Denitsa Pirinova SOKOLOVA

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IMPLEMENTATION OF ISLAMIC LAW IN EUROPE: IMPROVING RELATIONS WITH THE MUSLIM WORLD AND INTEGRATING MUSLIM MINORITY IN EUROPE

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by

Denitsa Pirinova SOKOLOVA

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For my family…

APPROVAL PAGE

Student **:** Denitsa Pirinova SOKOLOVA

Institute **:** Institute of Social Sciences

Department **:** International Relations

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I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Arts.

Assoc. Prof. Savaş GENÇ
Head of Department

This is to certify that I have read this thesis and that in my opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Arts.

Prof. Recep ŞENTÜRK
Supervisor

Examining Committee Members

Prof. Recep ŞENTÜRK …….

Assoc. Prof. Berdal ARAL …….

Assoc. Prof. Ihsan YILMAZ …….

It is approved that this thesis has been written in compliance with the formatting rules laid down by the Graduate Institute of Social Sciences.

Assoc. Prof. Mehmet KARAKUYU
Director

AUTHOR DECLARATIONS

1. The material included in this thesis has not been submitted wholly or in part for any academic award or qualification other than that for which it is now submitted.

2. The program of advanced study of which this thesis is part has consisted of:

i) Research Methods course during the undergraduate study

ii) Examination of several thesis guides of particular universities both in Turkey and abroad as well as a professional book on this subject.

Denitsa Pirinova SOKOLOVA
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ABSTRACT

Denitsa Pirinova SOKOLOVA **June 2011**

The accommodation of religious and ethnic minorities became an important issue in politics and international relations. In Europe the biggest minority group today is the Muslim minority. Today, they have an important effect in European countries' foreign policies and vice-versa. The integration of this minority in the mainstream society has been an issue that is much discussed in Europe. Some issues, such as Islamic finance and banking, are accepted in almost all of Europe; whereas some particular countries went further to broaden the rights of the Muslim minority.

Greece is a country that has a Muslim minority from its foundation, and to accommodate them they recognize the application of the Islamic law among its Muslim minority, based on international treaties. Britain, on the other hand, has recently decided to recognize the implementation of the Islamic law and the Islamic courts, to accommodate and integrate its Muslim minority.

While Greece recognizes this right for over a century, because of international treaties, Britain does this only recently because of international events. The invasion of Iraq, the 9/11 attacks, the 07/07 attacks, and similar events have accelerated the ongoing debates about implementing Sharia law in Britain, and resulted in the recognition of the Islamic law and Islamic courts in 2007. In both these cases what is implemented from the Islamic law is the Islamic Civil Law, but there are many other similarities and differences as well.

In this thesis I aim to analyze the reasons behind implementation of the Islamic law in both Greece and Britain; then I aim to see how similar and different these two cases are; and finally my goal is to come out with recommendations of how can the minorities, in this case the Muslim minorities, be integrated in Europe and elsewhere.

Key words: Islamic Law, Sharia, British Law, Greek Muslims, British Muslims, Minority Rights, Immigration, European Muslims.

KISA ÖZET

Denitsa Pirinova SOKOLOVA **June 2011**

Dinsel ve etnik azınlıkların uyumu ulusal ve uluslar arası politikada önemli bir araştırma konusu olmuştur. Bugün Avrupa'daki en büyük azınlık topluluğu Müslüman azınlıklardır. Bugün Müslüman azınlıkların Avrupa ülkelerinin dış politikalarına ve bu politikaların azınlıkların durumuna etkisi oldukça büyüktür. Bu azınlıkların hakim topluma entegrasyonu Avrupa'da çok tartışılan bir konudur. İslami finans ve bankacılık gibi mevzular hemen her Avrupa ülkesinde kabul edilirken bazı ülkeler Müslüman azınlıkların haklarını daha da genişletmişlerdir.

Yunanistan kurulusundan itibaren Müslüman bir azınlığa sahip olan ve uluslararası anlaşmalara bağlı olarak, bu azınlığın uyumu için Müslümanlar arasında İslam hukukunu tanıyan bir ülkedir. Diğer yandan İngiltere, Müslüman azınlığın entegrasyon ve uyumu için kısa bir zaman önce İslam hukukunun ve İslami mahkemelerin uygulanmasını tanımıştır.

Yunanistan bu hakları uluslararası anlaşmalar gereğince yüzyıldan uzun bir suredir tanırken, İngiltere uluslararası bazı gelimseler sebebiyle sadece kısa bir suredir tanımaktadır. Irak'ın işgali, 9 eylül ve 7 temmuz saldırıları ve benzer olaylar İngiltere'de Şeriat'ın uygulanması ile ilgili devam eden tartışmaları hızlandırmış ve 2007'de İslami hukukunun ve İslami mahkemelerin tanınması ile sonuçlanmıştır. Her iki durumda da İslami hukuk olarak uygulanan İslam Medeni Hukuku'dur ve bunun yanında diğer bazı benzerlikler ve farklılıklar da vardır.

Bu çalışmada Yunanistan ve İngiltere'deki İslam Hukuku uygulamalarının arkasındaki nedenleri analiz ediyorum ve bu iki örneğin farklılık ve benzerliklerini ortaya koymaya çalışıyorum. Son olarak amacım azınlıkların, özellikle Müslüman azınlıkların, Avrupa 'da ve diğer ülkelerdeki entegrasyon süreçlerine faydalı öneriler ortaya koyabilmek.

Anahtar kelimeler: İslam Hukuku, Şeriat, İngiliz Hukuku, Yunanistanlı Müslümanlar, İngiliz Müslümanlar, Azınlık Hakları, Göçmenlik, Avrupalı Müslümanlar

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CHAPTER 1

Introduction

The integration of all the groups of citizens into the state is an important political issue. Nevertheless when this group is a minority group, it becomes an important international political issue. On one hand this is a state strategy problem but on the other it is an internationally regulated issue. In this thesis I will analyze the method that Britain and Greece used, to be able to integrate their Muslim population as well as satisfy international agreements, in the case of Greece; and have better relations with the Muslim world, in the case of Britain. Here I will try to show that the implementation of the Islamic Civil Law in Europe can be a successful way of integrating the Muslim minorities, and improve or stabilize the relations between the Western world and the Muslim world. I will try to prove my arguments by analyzing the methods of Britain and Greece.

I chose these two cases because they both are European countries, members of the European Union, who have recognized the implementation of the Islamic civil law. As similarities, these cases have many differences as well. The circumstances are different, the legislative traditions are different, and their international relations are different. These I will try to analyze in this thesis.

By analyzing these two cases I aim to show a method, not so much talked about, that is used to be able to integrate the Muslim minorities. I will briefly discuss the other European states' methods, as well. I will talk about European states' methods because the European states also realized that they shall improve their relations with their Muslim minorities, because the Muslim minorities can play a significant role in the particular states' foreign policy. At the same time, I aim to show how different international events influenced European states, and my case studies, to take steps towards integrating the Muslim minorities, and give positive signals to the international arena.

There have been many voices on the pros and cons of the implementation of Islamic law in Britain and Greece, but there is lack of academic literature in the

International Relations discipline, on this issue. The present literature, academic and non-academic, analyze the issue from the juristic perspective or as an internal issue, whereas I aim to look at it from the International Relations perspective.

1.1 Recent British IR and the implementation of the Islamic Law

Britain is an important global actor, with an imperial background. Having many national groups in its territory, Britain also has many minority groups residing. From the early imperial times, many religious and ethnically different people migrated to Britain, and later on they formed their religious or ethnic groups. One of the biggest being the Muslim minority group, they constitute a good labor force and voting potential in Britain. Coming mostly from ex-British colonies, such as India, Pakistan, and Bangladesh, and less from Turkey, Balkans, and Middle East; this group today holds a good economic and political capacity in Britain.

Britain is one of the few countries that decided to go to war in Iraq on the side of the United States of America, in 2003. This sparked a lot of debate in Britain among all the citizens. Nevertheless, this played a very big role for the British Muslims, who were not happy with this British policy, and questioned the British government's intentions towards the Middle East, towards the Muslims living in Britain, and towards their religion, Islam. This brought confusion and frustration on the British Muslims but it also brought confusion on the British politicians, who had to make up for the invasion of Iraq.

On July 7, 2005, Britain was shocked by 4 suicide bombings that allegedly were made by British Muslims in London's public transport, 3 of them in the underground and one in a double-decker bus. This event shocked the whole Britain; the politicians were furious and confused; the people were furious and frightened; and the Muslim Britons were frustrated, confused, and frightened. The four bombers were, supposedly, British Muslims. This event made the British decision-makers re-think their Middle Eastern policies. They understood that homegrown terrorists might be born if the Muslim community in Britain is not happy with the British

policies. The British government understands that they had to do three things, after the 7/7 bombings: Integrate the Muslim Community and make them feel comfortable, and identify themselves with Britain; explain that Britain is not against Islam; war on terrorism is not something against the religion of Islam, or Muslim, rather is a war against terrorist organizations that threaten Britain and others in the world; and, it had to bring more security to Britain.

Many surveys and researches were conducted, which alarmed the British government. According to these researches the British Muslims were not happy with British policies towards the Middle East, they were even more frustrated with how they and Islam were portrayed in British media, and they associated themselves more with their home countries of origin. This phenomenon was more present among younger Muslim Britons, who claimed that the implementation of Islamic Law in Britain and the opening of Islamic schools would be an immediate step that shall be taken by the British government.

The implementation or the recognition of the Islamic law in Britain is an old topic. A lot has been debated and written about the need to recognize Sharia courts in Britain, but they were accepted only in the year 2007, as arbitration courts. The Islamic courts have been active since 1980s in Britain, but unofficially, whereas in 2007 these courts were officially recognized. While many scholars claim that it is an old debate and anyhow it was going to be accepted by the British judiciary, I claim that it was exactly because of some international events prior to 2007, that accelerated and concluded the on-going debate on the recognition of the Islamic law in Britain. I understand that the debate is old, but I think that the fact that these events accelerated the process shall not be denied either. The recognition of the Sharia courts in 2007 brought a sharp debate, and mainly in 2008 a lot of important figures were involved. One of the strongest advocators for the recognition of the Islamic law in Britain, Archbishop William Rowans, has attracted much criticism after he favored the implantation of the Islamic law, in a speech given in 2008. While some scholars have questioned the compatibility of the Islamic law and human rights, some other critics have claimed that the law of the land is the one and only law that should be implemented. Nevertheless, there are others that claim that the

Islamic law is highly misinterpreted and that the people should know more about it, rather than talk about it without knowing. Some Muslims jurists also claim that what British Muslims want is to regulate their cases according to the Islamic law in civil matters, not in criminal matters or any other subject that might conflict with the law of the land, that of Britain.

Finally, today we can see that Britain is implementing the Islamic law in civil matters. No one misused it, and people are more satisfied and started to identify themselves as British first. This also helped the British IR, especially in the Muslim World, where most of the people saw Britain as a state who wants to fight against Islam. Having good ties with their home country, the British Muslims are important volunteer ambassadors of Britain, which might improve the relations between Britain and the Muslim world.

1.2 The Greek IR and the implementation of the Islamic Law

The Greek case is totally different in its origin. Being a part of the Ottoman Empire, Greece declared its independence by 1829. Greece was always considered as a good friend of the West, which made it an important factor.

When Greece declared its independence there were many Turkish people who wanted to stay there, as were many Greek people who wanted to stay in Turkey. So, these minorities and their rights needed to be regulated and monitored by an international agreement. Including the implementation of the Islamic civil law, the Lausanne Treaty protected these minorities and their rights, which was the treaty that formed today's borders of the Turkish republic and the Greek republic. According to this treaty, the Greek state is obliged to give the right to the Muslim minority to be trialed according to the Islamic law, for their civil issues (Lausanne, 1923: art. 42-45).

We can claim that the implementation of the Islamic law in Greece is a very old phenomenon, but only few people knew about this. On one hand, people are not

informed that they have such a right, on the other hand the Greek state wants to abolish this right. So, if one asks if this has worked perfectly during this period, I must say that it did not work without problems; but nevertheless these rights exist even today (Serif, 2011).

About this topic there are very few academic materials from the IR perspective, the only materials on Greece and the Islamic community there, are those that see the cultural and historical aspects of the minorities. Here my sources are mainly conference papers and few academic articles that are available in English; unlike for Britain, where I use newspaper articles, polls, and speeches of the influential people, besides few academic articles and books. For Greece, I also used reports and decisions that are connected to the issue of Islamic law, from the European Court of Human Rights. Nevertheless, my first contribution, I consider, will be to let the people and the scholars know that there is such an institution and that the Islamic law is being implemented in the European Union, not only in one country but in two, and maybe soon we will have the others.

I am aware that the most accepted part of Islamic Law in Europe, today, is the Islamic Finance Law. Including the implementation of the Islamic finance law would make my job easier, but that is beyond my topic. Firstly, it is a very large topic and a special research is needed for that, and secondly I want to look at the Islamic civil law only. The Islamic civil law, on the other hand, is not very well understood by the European public, and very less is known on what it consists, and how it is implemented. Whereas the Islamic finance law is more common because it directly effects the economy of a country, and directly serves the interest of a country, that is bringing the Arab money to the country, and the money of the Muslims that live in that country.

We will see below how this law is implemented in Greece, and by this case study, I aim to show how effective the international agreements may be.

1.3 Structure of the Thesis

This thesis is not a thesis in law; so I will not look at how the Islamic law is being implemented and track its judicial effect. For the same reason I will not analyze individual cases either. This thesis is an International Relations thesis, so I will analyze how the international events effected the implementation of the Islamic law in my two case studies, and what this phenomenon means in my case studies' international relations.

After the introduction in the first chapter, although it is not a law thesis, in the second chapter I will briefly introduce some of the controversial issues in the Islamic civil law, so the reader can be familiar about the subject that is discussed in this thesis. I will explain the origin of the Islamic law, and then focus on the Family and the Inheritance law a little more. It is important to explain this, I think, because there is a big misunderstanding in the academia and the public, on the Islamic law; its origin, meaning, and what it consist. The Islamic law, intentionally or unintentionally, is negatively portrayed in the Western world.

In the third chapter I will analyze the implementation of the Islamic law in Britain. Firstly I will analyze the immigration of the Muslims in Britain, and then I will continue on how the Islamic law was implemented in Britain. I will also analyze the supporters and the opposers of the implementation of the Islamic law in Britain, in the third chapter.

