

## AN ONGOING DEBATE IN THE TURKISH-GREEK RELATIONS: ELECTION OF THE MUFTIS IN GREECE

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### ABSTRACT

In the post 1999 era, although a number of minority issues have been resolved between Turkey and Greece, no progress has been made on the issue of the election of *muftis* in Greece. In spite of the presence of Protocol No. 3 that was annexed to the 1913 Treaty of Athens, which recognizes the right of Muslims to elect their *muftis*, Greece argues that the Treaty of Athens and Protocol No. 3 are invalid. The underlying reason for this argument is the fear stemming from the extensive secular and judicial authorities of the *muftis* and the possibility of politicization of their authority. This paper aims to discuss the validity of the 1913 Treaty of Athens and Protocol No. 3 and to examine relevant international treaties on the election of *muftis*. The paper further aims to explain the positions of Turkey and Greece and ongoing developments on this issue.

**Keywords:** Greece, Turkey, Turkish-Muslim minority, Election of the *muftis*, 1913 Treaty of Athens and Protocol No. 3 Annexed to the Treaty.

### TÜRK-YUNAN İLİŐKİLERİNDE SÜREGELEN BİR TARTIŐMA: YUNANİŐTAN’DA MÜFTÜLÜK SEÇİMLERİ

#### ÖZ

Her ne kadar 1999 sonrası dönemde Türkiye ve Yunanistan arasında azınlıklarla ilgili birçok sorun çözüme kavuřturulmuř olsa da, Yunanistan’daki müftülerin seçimle iřbařına gelmeleri konusunda herhangi bir olumlu geliřme yařanmamıřtır. Müslümanların müftülerini seçme hakkını tanıyan 1913 Atina Antlařması’na Ek 3 Numaralı Protokol’ün varlıđına rađmen, Yunanistan, Atina Antlařması ile Antlařma’ya Ek 3 Protokol’ün geçerli olmadığını savunmaktadır. Bu

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iddianın gerisinde, müftülerin seçimle işbaşına gelmeleri halinde geniş dünyevî ve yargısal yetkilere sahip müftülük kurumunun siyasallaşacağı endişesi yatmaktadır. Bu çalışma, 1913 Atina Antlaşması ve Antlaşma'ya Ek 3 Numaralı Protokol'ün geçerliliğini tartışmayı ve müftülerin seçimle işbaşına gelmeleriyle ilgili diğer uluslararası antlaşmaları incelemeyi amaçlamaktadır. Çalışmada, ayrıca, konuyla ilgili olarak Türkiye ve Yunanistan'ın politikaları ile yaşanan gelişmeler aktarılacaktır.

**Anahtar Kelimeler:** Yunanistan, Türkiye, Türk-Müslüman Azınlık, Müftülerin Seçimi, 1913 Atina Antlaşması ve Antlaşma'ya Ek 3 Numaralı Protokol.

### Introduction

Although some problems of the Greek-Orthodox minority in Turkey and the Turkish-Muslim minority in Greece have been resolved in the post 1999 era,<sup>1</sup> there remain unresolved issues in relation to these minorities. Heading the list are the issues of *muftis* being appointed in Greece rather than being elected, and the issue of the closure of the Halki Seminary in Turkey.

There are various factors contributing to the failure to resolve these problems as of May 2019.<sup>2</sup> When the issue of the *muftis* is analyzed, we see

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<sup>1</sup> 1999 was an important turning point in Turkish-Greek relations which was tense for many years. Developments such as the security concerns due to the Kosovo crisis, seeking for cooperation in various fields mainly in the field of terrorism, earthquakes in both countries, and Greece's support for the Turkish candidacy for the European Union in the Helsinki Summit, were instrumental in the beginning of a new era between the two countries. Thanks to this positive atmosphere, some positive steps have been taken for the Greek-Orthodox and Turkish-Muslim- minority in the fields of education, freedom of religion and conscience and foundations. Ali Dayıođlu, "Yunanistan'la İlişkiler", (ed.) Baskın Oran, *Türk Dış Politikası: Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar*, Cilt III (2001-2012), İletişim Yayınları, İstanbul 2013, pp. 560-621.

<sup>2</sup> Turkey claims that Article 24 of the 1982 Constitution and Article 3 of the law on the Higher Learning Council prevent private universities from operating theological institutions of higher learning (Baskın Oran, "The Question of the Theological Seminary of Heybeliada", (ed.) Baskın Oran, *Turkish Foreign Policy, 1919-2006: Facts and Analyses with Documents*, The University of Utah Press, Salt Lake City 2010, p. 797). Therefore, according to Turkey it is not possible to open the Halki Seminary as it is a private educational institution. Despite the legal status, it can be argued that in return for the demands to permit the opening of the Halki Seminary, Turkey has been making its own demands under the condition of "reciprocity". According to these demands *muftis* will be elected in Greece and Fethiye Mosque in Athens will be opened by the Greek government (Dayıođlu, *Yunanistan'la İlişkiler*, pp. 616-619). For example, in a statement made by Prime Minister Recep Tayyip Erdoğan on 8 October 2013, he said that "In Western Thrace, the Greek government appoints the Head Mufti like her officer. Do I appoint Bartholomeos like my officer? If the Greek Orthodox minority has the right to elect their religious leaders, the Greek

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two main reasons for the opposition of the Greek administration on the election of *muftis*. First of all, according to Greece, the 1913 Treaty of Athens and Protocol No. 3 annexed to the Treaty that regulates the election of *muftis* for the Muslim community in Greece are no longer valid. Secondly, the Greek administration fears from the politicization of religion if *muftis* are directly elected by the Muslim community and therefore, of radical movements that may seize control of the Office of *Mufti*.<sup>3</sup>

In response to these arguments, Turkey claims that the right of the Muslims to elect their *muftis* is recognized by the 1913 Treaty of Athens and Protocol No. 3. Greece has put into effect Law No. 2345/1920 for the implementation of the provisions of the Treaty of Athens. Therefore, Turkey argues that the validity of the Treaty of Athens and Annexed Protocol have been accepted by Greece.<sup>4</sup> Turkish authorities also cite the election of the Ecumenical Patriarch of Istanbul by Orthodox Greeks and claim that the *muftis* in Greece should be elected to office by the Muslim community just the same.

