



## NKÜ HUKUK FAKÜLTESİ DERGİSİ

İNCELEME MAKALESİ / REVIEW ARTICLE

### LEGAL PLURALISM IN GREECE: BETWEEN MINORITY RIGHTS AND INDIVIDUAL RIGHTS

*Res. Asst. Burak SAYGILI\**

#### ABSTRACT

The issue of legal pluralism has been analyzed and discussed in legal, political and sociological literature over time. Different models of legal pluralism that are both of supportive and oppositional arguments are asserted in literature. The main goal of this study is to analyze the legal pluralist model of Greece that is based on the Lausanne Treaty and the discussions on it. It is seen that Greece has recognized some parts of Islamic law for Thracian Muslim minority. However, this system is quite debatable in the context of women's rights, status of religious autonomy, minority rights, individual rights, essentialism, multiculturalism and assimilation anxiety. Moreover, legal pluralist model in Greece has been the subject matter of Molla Sali v. Greece case that was decided by the ECtHR. For this reason, Greece has undergone a reform regarding its model for Thracian Muslim minority. The article demonstrates the historical background and current debates about legal pluralist model of Greece regarding Thracian Muslim minority.

**Keywords** Legal Pluralism, Greece, Western Thrace, Multiculturalism, Minority Rights

### YUNANİSTAN'DA HUKUKİ ÇOĞULCULUK: AZINLIK HAKLARI VE BİREYSEL HAKLAR ARASINDA

*Araş. Gör. Burak SAYGILI\*\**

#### ÖZET

Hukuki çoğulculuk konusu; hukuk, siyaset bilimi ve sosyoloji literatüründe süreç içerisinde analiz edilmiş ve tartışılmıştır. Literatürde hukuki çoğulculuğun farklı modellerine dair destekleyici ve muhalif argümanlar ileri sürülmüştür. Bu çalışmada temel amaç, Yunanistan'ın Lozan Antlaşması'na dayanan hukuki çoğulculuk modelini ve konuyla ilgili tartışmaları incelemektir. Yunanistan'ın Trakyalı Müslüman azınlık için İslam hukukunun bazı unsurlarını tanıdığı görülmektedir. Ancak bu sistem; kadın hakları, dinsel otonominin durumu, azınlık hakları, bireysel haklar, özcülük, çok kültürlülük ve asimilasyon endişesi konuları bağlamında oldukça tartışmalıdır. Ayrıca Yunanistan'ın hukuki çoğulculuk modeli, Avrupa İnsan Hakları Mahkemesi tarafından karara bağlanan Molla Sali /Yunanistan davasının da konusunu oluşturmuştur. Bu sebepten dolayı Yunanistan, Trakyalı Müslüman azınlığa ilişkin modelle ilgili bir reform gerçekleştirmiştir. Bu makale, Yunanistan'ın hukuki çoğulculuk modelinin tarihsel geçmişini ve hukuki çoğulculuğa ilişkin güncel tartışmaları açıklamaktadır.

**Anahtar Kelimeler** Hukuki Çoğulculuk, Yunanistan, Batı Trakya, Çok Kültürlülük, Azınlık Haklar

\* PhD Candidate, Research Assistant on Legal Philosophy and Sociology of Law, Tekirdağ Namık Kemal University, School of Law, bsaygili@nku.edu.tr, ORCID 0000-0002-0083-5273

\*\* Doktora Öğrencisi, Araş. Gör., Tekirdağ Namık Kemal Üniversitesi, Hukuk Fakültesi, Hukuk Felsefesi ve Sosyolojisi Anabilim Dalı, bsaygili@nku.edu.tr, ORCID 0000-0002-0083-5273



## INTRODUCTION

Cultural and religious minorities need protection by law for maintaining their traditions and customs. In this regard, legal pluralism is considered a solution by some countries. However, there are different kinds of models and arguments regarding legal pluralism. Especially, differences between liberal legal order and local- traditional rules are main controversial issues about legal pluralism. On this ground, the protection and rights of minority groups and that of individuals are significant reasons for current debates regarding legal pluralism. Therefore the Thracian Muslim minority and the case of Chatitze Molla Sali v. Greece (No. 20452/14) is very important in understanding legal pluralism in the context of multiculturalism, minority rights and individual rights in the legal system of Greece.

### I. THE CONCEPT OF LEGAL PLURALISM

The definition of legal pluralism is a bit vague for an accurate scholarly use. There is no clear-cut definition of legal pluralism. We can only elucidate a certain line of development of the concept of legal pluralism. In a search for an appropriate concept of legal pluralism, Mustafa Yaylali argued, that there is no accurate concept of legal pluralism to pin on which scholars can lean on in their academic work. He basis his argument on Brian Tamanaha's criticism of legal pluralism which is called the "Malinowski problems"<sup>1</sup>. This refers to the domination of the concept of legal pluralism by social scientists which has led to blurring the line between social behavior and legal normativity. According to these social scientists, every social movement can be considered as "normative", while for legal scholars a behavior can only be called normativity if it contains compulsion. For the sake of clarity and making my point, I will not concentrate on the conceptual dispute of legal pluralism, instead I will confine myself to the definition of Waldron, which I believe is accurate enough to ascertain legal pluralism in Greece.

