UDK: 347.62+348.97 (497.6) "1878/1918"
Original scientific paper DOI: 10.51237/issn.2774-1180.2020.19.151

MARRIAGE ACROSS BOUNDARIES: MIXED MARRIAGES AT THE SUPREME SHARIA COURT IN HABSBURG BOSNIA AND HERZEGOVINA

Ninja Bumann
Institute for East European History, University of Vienna
ninja.bumann@univie.ac.at

Abstract: The article examines the regulation and negotiation of mixed marriages, that is marriages between persons of different religions, at Sharia courts in Bosnia and Herzegovina under Austro-Hungarian rule. Based on the analysis of documents from the Supreme Sharia court, an appeal body installed by the new Habsburg administration in 1879, this article investigates how the limitation of the competence of Sharia courts led to misunderstandings and disputes regarding the solemnization of mixed marriages. The text illustrates that mixed couples did not only transcend religious boundaries but also crossed institutional and legal, as well as social, constraints. In general, Sharia courts were banned from registering mixed marriages, which often led to strategic conversions or concubinage. While the state authorities increasingly regulated conversions and, thus, not everyone was allowed to adopt Islam, also mixed couples living in concubinage often faced legal problems around the religious affiliation and the legal custody of their children born out of wedlock. In 1912, however, the legal situation changed when a specific regulation by the Provincial Government allowed for the solemnization of mixed marriages by a *kadi*. However, as will be demonstrated in the article, this did not directly lead to a greater acceptance of mixed marriages by society.

Keywords: Mixed marriages, Sharia courts, Islamic law, Bosnia and Herzegovina, Austria-Hungary, conversion, concubinage

Apstrakt: Članak istražuje regulisanje i pregovaranje o mješovitim brakovima, odnosno o brakovima između osoba različitih religija na šerijatskim sudovima u Bosni i Hercegovini pod austrougarskom upravom. Na osnovu arhivske građe Vrhovnog šerijatskog suda, žalbene instance koju je nova habsburška administracija uspostavila 1879. godine, ovaj članak ispituje kako je ograničenje nadležnosti šerijatskih sudova dovodilo do nesporazuma i sporova u vezi sa sklapanjem mješovitih brakova. Tekst ilustrira da mješoviti parovi nisu samo prelazili vjerske granice, već i institucionalna i zakonska, kao i društvena razgraničenja. Općenito, šerijatski sudovi nisu bili ovlašteni za registriranje mješovitih brakova, što je često dovodilo do strateških konverzija ili konkubinata. Međutim, državne vlasti su sve više regulisale vjerska preobraćenja i nije svima bilo dozvoljeno prelaziti na islam. Mješoviti parovi koji su živjeli u konkubinatu ipak često su se suočavali sa pravnim problemima oko vjerske pripadnosti i zakonskog starateljstva nad djecom rođenom izvan braka. Situacija se značajno promijenila 1912. godine kada je Zemaljska vlada donijela naredbu i dozvolila da kadije sklapaju mješovite brakove u određenim slučajevima. Međutim, kao što je prikazano u članku, ova odluka nije neposredno dovela do većeg prihvatanja mješovitih brakova u društvu.

Ključne riječi: Mješoviti brak, šerijatski sudovi, islamsko pravo, Bosna i Hercegovina, Austro-Ugarska, konverzija, konkubinat

Introduction

Mixed marriages in Bosnia and Herzegovina, that is marriages between two people of different religions/confessions, are in historiography often depicted as highly politicized relationships. Historical accounts on Bosnia and Herzegovina under Austro-Hungarian rule often highlight a few well-known cases of mixed marriages, such as the incident around Saja (Saima) Đukić (also Ćokić, Đokić, Gjukić or Gjugić): The young Muslim woman from the village of Blizanci near Mostar fled her father's home in February 1881 in order to convert to Catholicism and then marry her catholic boyfriend Andrija Kordić. This sparked fierce protest among Muslims from Mostar, who saw an alleged abduction and forced conversion in the case.[1]

