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MINORITY LEGAL ORDERS IN GREECE AND  
IN THE UK: A COMPARISON OF THE MUFTI  
OFFICE IN KOMOTINI AND THE ISLAMIC  
SHARI'A COUNCIL IN LONDON

Eleni Velivasaki



# OPERATING RELIGIOUS MINORITY LEGAL ORDERS IN GREECE AND IN THE UK : A COMPARISON OF THE MUFTI OFFICE OF KOMOTINI AND THE ISLAMIC SHARI'A COUNCIL IN LONDON

Eleni Velivasaki<sup>1</sup>

## INTRODUCTION

*“It seems unavoidable and indeed as a matter of fact certain provisions of Shari’ a are already recognized in our society and under our law. So it’s not as if we’re bringing in an alien and rival system. We already have in this country a number of situations in which the law – the internal law of religious communities – is recognised by the law of the land as justifying conscientious objections in certain circumstances”<sup>2</sup>* Dr Rowan Williams, Archbishop of Canterbury

In February 2008, Dr Rowan Williams, at the time the Archbishop of Canterbury, Head of the Church of England, made a series of statements that were considered as sanctioning shari’ a law in the UK. The Archbishop did not ‘retreat’ from the principle “one law for all” which he did recognise as important “pillar of Britain’s social identity as a Western liberal society”. He reminded us, though, that people might have other “affiliations, other loyalties that shape and dictate how they behave in society” and that the law should take some account of that. This statement although it does not suggest a different image of the state law other than that of the privileged dominant authority, it does relieve the state from part of its exclusivity in regulating the lives of individuals which most European states reserve for it.

The assumption that law is conceptually (and morally) inextricably linked to the state reflects the dominant position in mainstream legal theories.<sup>3</sup> As Twining has noted *“for over 200 years Western legal theory has been dominated by conceptions of law that tend to be monist (one internally coherent system), statist (the state has a monopoly of law within its territory) and positivist (what is not created or recognised*

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<sup>1</sup> Eleni Velivasaki (BA, LLM) is a member of the Legal Assistance Unit of the of the Greek Council of Refugees in Thrace (Greece). She is also a resident fellow at the Center for Comparative Constitutional Law & Religion at University of Luzern. For contact email: [elenivel@gmail.com](mailto:elenivel@gmail.com) .

<sup>2</sup> Interview of the Archbishop of Canterbury with Christopher Landau of the BBC World at One programme ,The Archbishop of Canterbury website, <http://www.archbishopofcanterbury.org/1573> (last accessed 15th July 2009)

<sup>3</sup> Melissaris E., *Ubiquitous law: legal theory and the space for legal pluralism* (Aldershot: Ashgate, UK, 2009), at 23

*as law by the state is not law*”.<sup>4</sup> State law claims universality and sees itself as an objective order. Consequently, it extends its dominion over the territory and host of people irrespective of what are the people’s shared normative experiences.<sup>5</sup> This creates state exclusivity to proclaim legality<sup>6</sup>.

This dominance is quite clear for the majority of modern states in Europe. They have opted for a rather secularized law where doctrines of legal uniformity, liberal individualism and religious tolerance have a prominent place.<sup>7</sup> It is a common assertion of modern European democracies that state and consequently the law, allegedly separated from religion, are colour-blind<sup>8</sup> and thus it assumes everyone’s moral and political equality. Yet, the increasing pluralisation of western societies with the presence of a growing Muslim population is a salutary reminder of the limits of the liberal state when it comes to recognising the views and values of ‘others’.<sup>9</sup>

The development of Islamic minority legal orders in Europe is another bold reminder of the fact that contrary to the tidy, consistent ideal of uniformity, legal reality is plural rather than monolithic; that a considerable part of the law today is not derived by a single source, nor created by the state but derived from other sources, as Ehrlich noted as early as early 20<sup>th</sup> century.<sup>10</sup> Human conduct is often not determined by the compulsory state laws and the pending sanctions of the courts

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<sup>4</sup> Twining, W., *Globalisation and Legal Theory* (Butterworths, London, 2000), at 232.

<sup>5</sup> Melissaris E., *Ubiquitous law: legal theory and the space for legal pluralism* (Aldershot: Ashgate, UK, 2009), at 142

<sup>6</sup> Melissaris E., *Ubiquitous law: legal theory and the space for legal pluralism* (Aldershot: Ashgate, UK, 2009), at 4

<sup>7</sup> Young M.I., *Together in Difference: Transforming the Logic of Group Political Conflict*, in Kymlicka W. (ed), *The rights of minority cultures* (Oxford: Oxford University Press, 1995), at 162.

<sup>8</sup> The colour-blind approach, launched (or at least deemed to be launched) by the Brown v. Board of Education American Supreme Court Decision which ruled against the segregated educational facilities for black and white children saw the equal but separate treatment as racial injustice.

<sup>9</sup> Menski W., *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), at 5.

<sup>10</sup> Ehrlich E., *Fundamental principles of the sociology of law*, new ed. (New Brunswick, N.J., London: Transaction Publishers, 2002), at 12,21

but rather on quite different motives such as losing face in the community, reputation, etc.<sup>11</sup>

This is what makes Muslim women in Britain the primary users of Islamic Shari'a Councils: Having already obtained a civil divorce, but with their husbands refusing to grant them a unilateral religious divorce, they will often, approach one of the many Shari'a councils seeking an Islamic divorce, a divorce that will dissolve their marriage "in the sight of God" and will allow them to remarry according to their religious and cultural convictions.<sup>12</sup>

Various legal orders other than the state -which is of course itself not less plural-, have always been dispersed across the social spectrum and within the boundaries of a state's jurisdiction. What increasing Muslim presence in majority non-Muslim countries does is that it makes their existence more evident. The measuring of the law by the western perception of legality does not make these legal orders disappear rather than results in their identification as minority legal orders which are under this "minority" prism adjusted, operationalized and reconstructed. The existence of minority legal orders, be it religious or of other basis, undermines the basic assertion of official law as an idealised uniform legal control mechanism.<sup>13</sup>

Looking at two distinct religious bodies, yet related to the same religious order, the Islamic Shari'a Council in Britain and the Mufti office of Komotini, in Greece, this paper discusses how two religious minority legal orders operate within an allegedly unitary legal system and explores their interaction with state law and accommodation within a state jurisdiction. It also evaluates specific state responses to the plurality of each socio-legal reality. These issues are addressed with the realisation that every identifiable type of law and norms is itself latently plural.

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<sup>11</sup> Ehrlich E., *Fundamental principles of the sociology of law*, new ed. (New Brunswick, N.J., London: Transaction Publishers, 2002), at 12,21

<sup>12</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, *10 Ecclesiastical Law Journal*, (2008), pp 283-309, at 288

<sup>13</sup> Menski W., *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), at 62.

I shall first start with an explanation of the use of ‘minority legal orders’ which I have borrowed from Maleiha Malik’s Report titled *Minority Legal Orders in the UK: Minorities, Pluralism and the Law* (2012)<sup>14</sup> where she discusses minority legal orders in the UK, their origins and context within a liberal democracy and explores the advantages and disadvantages of the practical ways in which the state can respond to minority legal orders in the UK and work with them. Drawing upon Malik’s definition I will start setting the general framework that allows for the application of the concept in the discussed case studies first by framing the issue of the recognition and accommodation of the minority legal orders within the topic of the law and religion relation and then by defining the religious, historical, and social context in which minority legal orders developed. I will then examine the religious bodies’ jurisdiction on family law matters with a focus on religious divorce and their relevant procedures in order to finally identify the character of the institution, its enforcement powers and interaction with state law. Finally I will evaluate their function, accommodation and reconstruction within an allegedly uniform legal framework.

## **RELIGIOUS MINORITY LEGAL ORDERS IN LESS SECULAR SOCIO-LEGAL ENVIRONMENTS**

Allegedly ‘secularized’ laws around Europe have been dominated by the popular doctrine of the separation of religion and state, and therefore religion and law, seeking to confine religion to the “private” realm.<sup>15</sup> Yet, despite the alleged segregation of law and religion, religion still serves as a focal point for group cohesiveness forming an important factor of identity formation for individuals and groups.<sup>16</sup> Law is unavoidably influenced by ethical and religious concepts and thus as Shah notes “highly culture specific”.<sup>17</sup> The idea of separation of religion and state

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<sup>14</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law* (London: The British Academy, 2012)

<sup>15</sup> Shah, P. , Introduction: Socio-Legal Perspectives on Ethnic Diversity, in Shah, P. (ed), *Law and Ethnic Plurality, Socio-Legal Perspectives* (Leiden, Boston: Martinus Nijhoff Publishers, 2007), at 2

<sup>16</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London:Sweet & Maxwell, 1998), at 66.

<sup>17</sup> Shah, P. , Introduction: Socio-Legal Perspectives on Ethnic Diversity, in Shah, P. (ed), *Law and Ethnic Plurality, Socio-Legal Perspectives* (Leiden, Boston: Martinus Nijhoff Publishers, 2007), at 2

remains an ideal for many European states, not less for Greece and England, where the existence of established Churches with accorded constitutional roles underline the fact that national orders are not that secular. As Menski observes we presume that anything Muslim or Hindu is always “religious”, while we do not apply the same assumption to the majority religion.<sup>18</sup>

Be it The Church of England or the Eastern Orthodox Church of Christ, the establishment of a state church and a dominant religion, the special relationship between the Crown and the Church of England with the Queen being both the Head of State and the Supreme Governor of the Church of England and the absolute restriction on non-adherents to the Greek Orthodox dogma to be appointed as President of the Hellenic Republic shows there is something suspiciously religious at the very core of the two European member states, despite secular claims.