Legal pluralism is described as the existence of various systems of legal obligations within the one state<sup>2</sup>. According to Waldron's definition, "legal pluralism is a term used mostly to describe and characterize the existence of several distinct legal systems, or perhaps legal sub-systems, within a single independent political community, like a nation-state"<sup>3</sup>. In this context,

---

<sup>1</sup> Mustafa Yaylali, 'Beyond the Law of the Nation-State: An Inquiry into the Theory of Legal Pluralism and Societal Law', (PhD Thesis, University of LUISS Guido Carli, 2011), 4-9

<sup>2</sup> M. B. Hooker, *Legal Pluralism: Introduction to Colonial and Neo-colonial Laws* (1<sup>st</sup> edn, Oxford University Press 1975) 2

<sup>3</sup> Jeremy Waldron, 'No Barking: Legal Pluralism and The Contrast Between Hart's Jurisprudence and Fuller's' (Colloquium: The Hart-Fuller Debate 50 Years On, New York, February 2008)

the principal emphasis about legal pluralism is that there is multiplicity of legal systems in the same social field such as community, region or country<sup>4</sup>

## II. THE THRACIAN MUSLIM MINORITY OF GREECE

When we consider the legal system in Greece, religious-cultural identities and their historical backgrounds are remarkable for understanding the socio-legal structure. In this respect, Greece is in a unique state about its pluralistic legal system in Europe. In this perspective, Greece recognizes the Thracian Muslim minority's customs within the legal framework. Certainly, this structure is related to the traditional *millet* system of Ottomans, so historical experience about co-existence of Muslims who are mostly Turks, and Christians has influenced the Greek legal system. However, cultural diversity has decreased due to some historical developments and events in Greece. In this context, independence of Greece from the Ottoman Empire plays a great role in the building of its nation. In this regard, European romanticism and Balkan parochialism were influential on Greek nationalism. Moreover, Orthodox Christianity which was under Greek state control and integral part of Greek nation-state was a principal feature of Greek identity. Balkan Wars (1912-1913) was also significant in regards to the socio-demographic change in Greece. Thousands of Turkish refugees reached Anatolia from Greece, during the same period exodus of Greek population began in Anatolia<sup>5</sup>. Moreover, Greco-Turkish War (1919-1922) which is part of the Turkish War of Independence and the Lausanne Treaty (1923) are substantial in the demographical changes and status of minorities. According to provisions of Lausanne Treaty, Greece and Turkey agreed on population exchange, so Anatolian Greek-Orthodox people (except Greeks of Istanbul and certain islands (Gökçeada/Imbros and Bozcaada/Tenedos)) left Anatolia and settled in Greece, also Muslims of Greece (except Western Thracian Muslims) migrated from Greece and settled in Turkey. Due to the population exchange, the Karamanlides who were Turkish-speaking Orthodox community, and Pontic Greeks migrated from Anatolia to Greece<sup>6</sup>. Clearly, mandatory population exchange was influential on sociological change in Greece. However, Western Thracian Muslims were exempt from the population exchange. In this context, Lausanne Treaty which included a section on minority rights was important, thus the Lausanne Treaty kept in place the institution of Sharia. Also, Islamic law was judicial sub-system that

---

<sup>4</sup> Alfonso Peña Jumpa, 'The Limits of International Human Rights and Refugee Law: An Analysis of the Case of the Aymara from the Perspective of Legal Pluralism' in Rene Kuppe and Richard Potz (eds), *Law and Anthropology: The International Yearbook for Legal Anthropology XI* (Martinus Nijhoff Publishers 2001), 19

<sup>5</sup> John S. Koliopoulos and Thanos Veremis, *Modern Greece: A History since 1821* (1<sup>st</sup> edn, Wiley-Blackwell Publication, 2010) 3-74

<sup>6</sup> Eric Jan Zürcher, *Modernleşen Türkiye'nin Tarihi* (30th edn, İletişim Publishing, 2015) 220-224

was related to family law, inheritance and child custody according to Greek Law No. 2345 (1920)<sup>7</sup>. Therefore, Islamic law is applicable in Greece because of international treaties and statutes which are related to the historical background and religious-cultural identities. If we look at today's Greece, indigenous Muslims of Greece are approximately 120,000 people which include three different ethnic communities, Turks, Pomaks and Romas that share the same religious belief but have internal cultural and linguistic differences<sup>8</sup>. On the other hand, important part of these ethnic groups identify to some extent with Turkish national consciousness<sup>9</sup>.