Having presented the views of the two countries on the election of *muftis*, the paper will discuss whether the theses advocated by Turkey and Greece are valid from the perspective of international law and the recent developments on this issue.

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*government does not have the right to appoint the muftis. If we do them simultaneously, we can open the Halki Seminary*". He also said that, "If the Greek government keeps her promise to open the Fethiye Mosque, we can open the Halki Seminary" ("Erdoğan: Heybeliada Ruhban Okulu için Atina'da Cami ve Müftü Seçimi", *Azınlıkça*, 8 October 2013, <http://www.azinlikca.net/bati-trakya-haber/heybeliada-icin-atina-da-cami-ve-muftu-secimi-1082013.html>, (21.04.2019). Similar statements made by Erdoğan in the following years when he was elected as the president of Turkey. For example see "Tsipras ile Erdoğan Batı Trakya Hakkında Ne Konuştular", *Azınlıkça*, 6 February 2019, <https://www.azinlikca.net/yunanistan-bati-trakya-haber/item/17041-tsipras-ile-erdogan-bati-trakya-hakkinda-ne-konustular.html>, (26.04.2019).

<sup>3</sup> İsmail Cem, *Türkiye, Avrupa, Avrasya*, C. I, İstanbul Bilgi Üniversitesi Yayınları, İstanbul 2004, pp. 141-142.

<sup>4</sup> Republic of Turkey, Ministry of Foreign Affairs, "Turkish Minority of Western Thrace and the Turkish Community in the Dodecanese", <http://www.mfa.gov.tr/turkish-minority-of-western-thrace.en.mfa>, (15.11.2018).

### **1. Importance of the *Muftiate* Institution for the Turkish-Muslim Minority and Significant Developments on the Issue of the Election of the Muftis**

In the Balkans, as well as in Greece, religion, rather than ethnic belonging and/or language, constitutes the basic element of communal identity. This is a result of the *millet* system which formed the basis of the social structure of the Ottoman Empire. Therefore, the *muftiate* institution, the highest religious authority of Muslims in Greece, has a crucial role in the preservation and promotion of the communal identity of the Turkish-Muslim minority. Because of its importance for the Turkish-Muslim minority, many provisions regarding this institution were set in the international treaties. Among these provisions, the issue of the election of the *muftis* was regulated explicitly in the 1913 Treaty of Athens and Protocol No. 3 annexed to the Treaty.

After the 1913 Treaty of Athens and Protocol No. 3 annexed to the Treaty came into force, the first significant development regarding the election of the muftis occurred in 1920. On that date, the Greek authorities issued Law No. 2345 titled “Concerning Temporary Arch-Mufti and muftis of the Muslims in the State and Concerning Management of the Muslim Community Property” and transferred the provisions of the 1913 Treaty of Athens to domestic legislation.<sup>5</sup> According to the law, the *muftis* are to be elected by the Muslims residing in their area of authority. The *muftis* not only have religious but also administrative and judicial authority such as in implementing *Shari’a* rules, administering the personnel of educational and religious offices, controlling the foundation revenues of the Community Executive Boards, resolving problems among the Muslims regarding individual rights and family law etc.<sup>6</sup> Even though Article 6 of the Law was titled “Law Regarding the Election of Muftis and Head Mufti and the Administration of Waqf (Evkaf) Income”, it set out the procedure for *mufti* and Head *Mufti* elections in detail, the legislative decree was not issued and Article 6 could not come into effect. But, from 1920s to mid 1980s, the

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<sup>5</sup> Vemund Aarbakke, *The Muslim Minority of Greek Thrace*, (Unpublished Ph.D Thesis), University of Bergen, Bergen 2000, pp. 327.

<sup>6</sup> Baskın Oran, *Greek Violations of the Lausanne Treaty*, The National Committee for Strategic Research and Studies, Ankara 2002, pp. 67-68; Konstantinos Tsitselikis, *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Martinus Nijhoff Publishers, Leiden-Boston 2012, pp. 367-374 and 390-417; Konstantinos Tsitselikis, “Seeking to Accomodate Shari’a within a Human Rights Framework: The Future of the Greek Shari’a Courts”, *Journal of Law and Religion*, Vol XXVIII, No 2, 2012-2013, pp. 345-346.

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Greek authorities allowed the Muslims of Komotini and Xhanti to nominate three candidates for the office of *mufti*. According to this practice, the *muftis* were appointed by the Governor of Rhodope among these candidates. Therefore, there was no problem on this subject between the minority and the Greek authorities until the mid-1980s.<sup>7</sup> But, the Head *Muftiate* institution was never actualized.

The issue of the election of *muftis* came to the agenda when Hüseyin Mustafa Efendi, the *mufti* of Komotini died in 1984 who was elected in 1948 and was appointed in 1949.<sup>8</sup> When the Greek government appointed Imam Rüştü Ethem as the acting *mufti*, the minority reacted negatively to this appointment as the opinion of the minority was not sought for the first time. The reason why Greece changed its policy on this issue was that, with time, because of their religious, administrative and judicial authorities, the *muftis* became head of the Turkish-Muslim minority and “*the official interlocutor for the Greek authorities*”.<sup>9</sup> Therefore, Greece turned to control the *muftis*. Turkey’s policy change on religious matters after 1980 was the second reason. After 1980, Turkey turned to benefit from religion to tighten her relations with the minority and the Turkish consulate in Komotini abandoned its policy of ignoring the *muftis*.<sup>10</sup> Therefore, Greece became concerned about checking the influence of Turkey on the *muftis*. “*In this context, the mode of selection became of crucial importance*”.<sup>11</sup> Another reason behind the reactions was that Rüştü Ethem was considered close to the government. As a result of these reactions, Rüştü Ethem resigned. Following his resignation, the dignitaries of the minority made an application to the Governor’s Office and demanded that the *mufti* elections be held in accordance with Law No. OSIG/1913, which approved the Treaty of Athens and Law No. 2345/1920 which transferred the provisions of the Treaty to the domestic legislation. But, this request was ignored by the Greek authorities and Hafız Cemali Meço was appointed as the acting *mufti* on 16 December 1985. Turkish-Muslim minority has reacted to this appointment as he was also considered to be close to the government and

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<sup>7</sup> Ali Hüseyinoğlu, “Past and Present of Islam in the Balkans: The case of Greece”, *Avrasya Etüdləri Dergisi*, No 50, 2016, p. 34.