The public hysteria that followed the Archbishop’s speech shows also, as Shah , rightly emphasized, that despite the energy spent discussing the dresses that Muslim women should wear<sup>19</sup> we are rather uneasy with considering Islamic law as a well-established field, even more uncomfortable to consider that for many people allegiance to it is not negotiable. Despite moral panics on the eminent advent of Shari'a on European soil, Islamic legal orders are already clearly present in both Greece's and UK's jurisdictions. This presence is more than the usual reconstruction of religion as rights of worship and performance of ritual placed by the liberal state in rank order with all other rights and obligations.<sup>20</sup>

In Greece, Islamic law is officially recognised as the applicable law in family law issues as Greek legislation envisages an Islamic personal law system to be applied to a specific category of Greek citizens. The members of the minority of the Western

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<sup>18</sup> Menski W, *Law, Religion and South Asians in diaspora*, in Hinnells R. J. (ed), Religious reconstruction in the South Asian diasporas : from one generation to another (New York, Palgrave Macmillan, 2007)

<sup>19</sup> Prakash Shah, ‘Transforming to accommodate? Reflections on the shari'a debate in Britain’, in Ralph Grillo et al (eds.) *Legal practice and cultural diversity* (Aldershot: Ashgate, 2009), pp. 73-91, at 87

<sup>20</sup> King M., The Muslim Identity in a Secular World, in King M. (ed), *God's Law versus State Law, The Construction of an Islamic Identity in Western Europe* (London: Grey Seal, 1994), at 108-110.

Thrace are exempted - on an optional or compulsory basis (positions vary in Greek legal theory and jurisprudence) - from the jurisdiction of Greek courts with regard to their inheritance and family law matters, and instead, they are subjected to the jurisdiction of the Mufti. The Mufti's initial role as divine interpreter of Islamic law, Greek state's legacy from the Ottoman Empire, has been fused with the function of the ottoman *kadi* that is that of a judge.<sup>21</sup> The Mufti, along with his religious and social tasks, has judicial competence to adjudicate in private disputes of inheritance and family matters that is: marriages, divorces, personal relations of the spouses, family ties, etc of Muslim citizens, mainly the Muslims belonging to the minority of Western Thrace, applying Islamic law. This creates a *sui generis* judicial system stemming mainly from minority protection status of a particular religious community going back to the establishment of the Greek state. Islamic law is thus officially accommodated as a separate normative order.

On other hand, English law shows reluctance to grant any recognition to Islamic law as part of English law. For English law Islamic personal laws and religious legal orders of Muslim communities are not formally part of it, they remain at the level of 'foreign custom', 'culture' or 'tradition' outside the formal realm of law.<sup>22</sup> Yet this does not mean that Islamic law is not present. The moral panic to Dr Rowan Williams' statement was so fierce that the general distress surpassed the perspicuous statement of the existence of a plural legal reality; a reality where the law of religious communities, including Islamic law, is in certain circumstances already recognised.

As Bowen has recently noted "nowhere in Europe or North America is the legal system closer to "recognizing" Islamic judgments than in England".<sup>23</sup> In civil cases

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<sup>21</sup> Soltaridis S., *The history of the mufti offices of Western Thrace* (Athens: Nea Synora-A.A.Livani, 1997) at 72 (in Greek); Ktistakis Y., *Sacred Islamic Law and Muslim Greek citizens*, (Athens-Thessaloniki: Sakkoulas,2006) at 32 (in Greek)

<sup>22</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London:Sweet & Maxwell, 1998), at 69.

<sup>23</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 411

judges in some way “recognized” the procedures and rules attributed to shariah.<sup>24</sup> In a recent reported case (the *Uddin v. Choudhury*),<sup>25</sup> the Civil Division of the Court of Appeal enforced a *mahr* agreement and awarded the bride the £15,000 in *mahr* treating the Islamic agreement as a contract with legal force in English law, performing what it may well be considered as an act of “recognition” of Islamic law.<sup>26</sup> English legislation has also to an extent “accommodated” some Islamic rules and “practices”, through the strategy of making exceptions such as special rules on slaughter of animals for food, *halal* meat in public institutions and designating prayer facilities or time for prayer at the work place. Nevertheless, when it comes, particularly, to family law, English law refuses recognition. Yet, Muslims continue to arrange their daily life especially their family issues, their marriages and divorces according to their religious rules and customs. While Islamic law is “officially” pushed to the realm of the unofficial, new hybrid forms of Islamic law are created, what Menski has imaginatively labeled *angrezi shariat*<sup>27</sup>, as informal dispute resolution undertaken by religious structures such as the Shari'a Council is flourishing in London and elsewhere in the UK.

### **RELIGIOUS MINORITY LEGAL ORDERS: THE WAY TO REMAIN FAITHFUL**

Drawing on Maleiha Malik’s definition of minority legal orders<sup>28</sup>, I consider that these two Islamic structures namely The Islamic Sharia Council in England and the Mufti office of Komotini, in Greece are two basic agents around which two minority legal orders operate and develop. I take Maleiha Malik’s definition to consider minority legal orders as forms of **normative** social regulation that **exercise authority**

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<sup>24</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 435, see also the ‘missing pound’ Ali v. Ali (unreported) mentioned by Menski in Menski W., ‘Law, religion and culture in multi-cultural Britain.’ In Mehdi, Rubya and Petersen, Hanne and Reenberg Sand, Erik and Woodman, Gordon R., (eds.), *Law and religion in multicultural societies* (Copenhagen: DJØF Publishing, 2008) pp. 43-62, at 55, 56

<sup>25</sup> The case, *Uddin v. Choudhury*, was decided in the Court of Appeal for England and Wales, Civil Division, at the Royal Courts of Justice, on October 21, 2009, Transcript of *Uddin v. Choudhury*, [2009] EWCA (Civ) 1205, available at <http://www.bailii.org/ew/cases/EWCA/Civ/2009/1205.html> (last accessed 1<sup>st</sup> April 2013)

<sup>26</sup> John R. Bowen, “How Could English Courts Recognize Shariah?” *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 424, 425

<sup>27</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London:Sweet & Maxwell, 1998), at 58

<sup>28</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law* (London: The British Academy, 2012) at 5, 23, 24.

over the lives of individuals, yet are **distinct** to the state regulations and **“subordinate”** in the light of the dominance of the state legal orders in terms of political power. This does not mean that they enjoy less authority and legitimacy across the individuals or communities that submit to them. As Alott put it, what makes norms is the willingness of those subjected to them to conform their behaviours to these norms.<sup>29</sup> In some situations minority legal orders command greater obedience and legitimacy than state law.<sup>30</sup> Minority legal orders may include norms that define the acts of the individuals, as well as specifying consequences for non-compliance, and complete legal orders with mechanisms to ensure compliance.

The Islamic Sharia Council in England and the Mufti office of Komotini in Greece are admittedly two distinct institutions, yet both of a religious character operating in similar minority legal orders, in the sense that they interpret and apply a body of religious “law”, a religious order, a set of norms that are binding on adherents.

While in modern western societies the notion of faith has long ago ceased to function as a code for general social processes, for Muslims, Islamic law is considered to regulate all aspects of a believer’s life.<sup>31</sup> It is much more than law in the modern sense, it is a vocabulary of morality and justice.<sup>32</sup> Shari’ā, a term usually used to refer to Islamic law as whole, is to quote Tariq Ramadan, “a way of life from a normative reading of Muslim scriptural sources; the way to remain faithful to their universal principles anywhere in the world”.<sup>33</sup> Shari’ā literally meaning “path to be followed” or “right path”, principally refers to the sources of Islamic law that are the revealed law as contained in the Qu’ran and the authentic Traditions (Sunnah) of the

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<sup>29</sup> A. Allot, *The Limits of Law* (London: Butterworths, 1980) at 53.

<sup>30</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law* (London: The British Academy, 2012) at 5.

<sup>31</sup> Douglas G., Doe N., Gilliat-Ray S., Sandberg R. and Khan A., *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*, Report of a Research Study funded by the AHRC (Cardiff University, June 2011) <http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf> (last accessed 30 March 2013), at 27

<sup>32</sup> Sami Zubaida, *Law and Power in the Islamic World* (I B Tauris, London 2005), at 11

<sup>33</sup> Ramadan T., *Europeanization of Islam or Islamization of Europe?*, in Hunter T. S. (ed), *Islam Europe’s Second Religion, The NEW Social, Cultural, and Political Landscape* (Westport: Praeger, 2002) at 211-212.

