APPLYING SHARI’A IN EUROPE: GREECE AS AN AMBIVALENT LEGAL PARADIGM

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1 Introduction

For historical reasons, Greece’s Muslim communities have remained under legal protection with a strong communal profile: Muslim schools, foundations (waqfs) and religious hierarchies (muftis, imams) survived from the preceding Ottoman administration within a modern legal system. Often these institutions were governed both by mainstream legal norms and by a special minority protection framework. On the other hand, while mainstream legal norms were developed along with other institutions and law inherent in the Greek legal system, minority institutions were less exposed to evolution as community structures were less flexible when it came to change. These community structures and institutions were akin to the organisational category of millets, ethno-religious communities, on which the Ottoman state and society were based. However, some institutions, while retaining their own characteristics, did acquire a certain amount of new content and functions. In Ottoman times, the mufti was appointed by the qadi (judge) as an interpreter of Shari’a law. Under the Greek legal system, he became both judge and interpreter of Shari’a. Through this new role, the muftis became in many cases heads of the local Muslim communities with a political authority, representing the Muslim community to the Greek administration.

In concrete terms, following the gradual withdrawal of the Ottoman administration after 1881 and Greece’s annexation of Thessalia and part of Epirus, the local muftis took office as judges in matters of personal status, and became heads of the Muslim community. When Greece annexed the New Territories (Epirus, Macedonia, Crete and

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the islands of the Eastern Aegean) after the Balkan Wars (1912–1913), the position of the muftis was again acknowledged in Greek law, with special jurisdiction being granted to them in family and inheritance matters concerning Muslim Greek citizens. In both cases, special legal regulations implemented bilateral treaties between Greece and the Ottoman Empire. The end of the Greek-Turkish war of 1919–1922, the fall of the Empire and the establishment of the Turkish Republic, engendered the population exchange between the two countries on the basis of religion: as a counter-weight to the Greek Orthodox already expelled from Asia Minor and Pontus, the Muslims of Greece had to migrate to Turkey. In total, 1.6 million Greek Orthodox and 450,000 Muslims became refugees in terms of the Lausanne Convention (January 1923). According to the treaty, the Muslims of Western Thrace were exempted from the exchange, as were the Greek Orthodox of Istanbul (including Imvros and Tenedos, under the Treaty of Lausanne). The Treaty of Lausanne finalised the agreement of the participants in the conference, establishing modern Turkey. Among other issues, the Treaty attributed special minority rights to non-Muslim Turkish citizens in Turkey and to Muslim Greek citizens in Greece (residents of Thrace who had been exempt from the population exchange).\(^2\) In addition, although not explicitly mentioned in the convention, Muslims of Albanian origin were also exempt, but they were expelled en masse to Albania during the German occupation of Greece and the beginning of the civil war. In the aftermath of the annexation of the Dodecanese by the Greek State in 1947, the Mufti of Rodos remained a religious leader with no jurisdiction.

Thus Muslim communities enjoyed a special status and rights regarding internal institutions, such as schools, foundations and the offices of the muftis, the muftis exerting jurisdiction in matters of personal status and these institutions have operated in Western Thrace until today without interruption. The three muftis in Komotini, Xanthi and Didimotyho apply Shari’a law in family and inheritance disputes, in an awkward relationship vis-à-vis the Greek constitutional and European legal systems. The adjudication by the mufti applying Islamic law in a nationally recognised court is unique in the current European legal