<sup>8</sup> Aarbakke, *The Muslim Minority of Greek Thrace*, pp. 328-329.

<sup>9</sup> Konstantinos Tsitselikis, “The Pending Modernisation of Islam in Greece: From *Millet* to Minority Status”, *Südosteuropa*, Vol LV, No 4, 2007, p. 368.

<sup>10</sup> Aarbakke, *The Muslim Minority of Greek Thrace*, pp. 329-330.

<sup>11</sup> Tsitselikis, *The Pending Modernisation of Islam in Greece*, p. 368.

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came to the office without elections.<sup>12</sup> Despite these reactions, Meço continued his office until August 2018<sup>13</sup>

While the discussions on this subject continued, Mustafa Hilmi, the *mufti* of Xhandi, died on 5 February 1990 who came to the office in 1957.<sup>14</sup> After his death, his son Mehmet Emin Aga who enjoyed the support of the minority, was appointed by the Greek government as the acting *mufti*. The appointment of Mehmet Emin Aga created a dilemma for the minority because he had been a strong opponent of the appointments of *muftis*. To overcome this dilemma, he agreed to take over the duty of the *mufti* temporarily until elections of a new *mufti* under Law No. 2345/1920 could be carried out. But, after the appointment of Hafız Cemali Meço as the *mufti* of Komotini on 30 March, Mehmet Emin Aga resigned from his office on 10 May 1990. After his resignation, an election was held in the mosques of Xanthi on 17 August 1990 after Friday prayers and Mehmet Emin Aga was elected *mufti* by the Muslims of Xanthi.<sup>15</sup>

Following these developments, Decree No. 182 entitled “*Legislative Decree Governing Regulations Regarding the Establishment of a Muftiate Institution and Divinity School in Western Thrace*” was issued by the Greek government on 24 December 1990. The Decree, which regulated the rules of the *muftiate* institution in Western Thrace, revoked Law No. 2345/1920 and stipulated that *muftis* would be appointed to their posts with a presidential decree after the recommendation of the Minister of National Education and Religious Affairs. As a reaction to the Decree as well as to the appointment of Meço, Muslims of Komotini elected İbrahim Şerif as their *mufti* on 28 December. This meant that like Xanthi, Komotini had two *muftis* at the same time, one “official” and the other “elected”.<sup>16</sup> After the election, Decree No. 182 was ratified by the Greek Parliament on 22 January 1991 and Mehmet Emin Şinikoğlu was appointed as the *mufti* of Xanthi on 22 August 1991. Minority members responded to this appointment with a sit-in protest. But, Greek right wing extremists attacked the group and the shops belonging to the members of the minority. While 13 Turks were injured

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<sup>12</sup> Aarbakke, *The Muslim Minority of Greek Thrace*, pp. 330-338.

<sup>13</sup> Baskın Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, 2<sup>nd</sup> edition, Bilgi Yayınevi, Ankara 1991, pp. 161-163.

<sup>14</sup> Aarbakke, *The Muslim Minority of Greek Thrace*, p. 329.

<sup>15</sup> Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, pp. 170-171.

<sup>16</sup> Melek Fırat, “Relations with Greece”, *Turkish Foreign Policy, 1919-2006: Facts and Analyses with Documents*, (ed.) Baskın Oran, The University of Utah Press, Salt Lake City 2010, p. 794.

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during these events, many Turkish shops were looted by the fanatics.<sup>17</sup> After these incidents, the Greek government announced that only the appointed *muftis* shall be recognized as the official *muftis*, and thus the practice of appointing *muftis* to their posts continued.

Turkey reacted to the appointment of the *muftis* along with the minority. For example, in 1993 the Religious Affairs Directorate of Turkey and Ministry of Foreign Affairs sent four Turkish *muftis* to Greece to visit the “elected” *muftis* Mehmet Emin Aga and İbrahim Şerif on the occasion of the month of Ramadan in order to protest Decree No. 182 and the practice of appointing *muftis*. The Turkish clerics arrived in the region on 20 February 1993. Although they tried to visit the “elected” *muftis*, Greek authorities told them they can be in contact only with the official *muftis* Hafız Cemali Meço and Mehmet Emin Şinikoğlu and not the elected ones. The Turkish *muftis* refused this and they declared that they would not meet with *muftis* who are not supported by the Muslim population in Greece. Eventually, Turkish *muftis* were deported by the Greek Ministry of Public Order on 24 February 1993.<sup>18</sup>

The discussions on the subject continued in the following years. The Greek authorities have filed numerous suits against the elected *muftis* on the grounds that the elected *muftis* of Xanthi and Komotini have usurped the positions of the appointed *muftis*, based on the messages they have issued on religious festivals and sacred days. Some of these cases resulted in imprisonment. For example, Mehmet Emin Aga, the elected *mufti* of Xanthi, was sentenced to imprisonment with a total of 17 months in three separate cases. Aga also received a 6-month imprisonment on 1 December 1999 on the grounds that he used the title of “Mufti of Xanthi” in a message published in 1998. Fines were issued. In other cases, the Greek Supreme Court reversed the imprisonments issued by inferior courts. For example, on 28 April 2002 the Supreme Court upheld the decision of the Larissa Criminal Court, which sentenced Mehmet Emin Aga to a 4-month imprisonment for “using an illegal religious title”.<sup>19</sup>

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<sup>17</sup> *Ayın Tarihi*, 11 August 1991, <http://ayintarihi.iletisim.gov.tr/turkce/date/1991-08-11>, (08.10.2018).