### III. GREEK MODEL OF LEGAL PLURALISM

It is seen that Greece accepted legal pluralism based on the Lausanne Treaty (1923). Therefore, Greece recognized the Shari'a as the law regulating family issues and civic matters for Western Thracian Muslims because of legacy of Ottoman system and provisions of Lausanne Treaty (1923). In recognition of their minority status, Western Thracian Muslims are granted basic entitlements like mother tongue education, practice of religion without any restraints and to manage their own religious and social institutions. Regarding Islamic law, three muftis of Xanthi/İskeçe, Didimotyho/Dimetoka and Komotini/Gümölcine apply Islamic law in Western Thrace<sup>10</sup>. The office of mufti which is an institution that issues *fatwa* which means authoritative legal opinion by Islamic legal scholar, has an important role in minority law which is related to marriage, divorce, inheritance and custody<sup>11</sup>. Thus, duties of muftis are both religious and civil, so the institution of mufti is of a religious leader and a civil judge. Therefore, the duties of a mufti require a certain standard of qualifications and competence in regards to

---

<sup>7</sup> Dia Anagnostou and Anna Triandafyllidou. 'Regions, minorities and European integration: A case study on Muslims in Western Thrace' (2006)2<[http://www.eliamep.gr/wp-content/uploads/en/2006/05/Case\\_study\\_report\\_Thrace.pdf](http://www.eliamep.gr/wp-content/uploads/en/2006/05/Case_study_report_Thrace.pdf)>Accessed 06 June 2020

<sup>8</sup> Venetia Evergeti and Panos Hatziprokopiou, 'Islam in Greece: Religious identity and practice among indigenous Muslims and Muslim immigrants' (CRONEM 6th Annual Conference "Living Together Civic, Political and Cultural Engagement Among Migrants, Minorities and National Populations: Multidisciplinary Perspectives", Guildford, 29-30 June 2010) 3

<sup>9</sup> Konstantinos Tsitselikis, 'Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers' (1st edn, Brill Publishing, 2012) 150 The definition of Western Thracian minority is one of the controversial topics in Greece. It is seen that Greece prefers the term of 'Muslim' rather than 'Turk' on the definition of Western Thracian minority. For more detail see also Baskın Oran, Türk-Yunan İlişkilerinde Batı Trakya Sorunu (1st edn, Mülkiyeliler Birliği Vakfı Yayınları, 1986) 84-91

<sup>10</sup> Berna Zengin Arslan and Bryan S. Turner, 'Legal Pluralism and the Shari'a: A Comparison of Greece and Turkey' in Adam Possamai, James T. Richardson and Bryan Turner (eds). The Sociology of Shari'a: Case Studies from around the World (Springer Publishing, 2015) 225

<sup>11</sup> Berna Zengin Arslan and Bryan S. Turner 'Shari'a and Legal Pluralism in the West' (2011) 14 (2) European Journal of Social Theory, 155

Islamic law. In this respect, the post of a mufti is very important as a cultural and legal institution for the Muslim community's, regarding cultural values and religious life<sup>12</sup>.

Greek Law No. 2345 (1920) states that the denominational heads must be elected by the respective communities. In addition, Treaty of Lausanne (1923) provides for free exercise of religion, including selection of muftis<sup>13</sup>. However, the post of mufti is the most controversial issue between Greek government and minority and even within the minority itself, because the public authorities directly appoints the mufti in despite of the democratic way for the appointment of the Greek Law No. 2345 (1920)<sup>14</sup>. In this regard, Law. No. 1920 (1990) is crucial, because Greece announced that the muftis would be appointed by the government based on Law. No. 1920 (1990). Nevertheless, the Turkish minority elected its own muftis, then this situation caused pairs for each community, one appointed and other elected<sup>15</sup>. The legal acts issued by the appointed muftis, on the other hand Turkey refused to recognize the institutional existence of the appointed muftis. Moreover, the problem about muftis enhanced segregation within the local society. The political controversy between Greek and Turkish nationalism about the control of muftis was used by the Greek courts, so Greek courts' decisions were considered as contradicting the European Convention of Human Rights by the European Court of Human Rights<sup>16</sup>. On the other hand, issue of democratic representation of Muslim minority was discussed by the Greek government during the recent years, so Greek ex-Prime Minister Alexis Tsipras emphasized the need for more freedom regarding the Thracian Muslim minority, especially "the right to elect their own religious leader, rather than him being appointed by the Greek state"<sup>17</sup>. However, problems of Thracian Muslim minority was not fully solved. In today's Greece that is governed by the Cabinet of Kyriakos Mitsotakis, debates about Muslim minority is still continued.

