

On the Muslim Turkish minority of Thrace, Greece: Long-lasting problems that require immediate solutions

Summary

The 1923 Treaty of Lausanne granted special minority rights to the predominantly Turkish speaking Muslim minority of Thrace (Greece). These minority rights were only granted on the basis of the minority's religious affiliation as Muslims. This legal logic stems from the Ottoman millet system, in which ethno-religious communities enjoyed institutional autonomy. Moreover, the Greek government, lawmakers and the judiciary only granted Muslims of Greek citizenship specific minority rights if they lived in their ancestral region (Thrace). Legal norms governing the position of the Muslims in Greece have attempted to balance personal autonomy and territoriality based on asymmetric schemes. Aspects of non-territorial autonomy (educational rights) and territoriality (minority rights granted only at the region of Thrace) coexist. The ideological antagonism that exists between the *community of citizens* and the *community of the nation* impacts the position of Greek Muslims in a fragmented and incoherent way. The challenge for law and policy is to consolidate an holistic approach to treating a multifaceted minority group in a manner grounded in the principles of justice and human rights.



Recommendations

- ▶ The harmonisation of laws and policies dealing with the Turkish–Muslim minority of Thrace with the fundamentals of human rights law. For instance, administration of schools, community properties, the selection and appointment of teachers, imams and muftis, as well as the establishment of associations, should not fall under a “status of exception” that derogates from rule of law. Rather, they should be governed by the fundamental principles and norms that stem from the European and Greek legal order.
- ▶ To disentangle minority issues from historic Greek–Turkish antagonisms and grant minority protections via multilateral legal guarantees such as those provided by the Framework Convention on National Minorities of the Council of Europe.

Introduction:

A theoretical approach as a precondition of any legislative amendment

The end of the Greco-Turkish War of 1919–1922 witnessed the fall of the Ottoman Empire and the establishment of the Turkish Republic. Following the fall of the Ottoman Empire, the Lausanne Conference adopted measures sanctioned by international law, which effectively involved ethnic cleansing in order to establish homogeneous nation-states in Greece and Turkey. The mandatory population exchange between the two countries, under the Convention of Lausanne (January 1923), affected 1.2 million Greek Orthodox Ottoman subjects from Asia Minor and over 400,000 Muslims Greek citizens from Greece. All were forced to lose their homeland and acquire a new one. However, the Muslims of Western Thrace were exempted from the population exchange, as were Istanbul's Greek Orthodox community and the Greeks of the islands of Imbros and Tenedos. The subsequent Treaty of Lausanne (July 1923) granted special minority rights to non-Muslim Turkish citizens in Turkey and to Muslim Greek citizens in Greece who were exempt from the population exchange.

The policies and laws concerning Thrace's Muslim minority have been developed and often justified by claiming that predominant 'national interests' are at stake. During the century-long history of Greek–Turkish reciprocal policy on minorities under the Treaty of Lausanne, the principle of reciprocity was applied in a negative way. Moreover, minority policies favoured and still favour certain groups, inside and outside the minority. Fear of excessive interventionism from Turkey is often used as a tool to justify special minority policies. The conditions of coexistence between Christians and Muslims have been shaped through the visibility of the minority, mainly through a religious lense (Islam). This has constructed an implicit and stigmatised national identity for the Muslims of Thrace that implies an affiliation to Turkish, rather than a religious a-national identity. Nonetheless, no collective identity is one-dimensional or static.

On top of the identity issues, Thrace's Muslim minority is located in a region that offers limited opportunities for economic development and socio-economic progress. The low socio-economic status of Thrace's Muslims among the local population also creates limitations for the equal enjoyment of minority rights. After all, the problems and demands of the entire region should be given equal weight in the internal hierarchies of needs.

The minority policies implemented in Thrace have and continue to be based on a series of minority institutions such as schools, community properties and the mufti offices which the Greek governments are able to control. What is at stake is the enjoyment of minority rights and the operation of minority institutions within a framework of autonomy. The state sees the ideological mission of minority institutions as one that mobilises a solid and unchanging image of a 'community of believers', so the state ideology ignores the national (Turkish) identity that predominantly underlies within this community.

To achieve the ‘modernisation-rationalisation’ of the Thrace minority’s legal status, the employment of interpretive schemes based on the millet-like differentiation between Christians and Muslims should be abandoned. Moreover, segregation on the basis of religion should also be abolished. An inclusive civic citizenship must be established and minority rights should be offered and enjoyed by the members of the minority who would freely chose to use them.

The maintenance of pre-ethnic categories of religious institutions cannot underpin sustainable minority protection norms and policies. The same is true of both state authorities and a significant part of the minority political and social elite. These often myopically insist on demands for ‘institutional autonomy’, but without referring to qualitative criteria and socio-economic realities. While demanding institutional autonomy and sustainable rights, discussion regarding strategies for the emancipation of the members of the minority or the reduction of intra-minority inequalities by these factions is carefully avoided.