<sup>18</sup> *Ayın Tarihi*, 11 February 1993, <http://ayintarihi.iletisim.gov.tr/turkce/date/1993-02-11>, (11.10.2018).

<sup>19</sup> Dayıoğlu, “Yunanistan’la İlişkiler”, p. 600.

As a result of the sentences given by the Greek courts, the elected *muftis* of Xanthi and Komotini made individual recourses to the European Court of Human Rights (ECtHR). The Court accepted all of these recourses and adjudged that Greece had violated Article 6 and Article 9 of the European Convention on Human Rights (ECHR), which guaranteed right to a fair trial and freedom of thought, conscience and religion, respectively.<sup>20</sup> In its judgments, the ECtHR briefly stated that the elected *muftis*' convictions, as they arise from the decisions of the domestic courts, like issuing messages on the occasion of religious festivals, delivering speeches at religious gatherings, wearing dresses as religious leaders in public etc., amounts to interferences with their rights under article 9 of the ECHR "*in community with others and in public..., to manifest his religion... in worship [and] religion*". According to the Court, punishing the elected *muftis* as the religious leaders of the Muslims that willingly followed them can hardly be considered compatible with the necessities of religious pluralism in a democratic society. In response to the Greek administration's argument that the Greek "*authorities had to intervene in order to avoid the creation of tension among the Muslims in Rodopi and between the Muslims and the Christians of the area as well as Greece and Turkey*", the Court stated that the Greek administration had not been able to provide any evidence on the subject. According to the ECtHR, "*it is possible tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of authorities in such circumstances is not to remove the cause of tension by eliminating the pluralism, but to ensure that the competing groups tolerate each other*". Finally, the Court stated that the sentences which were given to the elected *muftis* did not emanate from "a pressing social need" as the Greek government argued. As a result, "*the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not 'necessary in a democratic society ..., for the protection of public order' under Article 9*". Therefore, Greece violated Article 9 of the ECHR. Greece paid the compensation issued by ECtHR, but did not go to any legislative

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<sup>20</sup> European Court of Human Rights, Case of Serif v. Greece (application no. 38178/97), Judgment, Strasbourg, 14 December 1999, Final, 14 March 2000, para. 33-54, <https://www.uio.no/studier/emner/jus/humanrights/HUMR5508/v14/teaching-material/case-of-serif-v.-greece.pdf>, (22.01.2019); European Court of Human Rights, Case of Agga v. Greece (application no. 50776/99 and 52912/99), Judgment, Strasbourg, 17 October 2002, Final, 17 January 2003, para. 45-61. [http://bib26.pusc.it/can/p\\_martinagar/lrgiurisprinternaz/HUDOC/AggaGrecia/20021017Agga2Grec52912-99en.pdf](http://bib26.pusc.it/can/p_martinagar/lrgiurisprinternaz/HUDOC/AggaGrecia/20021017Agga2Grec52912-99en.pdf), (22.01.2019). See also Tsitselikis, *Old and New Islam in Greece*, pp. 422-425.



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arrangement. Therefore, the duality between elected muftis and appointed muftis continued.

While discussions on the subject continued, Mehmet Emin Aga died on 9 September 2006. After his death, an election was held in 65 mosques of Xanthi on 31 December 2006 and Ahmet Mete was elected as *mufti* by the Muslims of Xanthi.<sup>21</sup> On the other hand, Hafız Cemali Meço's term of office was re-extended by a presidential decree dated 24 December 2010. Here, the important point is that the decree contained no information on for how long the term of office was extended.<sup>22</sup> This development increased the expectations within the minority that the muftis would come to office with elections in the following years. But this was not realized and discussions on this subject continued especially when Ahmet Mete was sentenced to a 7-month imprisonment in 2017 for "seizing the office of the *mufti*."<sup>23</sup>

The last important development on the subject took place in August 2018. On this date, the Greek Parliament enacted a law that forced the *muftis* in Western Thrace to retire at the age of 67 on the grounds that they also serve as judges.<sup>24</sup> After the enactment of the law, Hafız Cemali Meço and Mehmet Emin Şinikoğlu were forced to resign. On 16 August 2018, Cihat Halil and Bilal Kara Halil were appointed as the acting *muftis* of Komotini and Xanthi, respectively.<sup>25</sup> Although this regulation was interpreted by various circles as a first step towards the elections of the *muftis*, as of May 2019, there was no further development on the issue.

As for the Dodecanese Islands, given that Greece does not accept that Annexed Protocol No. 3 is valid in Western Thrace, it cannot be expected to accept its validity for Rhodes and Kos that were transferred to Greece in 1947. Furthermore, Greece claims that the Lausanne Peace Treaty

<sup>21</sup> "İskeçe Müftülüğüne Ahmet Mete Seçildi", *Hürriyet*, 1 January 2007, <http://www.hurriyet.com.tr/dunya/iskece-muftulugune-ahmet-mete-secildi-5707244>, (29.01.2019).

<sup>22</sup> <https://www.batitrakya.org/bati-trakya-haber/yunanistan-anlasmalara-ragmen-bati-trakya-muftuluk-sorununu-uzatti.html>, (04.02.2019).

<sup>23</sup> "Eski Günler Geri Döndü, İskeçe Müftüsü Ahmet Mete 7 Ay Hapis Cezasına Çarptırıldı", *Birlik Gazetesi*, 13 November 2017, <http://www.birlikgazetesi.net/haberler/13477-esk-guenler-ger-doendue-skece-mueftuesue-ahmet-mete-7-ay-haps-cezasina-carptirildi.html>, (21.01.2019).

<sup>24</sup> "Müftü Düzenlemesi Parlamento'dan Geçti", *Azınlıkça*, 2 August 2018, <http://www.azinlikca.net/yunanistan-bati-trakya-haber/item/15155-muftu-duzenlemesi-parlamento-nun-alt-komisyonundan-gecti.html>, (14.12.2018).