Application of Islamic law and Greek civil law are substantial for understanding of debates about legal pluralism in Greece. It is obvious that Thracian Muslim citizens of Greece

---

<sup>12</sup> Iris Boussiakou. 'Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace'. GreeSE Paper No 21, Hellenic Observatory Papers on Greece and Southeast Europe (2008)7-13

<sup>13</sup> Ataöv (1992). 'The Ethnic Turkish Minority in Western Thrace, Greece' (1992) (22). The Turkish Yearbook of International Relations, 96

<sup>14</sup> Boussiakou, (n 12) 7

<sup>15</sup> Ataöv (1992). 'The Ethnic Turkish Minority in Western Thrace, Greece' (1992) (22). The Turkish Yearbook of International Relations 96

<sup>16</sup> Konstantinos Tsitselikis. 'Muslims in Greece' in Richard Potz and W. Wieshaider (eds). Islam and the European Union (1<sup>st</sup> edn, Peeters Publishers, 2004) 93

<sup>17</sup> 'Election of muftis in northern Greece appears on gov't agenda', Ekathimerini (Athens, 15 December 2017) <<http://www.ekathimerini.com/224189/article/ekathimerini/news/election-of-muftis-in-northern-greece-appears-on-govt-agenda>> Accessed 10 June 2020

are subject to Islamic law. Actually, there are three Islamic courts in Western Thrace which is recognized by Law. No. 1920 (1990), so Islamic courts decide issues in accordance with constitutional guarantees, rights and freedom based on ECHR. On the other hand, there are disputes about application of Islamic law in Greece. In this context, one of the arguments states that Greece is responsible for taking measures to settle personal issues and family status of Thracian Muslims in accordance with their traditions and culture. However, some Greek scholars are against the application of Islamic law to Muslim citizens in Western Thrace, so they mention that Greece cannot bring a justification to the relevant provision of Lausanne Treaty, to escape its international obligations arising from human rights instruments. According to them, it is inconsistent with the equality before law, also they refer that most European countries like Germany and France don't apply Islamic law to their Muslim citizens. In addition, Turkey, whose population is mostly Muslim, long ago abolished Islamic law<sup>18</sup>.

#### IV. THE CASE OF MOLLA SALI VS. GREECE

It is clear that Greece is a member of Council of Europe, so it recognizes the compulsory jurisdiction of the ECtHR. Therefore, Muslim citizens of Greece can allege violation of European Convention of Human Rights. In this context, *Chatitze Molla Sali v. Greece* (2014) case is significant about implementation of Islamic law in Greece<sup>19</sup>. If we look at the case of *Chatitze Molla Sali v. Greece*, the applicant who is Ms Chatitze Molla Sali, is a Greek citizen that was born in 1950 and lives in Komotini, Greece. After the death of Ms Molla Sali's husband, she received his entire estate under the terms of a testament which is written by her spouse before a notary. However, the two sisters of the deceased contested the testament, on the grounds that their brother had belonged to the Thracian Muslim minority and his estate was subject to Sharia and to the jurisdiction of the office of the mufti rather than to the articles of the Greek Civil Code. In this respect, they relied the Lausanne Treaty (1923) that provided for Islamic customs to be applied to Muslim citizens of Greece. Firstly, the deceased's two sisters' demands were dismissed by the Greek courts and on appeal. Then, "the Thrace Court of Appeal found that the decision by the deceased, a Greek Muslim and a member of the Thrace religious minority, to request a notary to draw up a public will, determining for himself the persons to whom he wished to leave his property and the manner in which this was done, was an expression

---

<sup>18</sup> Theresa Papademetriou, 'Greece: Status of Minorities' (2012) The Law Library Congress 37-39 <<https://www.loc.gov/law/help/greece-minorities/greece-status-of-minorities.pdf>> Accessed 10 June 2020

<sup>19</sup> Yüksel Sezgin, 'Reforming Muslim Family Laws' in Jocelyne Cesari and José Casanova (eds). *Islam, Gender, and Democracy in Comparative Perspective* ( 1<sup>st</sup> edn, Oxford University Press, 2017) 181

of his statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens”. On the other hand, the Court of Cassation quashed this judgement based on questions of inheritance within the Thracian Muslim community ought to be dealt with by the office of the mufti in accordance with Sharia, so it remitted the case to a different bench of the Court of Appeal for “fresh consideration”. On 15th of December 2015, the Court of Appeal decided that the public will in question didn’t create any legal effects because of Islamic customs. Then, Ms Molla Sali appealed this judgement on points of law but the Court of Cassation dismissed the appeal on 6th of April 2017. In the case, the Court of Cassation deprived her three-quarters of her inheritance. Thus, Ms Molla Sali complains of the application to her inheritance relying on Article 6 of ECHR that mentions to the right to a fair trial and in conjunction with Article 14 of ECHR which mentions protection from discrimination. In the case, her husbands’ will was drawn up in accordance with Greek Civil Code’s provisions, so “she was subjected to a difference in treatment on grounds of religion”<sup>20</sup>.

Because of Chatitze Molla Sali’s application to ECtHR, status of Sharia in Greece was re-evaluated. Therefore, this issue is related to implementations on mufti system in Western Thrace. In this respect, amendment about mufti system and reformation of Islamic law judiciary was discussed at Greece’s agenda<sup>21</sup>. Therefore, Greek ex-Prime Minister Alexis Tsipras announced plans to make Islamic law optional for such disputes, following a looming ruling by the ECtHR. Thus, Tsipras said that under the amendment, litigants can still voluntarily agree to bring their dispute before a mufti for judgement, however if one of the two sides disagrees, the case will go to secular court<sup>22</sup>. Then, the offer of Tsipras gave a precedence to a Greek court of law, if there is no agreement among parties to go to local Islamic law official<sup>23</sup>. After a while, Parliament of the Greece made the practice of Sharia in disputes on family matters optional for the Thracian Muslims<sup>24</sup>. On the other hand, it is remarkable that practice of Islamic law is not

---

<sup>20</sup> ECHR 378 (2017) 06.12.2017. Issued by the Registrar of the ECtHR.

