.

[65] It should also be noted that in accordance with Article 30 of the Vienna Convention on the Law of Treaties of 1969 in case of successive treaties the provisions of an earlier treaty only apply to the extent that they are compatible with the new, special one. Therefore, the conventions signed between Greece and Turkey shall apply only as long as they do not contravene these conventions on the protection of human rights. See Tsaoussi, Zervogianni (2008) 222.

identification[66].

A the same time, the ECHR has already held that Sharia in its entirety is incompatible with the democratic principles set forth in the Convention, as described above[67].

At EU level, the European Commission considers Sharia as a general concept that encompasses several legal aspects and is the subject of varying interpretations both in the countries where it is applied and among specialists[68]. Those parts of Sharia law which are not compatible with EU fundamental rights standards are not to be applied, and those foreign judicial decisions, which are based on provisions of Shari'a law that are incompatible with these standards are not to be recognized and enforced in the EU[69]. In particular with regard to the Muslims of Western Thrace, the European Commission –even though it does not have general competence to interfere on fundamental rights, but only when a question relating to EU law is concerned– has affirmed that equality between women and men is one of the values of the European Union and, for all its actions, the EU seeks to eliminate inequalities and to promote equality between men and women, a principle also reflected in the Charter of Fundamental Rights of the European Union[70].

In light of these considerations, certain procedural and substantive aspects of the religious regime under examination appear to be particularly problematic.

From a procedural point of view, the total absence of procedural rights and guarantees in the Mufti jurisdiction has allowed the infringement of the principle of fair trial in many cases. For example, there have been noted cases of multiple hearings about the same dispute as well as cases where the respondent rarely received adequate notification of a filed action against him. And since the representation by a lawyer is not obligatory, parties may have not been able to properly defend themselves. The independence of the Mufti is

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66 ECHR, *Molla Sali v Greece*, *supra* II.B.3. and note 4.

67 ECHR, *Refah Partisi (the Welfare Party) and Others v Turkey*, *supra supra* II.B.3 and note 40.

68 Answer given by Mrs Reding on behalf of the Commission (7 April 2011) to the written question of Mr. Mözler (23 February 2011), available at <www.europarl.europa.eu>.

69 Answer given by Mrs Reding on behalf of the Commission (16 March 2012) to the written question of Mr. Obermayr (7 February 2012), available at <www.europarl.europa.eu>.

70 Answer given by Mrs Reding on behalf of the Commission (11 March 2010) to the written question of Mr. Tremopoulos (18 January 2010), available at <www.europarl.europa.eu>. According to the answer, as regards the particular situation, the Commission does not have any information showing that there is a link between this situation and EU law. It is, therefore, not in a position to pronounce on the existence of any incompatibility with EU law. Beyond the competences of the European Union, if a person considers that his fundamental rights have been violated, he can appeal to the European Court of Human Rights.

not guaranteed and, therefore, hardly can he be considered "judge" under the Greek Constitution. Besides, his judgments –which were many times characterized by lack of reasoning– cannot be appealed[71]. This situation is expected to change under the new regime and the impending enactment of the presidential decree on the safeguard of the procedural guarantees by the Muftis; the already long delay in the issuance of such presidential decree, however, in essence prevents the implementation of the new regime.

From a substantive point of view, many Sharia rules regarding marriage, divorce, parental care and succession[72] as implemented in the particular case are in direct conflict with the basic principles of the legal order as unanimously recognized by liberal Western civilization nowadays, particularly the principle of equal treatment and the protection of the best interests of the child. Specifically:

(a) Marriage in Islam is a private contract (*nikah*) with no need of a ceremony, religious or civil. Under classical Sharia doctrine, it is considered an agreement between two families where the woman's consent is not required. She can even be married without being present, given that marriage by proxy is legal. The practice of marriage by proxy had been initially accepted in Greece[73] until 2002, when it was considered contrary to the public policy[74]. Since then, Islamic marriages by proxy are considered non-existent and cannot be entered in the relevant registry.

In principle, Sharia also allows polygamy. However, the Muftis normally deny granting to a man permission for a second marriage. In any case, even if such permission is granted, the conclusion of a second marriage by the husband constitutes ground for divorce in favor of the first wife[75] as well as criminal offence under Article 356 of the Greek Criminal Code[76].