<sup>25</sup> "Gümülcine ve İskeçe'ye Atanan Müftü Naipleri Açıklandı", *Azınlıkça*, 17 August 2018, <https://www.azinlikca.net/yunanistan-bati-trakya-haber/item/15317-gumulcine-ve-iskece-ye-atanan-muftu-naipleri-aciklandi.html>, (21.04.2019).

is not valid regarding the minorities on these islands. According to Greece, the rights of the members of the Turkish minority on the Dodecanese are set out only in the 1947 Paris Peace Treaty. However, as mentioned above, within the scope of the principle of succession of states, Annexed Protocol No. 3 is still in force not only in Western Thrace but also in Rhodes and Kos. Therefore, the *muftis* have to be elected to office on these islands as well. But as of May 2019, Greece does not permit the election of the *muftis* to office in these islands. Moreover, there is no appointed *mufti* in these islands. Instead, a clergyman from Western Thrace is appointed as the Imam of Rhodes.

In the face of these developments, the validity of the 1913 Treaty of Athens and the Annexed Protocol No. 3 should be discussed within the context of international law and other relevant international treaties should be examined.

## **2. The Validity of the 1913 Treaty of Athens and the Annexed Protocol No. 3 for International Law**

The Treaty of Athens was signed on 1-14 November 1913 between Greece and the Ottoman Empire which resulted in Greece's takeover of Salonica, Southern Macedonia and Crete from the Ottoman Empire following the Balkan Wars. It is the treaty that imposes the most obligations on Greece in terms of minority rights to be granted to Muslims in her country. Article 11/6 of the Treaty is particularly important: it clearly states that the *muftis* shall be elected by the Muslims and sets down their authority. The article also states that the Head *Mufti* shall be elected from three candidates, at a meeting of all the *muftis* in Greece, and shall be appointed by the King of Greece.<sup>26</sup> The issue here is that the rights set forth in the Treaty are confined only to "the lands left to Greece" in 1913, that is, to Salonica, Southern Macedonia and Crete. Yet, Article 2 of the Treaty states that the Annexed Protocol No. 3 shall be applicable in "all of the territories in Greece". As with the Treaty of Athens, the Protocol grants the Muslims

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<sup>26</sup> For the 1913 Treaty of Athens and the Annexed Protocol No. 3 see Nihat Erim, *Devletlerarası Hukuku ve Siyasi Tarih Metinleri*, Cilt I, Türk Tarih Kurumu Basımevi. Ankara 1953, pp. 477-488. While Article 11/6 states that "*The muftis, each within his own community, shall be elected by Mussulman electors*", Article 11/7 says that "*The chief mufti is named by His Majesty the King of the Greeks from three candidates elected and presented by an electoral assembly composed of all the muftis of Greece*".

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various minority rights but does not include any regulations governing the election of *muftis* by Muslims.

As of May 2019, whether the conditions of the 1913 Treaty of Athens are valid or not is still a matter of debate between Turkey and Greece. In memorandums given to Turkey at various times, Greece has claimed that due to the population exchange between Greece and Turkey in 1923, the subject of the Treaty no longer exists, and therefore, it has lost its validity. The Greek Ministry of Foreign Affairs claims that the 1923 Lausanne Peace Treaty has replaced the 1913 Treaty, and therefore, the only Treaty binding Greece regarding the Muslim minority in Western Thrace is the Lausanne Peace Treaty.<sup>27</sup> Nevertheless, Greece has never mentioned the election of the *muftis* in the Lausanne Peace Treaty. Furthermore, Greece goes as far as to claim that the Lausanne Peace Treaty is not applicable for the minority population in Rhodes and Kos, and the rights of these people are set out in the 1947 Paris Peace Treaty only.<sup>28</sup>

Actually, the Muslim population living in Salonica, Southern Macedonia and Crete had to migrate to Turkey in accordance with the “Convention Concerning the Exchange of Greek and Turkish Populations” that was signed in Lausanne Peace Conference on 30 January 1923. As the subject of the Treaty no longer exists, the Treaty cannot be implemented in these areas. On the other hand, in 1920 Western Thrace, and in 1947 Rhodes and Kos joined Greece. Hence, the Treaty of Athens cannot be also implemented for the Turkish-Muslim minority in Greece living in these areas as the rights set forth in the Treaty are confined only to “the lands left to Greece” in 1913. Therefore, although it is still legally valid, it is not possible to refer to the Treaty of Athens while discussing the right of Muslims of Western Thrace and Dodecanese Islands to elect their *muftis*.

In regards to the 1913 Treaty of Athens, an important issue is the Annexed Protocol No. 3 that was put into effect in “all the territories of Greece” at the time it was signed. Therefore, this Protocol is still in effect and is valid for the minority members living in Western Thrace, Rhodes and

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<sup>27</sup> Nevertheless, it should be said that in their decisions some Greek public institutions referred to the validity of 1913 Treaty of Athens in the 1970s. Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, p. 102.

<sup>28</sup> Ali Dayıoğlu, “The Rights of the Turkish Minority of Rhodes and Kos in International Law”, (eds.) Mustafa Kaymakçı and Cihan Özgün, *The Forgotten Turkish Identity of the Aegean Islands: The Turkish Identity in Rhodes and Kos*, Eğitim Yayınevi, Konya 2018, pp. 68-84.

Kos. Article 15 of the Vienna Convention on Succession of States in Respect of Treaties of 1978 stipulates that the treaties of the successor state are in force, from the date of succession of states, in respect of the territory to which the succession of states is related.<sup>29</sup> In a decision dated 1978, the International Court of Justice (ICJ) stated that the concept of “the status of the country’s territories” must not be confined to the territories at the time the treaty is signed, but should be interpreted so as to include the territories the country acquired afterwards.<sup>30</sup>

The validity of Protocol No. 3 can also be seen in the “Treaty Concerning the Protection of Minorities in Greece”, that was signed on 10 August 1920 between Greece on the one side and Great Britain, France, Italy and Japan (the Principal Allied and Associated Powers) on the other. Based on the statement in the Introduction of the Treaty that reads “It is desired to free Greece from certain obligations which she has undertaken towards certain Powers”, it can be said that Greece was freed from the obligations with regard to the protection of the rights of the Muslim minorities in the country, which she had undertaken by signing the 1830 London Protocol and the 1881 Treaty of Istanbul because the 10 August 1920 Treaty signed with the powers can annul the multilateral treaties signed with the powers in 1830 and 1881. However, the 1920 Treaty does not annul the 1913 Treaty of Athens, which is a bilateral agreement, or the Annexed Protocol No. 3.<sup>31</sup> Nevertheless, as mentioned above, it can be said that the 1913 Treaty of Athens has lost its validity because it is concerned with the territories that were accessed to Greece in 1913, but Protocol No. 3 that is observed to be legitimate in all Greek territories, is still in force.