Prophet Mohammad and which is divine and immutable. Shar'ia thus differs from Fiqh, which refers to the methods of the law, the understanding derived from and the application of Shari'a, which is subject to change according to time and circumstances.<sup>34</sup>

Yet, as Bowen notes, there is no unified single set of rules and procedures to which someone can refer to as comprising "Islamic shariah".<sup>35</sup> Instead, there is a variety of sources and understandings. These minority legal orders have evolved organically out of the beliefs and voluntary conduct of individuals belonging to minority communities.<sup>36</sup> Such beliefs may be religious, cultural, spiritual or others. Religion, though a key source of communal identity,<sup>37</sup> and the basic reference for these religious bodies, is only one element in a "legally complex super diverse environment"<sup>38</sup> and even here it "competes" with other affiliations and identities. Thus, one, be it the Mufti, the Judge, or the Councillor at the Islamic Sharia Council, to decide on a particular issue he/she needs to consider more than one sources of understanding and not just a generalized vision of Islamic Shari'a. And when one looks at different sources for understanding the meaning of Shari'a, they may all give different answers to the same question.<sup>39</sup>

Therefore, while both religious bodies are involved in religious guidance and dispute resolution interpreting and implementing rules stemming from the same religious order, as they have the same reference of normative sources, they both operate and enforce distinct, though significantly similar in their terms of reference and

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<sup>34</sup> Baderin M. A, *International Human Rights and Islamic Law* (New York: Oxford University Press, 2005), at 33-34

<sup>35</sup> John R. Bowen, How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411-35, 2011 at 435

<sup>36</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law* (London: The British Academy, 2012), at 5.

<sup>37</sup> Parekh B., *Rethinking multiculturalism: cultural diversity and political theory*, 2nd edition (Basingstoke, New York: Palgrave Macmillan, 2006), at 203.

<sup>38</sup> Shah, P., Religion in a super-diverse legal environment: Thoughts on the British scene, in Rubya Mehdi, Gordon R. Woodman, Erik Reeberg Sand and Hanne Petersen (eds.), *Religion and law in multicultural societies*, (Copenhagen: DJØF Publishing, 2008) pp 63-81, at 77, 79

<sup>39</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411-35, 2011 at 421

fundamentals, minority legal orders, which are themselves not less than others, inherently plural.

The two groups related to the Islamic minority legal orders operated by the Islamic Shari'a Council and the Mufti office in Greece are defined for the purposes of this study, in terms of their religious affiliation. This does not mean neither that the groups are characterized by homogeneity nor that Muslims in Greece and in the UK are homogenous communities. Far from subjecting every Muslim individual to these Islamic legal orders we aim to examine just one way out of the various complex ways in which different Muslims engage with shari'a in the UK.<sup>40</sup> The minority legal orders are thus always defined in reference with the religious institution.

## **MINORITY LEGAL ORDERS AS THE RESULT OF HISTORICAL AND SOCIAL DEVELOPMENTS**

In February 2008 the enunciation of the idea that sooner or later Shari'a law would become a recognized source of law for some people in the UK by Dr Rowan Williams provoked a moral panic<sup>41</sup>. This moral panic depicted also in statements of people involved in community cohesion policies<sup>42</sup> well illustrated how desperate we are to ensure that traditional 'personal laws' should not become part of our allegedly secular, uniform modern legal systems.<sup>43</sup>

Before moving to observe the operation of the two minority legal orders, it is important to refer to the different historical conditions of the establishment and existence of the minority legal orders and the respective religious institutions.

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<sup>40</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, *10 Ecclesiastical Law Journal* (2008), pp 283-309, at 288.

<sup>41</sup> Sandberg R., Douglas G., Doe N., Gilliat-Ray S., and Khan A., Britain's Religious Tribunals: 'Joint Governance' in Practice *Oxford J Legal Studies* (2012), pp 1-29, at 1

<sup>42</sup> Shadow community cohesion minister Baroness Warsi said: "Dr Williams seems to be suggesting that there should be two systems of law, running alongside each other, almost parallel, and for people to be offered the choice of opting into one or the other. That is unacceptable.", BBC News website, <http://news.bbc.co.uk/1/hi/uk/7239596.stm>, (last accessed 1<sup>st</sup> March 2012)

<sup>43</sup> Menski W., *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), at 60.

In Greece the recognition of Islamic law was a consequence of significant historical developments and conditions existing already from its very establishment. Gradual annexations of territories at the beginning of 19<sup>th</sup> century gifted the Greek state with a religious or ethno-linguistic diversity. Muslims were a significant part of this diverse population until the 1923 Greek-Turkish exchange of population<sup>44</sup> that resulted in the homogenization of both countries as well as the minoritization of the communities exempted from the painful exchange. The autochthonous Muslim minority of Western Thrace was the community that was allowed to stay in the Greek territory and was awarded according to the Treaty of Lausanne a respectable status of minority protection. The minority is officially defined on religious terms and its members are awarded protection primarily as members of a religious community and not as individuals.<sup>45</sup>

While Turkey considers this minority a homogenous Turkish minority,<sup>46</sup> Greek trends divide it in three ethnic sub-groups,<sup>47</sup> claiming that ethnic Turks do not exceed 50 per cent of the population.<sup>48</sup> For a significant part of the minority, the terms of self-identification are indeed national rather than religious as the members of the minority have been gradually nationalized and identify themselves with their kin-state, namely Turkey. Yet, religion is still the predominant criterion of the minority's

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<sup>44</sup> For an overall appraisal of the population exchange see Hirschon R. (ed), *Crossing the Aegean : an appraisal of the 1923 compulsory population exchange between Greece and Turkey* (New York, Oxford: Berghahn, 2004) as well as Tsitselikis K.(ed), *The Turkish-Greek exchange of population, Aspects of a national conflict*, (Athens: Kritiki/KEMO, 2006) (in Greek)

<sup>45</sup> Tsitselikis K., Christopoulos D. From the multicultural "great dream of Hellenism" of the beginning of 20th century to the "multicultural reality" of the beginning of 21st century, in Christopoulos D. (ed), *The Unconfessed Issue of minorities within the Greek Legal Order* (Athens: Kritiki/KEMO, 2008), at 53. (in Greek) at 36.

<sup>46</sup> Tsitselikis K., *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Volume 5 of Studies in International Minority and Group Rights, (Leiden: Martinus Nijhoff Publishers, 2012) at 102

<sup>47</sup> See Article "Issues of Greek- Turkish relations", Greek Ministry of Foreign Affairs' Website (in Greek) at <http://www.mfa.gr/zitimata-ellinotourkikon-sheseon/> (last accessed 1<sup>st</sup> April 2013). It should be noted that such "trichotomy" concerning the affiliations of the minority is not mentioned in the English version of the article available here <http://www.mfa.gr/en/Issues-of-greek-turkish-relations> (last accessed 1-4-2013).

<sup>48</sup> Tsitselikis K., *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Volume 5 of Studies in International Minority and Group Rights, (Leiden: Martinus Nijhoff Publishers, 2012) at 103

legal status, which is prescribed mainly by the Treaty of Lausanne, alongside other bilateral treaties, which according to Article 28 of the Greek Constitution enjoy prevalence over other provisions of domestic law. The framework of minority protection for the members of the minority was constructed upon a series of rights and prerogatives through which a special organizational structure and a law of personal status occurred. Greek law still today recognizes a special status for minority Muslims of Thrace providing the Mufti with competence to adjudicate personal matters in family and inheritance questions. Though in Europe, there is a tendency to treat personal laws as medieval institutions, this millet system or more accurately the remains of it, what Tsitselikis has named *neo-millet*<sup>49</sup>, is still applicable in Greece. The Greek state formally recognises and endorses law on personal status for the members of the minority of the Muslims of Thrace, and scarcely for other Muslim Greek citizens, and in no case for the Muslim non-citizens.

This model of personal laws represents one model of interaction between law and religion that has been applied for centuries by the ottoman administration (*millet system*) and is until today followed by several states in Asia and Africa. It is a model that recognizes and accepts the application of a number of parallel legal systems in the field of family law, establishing an official legal pluralism. It combines a uniform law with parallel personal laws. There is a paradox, yet to this system as applied in Greece. The Greek state applies a distinction between Muslims, subjecting only part of its Muslim population, the Muslims of the minority of the Western Thrace and, to some extent, Greek Muslims outside Thrace, to this personal law system, leaving the rest to be ruled under the uniform state law. If you are an immigrant, and especially not a citizen, being Muslim is treated differently. The state makes recognition dependent on citizenship and origin. The state's special recognition is reserved for groups perceived in specific minority terms and as the state decides which group

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<sup>49</sup> See Tsitselikis K., Personal Status of Greece's Muslims: A Legal Anachronism or an Example of Applied Multiculturalism?, in Roberta Aluffi Beck-Peccoz and Giovanna Zincone (ed), *The legal treatment of Islamic minorities in Europe* ( Dudley: Peeters, 2004), at 130 and Tsitselikis K., *Old and New Islam in Greece: From Historical Minorities to Immigrant Newcomers*, Volume 5 of Studies in International Minority and Group Rights, (Leiden: Martinus Nijhoff Publishers, 2012), at 411 and 536

forms a minority or not,<sup>50</sup> these personal laws are applicable in the very exceptional case of the Muslims of Thrace, and very rarely for Greek Muslims outside Thrace.

This double standards attitude of the Greek state and particularly its refusal to apply a law of personal status for Muslim immigrant communities the majority of which lack Greek citizenship reflects the general model of territorial law<sup>51</sup> or territoriality model, dominant in Europe, not less popular in the UK, as well as the general treatment of Muslims in Western states. This model that has replaced the personal laws system which gradually disappeared from the European scene prescribes a uniform legal framework for all residents in the state, even for non-citizens. Yet it allows certain variations and exceptions in practice. The current legal situation in the UK with the piecemeal process of making exceptions for certain groups in specific scenarios corresponds to this territorial concept of the law.<sup>52</sup>

Increasingly large scale migration in Europe the past decades challenges these territorial supposedly secular national orders. Muslims in the UK, in their big majority of a South Asian descent and particularly with origin from Pakistan or Bangladesh, half of them born in Britain, form about 3 per cent of the population.<sup>53</sup> Like other immigrant communities, Muslims in Britain have long ago transformed from sojourners to permanent settlers.<sup>54</sup> They arrived with the colonial idea of personal status, according to which family matters of marriage and divorce were

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<sup>50</sup> The Muslim Minority of Thrace is the only officially recognized minority in Greece.