[1] This case also highlights that there was a lack of clear regulations on how to deal with such cases. The county administration (*okružni ured/Bezirksamt*) interrogated the bridal couple as well as

Beyond such particularly politicized cases, the issue of mixed marriages in Habsburg Bosnia and Herzegovina has been only marginally examined. Indeed, one reason might be that non-conflictual social, and specifically matrimonial, relations are rarely treated in archival sources, whereas highly disputed incidents have left many traces in archival documents.[2] Hence, more studies are dedicated to mixed marriages in the later periods, and for instance, Fedja Buric and Mustafa Hasani have both studied the debates on mixed marriages among the Islamic elite in the 1930s.[3] Besides, there are several studies dedicated to mixed marriages in Bosnia and Herzegovina or generally in Yugoslavia after World War II.[4]

the responsible catholic clerics but did not take any further measures. The local Sharia court in Mostar, in contrast, considered to be competent for regulating this case and sentenced Saja Đukić due to apostasy to imprisonment. Saja Đukić was briefly arrested by the gendarmerie but soon released by the county administration. The Provincial Government (*Zemaljska vlada/ Landesregierung*) then informed the Sharia court in Mostar that conversions were not within their scope of competence. See Fedja Buric, *Becoming Mixed. Mixed Marriages of Bosnia-Herzegovina during the Life and Death of Yugoslavia*, Dissertation, University of Illinois, Urbana, Illinois 2012. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.957.6472&rep=rep1&type=pdf (accessed: 24. 06. 2019), 15; Robert J. Donia, *Islam under the Double Eagle. The Muslims of Bosnia and Hercegovina. 1878-1914*, New York: Columbia University Press, 1981, 93-98; Heiner Grunert, *Glauben im Hinterland. Die Serbisch-Orthodoxen in der habsburgischen Herzegowina 1878-1918*, Göttingen: Vandenhoeck & Ruprecht, 2016, 188; Petar Vrankić, *Religion und Politik in Bosnien und der Herzegowina (1878-1918)*, Paderborn: Schöningh, 1998, 650-651. See also Arhiv Bosne i Hercegovine (ABiH), Vrhovni šerijatski sud (VŠS), box 16, sign. B 1881/27.

[2] See the assessment of Church documents by Heiner Grunert, which generally mention only marriages that were conflicting with traditional, canonical, or state norms. H. Grunert, Glauben, 146.

[3] Fedja Buric has written a longue-durée analysis of mixed marriages, in which he examined also a few cases of mixed marriages and their negotiation at Sharia courts under Habsburg rule at the beginning of the 20th century, but devoted a larger part to the debates in the 1930s. Mustafa Hasani has studied the application of Islamic law in cases of mixed marriages during the 1930s. See F. Buric, *Becoming Mixed,* and Mustafa Hasani, *Tumačenje i primjena šerijatskog prava o mješovitim brakovima u Bosni i Hercegovini u periodu od 1930. do 1940. godine*. Sarajevo: El-Kalem, 2014.

[4] Sociological studies on ethnic intermarriages in Former Yugoslavia have been provided, for instance, by Nikolai Botev and Snježana Mrđen: Nikolai Botev, "Where East Meets West. Ethnic Intermarriage in the Former Yugoslavia", in: *American Sociological Review*, vol. 59, No. 3, Washington: American Sociological Association, 1994, 461-480; Snježana Mrđen, "Etnički mješani brakovi na prostoru bivše Jugoslavije, 1970-2005", in: *Zbornik matice srpske za društvene nauke,* no.131, Novi Sad: Matica Srpska, 2010, 255-267.

Ondřej Žíla examined mixed marriages in the context of the nationality policy, and specifically

Only a little attention has been paid so far to the analysis of mixed marriages in the context of the legal and administrative practices in the religious institutions under the Austro-Hungarian administration, which were responsible for regulating family and marriage issues.[5] Although mixed marriages occurred between members of all religious and confessional communities, the present article aims to investigate the regulation and negotiation of mixed marriages at Sharia courts during the Habsburg rule.