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<sup>29</sup> Article 15 states that “When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State: (a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and (b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation”. *Vienna Convention on Succession of States in Respect of Treaties*, p. 8. [http://legal.un.org/ilc/texts/instruments/english/conventions/3\\_2\\_1978.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf), (27.09.2018).

<sup>30</sup> International Court of Justice, Reports of Judgments, *Advisory Opinions and Orders*, *Aegean Sea Continental Shelf Case (Greece v. Turkey)*, Judgment of 19 December 1978, pp. 32-33. <http://www.icj-cij.org/files/case-related/62/062-19781219-JUD-01-00-EN.pdf>, (27.09.2018).

<sup>31</sup> Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, pp. 74-75.

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The negotiations held during the Lausanne Peace Conference show that the Peace Treaty of Lausanne did not annul the Treaty of Athens or the Annexed Protocol No. 3. For example, at the session held on 19 December 1922, the head of the Greek delegation, Eleftherios Venizelos discussed the issue of rights to be granted to the minorities in Turkey and stated that Turkey should grant extensive guarantees based on Article 11 of the 1913 Treaty of Athens.<sup>32</sup> Moreover, during a session on 29 December 1922, when the Turkish delegation insisted that the Ecumenical Patriarchate of Istanbul be moved out of Istanbul, the Greek Delegate Demetrios Caclamano responded that in case of such a move, they would not keep the Treaty of Athens in force that sets out the election of *muftis* by the Muslim community. Hence, we can deduce that the Greek officials accepted the 1913 Treaty of Athens, and consequently accepted the validity of the Annex Protocol No. 3 during the Lausanne negotiations. However, due to reasons stated above only Annex Protocol No. 3 continued to be in force. While the Greek officials made their opinion known on this matter, the French delegate Jules Laroche picked up on an important point. Laroche pointed out that the Lausanne Peace Treaty, which was in the process of being prepared, could not change any legal obligations which Greece and Turkey had undertaken in the past, and that the Conference was not empowered to abolish or ratify such obligations.<sup>33</sup> Consequently, Annexed Protocol No. 3 was not annulled by the Lausanne Peace Treaty and within the scope of the principle succession of states, Annex Protocol is still in force in Western Thrace, Rhodes and Kos.

What needs to be discussed at this point is the importance of the Annex Protocol No. 3, though it does not include any regulations regarding the election of the *muftis*. A key point in this regard is Article 8 of the Protocol. The article states that: “*The chief mufti shall ascertain whether the mufti elected possesses all the qualities required by the law of Chéri [Shari’a].*” The *Head Muftiate* institution was never actualized.<sup>34</sup> However,

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<sup>32</sup> Article 11 of the Treaty recognizes right to life, property rights, civil and political rights, freedom of religion and conscience, right to elect the *muftis* and the chief *mufti* of the Muslims of the territories ceded to Greece.

<sup>33</sup> Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, p. 104.

<sup>34</sup> The main reason that the *Head Muftiate* institution was never actualized was that the Muslims of Greece mainly lived in Western Thrace region and they regulated their religious matters at the local level through the *muftis*. Therefore, “*neither a significant demand nor a need from the Minority has been raised over the years for functioning of the Head Mufti’s Office in Greece*”. Ali Hüseyinoğlu, “Islam and Religious Liberties in Western Thrace, Greece”, *Balkanlarda İslam:*

since the Greek officials validated a *de facto muftiate* institution, they have to accept that it is legal to elect the recognized person in charge of this institution in accordance with Annex Protocol No. 3, which as we have seen is valid in Western Thrace, Rhodes and Kos.<sup>35</sup>

### 3. The Issue of the Election of Muftis in Other International Treaties

Although Annex Protocol No 3 is the only document that recognizes the right of the Muslims to elect their *muftis*, there are three other treaties that include provisions regarding the prevention of discrimination against Muslims in Greece and therefore, recognize the right of the Muslims to elect their *muftis* implicitly. These are; 1) The Treaty Concerning the Protection of Minorities in Greece (1920); 2) Lausanne Peace Treaty (1923) and 3) Paris Peace Treaty (1947).

The Treaty Concerning the Protection of Minorities in Greece, which was signed on 10 August 1920 between Greece on the one side and the Principal Allied and Associated Powers on the other, not only provides protection to all ethnic, linguistic and religious minorities who lives in Greece on the date that the Treaty was signed but also to the minorities of the territories which may be added to Greece. Therefore, according to the principle of succession of states as discussed above, this Treaty is still valid in Western Thrace, Rhodes and Kos. In regards to our topic, Article 8 of the Treaty is important. This article states that;

*“Greek nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Greek nationals. In particular they shall have an equal right to establish, manage and control, at their own expense, charitable, religious and social institutions...with the right to ... exercise their religion freely therein”.*

Similarly, Article 40 of the Lausanne Peace Treaty, which is the main minority protection document between Greece and Turkey and which was signed on 23 July 1923 by Turkey on the one side and Great Britain, France, Italy, Japan, Greece, Romania, and the Serb-Croat-Slovene state on

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*Mıadı Dolmayan Umut/İslam in the Balkans: Unexpired Hope*, (ed.) Muhammet Savaş Kafkasyalı, T.C. Başbakanlık Türk İşbirliği ve Koordinasyon Ajansı Başkanlığı, Ankara 2016, p. 164.

<sup>35</sup> Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*, p. 166.