<sup>51</sup> Sack P., 'Legal pluralism: Introductory comments' in Sack P. and Minchin E., (eds) *Legal pluralism. Proceedings of the Canberra Law Workshop VII* Canberra: Research School of Social Sciences, (Australian National University) (1986), 1-16, at 5.

<sup>52</sup> Menski W., 'Law, religion and culture in multi-cultural Britain.' in: Mehdi, Rubya and Petersen, Hanne and Reenberg Sand, Erik and Woodman, Gordon R., (eds.), *Law and religion in multicultural societies*. (Copenhagen: DJØF Publishing, 2008) pp. 43-62 at 59.

<sup>53</sup> Bowen J., *Blaming Islam*, Cambridge A Boston review book (Mass, London: MIT Press, 2012) at 75

<sup>54</sup> Shaw A., The Pakistani Community in Oxford, in Ballard R. (ed), *Desh Pardesh, The South Asian Presence in Britain* (London: C. Hurst, 1994), at 42; Parekh B., *Britain and the Social Logic of Pluralism, in Britain, a plural society : report of a seminar organised by the Commission for Racial Equality and the Runnymede Trust*, October 1989 (London: Commission for Racial Equality, 1990) at 61; Brah A., *Cartographies of diaspora : contesting identities* (London: Routledge, 1996) at 27, Ballard R., Introduction: The emergence of Desh Pardesh, in Ballard R. (ed), *Desh Pardesh, The South Asian Presence in Britain* (London: C. Hurst, 1994), at 16.

worked out without state intervention.<sup>55</sup> As Menski has illustratively described the adaptation of Muslims in Britain to English law developed in different stages.<sup>56</sup> The first stage is characterised by the ignorance of the law. Upon their arrival Muslim immigrants were ignorant of the requirements of English law and they would handle their family matters themselves, among the community or overseas. At the second stage, Muslims realize that non-compliance with English law may lead to problems and they would start learning the law. At the third stage they start building English law requirements into their traditions and practices, developing new ways of solving confusing situations arising from the lack of recognised space for personal law.<sup>57</sup> Menski also now discerns a fourth stage as Muslims in Britain refuse to follow English legal requirements despite being aware of them.

Muslims, faced with a “secularized” system that had no place for a law of personal status during the 1970’s started making claims for the accommodation of a separate system of Islamic family laws.<sup>58</sup> In 1984, a Muslim charter was produced which demanded that the *Shari’ā* should be given a place in personal law<sup>59</sup> and a proposal along these lines was subsequently submitted to various government ministers in order to have it placed before the Parliament for enactment. The demand was reiterated publicly in 1996.<sup>60</sup> Yet, each claim has been negated in a dismissive way. It is in the same way that Trevor Phillips, ex-chairman of UK’s Commission for Racial Equality made this refusal crystal clear:

*“We have one set of laws. They are decided on by one group of people, members of Parliament, and that's the end of the story. Anybody who lives here has to accept*

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<sup>55</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 417

<sup>56</sup> Menski W., 'Law, religion and culture in multi-cultural Britain.' in: Mehdi, Rubya and Petersen, Hanne and Reenberg Sand, Erik and Woodman, Gordon R., (eds.), *Law and religion in multicultural societies*. (Copenhagen: DJØF Publishing, 2008), pp. 43-62, at 46-48.

<sup>57</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London: Sweet & Maxwell, 1998), at 75.

<sup>58</sup> See Modood T., 'Muslim Views on Religious Identity and Racial Equality', *New Community*, Vol. 19, No. 3 (1993) pp. 513–519.

<sup>59</sup> See Joly D., *Britannia's Crescent: Making a Place for Muslims in British society* (Aldershot: Avebury, 1995) at 15.

<sup>60</sup> Poulter S., *Ethnicity, Law and Human Rights: The English Experience* (Oxford: Oxford University Press, 1998) at 202.

*that's the way we do it. If you want to have laws decided in another way, you have to live somewhere else.*<sup>61</sup>

Although it is clear that Mr Phillips' statement was made particularly with regard to the accommodation of shari'a law for Muslim communities in the UK, it seems that he ignores that such accommodation of shari'a already exists. Such dismissive statements lag seriously behind reality. It is a basic fact of human life that there are other laws, other than the laws passed by the parliament, on which individuals decide their lives. As Ballard early observed, contrary to expectations the 'new settlers' have not abandoned their religion and culture but have been creatively reinterpreting their own particular cultural and religious inheritance on their own terms.<sup>62</sup> Muslims, like Hindus and other ethnic minorities in Britain, have reconstructed their legal environment in Britain, and now operate their own unofficial personal law systems mainly through operating unofficial Muslim dispute resolution.<sup>63</sup>

The Islamic Sharia Council based in Leyton is one of the several Shari'a Councils, which administer Islamic family law and operate as alternative fora for dispute resolution. Established in 1982, it has representatives in many large cities. On its website the Council makes it clear that its establishment is a response to the indifference of the "the civic local authorities to solve the problems of the Muslim community" framing it as a practical viable answer to the challenges facing Muslims in the West. The activism of the Council is something that the Greek Mufti office did not have to undertake, since the partial, yet official, recognition of personal laws provided the Mufti with the authority to rule on family issues as part of the official legal system. What seems yet as apparently very different conditions of establishment should also been seen through the perception of Islam as a way of life

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<sup>61</sup> "Muslims 'must accept' free speech" Article, BBC News Website, 26-2-2006, accessible at [http://news.bbc.co.uk/2/hi/uk\\_news/4752804.stm](http://news.bbc.co.uk/2/hi/uk_news/4752804.stm) (Last accessed 1st April 2013)

<sup>62</sup> Ballard R., Introduction: The emergence of Desh Pardesh, in Ballard R. (ed), *Desh Pardesh, The South Asian Presence in Britain* (London: C. Hurst, 1994), at 5

<sup>63</sup> Menski W., *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), at 64; Fournier P., *The reception of Muslim family law in Western Liberal States*, (Canadian Council of Muslim Women, Sharia/Muslim law Project, 2004) at 25

and the non-negotiable allegiance to the supremacy of shari'a.<sup>64</sup> What Islamic Shari'a Council presents as an Islamic 'duty' to help Muslims resolve their disputes based on Islamic values is also shared by the institution of the Mufti, who is as well officially recognised as the spiritual leader of the minority. Proving religious guidance is a divine task as the space of majoritarian Greek or English law cannot bring about genuine resolution of matrimonial disputes.

### **SETTLERS AND INDIGENOUS**

Greece is a good example of the fact that minority legal orders are sometimes recognised and treated with some respect in the cases of traditional minorities that pre-exist with historical bonds with the territory of a state. Yet they are usually disregarded in cases of immigrant communities. Kymlicka,<sup>65</sup> a leading scholar in minority rights, applies a distinction between immigrants and traditional minorities, what we may call in other terms, between the "settlers" and the indigenous.

Apart from the fact that such distinction ignores the fact that some generations are no more immigrants and thus no more "settlers", Will Kymlicka's distinction between immigrants and traditional minorities, based on the false assumption that immigrants as they choose to migrate (having "uprooted themselves") waive their right to live and work in their culture and hence may legitimately be obliged to assimilate into the legal orders of the receiving societies, is unfit with the liberal claims of equality and equity. As Menski has very illustratively put it, "it is like demanding from the people entering the country to live as a *tabula rasa*, devoid of any cultural and legal baggage. It is like being asked to leave your identity at the door before you enter a new room, full of strangers, and to take on the identity of those strangers".<sup>66</sup>

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<sup>64</sup> Coulson J.N., Islamic Law, in Duncan J. and Derrett M., *An introduction to legal systems*, (London: Sweet and Maxwell, 1968) at 54.

<sup>65</sup> Kymlicka W., *Multicultural citizenship : a liberal theory of minority rights* (Oxford:Clarendon Press, 1995), at 14

<sup>66</sup> Menski W., *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge: Cambridge University Press, 2006), at 64.

That said the particularity of the Greek case as a “traditional minority” is considered only with regard to the special protection awarded to it that resulted in the recognition of its autonomy in a field that the Muslim communities in the UK have long ago in vain sought recognition. In today’s European societies, where Muslims in Europe are no longer guests that one day will return home, but rather will remain as “a permanent part of Europe’s social and political fabric”<sup>67</sup>, states need urgently to officially take notice not only of their settlement but also of their minority legal orders.