After the occupation of the Ottoman provinces of Bosnia and Herzegovina by Austria-Hungary in 1878, the newly established Habsburg administration incorporated the hitherto existing rights regime. Consequently, the Sharia courts, which dispensed justice according to Islamic law, continued to administer issues regarding marriage, family, and inheritance among the Muslim population of Bosnia and Herzegovina.[6] However, the integration of these Sharia courts into the Austro-Hungarian administration led to several modifications of the traditional court system: The Provincial Government (*Zemaljska vlada/Landesregierung*) in Sarajevo, which was the highest administrative body in Bosnia and Herzegovina itself, enacted between 1878 and 1900 a total of 387 laws for the regulation of Sharia courts. The most fundamental modification was the establishment of a Supreme Sharia court in Sarajevo in July 1879,[7] which acted as an appeal

of the "Muslim Question" in Yugoslavia: Ondřej Žíla, "Sebeidentifikace, statistika a její interpretace. Etnicky smíšená manželství, Jugoslávci a muslimská otázka v Bosně a Hercegovině v kontextu národnostní politiky socialistické Jugoslávie", *Historický časopis*, vol. 61, No. 3, Bratislava: Historický ústav SAV, 2013, 513-532.

[5] An exception is Heiner Grunert's study on the Serbian Orthodox community in Herzegovina in which he also examined the issue of mixed marriages, albeit with a focus on marriages between Serbian Orthodox and Catholic persons. See H. Grunert, *Glauben*, particularly 197-213.

[6] Corresponding to a population census from 1879, 38% of the Bosnian-Herzegovinian population were Muslims, whereas 43% were Serbian Orthodox and 18% Catholics. Besides, there were significant Jewish communities in bigger towns. Each confessional group administered justice according to their respective ecclesiastical institutions. See Robin Okey, *Taming Balkan Nationalism. The Habsburg "Civilizing Mission" in Bosnia. 1878-1914*, Oxford: Oxford University Press, 2007, 8.

[7] This appeal body was first called "Sharia Court of Second Instance" (*Šerijatski sud druge molbe/Scheriatsgericht zweiter Instanz*), and was only in 1883 officially renamed as Supreme Sharia Court (*Vrhovni šerijatski sud/Scheriatsobergericht*).

body for decisions from the first level Sharia courts at the district level (*Šerijatski sudovi prve molbe*).[8]

The archival documents from this Supreme Sharia court, which are located today in the State Archive of Bosnia and Herzegovina (*Arhiv Bosne i Hercegovine*), can provide an insight into the dealings of marriages between a Muslim and a non-Muslim by Habsburg officials, *kadi*s (Sharia judges)[9] and the local population. Nevertheless, it has to be mentioned that an analysis based on such court documents can only encompass cases treated before the Supreme Sharia court, which in its function as an appeal body usually dealt with more complicated, and thus, rather unusual cases. Furthermore, the Sharia courts generally handled only cases of mixed marriages between a Muslim male and a non-Muslim woman due to the stipulations based on Sharia law.[10] In total, the author could identify and analyze 43 cases on marriage issues of mixed couples between 1879 and 1918 in the archival holdings of the Supreme Sharia court.[11]

By analyzing these court cases, the present paper addresses four issues in particular: The first part of this article investigates the impact of the unclear definition of competences brought by the new Sharia court regulation in 1883 on the registration of mixed marriages. The following section examines the role of conversions as a strategy for legalizing a mixed marriage despite the existing legal hindrances. Moreover, the third part elaborates on

[8] See Mehmed Bećić, "Novi pogled na transformaciju šerijatskih sudova u Bosni i Hercegovini. Da li je 1883. godine nametnut kolonijalni model primjene šerijatskog prava?", in: *Godišnjak*, Sarajevo: Pravni fakultet Univerziteta u Sarajevu, No. LX, 59-82, 2017, here 65-66; Enes Durmišević, "Šerijatski sudovi u Bosni u drugoj polovini XIX stoljeća", in: *Anali,* Zenica: Pravni fakultet Univerziteta u Zenici, No. 12, 2013, 75-89, here 84-85; Fikret Karčić, *Šerijatski sudovi u Jugoslaviji 1918-1941*, Sarajevo: Fakultet Islamskih nauka, 2005, 24.