<sup>21</sup> Sezgin, (n 19) 181

<sup>22</sup> ‘Country to confront controversy over historic sharia law’, *Pulse Nigeria*, 11 June 2018. <<http://www.pulse.ng/news/world/in-greece-country-to-confront-controversy-over-historic-sharia-law-id7630017.html>> Accessed 11 June 2020

<sup>23</sup> ‘Sharia Law Becomes Optional for Greece’s Muslim Minority’, *Greek Reporter*, 11 June 2018. <<https://greece.greekreporter.com/2018/01/10/sharia-law-becomes-optional-for-greeces-muslim-minority/>> Accessed 11 June 2020

<sup>24</sup> ‘Greece limits power of sharia law for its Muslim minority’, *Euractiv*, 10 January 2018. <<https://www.euractiv.com/section/languages-culture/news/greece-limits-power-of-sharia-law-for-its-muslim-minority/>> Accessed 11 June 2020

fully abolished in Greece. Actually, debates about practice of Islamic law in Greece still continues till this day.<sup>25</sup>

When we consider the ECtHR's judgement on *Chatitze Molla Sali v. Greece* case on 19 December 2018, the ECtHR ruled that the mandatory application of Islamic law in Greece violated Article 14 of the European Convention of Human Rights<sup>26</sup>. Then, Article 14 specifies that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"<sup>27</sup>. On judgement of the ECtHR, the Court specifies that "freedom of religion did not require the Contracting States to create a particular legal framework in order to grant religious communities a special status entailing specific privileges. Nevertheless, a State which had created such a status had to ensure that the criteria established for a group's entitlement to it were applied in a non-discriminatory manner. Furthermore, refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounted not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification". In addition, the Court emphasized that Greece was sole state in Europe that had applied Islamic law to a part of its citizens against their desires. Like the ECtHR said France had officially applied some provisions of Sharia to citizens one of its overseas territories that is Mayotte, however the application of those provisions was restricted and terminated in 2011. In addition the ECtHR mentions to England and Wales about status of Islamic law. The ECtHR states that "if any decisions and recommendations are made by a Sharia council that are inconsistent with domestic law (including equality policies such as the Equality Act 2010) domestic law will prevail"<sup>28</sup>.

On case of *Molla Sali v. Greece*, thirds parties' arguments should be analyzed for grasping the issue. The Hellenic League for Human Rights argued that "the State's wish to

---

<sup>25</sup> 'Greece's Muslim minority hails change to limit power of sharia law', *The Guardian*, 11 January 2018. <<https://www.theguardian.com/world/2018/jan/10/historic-step-greek-pm-hails-change-to-limit-power-of-sharia-law>> Accessed 12 June 2020

<sup>26</sup> 'ECHR condemns Greece over mandatory Sharia Law in Thrace', *Protothema*, 19 December 2018.

<<http://en.protothema.gr/echr-condemns-greece-over-mandatory-sharia-law-in-thrace/>> Accessed 12 June .2020

<sup>27</sup> Council of Europe, 'Article 14: Protection from Discrimination'. European Convention on Human Rights (Strasbourg, Council of Europe Publishing). <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)> Accessed 12 June 2020

<sup>28</sup> *Molla Sali v Greece* (2018) App no 20452/14, (ECtHR, 19 December 2018)

<[http://www.questionegiustizia.it/doc/Case\\_of\\_molla\\_sali\\_v\\_Greece.pdf](http://www.questionegiustizia.it/doc/Case_of_molla_sali_v_Greece.pdf)> Accessed 14 June 2020



preserve a given minority's autonomy and to enhance cultural pluralism could not justify, for the sake of protecting that minority, restricting the fundamental rights of those members of the minority who had decided not to follow its rules and practices... European and international practice did not justify granting the Greek authorities a margin of appreciation tending towards the compulsory application of Sharia law". Greek Helsinki Monitor stated that "respect for religious autonomy should not lead to uncritical deference to the decisions of religious bodies, particularly when those decisions clashed with fundamental legal principles protected by the Convention"<sup>29</sup>. Then, it is seen that the practice of Greece based on mandatory application of some Islamic law provisions were criticized by human rights organizations of Greece.

