



WORKING PAPER 3

The ECtHR as a Venue for Greco-Turkish Relations: The Treaty of Lausanne and the Muslim Minority in Western Thrace

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Introduction

Greece is signatory to a number of international human rights organizations. The country joined the Council of Europe on August 9, 1949. It signed the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on November 28, 1959 and ratified it on November 28, 1974. Article 28 (1) of the 1975 Constitution recognizes to international law and international conventions, including the ECHR, a status above domestic statutes¹, while the Treaty of Lisbon established the ECHR's superiority over national law, including Constitutional law. Following the (belated) acceptance of the individual right to petition the European Court of Human Rights (ECtHR) in 1985, hundreds of individuals from Greece, whose rights were violated or limited by the Greek legal and political system, have filed complaints in the Court in Strasbourg². The voice of the ECtHR is an increasingly powerful one, as it has evolved into "the most effective transnational human rights institution on earth", acting as a quasi-constitutional court for approximately 820 million individuals residing in the 47 Member States of the Council of Europe (see Fokas 2015).

Amongst the other rights established by the ECHR, the Strasbourg Court has increasingly formed the arena *par excellence* where issues around religious pluralism and the rights of religious minorities are debated. Greece's high record of convictions by the ECtHR over religious freedoms-related cases (Article 9 of the ECHR and not only) signifies the challenges the country has been facing in the treatment of religious diversity and the simultaneous prevalence of the Christian Orthodox Church. In fact, the Court's first ever conviction for an Article 9 violation concerned the constitutional prohibition of proselytism in *Kokkinakis v Greece* (1993). The country's convictions involved, amongst others, cases of proselytism and the right to practice one's religion, the creation of a place of worship without authorization from the Minister of Education and Religious Affairs, state interference with the right *not* to manifest or disclose one's religion or belief, the freedom of religious communities to elect their own religious leaders, while the most recent one (15 September 2016) concerned the refusal of Greek authorities to allow a conscientious objector and Jehovah's Witness, Mr Papavasilakis, to perform civilian work as an alternative to compulsory military service. ECtHR judgments are binding for national authorities, which means that both civil and criminal national justice must adapt to the Court's jurisprudence.

¹ Though the ECHR has precedence over any contrary legislative act, it does not have primacy over the Greek Constitution.

² According to the Statistics by State of the ECtHR, Greece had by 2015 an overall number of 881 judgments at the Court: http://www.echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf

The close interconnection between Christian Orthodoxy and national identity becomes further evident through the uneasiness with which Greek authorities have historically confronted the presence of minorities in the country. Nowhere is this tension more obvious than in the case of a Muslim minority - which is the only minority that the Greek state recognizes³ - situated in Western Thrace, at the north-east part of the country, close to the borders with Turkey. The minority's population is estimated around 120,000 persons and is largely composed of people of Turkish origin or descent (in Greek *tourkogenis* - but not Turks, *tourkos*), who represent about 50% of the minority population, of Pomaks, who speak a Slavic dialect and constitute about 35% of the population and the Roma (or Tziganes) who represent the remaining 15%. There are no exact population numbers available, as census data about religion and native language have not been collected in Greece since 1951. However, it is believed that the Muslim minority makes up approximately one-third of the population of Western Thrace (Huseyinoglu, 2010). The two common denominators of the component communities of this minority are the Muslim religion on the one hand and Greek citizenship on the other.

The presence of Muslim communities in Thrace today constitutes a miniature of the once multi-religious and multi-ethnic Ottoman Empire. The gradual decline of the Ottoman Empire in the 19th and early 20th centuries was marked by the rise of competing nationalist narratives, by a series of wars and the subsequent formation of nation-states in the Balkan peninsula, amongst which the newly-established kingdom of Greece in 1830. In 1919 Greece launched a campaign against the Ottoman Empire as a means to satisfy its irredentist aspirations, or the *Megali Idea* (Great Idea), to establish a Greek state that would encompass all ethnic Greek-inhabited areas, including the large Greek populations that were still within the Ottoman Empire. This Greco-Turkish War ended officially with the signing of the Peace Treaty of Lausanne on 23 July, 1923, as part of a series of international agreements under the auspices of the League of Nations that sought to provide minority protection in the Baltic and central European states (Featherstone, Papadimitriou, Mamarelis & Niarchos, 2011). Earlier in the same year (January 1923), the Bilateral Convention Concerning the Exchange of Greek and Populations was concluded which, by considering