[9] During Habsburg rule, the wording "Sharia judge" (*šerijatski sudija*) was often used interchangeably for the term *kadi* (in Bosnian: *kadija*).

[10] Islamic law allows marriage between a Muslim man and a Christian or Jewish woman, but Muslim women are allowed to marry only a Muslim man. See, for example, *Eherecht, Familienrecht und Erbrecht der Mohamedaner nach hanefitischem Ritus*, Wien: K. und k. Hof- und Staatsdruckerei, 1883, 13; Eugen Sladović, *Islamsko pravo u Bosni i Hercegovini*, Beograd: Izdavačka knjižarnica Gece Kona, 1926, 50.

[11] See ABiH, VŠS.

the question of the status of children from a mixed relationship, whereas the last part inquires the process of legalizing mixed marriages, which started with a new regulation in 1912. The examination of these aspects reveals, as this paper argues, that mixed marriages did not only cross religious boundaries but mainly faced institutional and legal, as well as social, obstacles.

Disputed Competences on Mixed Marriages

In October 1908, Husref-beg Kapetanović, the mayor of Prijedor, went to the Provincial Government in Sarajevo and requested that the marriage of his cousin Mehmed-beg Kapetanović with the Christian widow Natalija Babić, which had taken place at the district Sharia court (*kotarski šerijatski sud*)[12] in Sanski Most, should be examined and annulled. In the ensuing investigation, it turned out that the bridal couple had first unsuccessfully tried to get married at the district Sharia court in Prijedor, their place of residence. However, the *kadi* from Prijedor had been unsure about his competences and turned in August 1908 to the Supreme Sharia court for further advice. This court ruled that according to the "Regulation on the Order and the Scope of the Sharia courts" (*Naredba o ustrojstvu i djelokrugu šerijatskih sudova/Verordnung über die Ordnung und den Wirkungskreis der Scheriatsgerichte*) from 1883, the district Sharia court in Prijedor was not competent to marry a couple if not both partners were Muslims.[13]

Since the exact competences of Sharia courts had often been unclear directly after the Habsburg occupation and the Austro-Hungarian administration had wished to limit their competences clearly, the Provincial Government issued in 1883 the "Regulation on the Order and the Scope of the Sharia courts". This new directive restricted the competence of Sharia courts to the regulation of matrimonial, family, and inheritance matters

[12] The first level Sharia courts were until 1906 part of the district offices and thereby subordinated to the district heads. Therefore, they were until then officially denominated as "district office as Sharia court" ("kotarski ured kao šerijatski sud"). However, in the present paper these Sharia courts will be designated also for the period before 1906 as "district Sharia courts".

[13] ABiH, VŠS, box 26, sign. B 1908/10.

only among the Muslim population and changed the composition of the decision-making body of the Supreme Sharia court, which had been installed in 1879. According to the new regulation, it was composed of three non-Muslim judges, who were simultaneously members of the Supreme court, and only two *kadi*s.[14] In an administrative report, this measure was justified in the manner of a *mission civilisatrice*[15] by the lack of "humanistic and juridical education" of the local judges as well as the need "to preserve them from stagnation".[16] At last, the regulation on the Sharia court order from 1883 clearly indicated that in case of any doubt, the Provincial Government was competent to decide whether a case should be dealt with at a Sharia or a civil court.[17] Hence, the Austro-Hungarian officials had significant competences to influence Sharia court procedures.[18]

In the case mentioned above on the marriage between Mehmed-beg Kapetanović and Natalija Babić, the couple had seemingly circumvented the Supreme Sharia court's verdict by turning to the Sharia court in Sanski Most,