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[71] See Ktistakis (2007) 229, 230; Papadopoulou (2012) 706, 707; Tsavousoglou (2015) 248.

[72] See in general, among others Mallat, Connors (1990); Pearl, Menski (1998); Nasir (2002); Khan A.A. (2007); Khan T.M. (2007); Khan M.M. (2011a); *idem* (2011b).

[73] Legal opinion of the Legal Council of State No 686/1993 <www.nsk.gr>.

[74] Circular No 96080/19182/20.09.2002 of the Ministry of Interior Affairs, Public Administration and Decentralization; National Committee on Human Rights. Decision on Islamic marriages by proxy in Greece (May 2003).

[75] Ktistakis (2007) 53; Tsaoussi, Zervogianni (2008) 218. The Greek Civil Code grants the judge the power to give permission for the marriage of a minor only exceptionally, if this is justified by a special reason. The relevant social circumstances shall be taken into account when deciding on this issue.

[76] Presidential Decree 283/1985. Criminal Code. Government Gazette A 106. See in this respect Council of the Court of Appeal of Thrace 89/1995. (1998) Yperaspisi p. 78.

The marriage of minors is not explicitly prohibited by Sharia since no minimum age for marriage is provided. But generally, it is considered that a person has the capacity to marry only after reaching puberty. It is presumed that puberty is reached at the age of fifteen. However, it can be proved that younger persons have attained this stage of maturity. In the latter case, the marriage may be entered into if parental consent (meaning paternal consent) is granted. In Thrace, the Mufti has agreed to the marriage of girls as young as eleven years old[77].

(b) Sharia provides for three forms of divorce: the divorce by repudiation (*talaq*), the divorce by consent (*khul*) and the divorce on important reasons pertaining to the fault of the husband.

In the case of *talaq*, the man may unilaterally and informally state that he does not wish the continuation of the marriage. Such repudiation of the wife is no longer commonplace in Greece, and, in any case, it must take place before the Mufti and not privately. Usually the husband invokes a reason for divorce, however the Mufti does not really look into the facts of the case. The wife has no right to be heard in this procedure. The wife keeps the dower (*mahr*) that she received upon marriage and she may also receive maintenance (*nafaquah*), which, however, does not exceed the period of waiting that is imposed upon a woman who has been divorced or whose husband has died, after which a new marriage is permissible (*iddat*). In the case of *talaq*, *iddat* lasts until the completion of the wife's subsequent three normal menstrual periods (and in the case of missed periods, for three months and ten days). The *iddat* of a pregnant woman lasts until the baby is delivered. During the waiting period, the spouses should refrain from sex but if they engage in sex or decide on rapprochement, they can do so and they are again husband and wife (*rujat*). The husband may also have to compensate the wife for the dissolution of the marriage if such an agreement had been concluded in the marriage contract. It is disputable, nevertheless, whether such claims may be brought before the Mufti or if this matter exceeds his jurisdiction, because it refers to the property relations of the spouses[78].

In the case of *khul*, which is the most common form of divorce in practice, both spouses appear before the Mufti and state their will to obtain a divorce. This kind of divorce is substantially different from the divorce by mutual consent, as it is perceived in Western

[77] Ktistakis (2007) 52-55, 63; Tsaoussi, Zervogianni (2008) 217.

[78] Ktistakis (2007) 63-67; Tsaoussi, Zervogianni (2008) 216.

legal orders. In fact, under Islamic law the wife must compensate her husband for the termination of the marriage, usually by returning the dower (*mahr*) she had received for the formation of the marriage, by waiving her right to alimony or even her right to the custody of the children[79].

If the husband does not agree to the divorce, the wife can only achieve the termination of the marriage on important reasons pertaining to his fault. The Muftis have accepted that such fault-based reasons include the desertion of the wife, adultery, a change of religion, the non-performance of the obligation to maintain, bigamy or the violent behavior of the husband, and in general the breakdown of the marriage due to the behavior of the husband. Nevertheless, it was reported that the Muftis often rejected such divorce applications[80].