³ Greece does not recognize the minority status of other communities and rejects such claims as unsubstantiated and political motivated (see UN Independent Expert on Minority Issues 2009 report on Greece: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.11.Add.3.pdf>). On the presence of national minorities (such as Turks, Macedonians, Romanian Vlachs and others) and minority languages (Slav-Macedonian, Vlack and Pomak) in Greece, who are not recognized by the Greek state see Christopoulos & Tsitselikis (2003).

religion as the sole criterion, provided for the compulsory exchange of all Turkish nationals of the Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Muslim religion established in Greek territory. Amongst others, the Convention excluded from its provisions the “Muslim inhabitants of Western Thrace” and the “Greek inhabitants of Constantinople (Istanbul)”. The combination of these two agreements, which aimed at the homogenization of Greece and Turkey, brought about the specific status of the Muslim minority in Western Thrace that continues to exist. These groups have since been subjected to special protective measures that were set out by a distinct section of the Treaty of Lausanne on the “Protection of Minorities.”

Since 1923, the Greek Ministry of Foreign Affairs holds the coordination authority for any legal or political decision related to the Muslim minority. The implications of such a treatment of the minority as an issue of foreign – rather than internal – affairs become evident through the educational and professional limitations placed upon its members. In 1998, a project, titled “*Project for Reform in the Education of Muslim Children*” (PEM)⁴, found that 47% of the minority members are engaged in agricultural work, which far exceeds the Greek national average of 19% (Dragonas & Frangoudaki, 2006). Additionally, only 80% of the minority group had completed primary school. 2.6% of men and 0.2% of women had completed a university degree (Askouni, ctd. in Dragonas & Frangoudaki, 2006). These statistics demonstrate that Muslim Minority Schools, which are supposed to support minority ethnic and linguistic identity through a bilingual Greek-Turkish program, are failing.

This, together with the ongoing social, political and economic segregation of the specific minority by consecutive Greek governments indicates the extent to which this part of the country's population is treated as a sensitive national matter and considered by many as an “enemy within” (Featherstone, Papadimitriou, Mamarelis, Niarchos xxi). Indeed, in spite of Greece's adhesion to the European Economic Community in 1981 (now European Union), the Treaty of Lausanne and Greco-Turkish relations seemed to prevail over international conventions on minority protection and educational rights, such as the European Convention on Human Rights of the UN Declaration on the Rights of Persons Belonging to

⁴ The Project for Reform in the Education of Muslim Children (PEM) was a collective and inter-disciplinary effort initiated by the Greek state in 1997, and funded by the European Social Fund, as a means to address the core challenges that the provisions of the Treaty of Lausanne, as well as implementation of national laws and practices pose for minority education in Western Thrace. See Androussou, A., Askouni, N., Dragonas, T., Frangoudaki, A., & Plexousaki, E. (2011). Educational and political challenges in reforming the education of the Muslim minority in Thrace, Greece. *The International Journal of Learning*, 17(11), 227-239.

National or Ethnic, Religious and Linguistic Minorities⁵. As Greece was undergoing its own process of Europeanization throughout the 1990s, certain measures of positive or affirmative actions implemented by Greek governments were suggestive of a wider change in the overall treatment of the Muslim minority⁶, which, nonetheless, proved to be limited.