A necessary condition for overcoming age-old deadlocks and achieving the rationalisation of the legal regulations related to minorities is the recognition of the realities and the abandonment of irreconcilable positions. The quest to balance communitarianism (mufti jurisdiction, community properties, and minority schools) with universal equality (public school for all, and universal jurisdiction) should aim at securing fundamental human rights and minority rights on the basis of free choice. Indeed, in the judgment *Molla Sali v Greece*, at the European Court of Human Rights, referring to the Framework Convention for the Protection of National Minorities, says that: “no disadvantage shall arise from the free choice it guarantees, or from the exercise of the rights which are connected to that choice” (*Molla Sali v Greece*, 2018, paras. 67–68, 157).

Six positions for the reorganisation of minority institutions

The following positions constitute a starting point for identifying individual legal deficits and establishing concrete proposals. These will allow for a consistent and coherent legal regime that will govern the status of minority institutions in line with the fundamental parameters of the European and Greek legal order.

1. The legal status of minority schools, muftis and community properties (vakoufia/vakiflar) is characterised by a chronic ideological instrumentation of the law. The special status of minority schools' special status has survived since 1923 and often rubs up against the basic principles of European legal culture. The conflicting relationship with European legal institutions hinges on the question of whether Greek citizenship can incorporate other national identities (besides Greek). According to the European Court of Human Rights, the role of the state authorities is not to abolish the reason for these tensions through the abolition of pluralism, but rather to secure mutual tolerance between groups (*Serif v Greece, 1999, para. 53*).
2. The segregation of a population based on religion, often on a mandatory basis (see the appointment of teachers and the definition of jurisdiction), is an institutional entrenchment of the minority as an unchanging and given religious identity of its members based on the millet-like logic, according to which minority rights are granted to the sole ground of religious affiliation. At present, the administration considers, through a self-evident precondition, that the minority of Thrace constitute a 'special category of citizens' who 'are those who must remain Muslims' without, therefore, being able to alter their (religious) identity. However, the public declaration of religious faith cannot be a *sine qua non* condition for the enjoyment of rights and enacting of obligations.
3. The confusion between public and private entities is one among many problems that impact the legal position of the minority within the Greek legal order. The state has taken on the role of guarantor in the exercise and enforcement of general human and minority rights, but often intervenes decisively in the internal affairs of minorities, trespassing the fine line between the public and private spheres (the latter includes the Muslim community and their institutions). State interventions should function in favour of human rights rather than being a controlling mechanism curtailing minorities' rights.
4. The current legal framework governing minority rights has been subject to the principle of reciprocity between Greece and Turkey. As such, the exercise of policies and law enforcement is not about managing relations regarding minority affairs, but rather as a negotiating tool within Greek–Turkish relations. Consequently, in many cases, the rights of Thrace's Muslim minority have become a battleground in which retaliatory measures have been considered a necessary means to confront the competitive influence of the 'kin-state'. As such, Greek–Turkish bilateral cooperation on issues of minority rights should shift from undermining each other to a positive cooperation enhancing minority rights.

5. The Greek legislature is particularly reluctant to introduce international minority protection norms into the Greek legal order. Both the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages have been ignored and the opportunities they offer unexploited. Both legal instruments could give impetus to a review of the relevant legal framework governing the status of minority institutions. The entire European legal acquis, which is evolving through the work of the control mechanisms of the two conventions, could offer important solutions to the stalemate with regard to the Muslim minority in Thrace.
6. The outdated Treaty of Lausanne has been implemented in an extremely formalistic manner according to which a series of minority rights are granted through religious affiliation. The Treaty's executive legal framework (i.e. Act 964/1977 on Minority Education and the numerous relevant rules, Act 3647/2008 on Community Properties and Act 4964/2022 on the mufti) often does not comply with the hierarchies that structure the Greek legal order. The Treaty is implemented with unequivocal exceptions and priorities that contradict the rule of law.

A road map for dealing with long lasting problems and specific recommendations

The following ten points summarise the main issues that are preventing the economic, social and institutional development of the Thracian minority, which is hindered by sterile political and ideological battles. These issues can be resolved by enforcing regularity and minimising the minority's status as exceptional – a status that has historically had negative outcomes for the minority – except for issues that require positive action.

1. Minority education suffers from a number of legal and educational entanglements, resulting in the provision of low-quality education and the development of a climate of distrust towards the state. **Recommendation:** Upgrade the education provided and the Turkish language programme. Abolish unconstitutional exceptions to the norm (such as recruitment based on religion.) and adopt a codified law for minority schools. Consolidate multilingual kindergartens.
2. Community foundations (community properties or vakoufia/vakiflar) are governed by an institutional disorder that keeps community affairs under the close control of the government. The key issue is the selection of the members of the management committees. Since 1964 no elections have been held, as the law provides, but the members of the committees are appointed by the government. **Recommendation:** Re-formulate Act 3647/2008, consult with the minority, register and recognise the titles of foundations and hold elections for the management committees. Substantial management control is necessary in the interest of the foundations and local society.