In the fourth chapter I will analyze the implementation of the Islamic law in Greece; its origin, the importance of the international treaties; the history of the Muslim communities in Greece; and also explain the most debated topic today: the problem about the election of the Mufti.

The fifth chapter is based on the international relations of Greece and Britain, and the implementation of the Islamic law. In this chapter I will analyze the IR effects of the implementation of the Islamic law in Greece and Britain; I will also look at the IR drives for the implementation of the Islamic law in my two case

studies; and finally I will talk about the effect of the implementation of the Islamic law in Britain and Greece on the Muslim minorities there. I will also analyze the effect of the Muslim minorities in these countries' foreign policy. Here I will focus mainly on the discourse of the political and social leaders, especially in Britain, to try to understand the drives and the effects of the implementation of the Islamic law. I will also use some researches and polls to be able to measure the integration and satisfaction of the British Muslims. The reason why I focused mainly on Britain rather than Greece is because the Muslim minority has very little effect, if any, on Greek foreign policy except towards Turkey; whereas in Britain the Muslim minority started playing an important role in British foreign policy.

Finally I will make concluding remarks where I will summarize my main arguments, make a brief comparison of my two case studies, and as a contrasting case I will briefly look at the situation of the Muslim minorities in Europe and what is being done to integrate them.

CHAPTER 2

A Short View of Contextualizing the Controversial Issues About Islamic Law

This chapter aims to contextualize the controversy about Islamic law by providing an overview of the Islamic law.

I will shed light on the origin of the Islamic law, how the Islamic law functions and what Islamic law includes; and the two subcategories: the Family law and the Inheritance law; because it is needed to have some information on Islamic law and the two particular topics, which will be discussed in the following chapters. It is necessary to be familiar with the main concepts of Islamic law in order to understand why some politicians see as necessary to implement Islamic law on the one hand and on the other, some politicians are reserved on implementing the Islamic law. Britain and Greece are the two countries, which I will look at.

2.1 The Origin of the Islamic Law

In order to understand what is Islamic Law and what is the logic behind it, I will start with the origin of Islamic Law. In other, words I will mention about the main sources of Islamic Law and how the Islamic Law is structured.

The reason of doing so is that the Islamic Law, also called Shariah,[1] "is understood as a Law with God at its center", and it is different from the Law done by man (Rauf, 1998: 58). In the Law written by man, the religious rules do not exist,

[1] In meaning Shariah means Law, as in general usage, not Islamic Law as a particular meaning. But, recently Shariah is used to differentiate between Islamic and Western laws, where Shariah is synchronized with Islamic law and thus took the meaning of the Islamic law. In this thesis I will use the world "Islamic Law" but occasionally I may refer to it as "Shariah", interchangebly, to mean Islamic Law. For further information, you can refer to: Hamidullah, 1993: 98.

there are only rules regulating the relation between the state and the citizen, and the relations between citizens. When we look at the Islamic Law, we see that it consist of religious rules together with the civil rules, in the Islamic Law religious rules go hand in hand with the civil rules (Rauf, 1998: 58; Kamali, 2008: 14). In order to understand this, I will shortly explain the structure of Islamic Law.

Islamic Law is divided into two parts: the first part deals with the religious rules, which is also known as the Private Law; and the second part is the one dealing with the civil rules, known as Public Law.

The Private Law cares for the obligation of a person towards God. This part includes worshipping, fasting, the pilgrimage (hajj), taxes (zekah), charities (sadaqat) and the affairs of the hereafter, "which regulates the relationship of man with his Creator" (Kamali 2008, 17; Kamali 2006, 38). It has a vertical structure, where a third person is not present, because the Private Law deals just with ones relations with Allah. In this research the religion is not the area of interest, but I wanted briefly to explain what the first part of the Islamic Law is about. It is important to mention it because Islamic Law is a law, which combines all the aspects of human life, religion, politics, economy and moral, "just as the human personality cannot be separate into religious, political and economic segments" (Kamali, 2008: 18), so law cannot be separate, according to Islamic Shariah.

The second part of the Islamic Law, the Public Law, is the one I will mostly analyze and comment further in this research. The Public Law has a horizontal structure, referring to the relations between humans and the "interests of mankind", which include the following subtopics: Criminal Law, which includes crimes like murder, theft, etc.; Family Law, dealing with marriage, divorce, inheritance, etc.; and Transactions, which deals with property rights, loans and debts, deposits, etc. (Rauf, 1998: 5-6).

My thesis will focus on the second part of the Islamic Law, that of the Public Law, and make emphasis on two topics of law: the Islamic Family Law and the Islamic Inheritance Law. I will not analyze the implementation of the Islamic

Financial Law, although it is the most implemented part of the Islamic law in Europe and elsewhere, because this topic needs a separate research, and is far broader then my analysis here. I will also look at the Islamic perspective on Human Rights, but very superficially. Focusing on these subcategories, I will not look at their judicial effect; rather I will look at their effect on the state-society relations, the relations in the society (society-society relations), and the relations between the Muslim society and the state judiciary system, in my case studies.

As I already mentioned above, Islamic Law in essence is different from the Law written by human beings, because it does not reflect only the horizontal relations in the state, that between people, but also the relations between the individual and his Master. Another specific, and very important, characteristic of the Islamic Law is that it is not prepared by politicians but by Islamic jurists and it is independent from the authority of the ruler. This characteristic divides the powers in the Islamic state from the beginning, where the politicians take part in the executive branch, whereas the jurists take part in making the laws, and they do not interfere in each other's work. In the Islamic Law, the jurists do not differ between "the ruler" and "the people", rich and poor, educated and non-educated, or between Muslims and non-Muslims. A judge shall judge justly, "without fear or favor" (Doi, 1984: 5), because irrespective of the economic status of a person and of the person's religious preferences, everybody is one, under Allah's protection (Doi, 1984: 5-6; Kamali 2006, 190).

The Islamic Law then covers every field of Law, public or private, national and international, wider then the Western laws (Rauf, 1998: 59). But, the Western states have difficulties, and prejudices, when it comes to Islamic Law, although it covers more then the laws they have, because it is a law by God, not by human beings. From one side, there is division between the religious rules and the civil rules; but on the other side, we see that in the daily life, religious rules and civil rules are practiced together. The reason is that Islamic Law is based on Islamic ethics and not just on the Private Law; also the Public Law is inspired by the Islamic sources. Apart from civil laws that the Western world accepts, Islamic law includes laws and

we can better say suggestions on good behavior, good deeds, and morale, which are not included in secular western laws today.

2.1.1 The four primary sources of Islamic Law

The primary sources of Islamic Law, in a hierarchical way, are: the Quran, which is given by Allah, and accepted as the word of Allah; the Prophet's Hadith, where we can read His sayings, commentaries, and suggestions; and in the third and fourth place are the sources of the man-made, the general consensus (consensus of opinion) (ijma); and analogical reasoning (ijtihad) (Kamali, 2008: 16; Rauf, 1998: 52). The Quran and the Hadith are given priority, but after these two sources, importance is given to Ijma and Ijtihad, which are universally accepted by the Muslim jurists from the different schools, because the roots of these sources are also the Quran and the Hadith (Rauf, 1998: 73). Nevertheless, we can understand that differently from what some Western scholars argue, in Islamic law human interpretation and the needs of specific time and place are also taken in consideration very seriously. We can understand that the Islamic law is not a homogenous law that takes everything as given, but leaves place for interpreting every situation differently according to the Quran, the Hadith, and the circumstances of the time and the place, of the situation we might be in.

Let us briefly analyze the four sources of Islamic law, starting with the Quran, as the divine source; the Hadith, as a role-model; and the Ijma and Ijtiihad, which are interpretations of the Islamic ruling according to the time and reason.

2.1.1.1 The Quran

The Holy Quran is the "Word of Allah" and the last message, which Allah sent to all human beings by his last Prophet Muhammad and "transcending all limitations of time and space". The Quran is kept in its original tongue until todat, without any revision adding or canceling something of the original text. All around the world the text of the Quran is the same. If a part or the whole is changed, it is not

accepted to be a Quran, "because one of the foremost conditions for accepting as such is that it conform to the text used in Uthman's Musaf" (Al-Azami, 2009: 13). Earlier I said that Quran is the primary source of Islamic Law. What I mean is that in the Quran, there are around 500 verses, which mention legal commands (rulings instead of injunctions) like, marriage, polygamy, divorce, contracts, loans, deposits, punishments for crime, inheritance, equity, liberty, laws of war and peace, fundamental human rights, judicial administration, state etc. (Doi, 1984: 7). The details given in the Quran about these issues are very open for interpretation. It just gives the framework and the logic of the legal rulings, and based on the information in the Quran and in the Hadith, there is opportunity for interpretation by the Islamic jurists. The legal injunctions, which are mentioned in the Quran 14 centuries ago, are legal injunctions, which are functional even today. This makes Islamic Law effective and attractive even in our days.

2.1.1.2 The Hadith

The second very important source of the Islamic Law is the Hadith. This is the second pillar after the Quran, important for the Islamic Law and the life of every Muslim, because it includes the saying and the practice of the Prophet Muhammad (Doi, 1984: 49)

The term Hadith, comes from the expression hadith Rasulullah, which means

> a news report, or story, about anything the Prophet Muhammad said or did, including if he saw or heard something and said something or remained silent." The word haddatha means "to speak" and therefore the term hadith has an emphasis on speech, or the report about something, although the term hadith also refers to an event, an occurrence. Thus the term hadith is often used in this context in three senses: one is a report about something that the Prophet said or did; the second sense is that of the speech of the Prophet; and the third the act of the Prophet. The Hadith refers to the totality of Hadiths and it is defined as everything he said or did, regardless of its value as a teaching to be followed by his followers. (Rauf, 1998: 147).

This source is very important as the Prophet was sent as an example for the human being, so it is important that we keep bounded to the logic and method of the

Prophet, as an example on how to interpret the Quran, and how to live accordingly. While the Quran gives a general framework and explains the logic behind being and judging, the Hadith gives us more details on how we shall interpret the Quran and how we shall behave according to the situation we are in. Nevertheless, the Hadith are also open to further interpretation according to time and place, which gives the need for Ijma and Ijtihad, in the Islamic Law.

2.1.1.3 The Ijma (Consensus of opinion)

Consensus of opinion is used when on the ruling of a particular event the Quran and the Hadith do not give a clear ruling, when they are open for interpretation. The one who have the right of giving consensus of opinion are the scholars or jurists of the Muslim community, who are experts on Islamic law. They are also supposed to know well the Quran and the Hadith, because based on the interpretation of the main sources; they shall seek a consensus (Rauf, 1998: 64). When in the primary sources the exact solution of the problem is not written, the Quran and the Hadith are flexible enough to permit the Islamic jurists and the experts on the Islamic Law to find a consensus, which is not in contradiction with the Quran and the Hadith.

The consensus of opinion became a practice after the Prophet Muhammad passed away and after the Quranic text was standardized (Doi, 1984: 68; Hamidullah, 1993: 274). Today many opinions of earlier scholars are taken in consideration when one makes an Islamic judging, but other consensuses of opinion today can also be added.

2.1.1.4 The Ijtihad (legal reasoning; analogical reasoning)

Ijtijad is a very important source of *Shariah,* after the *Quran* and the *Hadith*. The main difference between *ijtihad* and revealed sources is that *ijtihad* proposes a continuous process of development, whereas revelation of *Quran* and the *Hadith,*

discontinued with the demise of the Prophet Mohammed. Hashim Kamali (2006) explains Ijtihad as "the principle instrument by which to relate the Quran and the Hadith to the changing condition of society" (159). Analogical reasoning (ijtihad) works in a similar principle like the consensus of opinion (ijma). When neither the Quran nor the Hadith gives a clear ruling on a particular problem that a man is facing in his daily life, the analogical reasoning takes place in finding a solution. Like the consensus of opinion, the analogical reasoning shall not contradict with the Quran and the Hadith and a solution of the problem shall be found from those two main sources (Doi, 1984: 7, 77; Hamidullah, 1993: 121, 272).

Different from consensus of opinion, where a group of qualified scholars on Islamic Law are deciding on the ruling of a particular event, legal reasoning is practicing (mainly) by individual jurists (Kamali, 2006: 60).

Both ijma and ijtihad play a significant role in the Islamic law to be functional in different places at different times, and to preserve its practice. Thanks to the flexibility of the Quran and the Hadith, which give just a mainstream of the legal injunctions, and with the help of the consensus of opinion (ijma) and legal reasoning (ijtihad), the Islamic Law will be effective even in the "changing condition of society" (Kamali 2006, 159).

Two of the most important principles of Islamic law, namely personal reasoning (*ijtihad*) and general consensus (*ijma*) can be conducted, from beginning to end, by the jurist without depending on the participation of the government in power. *Ijtihad* and *ijma* manifested the nearest equivalent to parliamentary legislation. As such *ijma* could be initiated by individual jurists, concluded and made binding on the government without the latter's participation. *Ijtihad,* on the other hand, needs unanimous decision of the Islamic Scholars of the community. Neither *ijtihad* nor *ijma* were institutionalized and have remained so to this day. Although the jurist who carries the *ijtihad* is independent and free from government, he has obligations to act according to the merits (Kamali, 2006: 60).

2.1.2 Human Rights and the position of Minority Rights in Islamic Law

Normally when there is debate in the Western world related to Human Rights or to Minority Rights, it is always referred to the Muslim World and stressed out that in the non-Western countries, human rights do not exist. However, I would like to mention the fact that Islam is giving much importance to the human rights and this topic takes special place in the Islamic Law. Before explaining the Minority Rights from Islamic perspective, I will introduce to you the Islamic law approach on human rights.