Largely as a result of Greek governments' consecutive policies of segregation and even neglect, the European Court of Human Rights has represented a venue to which members of the Muslim minority, themselves, resort in order to claim their rights, invoking, amongst others, violations of religious freedoms and the denial of ethnic identity (freedom of association). Scholars have dealt extensively both with the policies of the Greek state towards the minority (Anagnostou & Triandafyllidou 2009, Tsitselikis 2012) as well as with the implementation or *non-implementation* of ECtHR decisions by national authorities (see Bjorge, Eirik, 2015, "Domestic Application of the ECHR. Courts as Faithful Trustees" and Anagnostou, ed. 2013, "The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy"). Very little attention has however thus far been paid to the *resonance* that these decisions actually have upon grassroots actors and their mobilizations, as well as upon the social, political and legal dynamics that shape the religious freedoms cases in each country – and in this case, in Greece.

The "radiating effects" of the ECtHR: the case of the Muslim Minority of Western Thrace

This paper forms part of a wider project, titled "Grassrootsmobilise", funded by the European Research Council. Focusing on four countries – Italy, Greece, Romania and Turkey – "Grassrootsmobilise" examines the, thus far unexplored, dimension of the *aftermath* of ECtHR decisions around religious freedoms on the ground. While of course considering the implementation (or non) of such decisions, the project looks at the ways in which the Court's decisions define the "political opportunity structures" and the discursive frameworks within which citizens act in each of the four countries within the context of religious freedoms – widely understood. In so doing, the project focuses on socio-legal examinations of the

⁵ According to a decision by the Greek Supreme Court in 2005, the Treaty of Lausanne is a *lex specialis* and as such has not been superseded by a newer treaty. In essence, this ruling signifies that Greece remains bound only by the Treaty of Lausanne provisions as far as the Muslim minority is concerned see (Greece: Status of Minorities". The Law Library of Congress, Global Research Center, October 2012, p. 5).

⁶ For instance, on September 22, 1997, and many decades after the Treaty of Sevres of 1920 and the Treaty of Lausanne in 1923, Greece signed the Convention for the Protection of National Minorities. Similarly, Article 19 of 1955 Code of Nationality, which stated that "a person [Greek citizen] of non-Greek descent who leaves Greece without the intention of returning may be declared as having lost Greek citizenship" was abolished in 1998. According to the Ministry of Interior, about 46,600 Muslims have been deprived of their Greek citizenship between 1955 and 1998 (see Answer no 10097 by the Minister of Interior to a question in Parliament by the deputy of the minority Ilhan Ahmet, 20 April 2005, in Tsitselikis 8).

broader significance of ECtHR religious freedom jurisprudence and looks at the influence of the Court's judgments at the local and national level, in policy terms and more so in terms of their discursive impact at the grassroots level (see Fokas 2015). Thus, rather than focusing on the important – yet rather narrow – research question on simply the *direct* effects of the Court, we draw on Galanter's suggestion (1983) on a *centrifugal* flow of influence outward from courts and into the wider world. Galanter further specifies that

A single judicial action may radiate different messages to different audiences (...). Courts produce not only decisions, but messages. These messages are resources that parties use in envisioning, devising, pursuing, negotiating and vindicating claims (and in avoiding, defending, and defeating them (126).

Considering the project's research objectives, the Muslim minority of Western Thrace represents a critical and urgent case to examine such “radiating effects” of the ECtHR: not only does the minority form part of a country that has had the highest number of convictions in Strasbourg over religious freedoms (according to the latest 2015 report), it crucially also falls in the intersection between Greece and Turkey, as well as between religious and national identity. In addition, the Court's decisions – and their afterlives – may, in this case, have significant implications on bilateral agreements and on questions of international concern that have recently, once again, re-emerged – this time, over the Treaty of Lausanne⁷.