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the other states that; “[Greek] *nationals belonging to [Muslim] minorities shall enjoy the same treatment and security in law and in fact as other [Greek] nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions... with the right to... exercise their own religion freely therein*”.

On the validity of the Lausanne Peace Treaty, Greece claims that Lausanne Peace Treaty is not valid in Dodecanese Islands as they were transferred to Greece in 1947. Because Article 45 states that “*The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory*”, according to the principle of succession of states, Lausanne Peace Treaty is also valid in the Dodecanese Islands and therefore in Rhodes and Kos.<sup>36</sup>

Paris Peace Treaty (Treaty of Peace with Italy) which was signed on 10 February 1947 between Italy on the one side and the Allied and Associated Powers on the other is the only treaty that Greece considers valid in Dodecanese Islands. Article 19/4 of this Treaty states that “*The State to which the territory is transferred [Greece] shall, in accordance with its fundamental laws, secure to all persons within the territory, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of... religious worship...*”

As of May 2019, the Church of Greece has an independent structure and the clergy come to office without any external intervention. So, according to the above mentioned articles and as a requirement of international human rights standards, the same rights should also bind the Muslim religious institutions. Therefore, the *muftis* in Western Thrace and the Dodecanese Islands should come to the office through elections.

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<sup>36</sup> The rights of the non-Muslims in Turkey and the Muslims in Greece were recognized by Articles 37-45 of Section III of the Lausanne Peace Treaty. Greece’s obligations are due to Article 45. As can be seen, Article 45 does not create reciprocity between Greece and Turkey, but it brings “parallel obligations” to both countries (Turgut Tarhanlı, “Turgut Tarhanlı’nın Bildirisi”, *Cemaat Vakıfları, Bugünkü Sorunları ve Çözüm Önerileri*, İstanbul Barosu Yayını, İstanbul 2002, p. 37) and therefore these countries mutually recognize certain rights of their minorities.

#### 4. Positions of Greece and Turkey on the Issue of the Election of the Muftis

In spite of the presence of Annexed Protocol No. 3 which clearly recognizes the right of Muslims to elect their *muftis* and other documents which recognize this right implicitly, the reason why Greece wants to appoint the *muftis* herself is not only that she wants to prevent the Muslim minority community getting out of control and gaining power, but also because *muftis* have a great range of secular and judicial authority. The election of the *muftis* by the Muslim community will directly result in the politicization of the institution of religion, and radical movements may seize control of the *muftiate*. In statements they have made at various dates, the Greek authorities have stated that as long as *muftis* possess these authorities, they will not be allowed to be elected to office. For example, in January 2008, Prime Minister Kostas Karamanlis said that as long as *Shari'a* existed and *muftis* had judicial authority in addition to religious authority they would not change the policy of appointing *muftis* to office in Western Thrace.<sup>37</sup> A similar view was voiced by Dora Bakoyanni, the Greek Minister of Foreign Affairs in February 2008. Bakoyanni stated that as long as they had judicial authority over the issues of family and property, it would not be possible to have *muftis* elected to office.<sup>38</sup> In its resolution titled “Freedom of Religion and Other Human Rights for Non-Muslim Minorities in Turkey and for the Muslim Minority in Thrace (Eastern Greece)” and dated 27 January 2010, Parliamentary Assembly of the Council of Europe urged the Greek authorities to “allow the Muslim minority to choose freely its muftis as mere religious leaders (that is, without judicial powers), through election or appointment, and thus to abolish the application of Sharia law – which raises serious questions of compatibility with the European Convention on Human Rights – as recommended by the Commissioner for Human Rights” thus, indirectly supporting Greece’s view.<sup>39</sup>

In response to Greece’s attitude, the minority members and Turkish authorities cited the election of the Ecumenical Patriarch of Istanbul by

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<sup>37</sup> <https://www.haberler.com/yunan-basini-yavas-yavas-cozume-gidiliyor-haberi/>, (05.02.2019).

<sup>38</sup> “Bakoyanni: Yargı Yetkileri Devam Ettiği Sürece Müftülerin Seçimle İşbaşına Gelmeleri Mümkün Değil”, *Radikal*, 4 February 2008, p. 9.

<sup>39</sup> Council of Europe Parliamentary Assembly, *Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)*, Resolution No. 1704, 27.01.2010, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17807&lang=en>, (12.12.2018).



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Orthodox Greeks as an example, and claimed that the *muftis* in Greece should also be elected to office. For example, on 14 May 2010, as part of the High-Level Cooperation Council meeting Prime Minister Recep Tayyip Erdoğan met Prime Minister Yorgo Papandreu and said, “*Just as the Ecumenical Patriarch is elected by Greek Orthodox, so should the muftis be elected by Muslims*”.<sup>40</sup>

Looking at the authorities of the *muftis* in Greece and the Ecumenical Patriarch in Istanbul shows that there is a great difference between the scopes of their authority. In Turkey, the Patriarch is not paid by the state, and during the Lausanne Peace Conference he was stripped of his secular authority and granted authority only on ethereal matters. In contrast, the *muftis* in Western Thrace, whose expenses and salaries are paid by the state, possess secular authority based on *Shari'a* law. Marriage, divorce, custody, alimony, inheritance, appointing a guardian, *fatwa* and giving *halal* certificates for goods, and having control over foundations and education are among these authorities.

Actually, Muslim judge/*Shari'a* law is applicable in cases where citizens wish to apply to the *muftiate* instead of the civic court. Also, the decisions taken under the *Shari'a* law are under the control of the courts. However, when a 14-year-old girl is solemnized, in Greece where there is no distinction between State and Church, the courts approve the procedure on grounds that it is a Muslim custom.<sup>41</sup> But, an important development took place in November 2017. Greek Prime Minister Alexis Tsipras declared that by enacting a new law, the Muslims who leave an inheritance will have the chance to choose the civil law over the *Shari'a* law.<sup>42</sup>

After the declaration of Alexis Tsipras, in January 2018, a very important development occurred regarding the judicial jurisdiction of the *muftis*. On that date, in order to avoid negative consequences of the *Molla Sali v. Greece* case,<sup>43</sup> the Greek Parliament made an amendment to the

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<sup>40</sup> Dayıoğlu, “Yunanistan’la İlişkiler”, p. 572.