In the Islamic understanding, human rights are represented by two schools. One of them is the communalist school, according to which the human rights are granted just to Muslims and they speak mainly about the rights of citizen or constitutional rights. According to Communalist Muslim Jurists, "all rights are gained and granted by the law" (Senturk, 2005a: 76). The other school of thought is the Universalist school of Islamic jurisprudence. According to the jurists representing the Universalist school, the human rights are for all the human beings (*adamiyyah*) and all human beings have equal rights no matter what their "class, language, religion, and ethnicity" is (Senturk, 2005a: 72). The Universalist school represents the idea that there is no difference between Muslims and non-Muslims and that there are six basic rights, known as "axiomatic principle of law" or the "objectives of law" (Senturk, 2005a: 78), or also is referred to theses rights as inborn rights. These six basic rights are:

- Right to life
- Right to religion
- Right to family
- Right to property
- Right to freedom of expression
- Right to honor (Senturk, 2005a)

The six basic rights mentioned in the Islamic Law are given to all the humanity according to the interpretation of the universal school and since the

minorities are also human beings, they have also the right to practice the six axiomatic principles of Islamic Law (Senturk, 2005a: 78). The Islamic Law divides the Minority Rights into two: the minority rights given to individuals and the minority rights given to the community (Senturk, 2005a: 71), which shows us that in the Islamic tradition one can ask for its minority rights as an individual and as a part of community, which represents a minority group, and the recognition of a groups' religious law is such a right, which is granted by the Islamic law itself.

The Human Rights topic and its position in the Islamic Law is very important and a very broad topic, which is another topic of research and beyond this thesis. However, I wanted to briefly introduce with the subject since in my other chapters I will speak about the Muslim minorities living in Europe. While briefly explaining Human Rights in Islamic Law I wanted to stress mainly on two things: the first one is that the human rights mentioned in the Islamic Law are compatible with the human rights in the Western world. In the Islamic tradition the rights of minorities are discussed and protected for so many centuries in comparison with the Western world, which started to give importance for the rights of minority after the World War II, with the establishment of the Universal Declaration of Human Rights (UDHR). In the UDHR the six basic rights, known as *ismah* in Arabic, are mentioned. However the right to life, religion, reason, family and honor were firstly discussed in Islam as an ideology. These are innate rights, which "are considered to have been born with each and every individual person" (Senturk, 2002: 47), and since these rights are granted to the humanity (*adamiyyah*), they cannot be debated and objected. The second thing on which I want to stress about the Human Rights in Islamic Law is that it gives rights of minority to individuals and to community.[2] In the Western world, the rights of minorities are seen as collective minority rights like in UK or as individual minority right like in France.

In the above pages I have talked about the origin and the sources of Islamic law. Due to many misunderstandings and lack of knowledge, on where Islamic law comes from, there are some who think that the Islamic law is written somewhere in

[2] For more information on the human rights in Islam, please refer to: Senturk, 2005a; Senturk, 2002; Senturk, 2005b

the Middle East, like in Iran, and if we want to use it, or implement it, then we can take it and read it. On the other hand, there are some who think that the Islamic law is written in the holy *Quran*. This underestimates the Islamic law, because although it takes the main idea from the *Quran*, Islamic law gives importance to other sources as well. It is not a single and written law, but is open for interpretations by Islamic jurists, according to time, situation, and place that the ruling must be made, of course always referring first to the *Quran*, then the *Hadith*, and then the *Ijtihad* and *Ijma*. It is in this respect that Islamic law, as Islam, is not homogeneous in all the issues (but its core is one). It is in this respect that we have different schools of Islamic jurisprudence, and all of them are accepted. They do not differ only on the interpretation of Islamic law, but also on their world view on Human Rights, International Relations, and alike.

Let us now see the Islamic Famaily Law and the Islamic Inheritance Law, which are two of the branches of the Islamic law that are implemented in Britain and Greece.

2.2 Family Law

Even though Islamic Family Law is written some 1500 years ago, the issues, which are included in the Islamic family law, are the same issues, which concern the family relations in our modern time. Before starting my research on Islamic Law I had very little knowledge on the issue, but by continuing to read and understand the philosophy behind it, I was surprised with the liberal perspective of the Islamic law, which has God in the center, but emphasizes the importance of family, the rights and the positive discrimination of women, the protection of children, and alike. My previous knowledge was maybe on the prejudices that a lot of us have on Islamic law, due to misinformation we get every day from the media, and for this reason I found it important to briefly explain Islamic law, especially civil law.

Islamic Family Law is a very broad subcategory of the Islamic Law, but I will only talk about the topics which are necessary to know for my further writing. The

topics in which I will look at are: marriage, divorce, and polygamy. I decided to stress on marriage and divorce, because these are the two issues, which are the most common activities practiced in the society. However I decided to include also polygamy in my discussion because in the Western world it is a very popular topic, which is mis-introduced to the western people, and what comes first in their mind when one mentions Islamic law is: "Muslim men have the right to marry four women", but do not explain the reason behind this right. I give importance to polygamy because I think it is important to clarify what is the stand of Islamic law in this issue, the logic behind it, and the conditions for such an issue.

2.2.1 Marriage in Islam

I will start with the position of family and marriage in Islam and I will continue with the other topics in the Islamic Family Law.

Different from the teachings of Christianity, where the religious leaders are forbidden to marry, the situation in Islam is very different and the religious leaders get married as well (Doi, 1984: 121). In Islam, family and marriage are two very important concepts. Different from the Christianity where marriage is not required, in Islam marriage is encouraged (favored) on religious, social and moral basis (Jawad, 1998: 30). Islam is a religion, which takes care not just of the soul but also of the needs of human beings. In other words, Islam is a religion, which is harmonizing one's life by keeping balance between the spiritual and the physical (Doi, 1984: 121), and this makes one a complete human being. In Islam there is no option to choose whether to take the spiritual path or the physical path, rather the two paths must go parallel with each other. One of the examples on how the direction of the two paths is going on the same stream rather than separately is marriage. This is because Islam recognizes peoples' spiritual, metaphysical, being; and the physical being, where everyday activities and interactions with other people occur. The philosophy under this is that a person does not have to choose between two ways of life, spiritual or physical, a person shall live both, at the same time, at different levels.

Islam recommends people to marry, because the family is the root of the Islamic society (Doi, 1984: 115). Society and respect, as well as honor, are very important in Islam, components that every person, male or female, must bear, protect, and try to advance them. Marriage is a pillar that symbolizes the strong bond and commitment of persons to being respectable, having honor, and being bonded with the society. In Islam, marriage is not seen as a promise between the couples only, it is a promise given to God, as well. This is because in marriage there is devotion, and it is a completely righteous and encouraged act in Islam (Jawad, 1998: 30). The rules of marriage in Islam aim to regulate the functioning of the family where both the husband and the wife can feel comfort, security, love, and relatedness between one another, in the family, and towards God. As every good deed, every service to humanity, every effort, every good word is a worship of the Creator, in marriage these elements are very important, because the marriage itself is a worship to Allah (Doi, 1984: 116), and good deeds in marriage, good words to one another, and good service to humanity are highly respected, firstly because they directly mean worship to Allah, and secondly because defending and saving marriage, and making it more beautiful, means that you are taking care of an institution that Allah wants to see beautiful.

As I mentioned above, the sources of Islamic Law give some guidelines on how people shall live better. The same is the situation with the duties of husband and wife on how they have to behave towards each other. The duty of the husband towards the wife is to respect her, appreciate her good features and express his love towards her. His responsibility in the family is "protection, dealing with the outwardly matters" (Doi, 1984: 117), being good father and heading the family. On the other hand the wife is also supposed to respect her husband, to value his good features and show her love towards him. When it comes to family, the function of the woman is to raise the children, to educate them, to take care of the housework, and to keep the harmony of the family (Jawad, 1998: 36; Doi, 1984: 117).

As it can be seen above, men and the women have their roles in the family. The position, which they take in the family depend on their biological characteristics. Since the man is physically stronger, his main role is to protect and provide the

family with the needs for living. While the woman is more sensitive, she looks after the house and takes care for the spiritual and moral education of the children. However it does not mean that women cannot work. In respect of work, according to Islamic Law, the women have the same right to work as the men, but "in an Islamic society the wife is not expected to be pushed to work to gain money" (Doi, 1984: 117), in other words, the women is free to work if she chooses so by herself, not forced by her husband, as she has right of "not-to-work" if she doesn't want to. Women have economic independence in Islam, and they are encouraged to own, save, invest, and distribute their wealth according to discretion. This position of women is based on Quranic principles, under the teachings of *Zekat* (Jawad, 1998: 7).

The duties of husband and wife towards each other and the family are explained well by the sources of Islamic law, firstly to teach us how a family must look; and secondly to have a decent society with ethics and values. Before going to the issue of divorce, let us briefly see the view of Islamic law on polygamy, and the practice of polygamy in general.

2.2.2 "When" and "Why" polygamy is permitted by the Islamic Family Law

Even though nowadays the Western world is criticizing the practice of polygamy in the Islamic world, the polygamy, which means the marriage with more than one wife, is not a new event. In the ancient times, before Islam to come, polygamy was practiced in the regions of Egypt, Persia and China (Jawad, 1998: 43), but also when you look at the Jewish and Christian religious scriptures, you see that polygamy was an accepted way of life (Doi, 1984: 144), before and after Islam was revealed. In Islamic tradition polygamy is accepted but it is limited to four marriages at most, which is not the case in the other traditions, and this permission is given in special cases, restricted by the Quran (Jawad, 1998: 50; Doi, 1984: 145). Normally Islam claims that "monogamy is an ideal form of marriage" (Jawad, 1998: 50) and discourages the practice of polygamy unless certain conditions necessitates it (Jawad, 1998: 50), and these conditions are limited to special situations, like times of war.

May be you can come up with a question: than why there is not such a practice in the Christian religion? The answer, which Haifaa A. Jawad gives to that question, is that:

> It is important to stress that Christianity did not introduce monogamy to the Western world, nor was it reinforced out of a need for social reform. Rather, monogamy was the only legal form of marriage in the Western society to which Christianity was first introduced. This was further strengthened by the fact that a strong tradition of formal monogamy was prevalent in Greece and Rome. Also, the fact that Christianity took root among the least wealthy free classes, who could not afford polygamy, further reinforced monogamy. (Jawad, 1998: 44)

In Islam the recommended form of marriage is monogamy, but in certain conditions, men can take more than one wife. In the following one page I will try to explain the cases in which the Islamic law jurists agree that polygamy is permitted.

There are cases in which polygamy is accepted but with certain strict conditions. First and foremost, the husband needs to take permission, from his first wife if he wants to marry another one, and only with her acceptance he can marry another woman. The men shall love and treat all the wives equally and not less important the men must have good economic standard of life in order to look after their wives' needs (Doi, 1984: 145-147).

With these duties of the men that he is supposed to treat all his wives equally, shows us that Islamic Family Law doesn't give the right of having more than one wife, easy. The men must be sure that what he gives to one of the wife, he can give the same to the others as well; he must consult his first wife and take the permission beforehand. So, polygamy in Islam is not an automatic right, and is not such a common practice in the Islamic societies, as it has difficult conditions.

After I mentioned briefly what are the requirements for a men to have the chance to have more than one wife, let us turn to the situations in which polygamy is permitted, according to some scholars if the above written conditions are fulfilled and the below situations occur: when the wife is not able to give birth; when the wife

is having a serious illness; when there are too many widows, especially during times of war or right after the war; when the wife is disobedient; when the husband cannot satisfy his sexual needs[3] (Jawad, 1998: 48; Doi, 1984: 146)

We may ask the question if the Muslims who have more than one wife fulfill these conditions. I argue that because of the mis-interpretation of polygamy many Muslims forget the perquisites that need to be fulfilled in order to have more than one wife, or the conditions when that is permitted. I cannot put all the Muslim men under one category but we can almost certainly claim that there are Muslim men, who misuse the right of polygamy by practicing it without the reasons and the requisites that are mentioned in the Islamic law, and likewise we cannot take the Muslim men who practice polygamy as representatives of the Islamic law, and the Muslims in general.

Unfortunately in the Western world, everyone talks for the right of having four wives and nearly no one talks about conditions to the practice of polygamy in Islam. However we shall be aware of the fact that in most of the Christian countries there is a mistress practice going on in the society (Doi, 1984: 148), which is a silent way of polygamy.

After seeing the importance of marriage, the encouragement of monogamy, and the conditions of polygamy, let us turn to the divorce in Islam and its conditions.

2.2.3 Divorce - Talaq

Even though marriage and family are important segments of the Islamic philosophy and marriage is a requirement for every human being, sometimes life can come to a point in which the spouses cannot continue their life together. If it is so than a divorce takes place, which in Islamic Law terminology is called *Talaq*. Islam

[3] These are a very controversial criteria and many Islamic scholars think that these criteria are not logical and do not have a place in the Islamic law, but the debate is ongoing between them who think that these are accepted criteria that give the right to men to practice polygamy, and those who do not see them as such. For further information please see: Jawad, 1998.

recognizes that there might be such situations and divorce is permitted in Islamic Law but it is not encouraged (Jawad, 1998: 33; Doi, 1984: 169). In Islamic Family Law the wife or the husband can ask for divorce but there must be serious reasons for it. You can take the way on divorce when the marriage is not working. In such cases it is better for the spouses to separate from each other rather than quarrel because the ones who are going to be mostly affected from that unpleasant situation are the children (Doi, 1984: 168 and 192). In the Islamic traditions before the husband and the wife come to the last stage and divorce, there is period in which the spouses have the chance to try rethinking their final decision. I will not enter in detail about the right of rethinking before divorce but I think it is important to mention that such a pre-condition exists, in order to show how compatible is the Islamic Family Law with the practice which we have in the Western world. In the Western world when there is problem between the spouses, before divorce they go to marriage consultant, whereas in Islam they take a period to rethink their decision, which is limited to less than three periods of menstruation of the wife (Dio, 175-198).

It is also necessary to stress on the fact that divorce as a right was introduced with the Islamic tradition and regulated by the Islamic Family Law. When you look at the Greek history on divorce there was neither permission nor prohibition for divorce. According to the Romans religious law, divorce was not possible and in order the man to gain his freedom, he used to kill his wife. The whole subject of making divorce impossible is based on the following teachings of the Bible: “Whatsoever God has put together, let no man put asunder”, when God made them together who is then separating them (Doi, 1984: 181).

Jewish religion made the first step toward the legalization of divorce, stating “if a woman had not given birth to a child after ten years of marriage, it was essential for the husband to divorce her” (Doi, 1984: 180).

I have tried to explain the Islamic family Law, and now I will briefly explain the Islamic Inheritance Law, because these are the two important branches of the Islamic Law, together with the Islamic finance Law, that are applied in Europe today.