The paper draws on preliminary findings of fieldwork (with key actors involved in ECtHR- and national court-cases of the Muslim minority), discourse (case law and policy analysis) and media analysis and attempts to examine the aftermath of ECtHR's decisions on key issues around the Muslim minority of Western Thrace. While considering the past applications to the Strasbourg Court by members of the community, the paper also focuses on the current cases concerning the application of Sharia law in inheritance matters. It addresses the following research questions: to what extent and in what ways has the ECtHR represented a venue to which members of the Muslim minority resort in order to claim their rights? How, if at all, has

⁷ I here refer to recent statements by Turkish president, Recep Tayyip Erdogan, who criticized the Treaty of Lausanne, and its settlement of Modern Turkey's borders, for leaving the country too small. He specifically argued that Ataturk's willingness in the Treaty of Lausanne to abandon territories such as Mosul and the now-Greek islands in the Aegean was not an act of eminent pragmatic but rather a betrayal (see Nick Danforth, “Turkey's New Maps are Reclaiming the Ottoman Empire” in *Foreign Policy*, October 23, 2016: <http://foreignpolicy.com/2016/10/23/turkeys-religious-nationalists-want-ottoman-borders-iraq-erdogan/>). For the reaction of the Greek Foreign Ministry see <http://www.ekathimerini.com/212433/article/ekathimerini/news/erdogan-disputes-treaty-of-lausanne-prompting-response-from-athens>.

the ECtHR, as an external factor, intervened and influenced debates around the Treaty of Lausanne, the application of Sharia law and the ways in which the Greek state treats the minority in Thrace, in light of religious freedoms complaints?

The initial findings demonstrate that the “radiating” effects of the ECtHR are significantly limited due to the very policies of the Greek state, that – in spite of certain limited and exceptional attempts – persist on the segregation of the Minority and on its treatment exclusively as an issue of foreign affairs. This, in line with a symbolic and strategic interpretation of the Treaty of Lausanne, leaves the minority open to influences from Turkey. Subsequently, and as the cases over inheritance laws against women indicate, the persistence of the Greek state to allow the precedence of Sharia over civil law, significantly minimizes the ECtHR’s capacity to shape the dynamics within the community itself.

The Muslim Minority of Thrace before the European Court of Human Rights: the cases of the muffis, of national minorities and of Sharia law.

The applications in Strasbourg revolve around the three challenging issues facing the Minority in Thrace: the selection of religious leaders, the claims to national minority and, lastly, the application of Sharia in matters of inheritance law.

Agga v Greece and Serif v Greece: the cases of the Muffis

Two applications in the Strasbourg Court from members of the Muslim minority in Western Thrace concerned the selection procedure of Muslim religious leaders (muffis) in Thrace: *Serif v Greece* in 1999 and *Agga v Greece* in 2002.

In the first case, the applicant, *Serif*, was a theological school graduate who resided in Komotini. In 1985, when one of the two Muslim religious leaders of Thrace, the Mufti of Rodopi, died, the Greek state appointed a mufti *ad interim*. When the latter resigned, a second mufti *ad interimi*, Mr. M.T., was appointed, whom the President of the Republic confirmed in April 1990 in the post of Mufti of Rodopi. A few months later, the two independent Muslim Members of Parliament of Xanthi and Rodopi requested the State to organize elections for the post of Mufti of Rodopi, as the law then in force provided⁸. Having received no reply, the MPs

⁸ Law no. 2345/1950 provided that the muffis were directly elected by the Muslims who had the right to vote in the national elections and who resided in the prefectural district in which the muffis would serve. The elections were to be organised by the State and theological school graduates had the right to be candidates. Section 6(8) of the Law provided for the promulgation of a royal decree to make detailed arrangements for the elections of the muffis. Such a decree was never promulgated.

organized the elections themselves in December 1990. In the meantime, on 24 December 1990, the President of the Republic adopted a legislative decree by which the manner of selection of the muftis was changed. Under this decree, the functions and qualifications of the muftis remain largely unchanged. However, provision is made for the appointment of the muftis by presidential decree following a proposal by the Minister of Education who, in turn, must consult a committee composed of the local prefect and a number of Muslim dignitaries chosen by the State.