[14] See "Verordnung über die Organisation und den Wirkungskreis der Scheriatsgerichte. 29. August 1883. Zahl 7220/III.", in: *Sammlung der Gesetze und Verordnungen für Bosnien und die Hercegovina. Jahrgang 1883*, Sarajevo: Landesdruckerei, 1883, 538-542.
The composition of the Supreme Sharia court was changed in 1913 though, whereupon decisions were taken in a senate consisting of three *kadi*s. But a non-Muslim member of the Supreme court still had an advising function in issues regarding inter-confessional relations and international law. See "Gesetz vom 17. Februar 1913, womit die mit Allerhöchster Entschließung genehmigte Verordnung vom 29. August 1883, G.-S. Nr. 135, über die Organisation und den Wirkungskreis der Scheriatsgerichte, abgeändert wird", in: *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1913*, Sarajevo: Landesdruckerei, 1913, 77-78.

[15] The Austro-Hungarian rule in Bosnia and Herzegovina was often legitimized in contemporary discourses as a "civilizing mission" (or "Kulturmission" in German), which should pacify and modernize the region as well as bring it closer towards "Western European culture". See, for instance, Clemens Ruthner, *Habsburgs „Dark Continent". Postkoloniale Lektüren zur österreichischen Literatur und Kultur im langen 19. Jahrhundert*, Tübingen: Narr Francke Attempto, 2018, 220-223.

[16] Österreichisches Staatsarchiv (OeStA), Allgemeines Verwaltungsarchiv (AVA), Justiz, JM, Allgemein, Sign. 1, A1238, Bosnien, Regelung des Justizwesens, Post 11-55, 1881-1917. Ad Zahl 9.249/BH. ex 1912; see also M. Bećić, "Novi pogled", 74.

[17] See "Verordnung über die Organisation".

[18] Mehmed Bećić characterized this reform of the Sharia court system in 1883 as an adoption of a colonial model in the application of Sharia law. See M. Bećić, "Novi pogled".

which issued a marriage license (*izunama*) on 28 September 1908. Subsequently, they got married by an imam in the nearby settlement of Modra. Upon the Supreme Sharia court's inquiry, Smail Hadžić, the local *kadi* from Sanski Most who had issued the marriage license, declared that according to Sharia law he did not see any hindrances for registering the marriage between the Muslim and the Christian. On the contrary, he stated that Islamic law would explicitly allow such marriages[19] and explained that the bridal couple could show all of the necessary documents. After completing the investigation, the Supreme Sharia court found that the *kadi* in Sanski Most had exceeded his competence by issuing the marriage license for Mehmed-beg Kapetanović and Natalija Babić since he had allegedly violated Article 10 of the regulation on the Sharia court order from 1883, which defined the competences of Sharia courts. In addition, he was generally not allowed to issue any marriage license for non-residents of his district. The archive file from the Supreme Sharia court ends with a note that the county court (*okružni sud*) in Bihać asked for all documents in this case from the Supreme Sharia court.[20] Apparently, the state authorities demanded to put the responsible *kadi* from Sanski Most in front of a disciplinary procedure.[21]

This case illustrates that misunderstandings regarding the competences for registering mixed marriages were widespread. While the Supreme Sharia court had already in a case in 1902 ruled that the jurisdiction of the Sharia courts did not extend to the solemnization of mixed marriages because not both spouses were Muslims,[22] it expressed doubts about the curtailment of the competences of Sharia courts in this regard roughly two years later. On the occasion of a request for a marriage license from a Muslim man and a

[19] See footnote 10.

[20] ABiH, VŠS, box 26, sign. B 1908/10.

[21] F. Burić, *Becoming Mixed*, 20.