2.3 Inheritance Law

The terminology for Inheritance Law used in Islamic Law is *Mirath* (also called as the Law of Succession), which deals with the distribution of wealth and property of the deceased among his/her successors (Doi, 1984: 271-272). This sub-branch of the Islamic Law, which is also under the Islamic Family Law, includes rules about "who inherits and who is to be inherited, and what shares go to the heirs" (Doi, 1984: 271-272). After a person dies, not just his property is distributed among his inheritance but also his rights and obligations are transferred to his successors, which in Arabic is called *Wuratha* (Doi, 1984: 271-272).

The process of Inheritance is very important for the Islamic philosophy. The term *Mirath* (inheritance) is mentioned in about thirty-five verses of the Quran (Doi, 1984: 271) and the process of inheritance is explained with details in the Islamic law under the sub-branch Inheritance Law. The Inheritance Law gives detail information about what percentage of the share each member of the family will take (Doi, 1984: 295), however I will stress on the general rules of the Inheritance Law, because as I already mention before, the aim of my thesis is not to be a juristic thesis, but just to give some information on Islamic jurisprudence, and continue with my case studies in International Relations.

The Inheritance law is a law that does not guide just the distribution of a property among the family members but also the successors succeed to debts of the deceased. Before the successors (heirs) get their shares from the inheritance, the successor has obligation toward the deceased. The property will be distributed among the heirs according to the Inheritance Law, only after the deceased's debts are paid and after the expenses for the funeral are covered (Doi, 1984: 272).

Even though the share of the property among heirs is explained with details in the Islamic Inheritance Law there are five conditions, which are standard for all successors (Doi, 1984: 275):

1. The inheritance is not meant for men only, but women also have the right to inherit.
2. The property left behind by a deceased, however little it might be, must be distributed justly among the heirs.
3. The law of inheritance will apply to all kinds of property, movable or immovable or if any other kind.
4. The question of inheritance only comes up when the deceased has left any property.
5. The nearer relative precludes the distant relative from the inheritance. (Doi, 1984: 275)

2.3.1 Impediments to succession

Up to now I explained the right to succession but there are conditions when obstacles for individual heirs to be successors exist. Even though there is a debate among the Islamic jurists for the number of impediments to succession, the majority of them agree that there are three main criteria, based on which a heir cannot be a successor. The following obstacles are (Doi, 1984: 288):

a) Homicide: no matter whether the purpose for killing a person is intentional or unintentional, the homicide cannot be a successor (Doi, 1984: 319), the reason is that if a person is "allowed to kill and then benefit from the estate of the victims, it will encourage incidents of homicide" (Doi, 1984: 288).

b) The second obstacle for succession is 'Difference of Religion'. According to a Hadith, 'a Muslim cannot inherit an unbeliever and an unbeliever will not inherit a believer' (Doi, 1984: 289). Most of the Muslim jurists agree with this statement (Doi, 1984: 289) and also the idea that a Muslim and non-Muslim cannot inherit each other's wealth is included in the Islamic Law as well (Doi, 1984: 319).

c) The third impediment to succession is ‘Slavery’. A slave has no right to inherit and to be inherited because a slave does not own any property (Doi, 1984: 291).

I have tried to very briefly explain some parts of the Islamic law, which are the parts of the Islamic law for which the debate on the Islamic law is being made in Europe today. These parts of the Islamic law deal with the civil issues, and the Muslim minorities in Europe require these parts to be implemented. Despite of the Finance Law, which is recognized by many European countries, Britain and Greece today recognize the implementation of the Islamic Civil Law in general. After the introduction of the Islamic Law, let me continue with the implementation of the Islamic Civil Law in Britain and Greece.

CHAPTER 3

The Implementation of Islamic Civil Law in Britain

In the previous chapter we shortly walked through the Islamic law, so we can have an idea on what it is about, how it is implemented, and we have learned that many "trues" that we know for the Islamic law are in fact misinterpreted. I hope that, in the previous chapter, I have contextualized the debates in Europe about what the Islamic law is, and about the fact that some parts of Islamic law are wrongly constructed in the minds of the people, and scholars, and that we continuously need to refer to the original sources so we can stay in the right track. With this thesis I do not aim to make the readers experts on Islamic law, this is why I strongly recommend the ones that are interested in Islamic law to refer to the sources I used here, and the original sources (Qur'an and Hadiths). The reason then why I talked about the origin and brief introduction to the Islamic law, is because I wanted to give an idea about what we are going to read in this thesis, what I am going to analyze.

I will show how this law is implemented in some European countries in the chapters to follow, and my goal is to come up with a thesis on whether these steps to implement the Islamic law has helped these countries to politically integrate the Muslim minorities there, and their relations with the Islamic world.

Since the Muslims today constitute one of the largest minority groups in Europe, their integration has been a topic of debate in many European countries. I choose to look at the case of Britain because Britain is a European country, member of the European Union, has a large number of Muslims living in its territory and has been one of the most open countries for Muslims, and the implementation of Islamic law has been a topic that is largely discussed there.

Academic sources on the implementation of Islamic law in Britain are very limited, firstly because this is a new topic in Britain, compared with the implementation of Islamic law in Greece and the implementation of Jewish law in Britain; and secondly there are still pro-s and con-s about the implementation of

Islamic law in Britain, the place of Islamic courts, and the hierarchical relations of Islamic courts and civil courts in Britain; consequently while these discussions go on the public media, the academia has been reluctant to write on this issue. Taking this in consideration, in this chapter my primary sources will be articles in the newspapers, which will help me to analyze the Islamic courts in Britain and whether the establishment of Islamic courts have any impact on integrating the Muslim community in Britain.

3.1 History of Muslim Immigration to Britain

Before looking at the immigration of Muslims to Britain and their impact on the British political system, I thought it will be good to firstly give some general information on how Muslim immigrants came to Europe because the path is the similar for all industrialized European states. Then I will specifically look at the Muslim migrants in Britain and what measures did the British government took in order to integrate the Muslim minority.

The first wave of Muslim immigrants in Europe started in the 1950s and 1960s (Klausen, 2007: 5; Fetzer and Soper, 2005: 2). The profile of the Muslim immigrants at that time was worker and "often single men" (Klausen, 2007: 5) coming from Third World Countries and ex-colonies of the Western powers (Fetzer and Soper, 2005: 2) with the idea that with the earned money they will go back to their families. However the reality, accepted by the Muslims of Europe, was that they were going to stay (Klausen, 2007: 5), which encouraged a 'second wave' of immigration as family members coming to Europe (Fetzer and Soper, 2005: 3). With the settlement of the labor migrants' families in Europe, the politics of the European states towards immigrants had to change. Except the political and economical rights, which they were having as labors, now the governments of the European states have to consider "their cultural and religious needs as permanent residents or citizens" (Fetzer and Soper, 2005: 3).

With the acceptance of Muslim immigrants in the territory of Europe, the idea of the West was to assimilate the Muslim migrants. But, instead of assimilation, we can see emergence of religious groupings almost everywhere to refuse assimilation. In this respect ethnic and religious minorities have been developing a variety of avoidance and resistance strategies (Yilmaz, 2002: 345), that include even ghetozation in particular parts of the country and particular parts of the city, where they live in. Ihsan Yilmaz (2002) argues that the most active resistance of these groups, that one can see, is the resistance towards the assimilative ambitions of the legal system. One of the reasons for the Europeans to fail in assimilating the migrant Muslims was, I suppose, their bond to the Islamic law, which leads the spiritual and daily life of Muslims. As I already mentioned in the second chapter, Islamic law is a law, which includes components like religion, politics, economy and moral values, norms that exist in the life of every human, and cannot be separated from each other. As Yilmaz (2002: 346) claims:

> "Islam is a system of state, society, law, thought, and art- a civilization with religion as its unifying, and eventually dominating factor. In particular, family law issues have always been, to the Muslim mind and legal consciousness, even more closely associated with religion than other legal matters, and therefore controlled by Islamic Law".

This brings us to the idea that to integrate the Muslims and make them a part of the system, the Europeans and their governments have to change their current approach (Klausen, 2007: 5) since the Muslims did not assimilate. Because of the Islamic philosophy, where Islamic law influences/regulates every aspect of the human life, the European governments faced problems of whether and how to accommodate Muslim religious practices in state institutions such as schools, prisons, and hospitals; how to develop their communities; whether to pass law specifically designed to protect Muslims against religious discrimination; and what efforts to take to prevent discrimination against them.[4]

[4] Cesari 1997; Morsy 1992; Nielsen 1999: 36-46; Ozdemir 1999: 244-259; Fetzer and Soper, 2005: 3.

Similar to the other European countries, after the Muslim labor immigrants come to Britain, they decided to take their families until 1962, when the Commonwealth Immigrants Act restriction on immigration was imposed (Klausen, 2007: 29), which forbid family reunions.

In the British case we can also see that instead of being assimilate, the British Muslims, "have re-ordered their lives on their own terms" (Yilmaz, 2002: 345). After the Muslim migrants settled in the UK, there was a contradiction between the official British law and the unofficial Islamic law, but it was believed that it is a short-run problem that will be solved after the Muslims learn and start follow the British law, the law of the land (Yilmaz, 2002: 345). In comparison with the other European states, Britain seems to not have so many problems in changing its political and legal system in order to integrate the Muslim immigrants. The reason is that Britain is familiar with the Islamic philosophy and traditions, because for centuries Britain had her colonies on the Indian subcontinent (Fetzer and Soper, 2005: 26). It is from there that Britain had contacts for centuries with Islam and Islamic law, and this way became familiar with them (Fetzer and Soper, 2005: 20-30).

When Britain saw the real situation of different groups in the country, the dominant ideas in British political ideology started to place greater importance on finding ways to best manage the relations among different groups of the population, allowing them to keep their identities, instead of transforming the immigrants into "ideal citizens" (Fetzer and Soper, 2005: 14). Such ideas meant that British political elites, from all the parties, have been more open to different cultures, ethnicities, and religions, through public policy. This commitment shows us why the state has tried to develop independent Muslim communities, by supporting multicultural education, race relation legislation, and separate Islamic schools (Fetzer and Soper, 2005: 12-16).

Fetzer and Soper (2005) also argue that in British pragmatic political tradition, political compromise is very consistent, which gives greater preference to what works than to abstract theorizing. An evidence for this political compromise is that the colonies, which were under British control, did not change their legal system,

as colonies under French rule did. For Britain, as a colonizer, it was important for the system to be effective and not pay attention whether the colony is ruled under the Islamic law or under the secular one. In fact, Britain has accepted the rule of the customary law in its African colonies where the population wanted to be ruled by that law.

With the rise in the diversity in the population of Britain, there came a lot of questions on how to integrate, or assimilate, these peoples, whose religious practices and cultural backgrounds were different from that of Britain's. Many scholars argue that the guiding principle for British policy in this issue was multiculturalism (Bleich 1998; Favell 1998; Joppke 1999, Fetzer and Soper, 2005).

This was not in opposition with the British common law tradition, which supports the religious pluralism and religious liberty rights, and the recently signed Human Rights Act gave additional legal protection to religious minorities (Fetzer and Soper, 2005: 16-17). Because of the flexible British citizenship laws, much more Muslims in Britain are British citizens, than are Muslims in Germany citizens of Germany, or Muslims in France citizens of France. Because they have more opportunities to be citizens, British Muslims have used political opportunities for activism at their disposal. Political parties have had initiatives to make direct electoral appeals to British Muslims as they participate in conventional political channels (Fetzer and Soper, 2005).

We can say that there is a better stand of the state towards the Muslim immigrants in Britain in comparison with the other European countries. The British government was and still is open to accept all conditions of the British Muslim community in order to integrate them in the system and make them part of the daily British life. Furthermore, the British government does not look at them as temporary living citizens, but as permanent citizens, who have their duties and obligation towards the state and vice versa, where the British government shall protect them.

In this part of my thesis I have talked about the immigrants in Europe in general and Britain in particular. We have seen how they came to Europe and

Britain, and what steps have been taken by Britain to accommodate them as part of the British society. In the next part, I will demonstrate how Britain accepted the implementation of the Islamic law, as a way of accommodating its Muslim citizens.

3.2 Implementation of Islamic Law in Britain

We have seen until now that Britain has been in search of ways to accommodate its Muslim citizens, as well as other ethnic and religious groups. Due to this political tradition, Britain has accepted the implementation of the Islamic law in Britain, as it does with the Jewish law.

Although the first officially recognized Islamic arbitration court in Britain was established in 2007 (Hickley, 2008), unofficially the Islamic law has been functioning in Britain since 1982, when the first Sharia Council was established (Toplansky, 2010). The criteria for the ruling of this court was that all the parties involved agree voluntarily on resolving their problems in the Islamic Court (Hickley, 2008; Toplansky, 2010). However what prompted Britain to officially recognize to implementation of the Islamic Law were the 9/11 attacks and the 7/7 bombings. Britain wanted to show to the international society and to its Muslim citizens that Britain was not against Islam and was not an enemy of Islam.

The Civitas Report has estimated that there were around 85 Sharia courts in Britain functioning from early 1980s. However these courts have been operating only under shadow or as ad-hoc courts, usually on disputes of civil jurisdiction (Hamilton, 2009).

Considering that these courts were operating, although unofficially, we can say that the concept of Islamic court and Islamic law is not too alien for the British public in general. The Islamic courts come to be officially recognized and their decisions become legally binding by the Arbitration Act, which was passed by the British parliament in 1996. The Act gives permission to the parties of dispute to go to

an impartial tribunal to resolve their disputes (McSmith, 2009) through a method called “alternative dispute resolution” (Hickley, 2008).

This legal re-structure of the place of Islamic courts in Britain have made them so popular that people from the British government and civil society institutions started discussing the Islamic courts and their power to resolve civil cases like family disputes, financial disputes, and domestic violence (Taher, 2008).

But how are these Islamic tribunals/courts established and how do they function? Who are the lawyers and experts of Islamic law in Britain? Since 2007, the Sharia courts in London, Manchester, Bradford, Birmingham, and Nuneaton, have been operating under the coordination of the Muslim Arbitration Tribunal (MAT), which is a network of Sharia courts, established under the 1996 Arbitration Act, by lawyer Sheikh Faiz-ul-Aqtab Siddiqi. Provided that they do not conflict with the British law and that all the parties choose to be judged by these courts, the courts working under the Muslim Arbitration Tribunal have the right to make legally binding decisions, which can be enforced by the British authorities (Taher, 2008). The lawyers and experts of MAT, which runs alongside the British legal system, are scholars and lawyers at Hijaz College Islamic University in Watling Street, Nuneaton (Reid, 2008).