## V. THE DISCUSSIONS ON LEGAL PLURALIS

If we consider discussions about Greek legal system that is based on legal pluralism, both of supportive and oppositional arguments are asserted. First of all, normative structure of religious tribunals is repeatedly criticized for failing to protect Muslim women's rights<sup>30</sup>. Also, Greek legal pluralism is regarded as institutional remnant of pre- modern State structure and inconsistent with cultural diversity and post-modern legal pluralism. In this respect, protection of the minority's collective rights appears to serve as sufficient reason to exclude the protection of its members' human rights. According to this approach, essentialist characteristic exists in Greek legal order, so it consider minority as a permanent and immutable community because of its typification that is based on the formulation of minority in the context of abstraction<sup>31</sup>. On the other hand, the Greek government's reform is criticized in some aspects because of assimilation anxiety. According to this critical view, Greece abolishes completely Thracian minority's religious autonomy which is based on customary law due to the amendment<sup>32</sup>. Therefore, the amendment about implementation Islamic law to Thracian Muslims is regarded as violation of religious-traditional autonomy and cultural rights one side, but the same reform is also supported by some scholars for protection of individual rights, women's rights and diversity within Thracian minority. In summary, the special jurisdiction of the mufti on family and inheritance disputes contradicts current European legal standards of human rights such as

---

<sup>29</sup> ibid

<sup>30</sup> İlker Tsavouoglou, 'The Legal Treatment of Muslim Minority Women under the Rule of Islamic Law in Greek Thrace' (2015) 2(3). Oslo Law Review Special Issue: Legal Pluralism, 242

<sup>31</sup> Stergios Kofinis, 'The Status of Muslim Minority Women in Greece: Second Class European Citizens?' in Dagmar Schiek and Anna Lawson (eds). European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination (1<sup>st</sup> edn, Routledge Press, 2011) 130

<sup>32</sup> Avrupa Batı Trakya Türk Federasyonu, 'Another blow on religious autonomy of the Turkish community in Western Thrace!'. 12 January 2018. <<https://www.abttf.org/html/index.php?link=detay&id=5736&grup=4&l=en&arsiv=0>> Accessed 15 June 2020

right to a fair trial and gender equality. However, the preservation of the minority status is important for the survival of the Muslim/Turkish community in Greece. Thus the way to accommodate a minority internal order that is based on religious traditions within liberal legal context is the main issue. Therefore the compability of Islamic law and the European legal order remains under question<sup>33</sup>.

Conception of multiculturalism is vital for analysis of current debates about legal pluralism in Greece. It is obvious that the term of multiculturalism is related with notion of diversity as opposed to sameness. According to multiculturalist approach, there are cultural and political principles, notions and guidelines with the purpose of encouraging the fair and equal presence of whole cultural groups in public and private institutional environments and making a balance between languages or races. In this perspective, multiculturalism offers a “political framework for social equality and cultural differences as for substantial elements of social order”. Therefore, cultural entities are supported and respected, yet its boundaries with liberalism or globalism are frequently blurred<sup>34</sup>. Application of legal pluralism that is based on traditional rules and its limitations are debatable issues about relationships between multiculturalism, legal pluralism and liberal order. Thus, cosmopolitan pluralist approach is criticized by some scholars who prefer stronger emphasis on universal norms<sup>35</sup>. In addition, criticism about essentialism is also important. According to some scholars, multicultural multi-legalism builds upon a theoretically incoherent or normatively unpalatable picture of cultural essentialism, so it is seen that forcing a rigid and narrow interpretation of cultural identity upon members of minority, therefore this perspective emphasizes various voices and strata of the minority, hence they refer that legal powers do not give unfair and irrevocable advantages to some parties in minority group. In this respect, they mention hybrid and flexible identities against essentialism<sup>36</sup>. In this perspective, Tharican Muslim minority is considered immutable

---

<sup>33</sup> Konstantinos Tsitselikis, ‘Aspects of Legal Communitarianism in Greece: Between Millet and Citizenship’ (2012) 2(7). *Oñati Socio-Legal Series* [online], 109, 110  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2050345](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2050345)> Accessed 15 June 2020

<sup>34</sup> Lilla Berkes, ‘The Development and Meaning of the Concept of Multiculturalism’ (2010) 1(4). *International Relations Quarterly*, 3 <[http://www.southeast-europe.org/pdf/04/DKE\\_04\\_A\\_E\\_Berkes-Lilla\\_Kantor-Judit.pdf](http://www.southeast-europe.org/pdf/04/DKE_04_A_E_Berkes-Lilla_Kantor-Judit.pdf)> Accessed 16 June 2020

<sup>35</sup> Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (1<sup>st</sup> edn, Cambridge University Press, 2012) 325

<sup>36</sup> Morten Ebbe Juul Nielsen, ‘Multiculturalism and Legal Autonomy for Cultural Minorities’ (2013) 7(2). *Etikk i Praksis Nordic Journal of Applied Ethics*, 80

in the historical construction of identities in Greece because of the Greek legal order's essentialist mentality<sup>37</sup>.