### **FAMILY LAW SENSITIVITIES**

There is something even more specific that makes family law the main domain where minority legal orders operate. Evidence of the importance of family law is the state’s continuous attempt to control it. In UK and Greece the state retains an interest in marriage and divorce. Though in Greece an Islamic marriage (*nikah*) performed by an imam is equally valid as a civil marriage, in the UK a *nikah* is never recognised as legally valid. Special treatment with regard to marriage customs in the UK concerns only Jews and Quakers.<sup>68</sup> Consequently, those who perform a *nikah* without a civil ceremony in a registered building<sup>69</sup> will not have a valid marriage according to English law. Yet, in both countries, with the exception of the individuals subjected to the jurisdiction of the Muftis in Greek Thrace, marriage is terminated through a judicial divorce. Concepts and terms such as “public policy” and “public order” are used to preclude the validity of marriages and divorces not complying with the requirements of English<sup>70</sup> and Greek law. The refusal of English law to delegate elements of family law to non-state religious bodies and both states’ claim to control the conditions of marriage and its termination, other than death, are

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<sup>67</sup> Ramadan T., Europeanization of Islam or Islamization of Europe?, in Hunter T. S. (ed), *Islam Europe’s Second Religion, The New Social, Cultural, and Political Landscape* (Westport:Praeger,2002) at 207.

<sup>68</sup> Poulter S., Cultural Pluralism and Its Limits: A Legal Perspective, in Britain, a plural society : report of a seminar organised by the Commission for Racial Equality and the Runnymede Trust, October 1989 (London: Commission for Racial Equality, 1990) at 8

<sup>69</sup> Religious buildings may apply to become places for marriage registration, although as Bowen notes of 2011 few mosques had this status see Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 412

<sup>70</sup> Fournier P., *The reception of Muslim family law in Western Liberal States*, (Canadian Council of Muslim Women, Sharia/Muslim law Project, 2004) at 27

based on an assertion of an interest in the consequences of the ending of a marriage for the parties themselves, the children and the wider society,<sup>71</sup> including a special interest in the welfare of children.<sup>72</sup>

On the other hand, in matters of marriage and divorce that is matters pertaining to the very personal sphere of the individual, there is no way to ensure that the state law is the one that will always be applied. Family law touches people's sensibilities directly. This has been clear to the Greek authorities when they delegated to the minority of Thrace an extensive autonomy in family matters. This was also taken into account by the British colonial administrators.<sup>73</sup> It dominates also the work of the two religious institutions, of both the Islamic Shari'a Council (ISC) and the Mufti office of Komotini<sup>74</sup>, as the personal law issues and particularly family problems have been their main focus among the issues handled.

The council's website makes main reference to its dealing with the Muslim Personal Law that covers Marriages, Divorces and Inheritance issues. One of the objectives of the ISC has been presented as the establishment of "a bench to operate as court of Islamic *Shari'a* and to make decisions on matters of Muslim family law referred to it".<sup>75</sup> In essence, the Shari'a Council has three key functions: issuing Muslim divorce certificates, reconciling and mediating between parties and producing expert opinion (*fatwas*), reports on matters of Muslim family law and practice for the Muslim community, solicitors and the courts. Specialising in providing advice and assistance on Muslim family law matters, it receives the sheer volume of enquiries

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<sup>71</sup> Douglas G., Doe N., Gilliat-Ray S., Sandberg R. and Khan A., *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*, Report of a Research Study funded by the AHRC (Cardiff University, June 2011) <http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf> (last accessed 30 March 2013), at 14

<sup>72</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 412

<sup>73</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 415

<sup>74</sup> Unless otherwise specified, information derives from fieldwork carried out in the Mufti office of Komotini between 2012 and spring 2013.

<sup>75</sup> Islamic Shari'a Council (ISC), *The Islamic Shari'a Council: An Introduction* (London: ISC, 1995) at 3–4.

related to marital problems.<sup>76</sup> While individual scholars still give daily significant informal advice on a range of spiritual and social issues including issues of inheritance, probate and wills and Islamic commercial law contracts, matters of religious divorce are the main of focus of ISC's work.<sup>77</sup>

The Mufti's scope of competence is far more extensive. Besides the Mufti's extensive administrative duties, such as appointment of imams and management of the vakf (real estate of religious nature), in family law the Mufti performs a wide range of tasks varying from the issuance of marriage licenses<sup>78</sup> and solemnization of marriages to mediating and adjudicating on issues of maintenance, children custody and appointment of guardian, the latter yet being questioned by the courts, despite previous recognition of competence. The Mufti performs marriage solemnizations only in exceptional problematic cases i.e. when parents do not consent to the marriage, the Mufti would mediate and then proceed with the solemnization in order to give to the marriage more formality. Otherwise religious marriages are performed by the imams, which are appointed by the Mufti. The Mufti's tasks, of course, include the issuance of religious opinions (fetwas or fatwas) mainly in family and inheritance law issues. Fetwas, though of non-binding force, were in the past enforced by the courts or Greek public authorities in particular by tax offices in the determination of the liable for taxation heirs.

The underlying understanding that family matters of marriage and divorce, as well as inheritance are matters that Muslims have to work among themselves and are

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<sup>76</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 295

<sup>77</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, accessible from

[http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf), forthcoming, (last accessed 1st April 2013) at 18; Bano S., *An exploratory Study of Shariah Councils in England with respect to family law* (Ministry of Justice and University of Reading, 2012) accessible from [http://www.reading.ac.uk/web/FILES/law/An\\_exploratory\\_study\\_of\\_Shariah\\_councils\\_in\\_England\\_w ith\\_respect\\_to\\_family\\_law\\_.pdf](http://www.reading.ac.uk/web/FILES/law/An_exploratory_study_of_Shariah_councils_in_England_w ith_respect_to_family_law_.pdf) last accessed 1-4-2013 (last accessed 1st April 2013), at p. 5

<sup>78</sup> The Mufti possesses the power to issue the required by Article 1368 of Greek Civil Code marriage license and to perform the solemnization of a marriage as a religious minister under Art 1367 of Greek Civil Code and, therefore, there is a requirement that the ritual and rules of Islamic law applied should not conflict with public order.

confined to the private sphere of family home and community, governs the function of both religious bodies. The work of these institutions is thus often understood as an extension of familial relations. This is clearer in the case of the Islamic Sharia Council<sup>79</sup> and less for the Mufti of Komotini, as the institutionalization of the role of the Mufti and the dispute that has arisen between the minority and the state over the appointment of the Mufti has to some extent affected the spiritual relationship between the Mufti and the local Muslims. Yet this is not to say that Muslims of the minority of Western Thrace do not appeal to the Mufti to solve their family disputes. In practice the most interesting aspect of both religious institutions' jurisdiction is divorce that is discussed next.

#### **A CLOSURE IN THE EYES OF GOD : DIVORCE AND PRIMARY USERS**

Both the Mufti and the ISC carry out mediation in family disputes and award religious divorces. Islamic divorce is a complex topic, as modern Islamic states have created positive-law versions of Islamic family law, and these Islamic legal systems now exist alongside long-standing traditions of Islamic legal scholarship and jurisprudence.<sup>80</sup> Despite the contractual character of marriage and divorce in Islam, which do not require the recourse to a judge, a judge may intervene either to encourage a husband to divorce his wife or to dissolve a marriage deemed beyond repair.<sup>81</sup> Islamic law permits divorce but as last resort.<sup>82</sup> Divorce has been characterized also as the “most abominable of permissible acts”.<sup>83</sup> Therefore efforts to conciliate the parties and “save” or repair the marriage should precede a dissolution of the marriage. Both religious bodies comply with this Islamic duty and try to mediate and reconcile the spouses.

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<sup>79</sup> Bano S. , *An exploratory Study of Shariah Councils in England with respect to family law* (Ministry of Justice and University of Reading, 2012) accessible from [http://www.reading.ac.uk/web/FILES/law/An\\_exploratory\\_study\\_of\\_Shariah\\_councils\\_in\\_England\\_with\\_respect\\_to\\_family\\_law.pdf](http://www.reading.ac.uk/web/FILES/law/An_exploratory_study_of_Shariah_councils_in_England_with_respect_to_family_law.pdf) last accessed 1-4-2013 (last accessed 1st April 2013), at p. 17

<sup>80</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 413

<sup>81</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 415

<sup>82</sup> Baderin M. A, *International Human Rights and Islamic Law* (New York: Oxford University Press, 2005), at 151

<sup>83</sup> Ahsan M., The Muslim Family in Britain, in King M. (ed), *God's Law versus State Law, The Construction of an Islamic Identity in Western Europe* (London: Grey Seal, 1994) at 24

Among the bulk of cases before the Mufti, religious divorces are one of the most common type; the majority of divorces concerning judicial dissolution (*fesh-i Nikah*, in ottoman Turkish, *faskh*, in Arabic) or divorce initiated by the wife at the expense of giving up her *mahr* (*Khul*). If there is no agreement on the divorce, the Mufti would postpone the decision/deliberation of the dissolution to another hearing in order to achieve *musalahā* that is reconciliation between the spouses. *Musalahā* ends divorce procedures preserving the marriage. It is signed by both spouses and then they return back home “conciliated and in peace” to continue their marital life. There are some cases where the woman does not want to ask for a divorce, but she is unhappy with the husband’s behaviour. The husband may refuse to fulfil marital obligations i.e. the obligation of maintenance or the husband exhibits ‘delinquent’ behaviour i.e. he is alcoholic. In the majority of these cases, a violation of husband’s *nafaqa* (maintenance) obligation will be found. These cases shall be first submitted to the Mufti as *nafaqa* applications. They may end with a *musalahā* as long as the husband undertakes compliance with its obligations before the Mufti or with a *fesh-i Nikah* (*faskh*) and rarely with *khul*. In many cases the spouses approach the Mufti having already decided to resolve the marriage. If *musalahā* is not possible as disagreement between the spouses is unbridgeable and the breakdown of the marriage irretrievable, the Mufti confirms the already agreed between the spouses divorce. The Mufti’s decision includes the terms agreed. Such terms vary from conditions on behalf of the wife to forego her *mahr*, to conditions on the husband to make payments in restitution of the wife’s waiving of her *mahr* and maintenance rights during the *iddat* period, as well as agreement on the custody of the children.