The cases that come to the MAT usually include divorce and inheritance. There have been more then 100 cases in the first year of the implementation of the Islamic law, which included many different topics, from divorce and inheritance, to nuisance neighbor disputes (Taher, 2008). In an interview for Sunday Times, Siddiqi explained that until September 2008 they handled six cases of domestic violence, too. In all of these six cases, the Shariah judges ordered the husbands to take anger management classes from community elders, and after they successfully managed their anger the women withdrew their complaints to the police who were involved in the investigation (Hickley, 2008; Taher, 2008). This is very important, as the rulings by the Islamic courts did no intend to punish one of the parties, but to resolve a problem, and in these cases six families were saved, and the couples were given second chances.

These rulings have not been without critics however, some criticisms include the ones that claim that women victims will be pressured to go to Shariah courts, where the husbands will get lesser punishment, than if the case were submitted to a mainstream criminal court (Hickley, 2008). As an answer to these critics we can see that women are in no way victimized by Shariah courts, and it is not true that the husbands get less punished in the Islamic courts, in comparison to British civil courts. In the case of divorce, the Islamic courts punish the husbands more harshly than the British mainstream courts. One of the main issues that these critics should keep in mind is that the Islamic law does not consider punishment as its goal, but seeks reconciliation. In the above cases of divorce, we saw that the Islamic court did not aim to punish anyone but wanted to save the marriages, and the families; as is mentioned in the second chapter. This is because for Islam, family is important and the Islamic law's aim is to save this institution until it is no longer possible to keep the family. Another very important point is that the two parties must agree to go to the Islamic court, which is what makes this type of courts arbitration courts.

In another example in Nuneaton, a Muslim man's estate was split between three daughters and two sons, where each son received twice as much as each daughter, although in a mainstream court all the siblings would have been treated equally (Hickley, 2008; Tahrer, 2008). This was their choice of handling the inheritance dispute, as the Islamic law gives more to the son than to the daughter, not because Islam or the Islamic law favors men, as some may argue, but because according to the Islamic law, as I explained in the previous chapters, after marriage the husband is required to finance the needs of the wife and the children, which usually brings the women and men to equal owning.

Another very important point is that the Muslim Arbitration Tribunal has received applications from non-Muslims as well. These courts started to be preferred not only by the Muslim British citizens but also by the non-Muslim British citizens as they are less cumbersome, more informal, and faster, than the British legal system (Hamilton, 2009). The MAT officials said that approximately five percent of its cases involved non-Muslims, and a good example of this is:

> "a non-Muslim Briton took his Muslim business partner to the tribunal to sort out a dispute over the profits in their car fleet company. "The non-Muslim claimed that there had been an oral agreement between the pair," said Mr Chedie. "The tribunal found that because of certain things the Muslim man did, that agreement had existed. The non-Muslim was awarded £48,000." (Hamilton, 2009).

As we can see, the implementation of Islamic law in Britain has accommodated the British Muslims, and there is an increase in the number of the Muslims who apply to the Islamic courts for ruling. Nevertheless, we can also see an increase in the number of non-Muslim applicants, who want their cases to be handled by the Islamic courts for various reasons. Although we can observe that this is a positive step towards accommodating Muslims in Britain, this process was not easy and there are different reactions of the political elite, divided between those who support the implementation of the Islamic law and the ones who oppose it. In the next part of this chapter, I will analyze the arguments of the supporters of and opponents of this process in Britain.

3.3 Supporters and Opponents of the Islamic Law in Britain

As I mentioned above, the Islamic courts are officially accepted in Britain as arbitration tribunal courts. However, there are still discussions on whether the decisions of the Islamic court should be binding or not, and there are ones who argue that the Islamic courts should not exist at all.

3.3.1 Opposition to the Islamic Courts

Some of the politicians who oppose the existence of Islamic courts, and the implementation of the Islamic law in general, mainly argue that Britain has an already functioning ligal system, which is equal and the same for everyone, and that is the British court system. They argue that Britain shall not accept any other types of courts in the country as it recognizes parallel systems to the British law system, which is one for all (White, 2008; Doughty, 2009; Edwards, 2008). Other politicians and public figures argue that Islamic law is not equal for everyone and it

discriminates women (Taher, 2008; Hickley, 2008). Some opponents go even further by calling Islamic courts as "brutal institutions where zealots in hard-line Muslim states pass down draconian punishments" (Bell, 2008).

Let us see some examples of the discourse that some British politicians used to argue against the Islamic law in Britain.

Dominic Grieve, the opposition's shadow home secretary, claimed that "British law is absolute and must remain so", and called the courts operating in criminal and family law cases as "unlawful" (quoted in White, 2008).

Another politician, Patrick Marcer, who is a Tory Member of Parliament for Newark and chairman of the Commons counter-terrorism subcommittee, also claimed that "we have an established law and a judiciary. Anything that operates outside that system must be viewed with great caution" (quoted in Doughty, 2009).

Finally, Philip Davies, also a Tory Member of Parliament for Shipley, claim that these courts "entrench division in society, and do nothing to enrich integration or community cohesion. It leads to a segregated society... We can't have a situation where people choose the system of law which they feel gives them the best outcome. Everyone should be equal under one law" (quoted in Doughty, 2009).

As we can see above, the politicians who oppose the Islamic courts in Britain mostly refer to the parallelism in the British judiciary system. Nevertheless, they do not know, or they pretened they do not know, that the Jewish courts, Beth Din courts, function from much earlier times, and that these privileges are not exclusive for the Muslims only.

Now let us see some of the supporters of the Islamic courts in Britain, and analyze their arguments.

3.3.2 Support of the Islamic Courts

The Islamic courts in Britain became highly controversial and debated after the Archbishop of Canterbury, Rowan Williams, shared his opinion that in Britain, in the future, the establishment of Islamic courts is something "unavoidable" (Taher, 2008). Many scholars and politicians share this view of the Archbishop Williams, but some other scholars also argue that the Islamic courts work on the basis that both of the parties want to be judged by the Islamic law, and that the Islamic courts and Islamic law do not want to establish parallel systems in Britain. The ones who argue for the existence of the Islamic courts, on the other hand, claim that the existence of the Jewish Beth Din courts did not establish a parallel judiciary system in Britain, and that the Islamic courts will deal only with civil issues, not criminal issues, that is under sole jurisdiction of the British judiciary system.

Former Dewsbury South councilor Imtiaz Ameen, claimed that "where Islamic law operates, and does not clash with the UK law, it could not be described as a different legal system. Muslims are not trying to create a separate legal system" (Dewsbury Report, 2007)

Inayat Bunglawala, a spokesman for the Muslim Council of Britain, argued, "organizations should be free to conduct arbitration under Sharia, provided that it did not infringe British law and was a voluntary process" (quoted in Hamilton, 2009). She also claimed "The MCB (Muslim Council of Britain) supports these tribunals. If the Jewish courts are allowed to flourish, so must Sharia ones" (quoted in Taher, 2008).

As we can see, the supporters of the Islamic courts and the implementation of the Islamic law in Britain, argue on mainly two points: Firstly, Islamic law does not aim at establishing a parallel legal system in Britain. It is based on voluntary process, on the issues that do not conflict with the British legal system; and secondly, Islamic law and Islamic courts shall exist and be implemented in Britain, as do the Jewish courts and the Jewish law. This, they claim, does not posse a threat to the British legal system, and these courts are not exclusive for the Muslims, as the Jewish courts has existed far earlier than the Islamic courts.

A very crucial support for the establishment of the Islamic courts in Britain came from the head of the judiciary in Britain, the Lord Chief Justice, Lord Philips, who stated that the Islamic courts could resolve family and financial disputes (Taher, 2008).

Conclusion

The question of whether the Islamic courts are lawful and whether and how shall they operate to give binding decisions, is highly discussed by politicians, religious leaders, and citizens representing different parts of the society, in Britain. However it is very important to point out that in Britain, the Islamic courts are not the only ones, which are functioning under the Arbitration Act of 1996. There are other religious courts, which operate in Britain, under the protection and the privileges of Arbitration Act of 1996. These courts are the Jewish Beth Din courts, which similar to Islamic courts resolve family and business disputes. But, the difference is that they function for more than hundred years and previously the courts were operating under a precursor to the act (Taher, 2008; Hamilton, 2009; McSmith, 2009). So, this right shall not be seen and evaluated as a privilege given only to the Muslim community in Britain. Britain and British society is familiar to such a function, and this has made the British judiciary system an all encompassing one, and I strongly believe that it shall continue to be so.

At the same time these Islamic courts cannot be considered as a parallel judicial system to the British mainstream judicial one, because they operate under the British legal system, and they cannot come in conflict with the British legal system. These courts give decisions only if all the parties voluntarily agree to go to them for disputes, and their decisions cannot be against the British law, and this is why they usually deal with everyday-disputes of civil law (mainly family and business disputes), and not with heavy criminal cases that involve many parties and heavy punishments. These courts do not get involved in cases that would directly conflict British laws (Murphy, 2008).

Finding alternative ways to accommodate its religious and ethnic minority citizens in general and Muslims in particular is not something new in Britain. Even before legal steps were taken to implement the Islamic law in Britain, some of its features were already incorporated in the British law. Firstly, the Food Standards Authority allowed animals to be slaughtered according to Islamic practices; secondly, Islamic law compliant financial products have been created in Britain, so that Muslims can satisfy their modern needs while complying with the Islamic law, as the Islamic law does not allow interest to be charged on money[5]. Similar examples can be multiplied on the Islamic as well as other traditional features that were incorporated into the British law, which again makes the British legal system unique.

[5] www.contactlaw.co.uk/sharia-court/html (accessed, 17.02.2011). This website gives answers to questions on British legal system, by specialists on particular fields, and they also give answers to questions that have to do with Islamic law, by Islamic jurists, but it also puts people in contact with Islamic courts, and Islamic specialists, in Britain, or any other court they might be interested in.

CHAPTER 4

Implementation of Islamic Civil Law in Greece

The case of Britain and the case of Greece have similarities and differences when it comes to the implementation of Islamic Law. In the previous chapter, we discussed the case of Britain and the reasons of implementing the Islamic Law. In this chapter, I will analyze the Greek case before making the comparison afterwards, in the conclusion part.

In the previous chapter, we saw that in the British legal system, the implementation of Islamic Civil Law is something that came, after a considerable number of Muslims immigrated to Britain. The practice of Islamic Civil Law existed on the territory of Greece long before the formation of the Greek state (Tsitselikis, 2004: 402). Regarding Greece case I will also give brief information on the history of the Muslim immigrants, but before mentioning about the immigration process in Greece I have to start with the formation of the Greek state because from that time on there has been a Muslim minority group, which lived in Greece. The reason for the Islamic Civil Law acceptance in Greece is based on international treaties. The root of this tradition is connected with the fact that before the Greek state was established, there was an Ottoman rule, where the majority of the population practiced Islam. However after the Greek state was formed (1829-1831), since there were more Christians than Muslims, the predominant religion in the country became Greek Orthodoxy, whereas Islam became the religion of the minority (Tsitselikis, 2004: 402; Velivasaki, 2010: 12).

4.1 International Treaties: The implementation of Islamic Civil Law in the case of Greece

With the establishment of the Greek state there was a traditional Muslim minority of Greek citizenship, which made Greece to undertake the obligation to consider them as equal citizens, regardless of their background, and to grant them equal access to public posts and offices. Greece had to respect the personal security

and property of the Muslims, according to Protocol 3 signed in London in February 3, 1930 (Tsitselikis, 2004: 403-404). Another right, which is granted to the Muslim minority of Greek citizenship, is that they can be trialed in Muslim religious courts, a right mentioned in the Treaty of Istanbul of 1881 for the first time, signed by Greece and Turkey (Tsaoussis and Zervogianni, 2007: 210). Nevertheless, the Treaty of Lausanne is the treaty that gave most of the rights that Muslim minorities in Greece have, and non-Muslim minorities in Turkey have today (Lausanne, 1923). With the establishment of the new state, according to the Treaty of Lausanne, Greece authorities have an obligation to protect and give rights to its Muslim citizens, with the condition that the religious rights are not against the principles of the Constitution and they are not in contradiction with the international human rights law (Lausanne, 1923; Boussiakou, 2008: 13).

The Treaty of Istanbul in 1881 is the first international treaty that regulates the obligations of Greece, under international treaties, towards its Muslim population. It was this particular treaty that emphasized that Greece shall recognize all the civil and political rights of Muslims, equally to the rest of the Greek citizens. This was the first time that a religious minority is internationally protected (Tsitselikis, 2004: 404), and the first time that religious minorities' protection enters in the domain of the international relations.

But, in fact the most important treaty, today, which has significant impact for the implementation of Islamic Civil Law, is the Treaty of Lausanne of 1923 (Lausanne, 1923; Tsitselikis, 2004: 406; Tsaoussis and Zervogianni, 2007: 211). The Treaty of Lausanne is an international binding treaty, which is related to the Greco-Turkish relations and includes legal protections for the Muslims of Greece in Western Thrace and non-Muslim population in Turkey, in the articles 37-45 (Lausanne, 1923; Tsitselikis, 2004: 406). According to this treaty "all matters pertaining to the personal status of the minorities would be resolved in accordance with their religious customs" (Lausanne, 1923; Tsaoussis and Zervogianni, 2007: 211).[6] Another important right that the Treaty of Lausanne gives to the Muslim community of Greece is that they choose their own Muftis, and their family and

personal disputes can be resolved based on the Islamic Law. However nowadays there is a dispute between the state and the Muslim minority of Greek citizenship for the appointment of the Muftis, which became a politicized issue (Boussiakou, 2008: 1). For the debate on whether the Muslim community should chose or the state should appoint the mufti, I will discuss later in this chapter. But, before that, I will firstly give a short historical background for the Muslim immigrants in Greece.