Issue of "reforming Muslim family laws" is mentioned in some of academic sources about Greek legal pluralism and Thracian Muslims. On this subject, it is stated that muftis of Greece haven't any incentive to self-reform because of the status quo, also there is no civil society organizations lobbying for reformation<sup>38</sup>. In this context, it is emphasized that the mufti's decisions without any "corrective control" endanger not only legal interest of Thracian Muslim citizens who are under the jurisdiction of the mufti, but also the significance and authority this Islamic institution. Therefore, the mufti's jurisdiction requires to be reformed with equal regard to the Islamic customs and culture, freedom of Muslims, fundamental values and individual rights of the European legal order. In this respect, there are two different ways which are channeling the development of Islamic law for compability with international human rights requirements or abolishing the mufti's jurisdiction. On this ground, The Commissioner for Human Rights in the Council of Europe recommends that Greece ought to strengthen the substantial review of the mufti's judicial decisions by Greek courts and formalize a continual and open dialogue with representatives of the Thracian Muslim community. The notion of *ijtihad* means "endeavour of jurists to analyze and comprehend the written sources of Islamic law with justice and equality" is significant on this subject. Therefore, these scholars who emphasize development of Islamic law suggest that system of *ijtihad* should be continious for dynamic application and interpretation of Islamic law<sup>39</sup>.

## CONCLUSION

In conclusion, legal pluralist system of Greece is quite debatable and controversial issue in accordance with various perspectives. In general, two topics which are appointment and election system of muftis and application of Islamic law have importance in this connection. Therefore, various arguments are asserted because of differences of approaches. In addition, Chatitze Molla Sali v. Greece case is crucial about relationships between minority and Greek legal order. In short, all of assimilation anxiety, emphasis on individual rights, conceptions of

---

<sup>37</sup> Stergios Kofinis, 'The Status of Muslim Minority Women in Greece: Second Class European Citizens?' in Dagmar Schiek and Anna Lawson (eds). European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination (1<sup>st</sup> edn, Routledge Press, 2011) 125

<sup>38</sup> Yüksel Sezgin, 'Reforming Muslim Family Laws' in Jocelyne Cesari and José Casanova (eds). Islam, Gender, and Democracy in Comparative Perspective (1<sup>st</sup> edn, Oxford University Press, 2017) 181, 182

<sup>39</sup> Konstantinos Tsitselikis, 'Applying Shari'a in Europe: Greece as an Ambivalent Legal Paradigm' in Jørgen Schøler Nielsen, Samim Akgönül, Ahmet Alibašić, Brigitte Maréchal and Christian Moe (eds). Yearbook of Muslims of Europe Volume 2 (1<sup>st</sup> edn, Brill Publishers, 2010) 672, 673

multiculturalism, the tension between local-religious rules and liberal legal order, reinterpretation of Islamic law, diversity in Thracian minority are significant factors in the issue of legal pluralism in Greece.

## BIBLIOGRAPHY

### Books and Articles

- Avrupa Batı Trakya Türk Federasyonu, ‘Another blow on religious autonomy of the Turkish community in Western Thrace!’, (12 January 2018).  
<<https://www.abttf.org/html/index.php?link=detay&id=5736&grup=4&l=en&arsiv=0>>
- Anagnostou D and Triandafyllidou A, ‘Regions, minorities and European integration: A case study on Muslims in Western Thrace’ (2006) <[http://www.eliamep.gr/wp-content/uploads/en/2006/05/Case\\_study\\_report\\_Thrace.pdf](http://www.eliamep.gr/wp-content/uploads/en/2006/05/Case_study_report_Thrace.pdf)>
- Ataöv T, The Ethnic Turkish Minority in Western Thrace, Greece. The Turkish Yearbook of International Relations Volume 22. (Ankara University Press, 1992)
- Berkes L, The Development and Meaning of the Concept of Multiculturalism. International Relations Quarterly, (2010) 1(4), 1-6 <[http://www.southeast-europe.org/pdf/04/DKE\\_04\\_A\\_E\\_Berkes-Lilla\\_Kantor-Judit.pdf](http://www.southeast-europe.org/pdf/04/DKE_04_A_E_Berkes-Lilla_Kantor-Judit.pdf)>
- Berman P. S., Global Legal Pluralism: A Jurisprudence of Law Beyond Borders. (1<sup>st</sup> edn, Cambridge University Press, 2012).
- Boussiakou I, ‘Religious Freedom and Minority Rights in Greece: the case of the Muslim minority in western Thrace’. GreeSE Paper No 21, Hellenic Observatory Papers on Greece and Southeast Europe (December 2008), 1-52
- Council of Europe, ‘European Convention on Human Rights’. <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)>
- Evergeti V and Hatziprokopiou P, ‘Islam in Greece: Religious identity and practice among indigenous Muslims and Muslim immigrants’. (CRONEM 6th Annual Conference “Living Together Civic, Political and Cultural Engagement Among Migrants, Minorities and National Populations: Multidisciplinary Perspectives”, Guildford, 29-30 June 2010)
- Hooker M B, Legal Pluralism: Introduction to Colonial and Neo-colonial Laws (1<sup>st</sup> edn, Oxford University Press, 1976)
- Jumpa A P, ‘The Limits of International Human Rights and Refugee Law: An Analysis of the Case of the Aymara from the Perspective of Legal Pluralism’ in Kuppe, R and Potz, R (eds). Law and Anthropology: International Yearbook for Legal Anthropology Volume 11 (Martinus Nijhoff Publishers, 2001)