All Mufti decisions are submitted to the First Instance Court in order to be declared enforceable that is to acquire legal effect.<sup>84</sup> The Mufti would also issue a *talaq* certificate when the husband seeks the divorce who is then obliged to pay the wife the *mahr*. A mere *talaq* enunciation of the husband will be of no legal validity in Greek law, as only decisions of the Mufti ratified by the First Instance Court produce

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<sup>84</sup> Art.10 par.3 of Act 2345/1920 and Art.3.par.3 of Act 1920/1991

legal results. Yet, such cases of unilateral pronouncements of *talaq* are rare.<sup>85</sup> Though *talaq* and *Khul'a* constitute different means of divorce, in the practice of the Mufti office of Komotini, they seem to be treated as *faskh (fesh-i Nikah)*. The form of divorce occurring may thus be identified only by knowing who initiated it or whether the *mahr* is paid, though still in these cases it may qualify for Dissolution by Mutual Agreement (*mubara'ah*), particularly when considering the wording of the majority of the decisions of the Mufti: “the Mufti ratifies the decision of the spouses to mutual divorce and proclaims the marriage dissolved”.<sup>86</sup> What is more significant in the handing of divorce cases is that *khul* is seen as a way, for the wife, to facilitate the dissolution of an unhappy marriage, echoing thus the traditional view that with *khul* the wife buys her freedom.<sup>87</sup> It is, of course, considered a favourable solution for the man too, since he does not have to pay the *mahr*.

Similarly, the Islamic Shari'a Council asks the wife to return or renounce the *mahr* when she seeks a divorce. Yet, this will facilitate a quick divorce only if the husband does not contest it.<sup>88</sup> Otherwise a full procedure provided in the Council's website, including a full deliberation that will take place.<sup>89</sup> Yet, the Council may proceed with the dissolution without the husband's consent. According to the Council's explicit rules of procedure if the husband seeks a divorce, it is considered a *talaq*, and he will receive a certificate from the Council but must pay any outstanding *mahr* (dower) to his wife. If the applicant is the wife, then it is considered a *khul'a*, and she is requested, as noted above, to relinquish her rights to *mahr*. Unlike the Mufti, the

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<sup>85</sup> Ktistakis Y., *Sacred Islamic Law and Muslim Greek citizens* (Athens-Thessaloniki: Sakkoulas, 2006) at 58- 65. (in Greek)

<sup>86</sup> See for example Mufti of Komotini, Decision 51/2002 of 22-7-2002 (unreported) and Mufti of Komotini, Decision 53/2001 of 8-8-2001(unreported)

<sup>87</sup> Esposito J., *Women in Muslim Family Law*, 2nd edition (New York: Syracuse University Press, 2001) at 32.

<sup>88</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from

[http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 10

<sup>89</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from

[http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 10

Council refrains from ruling on the issues of child residence and division of property, knowing that these matters will be determined in civil courts if they are not agreed upon by the parties.<sup>90</sup> Although established with the goal of treating a broad array of community problems, the ISC now focuses on matters of religious divorce.<sup>91</sup>

Muslim women appear to be the primary users of ISC and other Shari'a Councils as they seek for a religious divorce.<sup>92</sup> A woman interviewed by BBC Asian Network Reports<sup>93</sup> confesses: "for me the *talaq*, the religious divorce, was the first port of call. The civil divorce was something that could come later. I had to *islamically* have 'closure' in the eyes of God first". Many Muslim women in Britain, even after having already obtained a civil divorce, but with their husbands refusing to grant them a unilateral religious divorce, find themselves in limping marriages. They are divorced in a civil way but in their eyes, as well as before the community and God, they remain religiously married.<sup>94</sup> In a large proportion of the cases handled by the Council, which usually concern young British Asian women, there may be no civil divorce, either because the parties were married abroad (usually in Pakistan or Bangladesh) or because they were only married in an Islamic *nikah* ceremony in England.<sup>95</sup> What the Council does in such cases is to grant the wife a *khul'a*, if the husband agrees, or a *faskh*, if he does not, in the form of a divorce certificate, usually to the expense of her right to the *Mahr*, thus not diverging from the practice of the Mufti. In order to grant the wife a religious divorce the Council requires certain conditions: to begin civil divorce proceedings (in cases where a civil marriage exist),

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<sup>90</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 419

<sup>91</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from [http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 18

<sup>92</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 288, 305

<sup>93</sup> 'Sharia Britain', BBC Asian Network Special Reports, 16-1-2012, available from <http://www.youtube.com/watch?v=OZNDuf402pQ>

<sup>94</sup> Judge Pearl D., Dispute Settlement Amongst the Muslim Community in the UK, 20 Recht van de Islam (2003), pp. 5-16 at 6; Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 288, 305

<sup>95</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 419

provide proof that she and her husband have been separated for at least one year, assure the Council that the husband be able to see their children (if they have any), and, in some cases, return *mahr* already paid to her.<sup>96</sup> While the husbands' use of the services of the Council as an opportunity to negotiate access to children and, in some cases, financial settlements should not been downplayed,<sup>97</sup> in the bulk of ISC's cases, and especially when the husband may still be living overseas at the time of the Islamic divorce, the Council offers the wife an important service dissolving a marriage in a way that English law would have never been able to dissolve or not dissolve at all.<sup>98</sup>

Religious divorce appears to be the dominant subject administered by both religious bodies, yet that being more obvious for the Islamic Shari'a Council. Both seek mediation and reconciliation and attempt to establish the seriousness and validity of the divorce request before granting a divorce. Mediation is a preliminary step in the process. Yet, the Islamic Shari'a Council appears more determined in establishing clear rules and procedures with divorce procedures already posted in detail on their website. The Council sets more specific requirements such as a two-year separation or acquiring a civil divorce, in order to satisfy that there are valid grounds for declaring the marriage over.<sup>99</sup>

## **DELIBERATION AND GUIDANCE: OPERATIONAL PROCEDURES AND LEGAL CHARACTER**

Both the Mufti and the Islamic Sharia Council deliberate in premises adjacent to local mosques, the first in the Mufti office in the the complex of *Yeni Cami* mosque dated since 1585 and the latter at the Islamic Cultural Center, located in the complex dominated by the Central London Mosque next to Regent's Park. Deliberation occurs weekly for the Mufti or monthly for the Council sessions or meeting. When the

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<sup>96</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 419

<sup>97</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 303

<sup>98</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London: Sweet & Maxwell, 1998),at 75-77,

<sup>99</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 420

Council deliberates in its monthly formal meetings, it focuses mainly on requests by wives to dissolve their marriages,<sup>100</sup> while the Mufti examines various cases varying from *nafaqa* applications to children custody and religious divorces.

The Mufti of Komotini, like the other two established Mufti offices in Greece, is considered a special court of exceptional jurisdiction. What is more significant is that in the past this jurisdiction was deemed compulsory for the members of the minority, a view held until recently by Greek courts which even remitted cases to the Mufti refusing him to adjudicate on family law matters of Thracian Muslims.<sup>101</sup> Yet for the state, apart from a judge, the Mufti is also the religious leader of the minority. Despite the dispute between the minority of Thrace and the state on the issue of the appointment of the Mufti, which arose after a law enacted in 1991 amended the previous provisions that provided for the election of the Muftis, the Mufti's religious and spiritual leadership still governs the fulfilment of his tasks. Officially deemed as a judge, in practice he operates more as a mediator and arbitrator rather than a court with fixed procedural rules and rigid proceedings.

Similarly the Councillors in the ISC see themselves primary as mediators<sup>102</sup> in family disputes. As Zaki Badawi, one of the founders of ISC explained, '*Muslim law is not adversarial in nature but rather conciliatory. We seek to bring people together, to reconcile them rather than to create dissension between them*'.<sup>103</sup> The Councillors of the ISC, centered in London but also with an England wide network, would usually

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<sup>100</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 413

<sup>101</sup> First Instance Court of Athens Decision No 16613/1981, 33 *Arheio Nomologias* (1982), at 48; Supreme Court Decision No 1723/1980, 29 *Nomiko Vima* (1980), at 1217; First Instance Court of Komotini Decision No 146/2002 and Mufti of Komotini Decision No 21/2002. Contrary to this jurisprudence, the Single Judge First Instance Court of Thivas held that Greek Muslims are free to choose between civil courts and Islamic jurisdiction, see Decision of Single Judge First Instance Court of Thivas No 405/2000, *Diki* (2001), at 1097-1098, for a detailed discussion see Tsitselikis K., The jurisdiction of the Mufti as a religious judge. The Case No 405/2000 of the First Instance Court of Thiva, 49 *Nomiko Vima* 583 (2001), at 591-593 (*in Greek*)

<sup>102</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from [http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 2

<sup>103</sup> Badawi Z., Muslim Justice in a Secular State, in M. King (ed.), *God's Law versus State Law* (London: Grey Seal, 1995), at 78.