(c) As regards the relationship between parents and children, the way the post-divorce custody is awarded seems to be of particular importance. According to Sharia, the only relevant parameter for the attribution of parental responsibilities after the dissolution of marriage is the age of the child. In particular, the mother obtains custody of boys until the age of seven and of girls until the age of nine. Thereafter, the parental rights are attributed to the father. This rule was followed by certain decisions of the Muftis in Thrace, but with a large number of exceptions to this rule. Unfortunately, the factors taken into account in the case of those deviations refer to the fault grounds for divorce, without any reference to the best interest of the child[81].

(d) Sharia succession law (*farâ'idh*) introduces a particular system of unequal shares is intestate succession. Death results in the permanent cessation of legal relations between the deceased and third parties, such as the deceased's heirs, who are treated as creditors. Any creditors other than the heirs are accorded a higher rank and must be prioritized, failing which any inheritance in favour of the heirs is null and void. Male heirs have double the share in the estate as compared with female heirs. They are treated as autonomous heirs and are entitled to the portion of the estate remaining after those entitled to fractional shares have received them. The widow and daughters of the deceased are deemed to be entitled to fractional shares in the estate. Six types of fractional shares are possible: one-half, one-quarter, one-eighth, one-third, two-thirds and one sixth. Therefore, the widow will receive

[79] Ktistakis (2007) 60-61; Tsaoussi, Zervogianni (2008) 216.

[80] Tsoukalas (1998) 1655; *idem* (2002) 1305-1306; Tsaoussi, Zervogianni (2008) 217.

[81] Ktistakis (2007) 70-72; Tsaoussi, Zervogianni (2008) 217-218.

one-eighth of the estate, if there are children, and one-quarter if there are not. If the deceased's only child is female, she is entitled to half of the estate. If the deceased also has brothers and a mother, his daughter will receive one-sixth. Sharia also provides for a type of Islamic will, which in essence is more akin to a legacy. This is drawn up by the Mufti himself or is made orally before two witnesses. It enables the person concerned to bequeath up to one-third of his property to third parties (other than his heirs) for charitable purposes[82].

## IV. CONCLUDING REMARKS

All things considered, the unique religious regime applied to the Muslims of Western Thrace offers a useful example of how challenging the co-existence of secular and religious law –in particular, Islamic law– can be. Multiculturalism and freedom of religion constitute –and will continue to constitute– concepts of major importance that are to be respected in modern societies; at the same time, nevertheless, it is equally important that such core concepts and principles are aligned with the international legal order in general and the protection of human rights in particular, and do not turn into legitimate excuses for the infringement of the rights of weaker parties of the society, such as women and children. The examined case also highlights how important personal status law is in multicultural and, in general, diverse environments, given that family and succession law is still considered a strong reflection of the identity of a given society.

The new regime introduced by Law 4511/2018 has been critisized as a half-measure by the majority of legal doctrine, suggesting the full abolition of the application of Sharia and the Mufti jurisdiction. On the contrary, individual Muslims of Western Thrace –with no coherent and organized representation on the matter–, including Muslim Members of the Hellenic Parliament, appear to welcome it. Given the absence of official data and the relevant information being available mainly through press coverage, it could be argued, however, that the members of the Muslim minority of Western Thrace have a circumstancial and fragmented approach to the matter: as clearly shown in *Molla Sali v Greece* and the case law of Greek courts – which maybe constitute the most reliable sources of the existing trends in the matter, different persons belonging to the same

[82] As to the application of Islamic law to succession matters under this regime, see among others Pantelidou (2013); Sakaloglou (2015); Plagakos (2016), with further reference to case law.

minority can argue in favor of or against the Islamic regime according to their personal interests in a particular case.

It is clear that full abolition of the Mufti jurisdiction and Sharia was considered a politically premature step at the moment. In this respect, one should take into account how much delicate and complex the matter is as, apart from its legal aspects, it significantly relates to the country's international relations. In fact, it heavily depends on political considerations and the balancing of interests between Greece and Turkey, an issue obviously exceeding the scope of this paper. Bearing this in mind, one could allege that the approach adopted over time has been the result of such balancing of interests and not a conscious choice of a certain interreligious law technique. It remains to be seen whether and to what extent the respect of human rights will eventually be combined with the endeavours for political stability.

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