On 28 December 1990, the applicant, Mr Serif, was elected Mufti of Rodopi by those attending Friday prayers at the mosques, challenging the lawfulness of M.T.'s appointment before the Supreme Court. The applicant was then charged 'for having usurped the functions of a minister of a "known religion" and for having publicly worn the dress of such a minister without having the right to do so', for which he paid a fine. The applicant argued that his conviction amounted to an interference with his right to be free to exercise his religion together with all those who turned to him for spiritual guidance, according to Article 9 of the ECHR. The ECtHR held that there had been violation of Article 9.

The significance of the specific issue soon led to similar application in Strasbourg. In this case the applicant, Agga, was born in 1932 and lived in Xanthi. On 15 February 1990 the local Prefect appointed Mr Agga to act as a deputy, following the death of the two Muslim religious leaders of Thrace. In August 1990 the two independent Muslim Members of Parliament for Xanthi and Rodopi requested the State to organise elections for the post of Mufti of Xanthi. Having received no reply, the two independent MPs decided to organize themselves elections at the mosques on 17 August 1990, right after the prayers. On that date the applicant was chosen to be the Mufti of Xanthi by those attending Friday prayers at the mosques. On 24 December 1990 the President of the Republic, adopted a Legislative Act by which the manner of election of the Muftis was changed. In accordance with the new regulations, the Greek State appointed another Mufti. The applicant refused to step down. Eight sets of criminal proceedings were instituted against the applicant under Articles 175 and 176 of the Criminal Code for having usurped the functions of a minister of a "known religion". The applicant alleged, in particular, that his conviction for usurping the functions of a minister of a "known religion" amounted to a violation of his rights under Articles 9 and 10 (freedom of expression) of the ECHR. As in *Serif*, the ECtHR held that there was, indeed, a violation of Article 9.

In spite of the ECtHR's decisions in both cases, the Greek state has not complied with these convictions. A legal expert working on minority issues explains that

As we speak, there has been a dramatic subversion (...) over the cases *Serif* and *Agga v Greece*, concerning Article 9. Meaning, the muftis who had been elected by a part of the minority (in Western Thrace), who had been prosecuted and sentenced and [...], as in Bulgaria. It was understood that there can be more than one (muftis) and that the state is not obliged to officially recognize the non-hired (by the state) mufti. The state however cannot prosecute this (elected) mufti either. Following the decisions in *Serif* and in *Agga*, this issue had apparently been settled. (Over the last few years), however, there has been a barrage of prosecutions against elected muftis – or against the imams who fall under the elected muftis.

A human rights lawyer and activist in Greece with much experience in Strasbourg considered the Greek administration's violation of the Union's right to its ethnic identity amongst the most urgent religious freedoms challenges currently in the country. His views are particularly telling of the ways in which national judges seem to bypass ECtHR jurisprudence over the specific matters altogether:

There are constant case-files that lead to the trials of *Serif*, of *Mete*, of *Erkan Zizoglou* – together with *Mete* – and I cannot say with certainty of how many more (muftis), as information from there is scarce. This complete turnover (in attitude) is simply unacceptable, considering the jurisprudence [of the ECtHR], which means that if the muftis are sentenced, these issues will be taken again abroad [to the ECtHR]. Of course, the [national] judges who will reach these decisions couldn't care less. I would personally like to see – and I hope to contribute to this – one of these judges, who will read aloud the ECtHR jurisprudence (on this) and will, nonetheless, ignore it altogether.