call themselves “scholars” or “ulama,” and rarely “qadi” or “judges”<sup>104</sup>, thus indicating a general reluctance to be associated with official courts.<sup>105</sup> The uses of terms such as religious judges are considered to pose a risk of confusing ‘clients’ as to the legality of the council’s ‘verdicts’ under English law, something that the Council repeatedly underlines during the whole process as well as in the summary of the procedures posted in their website.<sup>106</sup> Tracing the historical conditions of its establishment the ISC’s website refers to an intention of the concerned Muslim scholars and field workers to establish “‘The Islamic Shari'a Council’ to be a quasi-Islamic Court” in family problems of Muslim community in particular and any Islamic questions in general.<sup>107</sup>

As Bowen has noted, when the Council deliberates in its monthly meeting, its procedures resemble those at the other highest-profile councils,<sup>108</sup> though with no right to appeal.<sup>109</sup> The Council pays attention on maintaining transparent and consistent procedures and has adopted a set of procedures designed to award religious divorces.<sup>110</sup> In order to establish clear procedural rules, the Council looks at procedures of English courts, while in terms of religious legitimacy it draws on precedents of tribunals in operation in South Asia.<sup>111</sup> The ISC has standards procedures, forms and certificates. Prior to considering dissolution, mediation is carried out. If mediation fails the case is brought to a formal meeting.<sup>112</sup> In the

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<sup>104</sup> Bowen J., How Could English Courts Recognize Sharia? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 413

<sup>105</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the ‘Sharia Debate’ in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 298

<sup>106</sup> The Islamic Shari'a Council Website (section Service) <http://www.islamic-sharia.org/2.html> (last accessed 1st April 2013)

<sup>107</sup> The Islamic Shari'a Council Website (section About us/ Our history) <http://www.islamic-sharia.org/4.html> (last accessed 1st April 2013)

<sup>108</sup> Bowen J., How Could English Courts Recognize Sharia? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 413

<sup>109</sup> After an unsatisfying decision of the Council any of the parties may just take their case to another religious tribunal to achieve a more solution.

<sup>110</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today’s England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from

[http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 2

<sup>111</sup> *Ibid*, at 18.

<sup>112</sup> *Ibid*, at 9,10.

formal meetings, the 6-10 scholars reviewing the cases deliberate in English, Arabic, and sometimes in Urdu, depending on who is sitting at the table.<sup>113</sup> The Council claims that it does not represent any single school of thought and will base its 'verdicts' upon rulings derived from the four main schools of Sunni together with other sources within the Sunni tradition, as well as the literalist school. In constructing their rules and procedures, the Council will look at Islamic jurisprudence and legal and social practices in the most relevant Muslim-majority countries.<sup>114</sup>

The Mufti's decisions are also made according to the Sunni tradition but derived mainly from the *Hanafi* school of jurisprudence, which is taken together with the local customs of Thracian Muslims. The Mufti looks into the traditions of Islamic legal scholarship and jurisprudence, yet, less often, to relevant jurisprudence in modern Muslim majority states. Unlike ISC that may easily find useful and relevant legal and social practices in the Muslim majority states from where its Muslim clients originally come from, for the Mufti the Muslim majority state whose rules could have a greater proximity and relevance to the experiences of local Thracian Muslims, Turkey, has adopted a 'divinely' secular law. It is interesting to note that some Muftis in Thrace, including the current Mufti of Komotini, have received formal Islamic jurisprudential training in Saudi Arabia. The Mufti office of Komotini also consults, a 1917 Ottoman Code for family law (*Aile Hukuku KararNamesi*) which was produced as a collection of past ottoman jurisprudence, available in ottoman with Arabic and Latin alphabet but not in Greek. It should be noted that the primary language is Turkish while Ottoman and less Greek are also working languages for the Mufti office in the drafting of documents and issuance of religious opinions, certificates and decisions. For both bodies religious law does not operate in a vacuum. Religious principles conflate with cultural practice, which is also taken into account, despite efforts to establish clear rules as exhibited in the case of the ISC.<sup>115</sup>

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<sup>113</sup> *Ibid.* at 9,10.

<sup>114</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 422

<sup>115</sup> Bowen J. Sanctity and shariah: Two Islamic modes of resolving disputes in today's England, in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann (eds), *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from

## PERFORMING AN ISLAMIC DUTY WHILE KEEPING INTERACTION WITH THE STATE

Both religious bodies exhibit a desire to support Muslims experiencing family problems in order to resolve conflicts within an Islamic framework of dispute resolution.<sup>116</sup> Both the Mufti and the ISC avail themselves to Muslims seeking religious advice and answers to personal questions about a variety of issues.<sup>117</sup> In effect what the Mufti and the ISC do in differing ways is that they combine open-ended advice and mediation sessions with formal deliberations on cases.<sup>118</sup> They provide, as described by Pearl and Menski, 'internal regulatory frameworks' resolving Muslim individual problems applying Islamic rules.<sup>119</sup> Although established in legally divergent ways and with completely different levels of recognition, the Mufti being an official institution of the Greek state, not to mention that the Mufti himself a public servant (!), and the Council a registered charity, they both view their formation and operation as a way of protecting a beleaguered faith and preserve Islamic legal principles in non-Muslim countries.<sup>120</sup> This project is still envisioned through religious mediation that developed on past forms of community-based mediation such as elders' mediation, which is felt to some extent that it still exists.

Being an official recognised and endorsed institution, the Mufti, at first, appears to differ significantly from the ISC in terms of the source from where they derive authority. But for the religious bodies themselves and for the individuals appealing to them, their authority is derived from their religious affiliation and not from the

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[http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) (last accessed 1st April 2013) at 12

<sup>116</sup> See discussion in Bano S., *An exploratory Study of Shariah Councils in England with respect to family law* (Ministry of Justice and University of Reading, 2012) accessible from [http://www.reading.ac.uk/web/FILES/law/An\\_exploratory\\_study\\_of\\_Shariah\\_councils\\_in\\_England\\_w ith\\_respect\\_to\\_family\\_law.pdf](http://www.reading.ac.uk/web/FILES/law/An_exploratory_study_of_Shariah_councils_in_England_w ith_respect_to_family_law.pdf) last accessed 1-4-2013 (last accessed 1st April 2013), at p. 19

<sup>117</sup> For ISC , see Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 413

<sup>118</sup> For ISC, see Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 418

<sup>119</sup> Pearl D. and Menski W., *Muslim Family Law*, 3rd edition (London: Sweet & Maxwell, 1998),at 396

<sup>120</sup> G Bunt, 'Decision-making concerns in British Islamic environments', *19 Islam and Christian–Muslim Relations* (1998) 103–113, at 106

state.<sup>121</sup> They draw their legitimacy from the need for institutions that respond to the individuals' religious needs. Their authority extends only to those who choose to submit to them.<sup>122</sup> Any decision reached by the Islamic Shari'a Council is not binding and as such, it relies on the goodwill of the parties to agree to follow and implement it. Nor in the case of the Mufti whose decision needs to go through the probate of the civil courts in order to produce legal results, is there any practical enforcement if the parties do not decide to comply with the decision and implement it. In some cases the parties may not be interested at all in enforcing the decision of the Mufti before the Greek courts. As Soltaridis in the 90's reported, in practice very few divorce decisions of the Mufti are submitted to the First Instance Court. The majority of them may only be found in the registrar of the Mufti office.<sup>123</sup>

While the Council looks at English court rules to establish their own, the Mufti office also draws parallel examples from their courts practice and rules on divorce procedures, such as the freedom the parties enjoy in determining their own terms in a mutual consent divorce. In one case that a civil court remitted a case to the Mufti because it considered the Mufti's jurisdiction obligatory for Thracian Muslims, the Mufti adopted a solution, which was provided by the Civil Code in a large interpretation of the shari'a law.<sup>124</sup> It is worth mentioning the Council's attention to alleged deficiencies of English law such as the deemed by the Council tendency to pay insufficient weight to the fathers need to see his children. The Council wishes to

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<sup>121</sup> Contrary to what is the dominant view of exclusive and compulsory jurisdiction, courts have started ruling on family matters of Muslims. See for instance First Instance Court of Rodopi (9/2008). To accept that Mufti's jurisdiction is compulsory amounts to a discriminative division between Greek citizens on religious grounds and an interference with freedom of expression and religious freedom.

<sup>122</sup> See similar discussion for other religious bodies in Douglas G., Doe N., Gilliat-Ray S., Sandberg R. and Khan A., *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*, Report of a Research Study funded by the AHRC (Cardiff University, June 2011)

<http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf> (last accessed 30 March 2013), at 28

<sup>123</sup> Soltaridis S., *The history of the mufti offices of Western Thrace* (Athens: Nea Synora-A.A.Livani, 1997), at p.183 (in Greek)

<sup>124</sup> First Instance Court of Komotini 146/2002 and Mufti of Komotini Decision 21/2002. A case of custody of a minor, in which the Moufti did order the mother to undertake the custody instead of the father, not taking into account the particular rules of classical jurisprudence that rule custody on the basis of age and which the Mufti usually considers.

work in a way that complements the working of the civil courts.<sup>125</sup> Both, the Mufti and the ISC, also emphasize the practicality of their procedures and the safety felt by the parties in family matters with discussing their cases in closed proceedings, as opposed to the open courts. And thus they both consider they provide a precious service for Muslims in their respective countries. They also share the same logic with family courts as they consider elements such as the couple's prior separation or an irretrievable breakdown of the marriage. It seems therefore that both bodies do not diverge a lot from mainstream legal procedures. It is interesting also to look at the more predefined procedures followed by the Council. The Council offers a set of procedures that, if followed, will generate a document, predicting specific steps to achieve specific results.<sup>126</sup> This is less valid in the case of the Mufti. The institution of the Mufti, though a public servant, is not encapsulated in the state public administration system. Despite this, the general settings and mentality of a vague bureaucratic framework where certain steps required by the law to achieve a specific result do not necessarily bring this specific result are reflected in the institution of the Mufti making action before the Mufti less predictable. In the same way the construction of the Council's procedures reflects the different practical realities of life in England.