[22] In 1902, Mehmed Spahić requested at the Sharia court in Mostar a license to marry Leopoldine Donderka from Zagreb. Unfortunately, the case file could not be found in the archival holdings of the Supreme Sharia court in Sarajevo, although it is listed as follows in the inventory: ABiH, VŠS, box 23, sign. B 1902/28: Spahić Mehmed eff. traži dozvolu za vjenčanje sa gosp. Leopoldinom Donderka iz Zagreba, Mostar.

Serbian Orthodox woman from Sarajevo, the Supreme Sharia court argued in a message to the Provincial Government that if the regulation from 1883 were to be strictly followed, then there would be no competent institutions for such marriages that had already been registered. It added that the solemnization of marriages fell under matrimonial law and that Sharia law explicitly allowed the marriage of a Muslim man and a non-Muslim woman. Moreover, since they assumed that the government did not intend to make mixed marriages impossible by the regulation mentioned above from 1883, they reasoned that also mixed marriages should be under the jurisdiction of Sharia courts. Nevertheless, the final answer from the Provincial Government came just three years later, stating that according to Article 10 of the "Regulation on the Order and the Scope of the Sharia courts", marriages between a Muslim and a non-Muslim did clearly not fall into the jurisdiction of Sharia courts.[23] The Supreme Sharia court applied this interpretation to several subsequent cases of mixed couples that wished to obtain a marriage license at a Sharia court.[24] Hence, the divided court system under Austro-Hungarian rule, which limited the competence of Sharia courts, obviously hindered mixed couples from getting legally married.

Conversions Between Necessity, Strategy and Restrictions

One remedy often proved to be a conversion, whereby such couples officially did not count as mixed anymore. Accordingly, marriage plans are often indicated as the main reason for a conversion in general, and conversions were, thus, often strategic in order to marry a man of another faith.[25] Furthermore, in some cases, the Supreme Sharia court even supported a conversion to Islam: When in 1901, Ibrahim Hušić wanted to marry the Catholic

[23] ABiH, VŠS, box 24, sign. 1904/28.

[24] See ABiH, VŠS, box 25, sign. B 1905/41; ABiH, VŠS, box 26, sign. B 1907/31; ABiH, VŠS, box 27, sign. B 1910/2.

[25] See Philippe Gelez, "Vjerska preobraćenja u Bosni i Hercegovini (c. 1800-1918)", in: *Historijska traganja*, no. 2, Sarajevo: Institut za istoriju, 2008, 17-75, here 25-26.
Grunert also stated that there were often tactical conversions in the context of mixed marriages. See H. Grunert, *Glauben*, 202-203.

Ana Samardžija at the district Sharia court in Sarajevo, the Supreme Sharia court ordered that the bride should first convert to Islam. This decision was confirmed by the Provincial Government and justified by the fact that Ana Samardžija had stated on record that she intended to adopt the Islamic faith.[26] The archival documents do not disclose any information as to whether Ana Samardžija indeed converted to Islam. Nevertheless, as has been highlighted in historiography, conversions could be highly politicized and rather complicated due to the increasing restrictions by state authorities.

Conversions were allowed – sanctions for apostasy from Islam had already been abolished under the Ottoman rule in 1856 and 1859 –, but they were often viewed as an attack on the respective community. This is also because women usually took the groom's faith and moved into his house, and thus his family, which was perceived as a loss for the community of origin.[27] Nevertheless, it can be noted that during the Ottoman rule the cases of Islamization were mainly treated as highly political affairs and led local clerics to ask for intervention, whereas the roles have changed after the Habsburg occupation. Under the Austro-Hungarian administration, primarily conversions of Muslim girls to Catholicism caused public protests.[28] Although the number of conversions was relatively low in relation

[26] ABiH, VŠS, box 23, sign. B 1901/10.

[27] H. Grunert, *Glauben*, 198-205; P. Vrankić, *Religion und Politik*, 186-187.