<sup>41</sup> Baskın Oran, “To Pedi Afto Me Stavroni!”, *Radikal İki*, 27 December 2009, p. 6.

<sup>42</sup> “Yunanistan’dan Batı Trakya İçin ‘Şeriat’ Kararı: Tüm Tarafların Kabulü Şartı Aranacak”, *BBC News Türkçe*, 16 November 2017, <https://www.bbc.com/turkce/haberler-dunya-42012019>, (05.02.2019)

<sup>43</sup> European Court of Human Rights, *Case of Molla Sali v. Greece* (application no: 20452/14), Judgment, Strasbourg, 19 December 2018. The case was opened by Hatice Molla Salih who was the wife of Mustafa Molla Salih, a member of the Turkish-Muslim minority in Western Thrace. He had drawn up a notarised public will in accordance with the Greek Civil Code before he died and

related law and abolished the special regulations imposing recourse to Sharia law for the settlement of family and inheritance law cases as it concerns the Muslims of Greece. According to this amendment, when the law goes into force, all family and inheritance cases of the members of the Turkish-Muslim minority will be in principle regulated by the Greek Civil Code and the disputes will be settled by the civil courts. But, with a written statement, minority members shall also have the right to choose Sharia law over the civil law. Recourse to the muftis in family law and inheritance cases is only possible with the agreement of all those concerned.<sup>44</sup> Thus, accepting the judicial authority of the *muftis* is left to the will of the Muslims.

Despite these important developments, no step has yet to be taken to ensure the election of *muftis* as of May 2019.

### Conclusion

Even though Turkey-Greece relations have progressed in the post-1999 era and certain issues have been resolved regarding the Greek-Orthodox minority in Turkey and Turkish-Muslim minority in Greece, no

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he had bequeathed his whole estate to his wife. After his death, his sisters challenged the validity of the will before the Greek courts and they demanded three-quarters of the property bequeath according to Sharia law. They claimed that, as he was a Muslim, any questions relating to Mustafa Molla Salih's estate were subjected to Sharia law and the jurisdiction of the *mufti* rather than to the provisions of the Greek Civil Code. In its decision, the Greek Court of Cassation stated that "*the jurisdiction the muftis is compulsory and exclusive for the Muslim citizens of Greece, as a protective privilege, and that the application of Sharia law could not be a matter for them to choose*" (Eleni Kalampakou, "Is there a Right to Choose a Religious Jurisdiction over the Civil Courts? The Application of Sharia Law in the Minority in Western Thrace, Greece, Religion, Vol. X, No 4, 2019, <https://www.mdpi.com/2077-1444/10/4/260/htm>, 27.04.2019). On the prolongation of the case in the Greek courts, Hatice Molla Salih made a recourse to the ECtHR in 2014. In its judgments, the ECtHR stated that "*the difference of treatment suffered by the applicant, 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*". According to the Court, there has been a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. European Court of Human Rights, *Case of Molla Sali v. Greece* para. 8-30 and 161-162.

<sup>44</sup> Law no 4511/2018, *Official Gazette of the Hellenic Republic*, 15 January 2018 Issue A', "Amendment of Article 5 of Legislative Act of 24 December 1990 "On Muslim Clerics" (A' 182) ratified by the sole Article of Law 1920/1991 (A' 11), [https://www.minedu.gov.gr/publications/docs2018/Law\\_4511\\_2018\\_Reform\\_on\\_Mufti\\_jurisdictio\\_n\\_Sharia\\_law.pdf](https://www.minedu.gov.gr/publications/docs2018/Law_4511_2018_Reform_on_Mufti_jurisdictio_n_Sharia_law.pdf), (27.04.2019)

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progress has been made regarding the election of *muftis*. Despite Protocol No. 3 that was annexed to the 1913 Treaty of Athens and other relevant international documents, Greece refuses to allow *muftis* to be elected to office and wants to prevent the Muslim minority community from gaining power. Greece also fears that the extensive secular and judicial authority of the *muftis* may lead to the politicization of their authority. In order to solve this problem and recognize the rights of the Muslim-Turkish minority to elect their *muftis*, the most reasonable solution would be to receive the approval of the members of the minority to strip the *muftis* off their judicial powers.<sup>45</sup> In this way, it would be possible to force the Greek authorities to put Annexed Protocol No. 3 into practice and allow the election of *muftis* to office in Greece. Needless to say, this would mean that *muftis* elected to office would be able to exercise all their non-judicial powers, matching the similar powers of Patriarch in Turkey. Such a move would subside the fears of Greece and allow elections to take place for *muftis*. At this point, the legal regulation which was accepted by the Parliament in 2018 where members of the Turkish-Muslim minority are, in principle, subjected to the Greek Civil Code and only exceptionally they may choose Sharia law and the jurisdiction of the *muftis* can be an important step to open the way for the elections of the *muftis*. With the solution of this problem, Greece will no longer face ECtHR sentencing regarding this issue and will earn the trust of her Muslim-Turkish citizens. Also, a ground for multiculturalism may occur<sup>46</sup> and Islamophobia can be undermined in the country.<sup>47</sup>

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<sup>45</sup> For various discussions on the subject see Tsitselikis, *Seeking to Accomodate Shari'a within a Human Rights Framework*, pp. 350-360; Kalampakou, *Is there a Right to Choose a Religious Jurisdiction over the Civil Courts?* <https://www.mdpi.com/2077-1444/10/4/260/htm>, 27.04.2019).

<sup>46</sup> Multiculturalism is the name of the policy which aims to eliminate ethnic and racial hierarchy with new relations of democratic citizenship. See Will Kymlicka, *Multicultural Citizenship*, Oxford University Press, Oxford 1995.

<sup>47</sup> See Ali Hüseyinoğlu, "Questioning Islamophobia in the Context of Greece", *IRCICA Journal*, Vol III, No 6, Fall 2015, pp. 65-95.

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