3. Three muftis (Muslim religious leaders) are appointed by the Minister of Education and Religious Affairs. In this sense, the minority's right to autonomy in managing internal affairs has been curtailed. The newly established Consultative Committee (Act 4964/2022) with a membership made up of notable Muslims does not have a decisive role in the selection procedure. The issue of religious freedom must be resolved in a manner that takes into account the political involvement of the elected muftis who act in parallel to the appointed ones as proponents of intense Turkish nationalist discourse. **Recommendation:** Institutionalise the selection of muftis after elections and minimise the involvement of both the Greek and Turkish governments. Reconsider the jurisdiction of the mufti (see hereinafter).
4. The mufti-judge adjudicates family and inheritance cases in accordance with the provisions of Islamic law, often to the detriment of the rights of women and children. **Recommendation:** The recent reforms triggered by the Molla Sali case and the amendments to the procedural law of the sharia courts was a step in the right direction (Act 4964/2022), although the institutional autonomy of the Mufti Offices is considerably limited. What is pending is the reform of the content of sharia law which eventually contradicts constitutional law. A dialogue with the minority is needed in order to shape social claims and positions in the manner to sustain sufficient standards of equality within the mufti courts. Abrogation of the Muslim court would probably lead to unofficial community arbitration courts, resulting in parallel jurisdictions escaping institutional control of the rule of law.
5. **Property deeds.** Many Muslims in the region of Thrace do not possess property titles or deeds. This has led to major economic and social insecurity, which has continually hampered efforts to develop the wider region. The security of ownership was recently brought to the fore by a series of court decisions which said that land ownership in Thrace and elsewhere in North Greece, has to be proved through titles issued before the date of annexation of the relevant region by Greece. Otherwise, land would belong to the state. **Recommendation:** Settle titles with special procedures when registering properties with the Land Registry or with mass 'settlements'.
6. **Associations.** Thrace's courts do not grant legal status to a series of associations established by members of the minority, when a reference to the Turkish character of the association in their title is made. The European Court of Human Rights has determined the denial of registration as a violation of the right to establish associations. In turn, the Committee of Ministers has declared the non-execution of these judgments as under 'enhanced supervision' (*Bekir Ousta group of cases*). **Recommendation:** Immediate execution of the ECtHR's judgments on minority associations.
7. **Teachers of religion.** Act 4115/2013 (amending Act 3536/2007) created 240 posts for religious teachers (imams) in mosques and public schools. Without having the qualifications of a secondary school teacher, they teach Islam to Muslim students in schools (in Greek). They are hired on a nine-month contract every year. **Recommendation:** Review the status of religious teachers. Standardise the necessary teaching qualifications by a permanent qualified committee, and hire teachers on full time contract).

- 8. Stateless Muslims.** Between 2004 and 2005, citizenship was granted to 115 stateless Muslims of Thrace. However, citizenship was granted ad hoc and not through a citizenship restoration process. A small number of Muslims from Thrace still remain stateless. **Recommendation:** Grant Greek citizenship to the last members of the Turkish–Muslim minority living in Greece in absolute institutional exclusion due to statelessness, thereby implementing the agreements of the New York Convention on Statelessness (1954). Examine the possibility of granting citizenship to those living abroad on the condition that they maintain strong ties with Greece.
- 9. Positive measures.** Since 1997 positive measures are applicable in favour of Muslim minority students to enter university education. **Recommendation:** A thorough study and appraisal of the measure’s effects and impact is needed in order to review, amend or abrogate the measure. Implement the special quota providing for civil service appointments through the national qualification system (ASEP).
- 10. Overall legal status.** The legal framework governing the institutions of Thrace’s Muslim minority and the attribution of minority rights on an individual basis needs to be reformed and aligned with fundamental standards of inclusive human rights and optional minority protection. **Recommendations:** Avoid bilateral antagonisms with Turkey over the minority through the instrumentation of the Lausanne Treaty. Liberalise the legal regime beyond the Treaty of Lausanne in accordance with human rights and constitutional standards, and free the minority affairs from Greek–Turkish entanglements. Ratify the Framework Convention for National Minorities, which was already signed in September 1997.

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Legal documents

- Act 694/1977 on Minority Education (Gazette A 264)
- Act 3536/2007 on teachers of Islam (Gazette A 42)
- Act 3647/2008 on Community Properties (Gazette A 37)
- Act 4964/2022 on the Mufti (Gazette A 150)
- Molla Sali v. Greece, No. 20452/14, Eur. Ct. H. R. (December 19, 2018)
- Serif v. Greece, No. 38178/97, Eur. Ct. H. R. (December 14, 1999)

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