Turkish Union of Xanthi?: “It is because they are Greeks and we are Turks”¹⁰

In *Tourkiki Enosi Xanthis* the applicants were two associations – Tourkiki Enosi Xanthis (Turkish Union of Thrace) and Academic Graduates' Circle of the minority in Western Thrace – and eight Greek nationals. According to its statute of 1927, one of the objectives of the first association (Turkish Union) was to help preserve and promote the culture of the “Turks of Western Thrace”. In November 1983 a Greek local court prohibited the association from using the term “Turkish” on any document, stamp or sign. On 11 March 1986 the Greek courts ordered the dissolution of the association on the ground that its statute ran counter to public policy. Almost 16 years later, on January 25, 2002, the Thrace Court of Appeal upheld this judgment and found that the applicant association was not in conformity with the Treaty of Lausanne and that some of the members presented the Muslim minority of Thrace as a “strongly oppressed minority”¹¹. The Turkish Union of Xanthi thus appealed to the ECtHR in 2005 against the ordered dissolution of their association by the Greek court, as well as against the excessive length of the proceedings (under Article 6 of the ECHR). The ECtHR stated that even supposing that the real aim of the applicant association had been to promote the culture of a minority in Greece (Muslim minority of Thrace), this could not be said to constitute a threat to the territorial integrity of the country or public order. It added that the existence of minorities and different cultures in a country is a historical fact that a democratic society has to tolerate and even protect and support, according to the principles of international law.

In June 2012, and in spite of Greece's conviction by the ECtHR, the chairman of the applicant association in *Turkish Union of Xanthi v Greece* wrote a letter to the Department for the Execution of Judgments of the ECtHR of the Council of Europe. In his letter, he describes the lack of implementation of the Court's decision by national authorities:

(...) I regretfully state that the Court of Cassation's judgment in Xanthi Turkish Union case is the latest implication of the Greek authorities' negative intentions concerning the Western Thrace Turkish Minority associations. While in September 2011, the Ministry of Justice, Transparency and Human Rights responded a parliamentary question with regard to the implementation of the ECtHR judgment that the outcome of the

⁹ Often considered in conjunction with *Emin and Others v. Greece* (application no. 34144/05).

¹⁰ Huseyinoglu (2012)

¹¹ See Diplomatik Gözlem, *Tourkiki Enosi Xanthis and Others v Greece*: <http://diplomatikgozlem.com/haber/tourkiki-enosi-xanthis-and-others-v-greece>

proceedings pending before the Court of Cassation should be awaited, the authorities' insistent rejections continue against the applications concerning the registration of minority associations in their original titles. (...) Despite the ECtHR judgments, the Greek authorities are quite decided not to allow the operation or re-registration of the associations which bear the word "Turkish" in their titles¹².

Interestingly, and despite Greek judges' defiance of the convictions, it appears that the ECtHR's decisions did have a significant, indirect effect in terms of triggering further mobilization amongst similar associations of the minority. As the chairman further describes in his letter:

After the judgments of the ECtHR regarding the cases of *Emin and others v. Greece* (No. 34144/05) and *Bekir Ousta and others v. Greece* (No. 35151/05), the above-cited associations (the "Evros Minority Youth Association" and the "Cultural Association of the Turkish Women of the Rodopi Province") applied to the Thrace Appeals Court, however their appeals were also dismissed. Both cases are currently before the Court of Cassation, waiting for the hearing dates to be announced. Apart from these associations, in respect of which there exist ECtHR judgments, the "Cultural Association of the Turkish Women of the Region of Xanthi" was rejected registration by the Xanthi First Instance Court on 17 February 2011.

In essence, this persistence of Greek administrations to avoid any characterization of members of the minority as "Turkish" contradicts its very own policies and attitudes towards the minority, which, in fact, push the latter towards Turkey in search of a mother country, an identity¹³ and even for educational and professional reasons. As a legal expert and human rights lawyer explained to me, there's a further, political manipulation of the situation, which serves the claims of the nationalist right in Thrace:

¹² Council of Europe, Secretariat of the Committee of Ministers. Item reference: 1144th meeting DH (June 2012), Communication from the chairman of the applicant association in the case of *Tourkiki Enosi Xanthis and others against Greece* (Application No. 26698/05).

¹³ Huseyinoglu (2012), describes becoming aware of the differences between him and his "Greek" peers while attending a Minority school: "Our school was very dilapidated, with crowded classrooms. Thus, I remember numerous instances when I asked my parents: 'Why do Greeks have a better, bigger, and more modern school than us? Their general response was always the same: 'It is because they are Greeks and we are Turks'" (p. 97). This statement is an expression of the experience that leads some Muslim minority students to leave home and attend high school and college in Turkey, rather than in Greece. Indeed, Huseyinoglu (2012) reports that the head of the Komotini Minority High School, Tunalp Mehmet, asserts that while minority school graduates took both Turkish and Greek university exams, almost 80% of them chose to continue their higher education in Turkey. This indicates a fundamental lack of trust in the Greek educational system and a possible lack of trust in Greece as a supportive environment for Muslim identity.