- Kofinis S, ‘The Status of Muslim Minority Women in Greece: Second Class European Citizens?’ in Schiek, D and Lawson, A, *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (1<sup>st</sup> edn, Routledge Press, 2011) 125-140
- Koliopoulos J S and Veremis T M, *Modern Greece: A History since 1821*. (1<sup>st</sup> edn, Wiley-Blackwell Publication, 2010)
- Nielsen M E J, ‘Multiculturalism and Legal Autonomy for Cultural Minorities’ (2013) 7(2). *Etikk i Praksis Nordic Journal of Applied Ethics*, 67-84
- Oran B, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu*. (1<sup>st</sup> edn, Mülkiyeliler Birliği Vakfı Yayınları, 1986)
- Papademetriou T, *Greece: Status of Minorities*. (The Law Library of Congress, Penny Hill Press, 2016)
- Sezgin Y, ‘Reforming Muslim Family Laws’ in Cesari, J and Casanova, J (eds). *Islam, Gender, and Democracy in Comparative Perspective* (1<sup>st</sup> edn, Oxford University Press, 2017)
- Tsitselikis K, ‘Muslims in Greece’ in Potz, R and Wieshaider, W. *Islam and the European Union*. (1<sup>st</sup> edn, Peeters Publishers, 2004)
- Tsitselikis K, ‘Applying Shari’a in Europe: Greece as an Ambivalent Legal Paradigm’ in Nielsen, J S, Akgönül S, Alibašić A, Maréchal B and Moe C. *Yearbook of Muslims of Europe Volume 2* (1<sup>st</sup> edn, Brill Publishers, 2010)
- Tsitselikis K, *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*. (1<sup>st</sup> edn, Brill Publishers, 2012)
- Tsitselikis K, (2012b). ‘Aspects of Legal Communitarianism in Greece: Between Millet and Citizenship’ (2012) 2(7). *Oñati Socio-Legal Series* [online], 106-118. <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2050345](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2050345)>
- Tsavousoglou İ, (2015). ‘The Legal Treatment of Muslim Minority Women under the Rule of Islamic Law in Greek Thrace’ (2015) 2(3). *Oslo Law Review* (Special Issue: Legal Pluarlism)
- Yaylali M, ‘*Beyond the Law of the Nation-State: An Inquiry into the Theory of Legal Pluralism and Societal Law*’. (PhD Thesis. LUISS Guido Carli, 2011)
- Waldron J, ‘No Barking: Legal Pluralism and The Contrast Between Hart’s Jurisprudence and Fuller’s’ (Colloquium: The Hart-Fuller Debate 50 Years On. Paper for ANU Colloquium “The Hart-Fuller Debate Fifty Years On”, New York, 17-19 December 2008)
- Zengin Arslan B and Turner B S, ‘Shari’a and Legal Pluralism in the West’. *European Journal of Social Theory* (2011) 14(2) 139

Zengin Arslan B and Turner B S, (2015). ‘Legal Pluralism and the Shari’a: A Comparison of Greece and Turkey’ in P Adam, J T Richardson and B S Turner (eds). *The Sociology of Shari’a: Case Studies from around the World* (Springer Publishing, 2015) 219-235

Zürcher E J, *Modernleşen Türkiye’nin Tarihi*. (30th edn, İletişim Publishing, 2015).

### **Newspapers**

Ekathimerini, “Election of muftis in northern Greece appears on gov't agenda”, 11 June 2018  
<<http://www.ekathimerini.com/224189/article/ekathimerini/news/election-of-muftis-in-northern-greece-appears-on-govt-agenda>> Accessed 10 June 2020

Euractiv, “Greece limits power of sharia law for its Muslim minority”, 10 January 2018.  
<<https://www.euractiv.com/section/languages-culture/news/greece-limits-power-of-sharia-law-for-its-muslim-minority/>> Accessed 11 June 2020

Greek Reporter, “Sharia Law Becomes Optional for Greece’s Muslim Minority”, 11 June 2018  
<<https://greece.greekreporter.com/2018/01/10/sharia-law-becomes-optional-for-greeces-muslim-minority/>> Accessed 11 June 2020

Protothema, “ECHR condemns Greece over mandatory Sharia Law in Thrace”, 19 December 2018. <<http://en.protothema.gr/echr-condemns-greece-over-mandatory-sharia-law-in-thrace/>> Accessed 12 June 2020

Pulse Nigeria, “Country to confront controversy over historic sharia law”, 11 June 2018.  
<<http://www.pulse.ng/news/world/in-greece-country-to-confront-controversy-over-historic-sharia-law-id7630017.html>> Accessed 11 June 2020

The Guardian, “Greece's Muslim minority hails change to limit power of sharia law”, 11 January 2018. <<https://www.theguardian.com/world/2018/jan/10/historic-step-greek-pm-hails-change-to-limit-power-of-sharia-law>> Accessed 12 June 2020