4.2 Historical background for the Muslim immigrants in Greece

In Greece the present Muslim minority is divided into two groups. The first is the Muslim minority of Greek citizenship, which I already mentioned above. They are Muslims, living on the territory of Greece from the Ottoman time. The second group is the recently settled Muslim immigrants coming in the Greek state after 1990's, including people from the Arabic states, Turkey, Iran, India, Pakistan and Bangladesh (Tsitselikis, 2004: 207). Their number is around 200000 and Tsitselikis refers to this Muslim immigrant group as 'New Islam'. Even though two of the groups represent the minority practicing Islam in Greece, the Greek authority behaves differently with the two groups of the Muslim community.

The reasons for Muslim immigrants to come in Greece after 1990's are the following international events: "the collapse of the communist regimes, the political instability in the Kurdish areas of the Middle East and the strengthening position of Greece as the nearest European Union country in the region" (Tsitselikis, 2004: 403). The 'New Islam' Muslim minority group is concentrated mainly in Athens and they are not granted any special rights like the Muslim minority, who are Greek citizens from the establishment of the Greek state. The reason is that the Greek state does not look at the immigrants as a minority group, which need special rights, because no matter that they live in Greece, the minority group of 'New Islam' are part of their national communities and also the immigrants are considered as part of the wider Islamic community (Tsitselikis, 2004: 410). Even though the Muslim immigrants can come from a country where the official law is the Islamic Law, the 'New Islamic'

[6] For the articles in the Lausanne Treaty that deal with the religious minorities in Greece and

group can not bring their case in front of the Mufti (Tsaoussis and Zervogianni, 2007: 220), and only the citizens whose ancestors were in Greece from before 1900s can have this right.

The number of the Muslims in Western Thrace, who are of Greek citizenship from before 1990s, is around 145, 000 (http://www.remth.gr) (Huseyinoglu, 2010: 3). Tsitselikis called them the 'Old Islam' (Tsitselikis, 2004: 403). This Muslim group is the one, which is living on the territory of Greece from Ottoman time. As I mentioned before, after Greece became an independent state this Muslim population continued to live in the new state, where the dominant religion was Greek Orthodoxy and the Muslims became part of the minority groups, which "are the only minority within Greece that is officially recognized by the Greek state" (Huseyioglu, 2010: 5). From that time on, to the Muslim minority living in Western Thrace is referred to as minority group and based on the international treaties, they may resolve their disputes according to the Islamic Civil Law. Because of the international treaties there are special laws, which regulate the status of the Muslims of Greek citizenship (Tsitselikis, 2004: 403).

This inequality made to the 'New Muslims' is based on inconsistency of Greek courts. They are inconsistent firstly because the same right that is refused to the Muslims that came from the Islamic world, is given to a group of Muslim-Greek citizens living in Greek territories, from the Ottoman time; and secondly, this is restricted only in one region, Thrace, and even the 'Old Muslims' who reside outside of Thrace are not given this right (Tsaossis and Zervegianni, 2007: 218-223).

The Muslim-Greek citizens are mainly agrarian community, mostly living in the Rodopian and Xanthian prefectures. These people practice their constitutional rights and they also practice their minority rights, which are "protected by bilateral and international agreements that Greece signed and ratified" (Huseyinoglu, 2010: 3). For all these decades, what made the community of 'Old Islam', keep their Muslim identity and not assimilate, in comparison with other minority groups, was their strong spiritual relation with Islam, which after the Cold War period most 'Old

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Turkey please see Appendix 1.

Muslim' started to associate themselves with ethnic Turkish identity (Huseyinoglu, 2010: 5). Compared to other minority groups in Greece, like the Albanians, it can be argued that one of the main obstacles to the assimilation of the Muslim identity in Western Thrace was their dual affiliation with Islam and for the vast majority during the Cold War years, an attachment to ethnic Turkish identity (Huseyinoglu, 2010: 5).

Because of their attachment to their Turkish identity, one can say that there is no competing version of Islam in the Western Thrace, today. The 'Turkish' type of Islam is the common understanding of what constitutes Islam, in the Western Thrace. This is why the society has remained homogeneous in the Western Thrace and they have kept their way of live, and believe, away from the influence of Arab Muslim networks. Although the religious elite of Western Thrace, could play an important role for the future of the Muslim immigrant communities in Greece, they choose not to be engaged in the needs of the Athenian Muslim immigrants, that came from countries of the Middle East, or that came afterwards. The only thing that the Muslim elite and NGOs push for is the establishment of a mosque and a Muslim cemetery in Athens. And they argue this in both regional and international platforms (Huseyinoglu, 2010).

Although the right of solving their civil disputes according to the Islamic Civil Law, is given to the Ottoman-Muslim minority in Greece, this process is not without problems. Below we will see the debate on the election of the Muftis of Greece, which in theory they are the leaders of the Muslim community in Greece.

4.3 The Mufti debate and its implication on the implementation of Islamic Law from IR perspective

The Mufti debate in Greece is not just an internal issue, which affect the domestic policy of Greece but also it has its international impact. Since I am doing an IR research, I am interested in the international dynamic involved in this debate, because it is an issue that concerns both Greece and Turkey, with the signing of the Treaty of Lausanne.

Even though the Islamic Law and the Islamic Courts were normal practice for the Western Thrace regions with the establishment of the Greek state, in 1990 Greek government introduced Law No. 1920/1991, which gave permission to the Greek government to appoint the Muftis of the Muslim community (Georgoulis, 1993: 61-67 in Greek) (Boussiakou, 2008: 9; Valivasaki, 2010: 5). The reason is that "the Greek state has been wary of the emergence of an institution that could assume a representative function with real authority vis-à-vis Athens" (Huseyinoglu, 2010:7).

Nowadays the Mufti issue is still a subject for conflict between the state and the minority, because the Mufti plays a significant role in the public life of the 'Old Muslims'. The argument of the Greek state is that Muftis shall be appointed by the state and not elected by the Muslim minority because the Mufti is not just a spiritual guide but a public officer who deals with marriages, divorce and inheritance disputes based on Islamic Law, as well (Valivasaki, 2010: 5; Boussiakou, 2008: 11; Gergoulis, 1993: 67). However in the region of Western Thrace, in Xanthi and in Komotini in each of the place, there are currently two Muftis: the Greek government appoints two and the Muslim minority chooses the other two (Boussiakou, 2008: 10).

On one hand, Greek state does not recognize the Muftis that are elected by the Muslim population of Western Thrace, but just the Muftis, which are appointed by the Greek government. On the other hand, the majority of Muslims, living in Western Thrace recognizes the Muftis elected by the people and considers them as their "legitimate religious leader", but do not recognize the Muftis appointed by the state (Huseinoglu, 2010: 13). The Muslims living in Western Thrace are in touch with the state Muftis only if there is a legal procedure to be made: like in cases of divorce and inheritance (Huseinoglu, 2010: 13), for official paper works only.

The state authorities do not recognize the people-elected Muftis and "some of them have been prosecuted for the illegal use of religious symbols" (Valivasaki, 2010: 10). The two elected Muftis, Serif and Aga, applied to the ECHR; Serif in 1997 and Aga in 1999, versus Greece (ECHR, 1997; ECHR, 1999; Huseyioglu, 2010: 8). In the two of the cases "the ECHR concluded that Greece had violated the rights to freedom of thought, religion, and conscience" (Huseyioglu, 2010: 8) according to Article 9 of ECHR (ECHR, 1997; ECHR, 1999; Valivasaki, 2010: 10).

No matter the decision of ECHR, Greece did not change its policy towards the Muftis (Huseyinoglu, 2010: 8). “This contested structure leads to a number of problems a clear expressed popular will of the minority to elect their leaders in a democratic fashion” (Huseyinoglu, 2010: 8).

The reason that the Greek state is insisting on appointing the Muftis is that Greek state still considers “the Muslim minority as a security threat rather than a group whose members enjoy full and equal citizenship rights” (Huseyinoglu, 2010: 16).

Private disputes on inheritance or family matters regarding Muslim Greek citizens are examined by the local Muftis of Komotini, Xanthi and Didimotiho. In practice, alien Muslims are appealing to this jurisdiction, too. However, according to the Greek civil code, the Greek judge could apply the Islamic Law in cases regarding Muslims of non-Greek citizenship under the premise that the Islam Law is the law in force in the state of citizenship of the litigants (Tsitselikis, 2004: 417).

CHAPTER 5

Foreign Policy Implications of the Muslim Minority Issues of Britain and Greece

I argue in this thesis that the implementation of the Islamic law in Britain and Greece should be analyzed as a part of their international relations, which includes the relations with the countries and organizations out of themselves, as well as the relations with their citizens who have a different origin. In this chapter I will firstly analyze Britain, and then Greece and see if and how the Muslim minorities influence the foreign policy of these countries, as well as the daily political debates.

5.1 Britain

One can argue instigated that it is because of the events in the international arena, like 9/11 or 7/7, that the British state decided to implement the Islamic law in Britain; and that the British state decided to implement the Islamic law in Britain because of the will to regenerate good international relations with the Muslim world, and the relations with its Muslim population, by giving a positive message.

There are some events in the international arena, which effected the relationship between the British government and the Muslim community. Depending on what decision the British government makes for an international dispute, the decision can have a negative or a positive impact on the relations with its Muslim minority. For example when the USA intervened in Iraq, the British government supported the USA policy and military, which brought to tension in the relationship of the British government with the British Muslim citizens. British Muslims were against the Iraq War and highly critical of the British foreign policy towards Iraq (Archer 2009, 335).

Another international event, which also affected the relationship of the British government with its British Muslim community, are the terrorist attacks of 9/11 in

New York and Washington DC. These 9/11 attacks were unexpected not just for the USA but for the whole world, which brought frustration and confusion among the governments of every state; first concern was security and second concern for the Western countries was the integration of their Muslim minorities. As much as these attacks frustrated the western world, they worried them as well. The question was on how to respond, and what is the role of the Muslim communities that lives in their states.

In the British context, the British government stood behind its British Muslim community, but even without intention the government and the media has given signals to show Islam as a threat (Archer, 2009: 333). Nevertheless they later wanted to make it up and the Home Office Minister John Denham as well as the Prime Minister Tony Blair, stated that the terrorist attacks shall not be linked with religion (BBC News, 2008a).

The position of the British government is against the global terrorism and against the misinterpretation of the Islam but not against Islam; these were the messages that the British politicians wanted to give to the British Muslim citizens. After the September 11 event the British government aimed at developing and improving the dialogue with their Muslim community (BBC News, 29.09.2001) for two reasons according to me. One of the reasons is that the British government wanted to show its support for the British Muslim citizens and that they are not going to be blamed for the September 11 attacks (Archer 2009, 333). Since Britain was a colonial power on the Indian subcontinent, the government wanted to show that they are familiar with Islam (Fetzer and Soper, 2005: 26) and that the British government does not look on Islam as something 'evil'. The other reason is that if British government strengthens its relationship with the Muslims living in Britain and integrates them, than the risk of domestic security problems would decrease (Archer 2009, 333).

However what made the British government to manage the tension, which the Iraqi war and the 9/11 brought among the British society, is the legal system of England. British common law tradition is built upon 'religious pluralism' and

'religious liberty rights' (Fetzer and Soper, 2005:16-17). British government deals with the religious rights of the Muslims as community not individually. It was in this context that Lord Philip argued that there is a place for the implementation of religious law in Britain, because the religious freedom given in Britain is a very important element that people migrated to Britain, and lived their religion freely (Edge, forthcoming).

Another event, which made the British policy to stress more on the integration of the British Muslim citizens, is the 7/7 bombings, which happened in Britain. This event increased the fear and the confusion of the British government and people. They were frustrated to have terrorists in their domain who go against them, but they were also confused on how they shall deal with them and what kind of massage they shall give, because they feared of the consequences in security terms as well as political terms. The government then decided they should work harder to integrate the Muslims and decrease the anti-British sentiments. After this event Q-News cooperated with other Muslim organizations to promote the Islamic thought against terrorism. With the financial support of British government, this project was supported by more than 20 organizations from all around Britain. This project aimed at challenging religious justification for violence, which was popular among small group of Muslims, and tried to promote justification of peace instead (Malik, 2007).

After many surveys and researches made in between 9/11 and 7/7, the British decision-makers understood that the Muslim Britons have concerns and problems in Britain. Nevertheless some surveys conducted after 7/7 showed that Islamic law played a very important role in the life of the British Muslims, so they decided that the best way to achieve these two goals; firstly to show that Britain is not against Islam as a whole but against terrorists, who hide behind Islam; and secondly to ensure the domestic security by integrating the British Muslims; was to accept the implementation of Islamic Law in Britain, to make the British Muslims be comfortable in Britain.

What make me think this way are the debates that were going on at that time in British press, among politicians, and influential people. But, the surveys published

at that time also pointed out that the British government has started to think more seriously about implementing the Islamic law right because of the international events, although this debate has been very old.

At that point we can have a closer look at the discourse that the British intellectuals produced in the Islamic law debate in Britain.

5.1.1 Discourse on the Islamic Law Controversy

In this part of this chapter I will look at the discourse of the parties involved in the Sharia debate in Britain. I will look at their discourse to analyze what kinds of arguments have been used for and against the implementation of the Islamic law in Britain.

There have been arguments that the implementation of the Sharia does not have to do with the international events, such as the war in Iraq, 9/11, or 07/07, and that these debates were going on earlier then that. While I agree that the debate and the unofficial implementation of the Islamic law date earlier, I claim that the international events that I have mentioned accelerated the process for Britain to officially recognize the Islamic courts.

On the other hand, there are others who claim that the Muslim Britons have already been integrated and happy with the British state, consequently this would not have played a role on their integration. I also agree with them in part that the British Muslims were very much integrated in the British society, nevertheless the dissatisfaction of the British Muslims with British foreign policy has recently risen at a very high level.

To argue this I will use polls that are conducted to measure this phenomenon, and it shows us that the dissatisfaction of British Muslims with British policies, and the identification of British Muslims with their origin, was on the rise. These polls showed that this was mostly true for the young Muslims, and we can see that this has put on an alarm among the British policy makers, who, I argue, felt a need that something must be done to integrate the Muslim Briton youngsters into the mainstream British society.