Yes, this situation is a choice of the Greek government and of the nationalists up there (in Thrace), who strongly support... paradoxically, Golden Dawn is almost non-existent in Thrace, whereas one would have expected it to be stronger. The nationalists – the borderline extreme-right – there, fight in favour of the Islamic character of the minority, thinking that this way they emphasize its Islamic aspect. This, in their view, does not allow anyone to call the minority a Turkish one and, at the same time, this supports the current message of Sytilianidis (former New Democracy MP from Thrace) that “you should finally elect a Christian MP!”. He has built his entire political message on the basis of this nationalism.

Inheritance Law: Sharia v. the Greek Civil Code

Law no. 2345/1920 provided that the Muftis, in addition to their religious functions, have competence to adjudicate on family and inheritance disputes between Muslims to the extent that these disputes were governed by Islamic law. In fact, Greece is the only European country in which cases around family and inheritance law of Greek citizens of Muslim religion in Western Thrace are adjudicated not by the regular judge, but by the Mufti, who does so by applying Islamic Law or Sharia. This preservation of the judicial powers of the Muftis over family and inheritance law in Western Thrace does not derive out of any international treaty – and not by the Treaty of Lausanne, which makes no reference to either the Muftis or Sharia law – but is rather provided by Greek domestic law (Law no. 147/1914 and Law no. 1920/1991).

Indicative of the disadvantageous position of women (and children) within this context of Sharia law is a pending case at the ECtHR. It concerns a Greek Muslim couple, who lived in Komotini and had no children. The husband had drafted a will at a public notary's office, according to which he wished to leave everything to his wife. When he passed away in 2008 his wife tried to get the certificate of inheritance – as set out in her husband's testament – but her husband's sibling appealed, claiming that she could not receive the certificate nor the inheritance because her husband was Muslim, which means that only Sharia law applied. And, according to the latter not only was the public will not recognized, but his siblings also had a right to his inheritance. The wife appealed to the Supreme Court, whose ruling stated that Sharia Law takes precedence over Greek family law as well as over the will of the

deceased, himself¹⁴. Her lawyer then advised her to reach an expert attorney at law with much experience in the Strasbourg Court. With his help, therefore, the wife managed to reach Strasbourg and her case will soon be adjudicated in the Grand Chamber.

When I asked this woman's lawyer whether her case is an exception – or whether indeed it forms part of a tendency of the minority to turn towards the ECtHR – his answer was straightforward:

Yes, it is an exception. Most of them do not go (to the ECtHR). Most of them would never want to go to the ECtHR. And they also receive orders about whether they should go to Strasbourg or not. They have therefore only received such orders as far as the *mufi* is concerned. The *mufi* is the issue of Turkish foreign policy.

Indeed, the question of the dynamics within the community and of its relations, moreover, with Turkey is of paramount importance in the study of the resonance of the ECtHR. The same lawyer spoke to me about another, similar case he had been working on: it concerned the daughter of a Muslim citizen of the minority – born out of wedlock – in Xanthi. Her father passed away while in Germany, where his daughter also lived. Once German courts recognized her as his natural daughter, she went to Xanthi to claim her rights to a small property. However, Islamic law prohibits inheritance rights for children who are born out of wedlock, regardless of whether these children are later on recognized either legally or by the father, himself. The specific lawyer then started working on this case and took it all the way to the ECtHR. While they were waiting for the Court to decide, the girl told the lawyer that she wanted to withdraw her appeal and that she was no longer interested in claiming the property. In her lawyer's own words:

The fact that the girl decided to quit (...) shows a lot about how much they are afraid of the ECtHR. (...) Even though she didn't speak a word of Greek, she was very close with the Turkish community (in Germany). I am certain that someone from Turkey pressured her not to go ahead.