#### **RELIGIOUS MINORITY LEGAL ORDERS: PROHIBITION OR RECOGNITION?**

The Council, not less the Mufti, have received criticism drawing mainly upon a concept of Islamic law as inherently violating modern and supposedly universal norms of human rights.<sup>127</sup> Fieldwork in the case of ISC has indeed revealed some tensions between the equal way women are expected to participate in the process and the greater room given for husbands for negotiation.<sup>128</sup> Similar

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<sup>125</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 419

<sup>126</sup> Bowen J., How Could English Courts Recognize Shariah? *St. Thomas Law Review*, 7 (3): 411–35, 2011 at 422

<sup>127</sup> Lewis P., Being Muslim and being British, The dynamics of Islamic Reconstruction in Bradford, , in Ballard R. (ed), *Desh Pardesh, The South Asian Presence in Britain* (London: C. Hurst, 1994), at 58; Levey B. G., Secularism and religion in a multicultural age, in Levey B.G., Modood T. (eds), *Secularism Religion and Multicultural Citizenship* (New York :Cambridge University Press, 2009) at 16.

<sup>128</sup> Bano S., In Pursuit of Religious and Legal Diversity: A Response to the Archbishop of Canterbury and the 'Sharia Debate' in Britain, 10 Ecclesiastical Law Journal, (2008), pp 283-309, at 302; Shah-

inferences may also be drawn from instances before the Mufti. Yet this is not to say that both bodies are not considerate of the welfare of the parties involved.<sup>129</sup> That said patriarchal attitudes are underpinned in all legal and social structures not less in religious minority legal orders. As practice demonstrates, the services of the religious structures can also be used for the empowerment of women especially when stubborn husbands fail to grant women a Muslim divorce. Both religious bodies pay/offer an important and necessary service to Muslim women providing a forum to Islamically dissolve an unhappy/unwanted religious marriage an opportunity completely absent from mainstream English and not sufficiently provided by Greek law. Before these religious bodies women are able to initiate, what is principally a male prerogative, an Islamic divorce that satisfies all religious and social requirements and thus makes their choice/ decision to end their marriage perfectly acceptable by their family and community. In their use of this fora in pursuit for an Islamic divorce, Muslim women may be able to overcome the barriers imposed by their family and community and reject or challenge conservative Islamic norms and values.

The present study examined these bodies as mechanisms operating within religious minority legal orders, administering and enforcing them. These minority legal orders perform their function that is mainly mediation, guidance and deliberation within the boundaries of our established allegedly homogenous “polities”. They offer alternate dispute resolution processes without or with limited state involvement. This does not, however, mean that they avoid interaction and contact with the state and its law, even when state is not involved at all. Although the institution of the Mufti has been embodied in the state, it still maintains a broad autonomy that allows for a privatised space within which mainly matrimonial disputes are resolved. While the Mufti operates within a communal millet system, the Islamic legal order that the institution was deemed to preserve is reformed and reconstructed along the transformations of the Muslim local and non-local community.

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Kazemi, N. S., *Untying the Knot: Muslim Women, Divorce and the Shariah*, The Nuffield Foundation, 2001.

<sup>129</sup> For ISC , see Bano S., *Complexity, difference and 'Muslim Personal law': rethinking the relationship between Shariah Councils and South Asian Muslim women in Britain*, PhD thesis, University of Warwick, (2004) at 255

The minority legal order connected to the Mufti is an example of a recognised minority legal order through the establishment of a personal law system. Religion is considered the identity marker and thus the members of the minority are not seen as individuals but necessarily as followers of a particular religion. The recognition of a personal law system for Greek Muslims has been combined for years with the principle of non-interference. However, there are lately instances where the state will claim its right to pick and choose which issues do or do not conform with its allegedly liberal norms and implement the principle of severance. Therefore besides the personal law system the state applies to some extent what Maleika Malik has labeled as cultural voluntarism: a model of accommodation of the minority legal orders which allows them to function while the state reserves the right to interfere when it deems right to protect 'liberal public policy principles'.<sup>130</sup>

This has been depicted in the recent cases where civil courts judgments exclude the Mufti's jurisdiction when the application of shari'a is considered to contradict basic human rights or when they deem that the cases decided by the Mufti are not within the Mufti's competence.<sup>131</sup> This creates uncertainty and confusion as there is no uniform rules and practice followed by the courts when examining the Mufti decisions and judges are admittedly not sufficiently equipped in order to rule or comment on Islamic rules. Often adopting one dimensional interpretation of Islamic rules and seeing shari'a as a unified set of rules they ignore its inherent plurality and give in to generalizations on Islamic law as inherently violative of human rights. In addition, they often ignore social reality on the ground. Rejecting a priori minority rules to which the individuals in question abide to and choose to be subject to indicates a top-down approach which runs a serious risk of bringing quite the opposite results than those aims wished to serve.

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<sup>130</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law*. (London: The British Academy, 2012) at 6 & 39-44

<sup>131</sup> See Decision of the First Instance Court of Rodopi (9/2008), which ruled that the civil courts have jurisdiction to adjudicate matters related to inheritance disputes in the case that the application of the sharia law would contradict basic human rights as safeguarded by the ECHR.

In addition, the individuals subjected to the jurisdiction of the Mufti according to the Greek legislation do not necessarily coincide with the beneficiaries of the services of the Mufti of Komotini. Despite the exclusion of non-Greeks from the jurisdiction of the Mufti according to law and jurisprudence, there are many non-Greek Muslims that appeal to the jurisdiction of the Mufti, mainly in order to be granted a religious divorce, and not in few cases the Greek courts have ratified such decisions.<sup>132</sup> There are of course also Thracian minority members that do not wish to abide to a religious order. They perform civil marriages and then take any family matters that may arise to the civil courts. The state should not only allow this choice but also ensure they have the option to make use of state or other non-religious structures. This of course cannot happen when the jurisdiction of the Mufti is deemed as compulsory.

The case of Muslims in the UK demonstrates a different state response. English law rejects personal law systems yet it does not prohibit them. It allows their function without yet recognizing them. Despite remaining unitary, state law has mainstreamed tiny parts of minority legal orders, making allowances for specific issues. This mainstreaming<sup>133</sup> is yet limited and despite English system's relative receptivity to the formation of local religious associations<sup>134</sup> and some pluralisation, it does not allow Muslims identification with mainstream political and legal institutions. The Islamic Shari'a Council fills this gap of institutions that cater for the needs of Muslims. It operates within the contested space of personal law its own version of multiculturalism becoming a site where 'new ijtihads'<sup>135</sup> are taking place. While there are of course different ethnic, social and cultural identities, they are incorporated in the minority legal order, becoming part of an endless process of

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<sup>132</sup> There are also many cases where civil courts refused to declare enforceable such decisions of the Mufti (even in cases where marriages have been registered at the Registry).

<sup>133</sup> Malik M., *Minority Legal Orders in the UK: Minorities, Pluralism and the Law*. (London: The British Academy, 2012) at 6 & 44-47

<sup>134</sup> Bowen J. "[Sanctity and shariah: Two Islamic modes of resolving disputes in today's England](#)", in Bertram Turner, Keebet von Benda-Beckmann, and Franz von Benda-Beckmann, eds. *Religion in Disputes*, Palgrave Macmillan, forthcoming, accessible from [http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen\\_sanctity\\_and\\_shariah\\_october\\_2012.pdf](http://anthropology.artsci.wustl.edu/files/anthropology/imce/bowen_sanctity_and_shariah_october_2012.pdf) last accessed 1-4-2013, on p.1.

<sup>135</sup> Yilmaz I., Muslim Alternative Dispute Resolution and Neo-Ijtihad in England in *Alternatives, Turkish Journal of International Relation*, vol.2 no.1, (2003) accessible at <http://www.alternativesjournal.net/volume2/number1/yilmaz.htm>, (last accessed 1<sup>st</sup> April 2013)

reconstruction. The Islamic Shari'a Council reconstructs a 'homeland' in Britain and is admittedly a significant agent in the development of hybrid forms of rules, attributed yet to the same Islamic order.

Nowadays in Europe there is a regeneration of the 'ideal' of 'national' homogeneity and hostility to difference is becoming increasingly popular. This coupled with the growing sceptism about multicultural models expressed even by European leaders,<sup>136</sup> demonstrates that we are far from coming to terms with diversity. Diversity, will however continue to exist, recognized or not, and minority legal orders within a state's boundaries will not cease to co-exist, operate and interact with other legal orders, not less with the state. The operation of minority legal orders is significantly helpful in understanding that accommodation of a personal law system does not mean clinging on some unchanged religious norms and rigid dividing lines but rather a combination, adaptation, re-organization and reconstruction of different normative orders of otherwise law-abiding individuals that stem from and end in a rich plurality.

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<sup>136</sup> See Statements by Angela Merkel, the German cancellor reported at <http://www.guardian.co.uk/world/2010/oct/17/angela-merkel-german-multiculturalism-failed> and David Cameron, British Prime Minister reported at <http://www.bbc.co.uk/news/uk-politics-12371994>