The murder of Theo and Gogh in 2004, the July 7, 2005 railway attacks in London, and the Archbishop of Canterbury Rowan Williams' endorsement of Sharia in 2008 have put the Islamic law into the forefront of the media in Britain in particular and Europe in general. Debates have been going on in the media trying to define what the Islamic law is. Muslim scholars have been trying to explain the Islamic law, what it contains, and how it functions; while non-Muslims have been trying to understand, some with prejudices on the Islamic law, associating it with the amputation of limbs and harsh penal code punishments, by some Muslim states who implement the Sharia law. Others have been debating the compatibility of the Islamic law with the Western standards of human rights, and especially gender rights and equality (Fulton, 2011). Despite of alienating the Muslims, by these prejudices, the polarization of the Islamic law because of previously accepted aspects, "truths", of Islamic law, looses the opportunity of the potential that the Islamic tradition gives us to reconcile the Islamic law with the western norms (Fulton, 2011). Few non-Muslims try to really understand the Islamic law, without prior prejudices, and these prejudices, I think, make the Muslims furious, when they see this on TV, and read it in the newspapers.

To decrease the polarization that the media is making in relation to Islam and the Muslims, which has led to Islamophobia in most of the Western countries, the European Union issued a handbook that banned the terms 'jihad', 'Islamic', and 'fundamentalist' when talking and referring to terrorism, and instead offered some 'non-offensive' terms (Pipes, 2010). Similarly, the British Prime Minister then, Gordon Brown, prohibited his ministers from using the word 'Muslim' in any connection to terrorism in 2007 (Pipes, 2010). In Britain this took root in 2006, during the 'war on terror', when the Foreign Office sought to use a language that upholds "shared values as means to counter terrorists" instead of "war on terror", being afraid that the second one would inflame British Muslims (Pipes, 2010). Home Secretary Jacqui Smith, went further to describe terrorism as "anti-Islamic", while the Foreign Office has tried to describe that terrorism has nothing to do with Islam, during 2006 (Pipes, 2010). The Home Office Minister John Denham stated that the event of 9/11 should not be used for discriminating or abusing Muslims because Islam is a religion, which preaches peace, tolerance and understanding. The

Prime Minister Tony Blair also pointed out that the 9/11 attacks are terrorist attacks, which shall not be connected with Islam or with Muslims (BBC News, 2008a).

These debates sparked a lot of controversy in Britain. While some argued on the basis of prejudices they have on Islamic law, some others (although in a small number) claimed that Islamic law suffers from a 'widespread misunderstanding'. Although the media lynched these people, they continued to influence the policy makers, and the Muslims as well as non-Muslim Britons, in Britain. In a speech at the East London Muslim Center in Whitechapel, Lord Philips, the most senior judge in England and Wales said: "There is no reason why Sharia principles, or any other religious code, terms of mediation would be drawn from the laws of England and Wales" (BBC, 2008), arguing that the British law systems allows any religious code, including the Islamic code, to be used as a mediation, while also claiming that the Sharia suffered from "widespread misunderstanding" (BBC, 2008), and it needs to be rightly understood. The Archbishop of Canterbury Rowan Williams took much attention in this debate of Sharia, when he claimed that the implementation of the Islamic law in Britain seems "unavoidable" to him, and that it could in fact be very useful to bring a better degree of social cohesion (Williams, 2008; Rohr, 2008). The next day, the media went harsh over him and the Sun tabloid even labeled him as "a dangerous threat to our nation"; while the Daily Express wrote that he capitulated to Muslim extremists (Rohr, 2008). Many people from the Church of England have asked him to resign, and the media harshly criticized him. Nevertheless, what he argued is that

> if we are to think intelligently about relations between Islam and British law, we need a fair amount of 'deconstruction' of crude oppositions and mythologies, whether of the nature of Sharia or the nature of the Enlightenment, but as I have hinted, I do not believe this can be done without some thinking also about the very nature of law. It is always ways to take refuge in some form of positivism, and what I have called legal universalism, when divorced from a serious theoretical (and, I would argue, religious) underpinning, can turn into a positivism as sterile as an other variety. If the paradoxical universal right are a way of recognizing what is least fathomable and controllable in the human subject – theology still waits for us around the corner of these debates, however hard our culture may try to keep it our. And, as you can imagine. I am not going to complain about that. (Williams, 2008).

I believe that for the common understanding and the integration of the Muslims and the mainstream society in Britain, such a step is very much needed. Muslim groups have welcomed the remarks of the Archbishop's speech, calling it a right move to understand the wishes of the British Muslim community and Islam (Majendie, 2008).

The integration of Britain's 1.8 million Muslims was a very debated issue since July 2005, when four British Muslims carried a suicide attack on London's transport network, which resulted in 52 dead and many more injured (Majendie, 2008). Many polls were conducted for this purpose and some of them have been alarming. A poll, carried out by Policy-Exchange think tank, a conservative leaning organization, found that overall the Muslim community is becoming more radical and feeling more alienated from the mainstream society, although 91% still feel loyal to Britain. According to the findings, 20% of 500 British Muslims interviewed, felt sympathy with the July 7 bombers' motives. And 1% even felt that the attacks were "right". Moreover, 50% of the interviewed said that the relations between Britons and the Muslims are getting worse (Hannessy and Kite, 2006). This poll got the attention of the British media, and I think it also got the attention of the policy-makers in Britain. What is more, this poll showed that four out of ten British Muslims want Sharia law introduced into parts of the country, want Islamic schools, and wearing the veil in public. This trend, the findings tell, is much stronger among the young Muslims than their parents (Hannessy and Kite, 2006).

The comments on this poll were not late, and they came immediately. Sir Iqbal Sacranie, the secretary general of the Muslim Council in British society said: "This poll confirms the widespread opposition among British Muslims to the so-called war on terror" (Hannessy and Kite, 2006). Sadiq Khan, the Labour MP involved with the official task set up after July 2005 attacks found the findings "alarming" and agreed with Sir Iqbal that the Muslims in Britain still had a "big gripe" on British foreign policy, particularly the war on terror and Iraq. He said: "Vast numbers of Muslims feel disengaged and alienated from mainstream British society", and added: "We must redouble our efforts to bring Muslims on board with

the mainstream community. For all the efforts made since last July, things do not appear to have got better" (Hannessy and Kite, 2006).

I argue that here we can see that the British policy-makers were influenced by these findings, that they have to do something for integrating and comforting the Muslims in Britain. They have learned that the war on terror and the Iraqi issue are among the most controversial issues from the Muslim Britons. Furthermore, the findings that the British Muslims associate themselves with the motives of the bombers of 9/11 and 07/07, alarmed the politicians even more. The Shadow Home Secretary, David Davis, claimed, "it shows we have a long way to go to win the battle of ideas within some parts of the Muslim community and why it is absolutely vital that we reinforce the voice of moderate Islam wherever possible." (Hannessy and Kite, 2006), while a spokesman for Charles Clarke, the Home Secretary, argued, "It is critically important to ensure that Muslims, and all faiths, feel part of modern British society. Today's survey indicates we still have a long way to go… [but] we are committed to working with all faiths to ensure we achieve that end" (Hannessy and Kite, 2006).

These polls were highly read, and while trying to find ways on how to integrate the British Muslims, and how to make them feel a part of the society, I think that no one can disregard the findings on the will of the young Muslim Britons for the Sharia law. Taking in consideration that the findings showed that 40% of British Muslims, significantly the young Muslim Britons, want Sharia law and Islamic schools, I think highly influenced the policy makers to officially recognize the Islamic courts in Britain. This idea was supported by the public figures that claimed that the Sharia law would work on integrating the young Muslims, and as Archbishop Williams argued, applying Shari'a would help with their social cohesion (Williams, 2008). Furthermore, the Archbishop also claimed,

> Among the manifold anxieties that haunt the discussion of the place of Muslims in British society, one of the strongest, reinforced from time to time by the sensational reporting of the opinion polls, is that Muslim communities in this country seek the freedom to live under Sharia law (Williams, 2008).

The Archbishop also claimed that the recognition of the Islamic law would strengthen the state, as it would acknowledge the case for religious space. He fears that the tolerance that once seemed to accommodate different freedoms is threatened in a world dominated by a philosophy of rights (Williams, 2008; Leader, 2008).

From the Muslim camp, the scholars of Islam also supported the recognition of the Islamic courts, and they emphasized the positive effect it would have for the Muslim community in Britain. Mohammed Shaqif, the head of the Ramadhan Foundation argued, "Muslims would take a huge comfort from the government allowing civil matters to be resolved according to their faith" (Majendie, 2008). But, there is much skepticism, which the media puts in forefront, with the compatibility of the Islamic law with the British law. Nevertheless, what even then were asked for were only the civil matters to be resolved in the Islamic courts according to the Islamic law. As an answer to the authors who argued that Muslims would later want their other matters to be resolved in the Islamic courts, according to Islamic law, Dr. Suhaib Hasan, an important scholar of Islamic jurisdiction, explained that the "Penal law is the duty of the Muslim state – it is not in the hands of any public institution like us to handle it. Only a Muslim government that believes in Islam is going to implement it. So there is no question of asking for penal law to be introduced here in the UK – that is out of question" (Hugh and Jones, 2008). For the criticism that this practice would cause a parallel system to the British Judiciary system, Ibrahim Mogra from the Muslim Council of Britain argued, "We're looking at a very small aspect of Sharia for Muslim families when they choose to be governed with regards to their marriage, divorce, inheritance, custody of children and so on. […] it is not as straightforward as saying that we will have a system. We do not wish to see a parallel system or a separate system of judiciary for Muslims" (BBC, 2008).

I have thus far tried to reflect the Islamic law debate in Britain, by the discourse, to make my point that increasing demand of the Muslim young Briton for the Islamic law, and the international events, have accelerated the implementation of the Islamic law in Britain, which brought an old debate to conclusion. This acceleration came after the international terrorist attacks, when the British government wanted to reinforce its commitment to integrate its Muslim minority.

But why Britain recognized Islamic law and other European countries do not? Or what are the other methods that the other European countries want to use to be able to integrate the Muslim community? In the conclusion, I will try to comparatively demonstrate the Muslim integration debate in mainland Europe, and we can see how it is different from Britain.

Below I will explore the effects of the Greek Muslims in Greece's foreign and domestic politics, and see how different it is from the British case.

5.2 Greece

The case of Greece is different in many aspects from that of Britain regarding the implementation of Islamic law. International treaties are the causes of the implementation of the Islamic law in Greece, but unlike in Britain, the recent international events did not have any effect on the relations between Muslim minorities and the Greek state (Serif, 2011). In my research I observed that the Muslim minority in Greece have very little, if any, visible effect on the Greek foreign policy. The only effect they have is in the Greece's relations with Turkey.

The problem with Greece is that the Muslim minority in Greece is not unified and politically active. Living in villages where majority are with Turkish origin, they cannot be compared to the Muslim minorities in Britain or the other European countries. The other Muslim Greek citizens, who came from the Arab world, so-called 'New Islam', are not accepted as minorities anyhow, and they are not given any special rights. Greek political and economic instability leaves no place for consideration of the Muslim minorities' needs. In comparison to Britain and France, and other European countries, the Muslim Greeks have no major impact on Greek foreign policy, with the exception of the Turkish-Greek relations and policies, where they are considered to have a very important role. Nevertheless, the protection of the Muslim minorities in Greece is a concern of the European Union, who continuously pushes Greece to improve the situation of the Muslim minorities in Greece.

In the relations between Turkish and Greek states, the Mufti issue is also a matter of dispute. The Turkish government does not recognize the state Muftis. Turkey is supporting the cause of the people living in Western Thrace that they have the right to elect their Muftis. Turkish government openly shows its support for the elections and their support for the popularly elected Muftis (Huseyinoglu, 2010: 13). In official visits of Turkish politicians and leaders in Greece, they make a point of not meeting with the Greek appointed Muftis and they visit the popular elected ones (Huseyinoglu, 2010: 13).

But why is the issue of the Mufti an important one, and what is its relation with the IR studies? The Mufti represents Islamic Law, which in my cases is a right given to the minorities, which is a subject dealt in international relations studies. Besides that, the Mufti case in Greece was engaged in the IR agenda as the popular-elected Muftis applied to the European Court of Human Rights, twice, and won their cases according to the international treaties, but nevertheless Greece refused to respect the rulings of the ECHR, because even though the ECHR gave the ruling that the Muftis should be elected by the people, the Greek state does not recognize that ruling and still appoints its own Muftis. This issue, on the other hand, also influences the Greek-Turkish relations. These are the reasons that bring the Mufti issue out of the domestic issue of Greece, into the international relations agenda of EU, Greece, and Turkey. At the beginning this issue might not have been an international issue, because anyhow the people, according to the international treaties, elected the Muftis. But afterwards, when the Greek state started appointing its own Muftis, the Mufti issue turned into an international one.

CHAPTER 6

Conclusion

In the conclusion, besides making my concluding remarks, I will also compare the case of Britain with the case of Greece, since in Europe these are the two countries, which officially implement the Islamic Civil Law. Nevertheless, they have different approaches to the Muslim minorities, different intentions, and different policies. I will also try to briefly analyze the case of Muslim minorities in Europe in general, and see how the European states deal with this issue with the purpose of contrasting the integration policies different EU countries apply and the place of Islamic law in these policies.

6.1 Comparison: Britain and Greece cases

Greece and Britain are two cases that show many similarities and differences. Firstly, I will analyze the similarities:

- the two states are located in Europe,
- they both have Muslim minorities,
- they both are members of the EU,
- they implement the Islamic Civil Law because of their Muslim minorities,
- the international events are the causes behind giving this right to the Muslim minorities in these two European countries.

If we start from the first point, it is important to note that these two countries are in Europe because lately we can see a rise of Islamophobia, nationalism, and misconception of the Islamic law, by some European politicians. This shows us the fact that the Islamic law is present in Europe, is unknown for the majority of the elite of European states, including politicians and academicians, let alone the normal European citizens. The second point is important because Muslims have largely immigrated to Europe, and a good concentration of Muslims is in these two

countries. Nevertheless, there are different experiences of immigration of the Muslims to these two countries. What I mean with the third point is that the Islamic law is not only present in Europe, but it is present in the EU. We can see some EU intellectuals who claim that EU has a tradition, which is not compatible with the Islamic tradition, and this is one of the reasons that some politicians put forward for rejecting Turkish application and proposing a strategic partnership. Nevertheless, they must be reminded that the Islamic law, which is not implemented in Turkey, is already a part of two EU member states, and one of them has this law for nearly a century now, even before the EU was established; whereas the other one has recognized it recently. In both of the cases the Islamic Civil Law is implemented for the satisfaction of the Muslim minorities there, which I think is an important point because this shows that different juristic traditions can be applied on civil matters for minorities, and puts down the argument that there might appear parallel systems in a state jurisdiction. Finally, in this research we saw that international causes, in one case treaties and in another terrorist events, made the strongest effect for implementation of the Islamic law in these two cases. This last point is important because the implementation of the Islamic law in Greece and Britain has been analyzed only from the legal and in-state perspective, whereas I claim in this thesis, that this phenomenon should also be analyzed from the perspective of other disciplines. I tried to analyze it from the International Relations perspective, while I acknowledge that there is place for analysis from sociological, psychological perspective, as well as other disciplines.