While pressures within the minority seem to greatly influence members' decision to either litigate in Strasbourg or not, the clash between civil law and Sharia law over inheritance cases reveals a fundamental impediment to the resonance of the ECtHR, which lies in the domestic

¹⁴ Supreme Court decision 1862/2013: (in Greek) http://www.areiospagos.gr/nomologia/apofaseis_DISPLAY.asp?cd=N175H12AC1HW9AVJ5GBRXZFM1UDD6D&apof=1862_2013

legal system of Greece and its determination to uphold Sharia law. Regardless of the potential human rights violations, the preservation of Sharia would not only allow the state the right to elect these religious judges (as with any judges), it would moreover challenge any arguments in support of the *Turkish/national* and not *Islamic/religious* character of the minority.

But what about the minority members, themselves? The findings thus far indicate that the case of the woman claiming her right to her husband's testament is in fact an exception, particularly as it has been taken over by an expert lawyer of the ECtHR. As noticed by a former scientific advisor at the Ministry of Foreign Affairs over matters of the minority in Western Thrace: "Had it not been for (this lawyer), no one else would have taken this case – that woman is definitely informed of that". The same former advisor argues that the minority, itself, would consider the banning of Sharia "an insult":

For the Muslims in Thrace the abolishment of Sharia would in fact constitute an abolishment of their minority right – this is how they see it. They do not see it as part of a wider human rights issue, rather (they see it) as their right as a minority. There's this whole debate and frustration about Sharia law violating women's rights, etc, but I believe that a solution lies within the system.

Preliminary conclusions: The (not so) "radiating effects" of the ECtHR in Western Thrace

To return to the research questions, the preliminary conclusions indicate, in the first place, that the ECtHR represents a venue to which members of the Muslim minority resort only in few, exceptional cases. The minority seems to be discouraged from reaching Strasbourg by two, often intertwined, factors: the dynamics within the minority and the Greek legal order's frequent indifference towards the ECtHR. In particular the latter, rather than acting as a trigger for further mobilization to exhaust national remedies and reach Strasbourg, seems to further distance the minority from the Greek state altogether. Thus, the lawyer of the inheritance case observes that:

In spite of all the victories, they still have not believed in the ECtHR. They do not consider these victories as autonomous, they simply see them as a strategic positioning on the chessboard – Turkey is on one side of the chessboard and Greece

on the other. They do not see ECtHR decisions as independent, as autonomous. They do not think that these decisions have an autonomous result on their own.

Secondly, the discussion has thus far shown that the ECtHR has had an indirect effect in terms of inspiring some mobilization before national courts – as indicated through the Turkish association cases following the conviction in *Turkish Union of Xanthi and Others v Greece*. Nevertheless, mobilization is exceptional and – as the other cases considered here suggest – most likely futile. In addition, the ECtHR does not appear to have challenged the hierarchy of conventions and their symbolic interpretations to which the Greek state often resorts to justify its treatment of the minority.

It appears therefore that the Lausanne Treaty has become a key reference point in Greece that symbolizes much more than what the treaty actually does stand for. The Lausanne Treaty is deeply embedded and interpreted each time in ways that help promote the *status quo* and that do not challenge this perceived, rigid framework that has determined the borders between the two countries. More importantly, perhaps, the more the Greek state pushes its citizens and members of the Muslim minority away, the more distant the European Court of Human Rights itself, becomes as a likely option and an ally for them to be able to claim their rights – over religious freedoms or the other rights guaranteed by the Convention. This unofficial precedence granted by the Greek state to a specific, strategic interpretation of the Lausanne Treaty over the ECHR and over ECtHR jurisprudence – clearly demonstrated through national courts' defiance of the latter's authority – constitute the main obstacle for any direct or, indeed, any indirect effects of the Court in Strasbourg.

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