Despite the similarities between the two countries, Greece and Britain also have many differences. The main differences can be listed in summery form as follows:

- In Greece the Islamic law is present for centuries, whereas in Britain it is a recent practice,
- In Greece the Islamic law is available only in one part of Greece, whereas in Britain it is accessible to everyone who lives in the British territory,
- Greece is internationally forced to accept such a practice, by international treaties, whereas Britain accepted it by its own will, as a

method of integrating their Muslim citizens, and decreasing their security concerns,

- In Britain the implementation of the Islamic law has a wider and greater benefit for Britain to improve its relations with the Muslim world, whereas in Greece there is no such use of it as part of a wider policy. (However it is explicit that Greece would certainly have better relations with Turkey for better treating its Muslim minority because Turkey has a special interest in the Turkish religious minority in the Western Thrace)

Now, I will shed more light on the points I listed above. In the territory of Greece, in Western Thrace, the Islamic Civil Law exists for centuries. The Islamic Civil Law functions in this region long before the establishment of the Greek state; from the Ottoman Empire. The purpose of the international treaties was to protect the rights of the minorities (communities). In Britain, on the other hand, the implementation of the Islamic law is a recent phenomenon, which shows us that the implementation of the Islamic law cannot be considered as only something traditional, but that it can be implemented in the present time as well. While the Islamic law in Greece is only implemented in the Western Thrace, where the Turkish Muslim minority lives, Greece does not give this right to the recent, new, Muslim citizens in Greece, who live in Athens or anywhere else in Greece. It does not even give this right to the Turks that went to live in Athens as well. In Britain, on the other hand, this right has been given to every Muslim citizen, but not only that. Furthermore, any British citizen, who wants to be trialed according to the Islamic Law, is given the right to be trialed as such, with no religious or ethnic prerequisite. This has helped Britain, as an important element of public policy, to improve its relations with the Muslim world, as the best ambassadors of Britain in the Muslim world, are British citizens with the "Muslim world" origin.

Today some elements in the Greek government are trying to take this right from Muslim minority in the Western Thrace. One example of that is the Mufti issue. The Greek government does not recognize the elected Muftis and instead it appoints the state Muftis, which is against the international treaties (Serif, 2011). The ECHR is also not supporting the actions of the Greek government, as we saw in the cases of

Serif and Aga. Nevertheless the Greek state has been trying to abolish such a right, but without success until today.

On the other hand, the implementation of the Islamic Civil Law in Britain is something very recent even though Muslims live in Britain for 200 years. The British government officially recognized the Islamic courts after 9/11 and the attacks in London because the government wanted to demonstrate that they are not against the Muslims living in UK. Unfortunately we cannot see the same in the Greek case, where instead of making the life of their Muslim minority easy, government is trying to take the minority rights from them. Because of these problems, which the Muslim minority has on the domestic level, they cannot play active role in the foreign policy of Greece, they can only influence the relations between Turkey and Greece.

Even though Greece was forced to give the rights of the minority by international treaties in the past, I believe it was a successful way to integrate her Muslim population in Western Thrace. For Britain, the government voluntarily chooses to implement the Islamic Law and recognize the Islamic Courts. It was a strategic move from which both the Muslim minority and the British government benefited. The Muslim minority is happy that they have the right to resolve their civil cases in the Islamic Court, but also the British government is satisfied that there is stability in the country and that with the implementation if Islamic Law, they did not just win the hearts of the British Muslim population, but also the government improved its relations with the broader Muslim world, as well.

6.2 Contrast Case: Europe

Finally, as a contrast case, I will extremely briefly talk about the case of the Muslim minorities in other European countries, how they are treated and what can be done more to integrate them. Accommodating the Muslims living in Europe became an increasingly important issue in Western Europe. With more then ten millions Muslims in Western Europe, they are considered as the largest minority group in the region. The increase of Muslims in Europe worries and pushes the Western European

countries to take steps for integrating the Muslims in Europe (Fetzer and Soper 2005).

Political and economical factors are the reasons for the first wave of Muslim immigrants to leave their motherland and to look for work and security in Europe (Ramadan, 2004:68). The Western European countries did not expect the Muslims to stay and become citizens, at the beginning, and this is why they did not give a special attention to them. By time, however, they and their families stayed there and formed their communities. These communities started to play significant role in European domestic politics as well as foreign politics. They became citizens, who have the right to vote, and the way in which the European states treat their Muslim minorities became an important factor to influence the relations of those states with the Muslim world (Klausen, 2007). Not realizing this influence of the Muslim minorities, by the European governments, I think was the reason for the "lack of concrete ideas about how to integrate Islam in Europe, in part because for decades no serious thought was given to the question" (Klausen, 2007: 81). September 11, 2001, have forced governments to think about the situation of their Muslim minorities again (Klausen, 2007).

Another reason, which influenced the position of Europe towards its Muslim minority in a negative way, was, as Ramadan puts it: "the impact of international events. Beginning with the Iranian revolution of 1979, these have had a tremendous effect on people's view of Islam in Europe and given rise to the negative perceptions, which are so widespread" (Ramadan, 1998: 1). The media took one of the most important roles for negative portraying of Islam. By showing the events in Algeria, Afghanistan, and 9/11 with dramatic outcome, the media was giving a message that the world is surrounded by the 'Islamic threat' (Ramadan, 2004:83). Because of the events happening in the Muslim world, they affect not just the politics on an international level but also these events affect the domestic politics of the Western countries. Even before the conflicts in the Muslim world to emerge and before the September 11 attacks, Muslims immigrants were having hard time in Europe (Ramadan, 2004:71), but these events increased their discrimination, which resulted in their dissatisfaction with the policies of the European countries. Muslims took

defensive position (Ramadan, 2004:86), while the Western world realized that instead of isolating its Muslim population or assimilating them, it is better to change their strategy toward the European Muslims. The European states, in their Euro-Muslim agenda put integration of the Muslims as their primary goal (Klausen, 2007:98). The European states agreed that they shall integrate their Muslim minorities but there was a debate in each state on the domestic level, on what strategy the government must choose towards the Muslims. Some governments decided to use policies that try to assimilate their Muslim minorities and make them accept the Western values, and some other governments decided on policies to encourage Muslims to keep their religious values (Fetzer and Soper, 2005:3).

The differences in the way how particular European state shapes its policy toward the integration of the Muslim minority and their religious needs, firstly depends on the status of religion in constitutional and legal level, and the relation between the state and church, together with its historical context. The relation between state and church plays a significant role in the policy towards Muslims in Britain, France and Germany (Fetzer and Soper, 2005:13). In the case of France and Germany, the constitution requires that the state shall not interfere with religion. However the state shall protect the citizens, as individuals to practice their religion (Fetzer and Soper, 2005:16-17). France and Germany protect the rights of the individuals but do not give collective rights. They give rights to a Muslim as a citizen to practice his or her religion but do not recognize the right of the Muslim community as such to collectively practice their religion in terms of judiciary needs.

The case of Britain is very different in comparison with France and Germany. British common law tradition supports the idea of 'religious pluralism' and 'religious liberty rights'. Furthermore, with the signing of the Human Rights Act, Britain officially recognized protections of the rights of religious minorities (Fetzer and Soper, 2005:16-17). British government is concerned with the religious rights of the Muslims as community, as well as individual. The reason that Britain is putting into practice more flexible relation between the government and it Muslim community is that in Britain there is a close state-church relation. The church has an important

voice in the British politics and public policy, which motivates the Muslims to ask for their religious rights to be publicly recognized (Fetzer and Soper, 2005:18).

Another factor that makes British Muslims different from the Muslims in other European countries is the dominant ethnic origin of the Muslim Britons. The British Muslims are mainly represented by Muslims coming from Bangladesh, Pakistan or India, who represent traditional way of Islam (Klausen, 2007: 95). Countries like Pakistan, India and Bangladesh are practicing Islamic Law; whereas in France the dominant group of Muslims is from North Africa where legal secularism prevails. Swedish, Danish, and Dutch Muslims are of mixed origins and there is no dominant ethnic group (Klausen, 2007). Consequently, the ethnic origin of the Muslim minorities in different European countries may also play a significant role in different strategies of those countries to integrate their Muslim citizens, because their accustomed habits, needs and requests are different.

The Muslims in France showed to be willing to take more political responsibility and have a role in French politics, in France's foreign and domestic politics. Some commentators of French politics even argue that French foreign policy is a hostage to the French Muslim community who must be satisfied, and who played the main role in France's decision not to intervene in Iraq (Laurence and Vaisse, 2006: 203-204). These comments come due to the refrain of French government to intervene in Iraq, but also due to the rally of political parties to include Muslim candidates in their elections, that outnumbered more then 123 candidates altogether so that they can attract 5 million Muslims in France (Laurence and Vaisse, 2006: 195).

One of the main issues that is discussed among the Muslims in France, and that influences the behaviors of the French Muslim community, is the issue of French policy towards Palestine-Israel conflict. Especially the youngsters are highly influenced by the situation there, and polls have shown that French policies towards Palestine are very much important to the Muslims in France. A poll that was conducted in the high schools with Muslim students has shown that this issue is the

first one in the list that will politically integrate the Muslims and make them take action (Laurence and Vaisse, 2006: 207-208).

On issues other than Palestine, the French Muslims seem to be very much similar to the mainstream French public especially in the Iraq case, where 94% of the French Muslims, and 92% of the French society approved the policies of the French government (Laurence and Vaisse, 2006). The most important fact is that the French Muslims list French foreign policy among the least concerned issues! What they have at the top of their concern list is medical service, housing system, education, immigration rights, the institutionalization of Islam, the fight against racism, discrimination, and alike (Laurence and Vaisse, 2006: 201-211). As much as the political, social, and economical aspects of integration are considered; the importance of religion must also be considered, when speaking about integration of the Muslims in France and Europe in general (Laurence and Vaisse, 2006).

Most of the scholars, Muslims and non-Muslims, agree that a new type of Islam, Euro-Islam, needs to be established. This meaning that it would integrate the Muslims in Europe, who are from very different backgrounds, and much different type of Islamic traditions (Klausen, 2007). I agree with some scholars who argue that the European Muslims must be integrated through 'home-grown' institutions, which would reflect the culture and the will of the Muslims in Europe, and stop importing the imams from foreign counties (Klausen, 2007; Ramadan, 2004). The only thing that is needed to do it is political will. The Euro-Islam would not change the Islamic practices; rather it will accommodate European culture and values, in Islam. As long as we have different Islamic traditions, Euro-Islam would accommodate all the European Muslims under a roof that will also reflect her cultural values. It is very important to address the needs of the Muslim community in Europe, because in a very quick time they will achieve wealth, as they work hard; they will increase their population; and this population will be used to exercise pressure on European countries' policies, especially foreign policy vis-a-vie Middle East (Klausen, 2007).

Conclusion

Implementing the Sharia, or offering such a discussion, is a very brave step taken by Britain. Firstly because the word 'Sharia' has been associated with all the evils in the human rights, such as abuse of women, physical punishments, etc; and secondly because even some of the western Muslim scholars do not dare to mention the word, fearing that it would downgrade their work altogether (Ramadan, 2004: 31). Anyhow, no Muslim scholar argues that Europe shall be turned into a caliphate where the Islamic law will be implemented in all the spheres. What they ask for is to exist as a minority and to live, by choice, according to their religious law, in civil cases (Klausen, 2007: 99). The Muslim scholars rightly argue that the state does not have the right to forbid the implementation of a religious law, moreover if the Jewish law is recognized. What we need to understand is that Islamic law and sciences have an important role not only in the everyday life of the Muslims, but on the spiritual side of the Muslims, as well as identity (Ramadan, 2004: 68). As long as the country that the Muslims live in respects and acknowledges their presence, the Muslims are commanded to respect and submit to the positive law of that country (Ramadan, 2004: 95).

Overall, the whole of Europe want to integrate their Muslim minorities as well as improve the relations with the Muslim world. While France and Germany have chosen to try other methods, Britain has gone for a more secure way, answering the calls of the Muslim youngsters, and recognizing the implementation of Islamic Civil Law. Although it is beyond this research, I must mention that all of the European states, especially Britain and France, are trying to implement the Islamic Finance law to increase economic and financial cooperation with the Islamic world, improve their relations, as well as to gain from their investments and finances. While Britain is more successful in this (Edge, forthcoming), France is still dealing with its national regulations to be able to implement this type of finance, but they have been trying hard to do it, as they feel that they need the money from the Islamic world as well as better relations.

Britain is a good example, that other European countries must take lessons from. I think that this step taken by Britain shall be taken by all the European states,

to integrate their Muslim communities, and have better relations with the Muslim world. I can certainly argue that the implementation or the recognition of the Islamic law in all of the European countries will be a good step to integrate the European Muslims into the mainstream society, and ease the tension between the Muslims and the governments of some European countries, that has been in the increase in the last years. The case of Britain in this thesis has shown that the implementation of the Islamic law is a good and important step that should be taken by the European countries if they want to integrate their Muslim minorities. I predict that the sooner or later they will take this step, but I advise that as sooner the Islamic Civil Law is implemented, the better for the European countries to integrate their Muslim citizens.

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APPENDIX ONE

Section III of the Lausanne Treaty

PROTECTION OF MINORITIES

ARTICLE 37.

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

ARTICLE 38.

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

ARTICLE 39.

Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

ARTICLE 40.

Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

ARTICLE 41.

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

ARTICLE 42.

The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by special Commissions composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in agreement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

ARTICLE 43.

Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes a violation of their faith or religious

observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

ARTICLE 44.

Turkey agrees that, in so far as the preceding Articles of this Section affect non-Moslem nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of the other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

ARTICLE 45.

The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.

(for the full text of the treaty please see: Lausanne, 1923).