[28] Selim Deringil, *Conversion and Apostasy in the Late Ottoman Empire*, Cambridge: Cambridge Univ. Press, 2012, 91-92; R. J. Donia, *Islam*, 55; Ph. Gelez, "Vjerska preobraćenja", 47-56.
The most prominent such case evolved around the conversion of Fata Omanović. The young Muslim girl from the village of Bijelo Polje near Mostar fled in May 1899 with the help of Catholic clerics from her father's home to Dalmatia where she converted to Catholicism. This sparked heavy local protests among the Muslim population, as they suspected "Catholic propaganda" as well as kidnapping and forced conversion of the girl. Within a year, this village protest spread to other parts of the province and escalated into agitation among the Muslim community for more religious autonomy throughout Bosnia. Hence, this conversion case is often seen as one of the starting points for the Bosnian-wide Muslim movement for religious autonomy. See, e.g, F. Buric, *Becoming Mixed*, 16-17; R. J. Donia, *Islam*, 113-117; Robert J. Donia, "Fin-de-Siecle Sarajevo. Habsburška transformacija osmanskog grada", in: *Prilozi*, no. 32, Sarajevo: Institut za istoriju, 2003, 149-178, here 176; H. Grunert, *Glauben*, 199-200.

to the total population,[29] this urged the authorities to regulate and thereby restrict conversions strictly. Upon another heavily debated conversion case of a young Muslim girl in Sarajevo,[30] the Habsburg administration enacted in 1891 a Conversion Ordinance that put conversions under the strict control of the authorities.[31]

In a few cases from the Supreme Sharia court, we can indeed see that it could be challenging to fulfill all of the requirements and obtain the necessary permission for conversion to Islam.[32] Thereby, it could also curtail the marriage plans of mixed couples. This was the case when Muharem Biberić from Banja Luka sent, in early spring of 1895, a telegram to the Provincial Government in Sarajevo complaining that the local *kadi* from Banja

[29] According to Philippe Gelez, between 1879 and 1915 only approximately 240 conversions took place in total, whereby most (93) persons converted to Catholicism, 88 to Orthodoxy, and only 44 persons converted to Islam. See Ph. Gelez, "Vjerska preobraćenja", 21-22.

[30] When the 16-year old Uzeifa Delahmetović, a servant of the city council member Esad Kulović, left her home in order to convert to Catholicism in August 1890, she took residence at the Archbishop Josip Stadler in Sarajevo where she was hidden from fellow Muslims, relatives and the authorities. Despite a police investigation declared that Uzeifa wanted to convert on her own free will, the case upset the local Muslim population, which started to protest against the missing actions of the government. See R. J. Donia, *Islam*, 55-57; R. J. Donia, "Fin-de-Siecle Sarajevo", 175; H. Grunert, *Glauben*, 190-191; R. Okey, *Balkan Nationalism*, 118-121; P. Vrankić, *Religion und Politik*, 655-656.

[31] This new regulation, which allowed but significantly hampered conversion of a physically and spiritually mature Bosnian citizen, mandated *inter alia* a two-month-long waiting period and an inspection by a government commission. Due to these severe restrictions, particularly Catholic clerics opposed these new rules. Based on subsequent negotiations between the Catholic Church, the authorities issued a set of confidential instruction orders in 1895, which facilitated the requirements for conversion. However, the regulations have been often neglected, mainly because they were partially inconsistent and had different requirements for the different religions. See H. Grunert, *Glauben*, 186-196; P. Vrankić, *Religion und Politik,* 661-674.
Regarding the Conversion Ordinance, see also "Verordnung der Landesregierung für Bosnien und die Hercegovina vom 9. Juli 1891, Z. 52694/I, betreffend den Uebertritt von Landesangehörigen zu einer der in Bosnien und der Hercegovina vertretenen Glaubensgenossenschaften", in: *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1891*, Sarajevo: Landesdruckerei, 1891, 305-309.

[32] Philipp Gelez calculated, based on archival sources, that only approx. 40% of all requested conversions effectively took place. He also stated that many persons who wished to convert did not change their faith in the end due to the heavy restrictions. See Ph. Gelez, "Vjerska preobraćenja", 20-23, 65.

Luka refused to marry him and his Jewish fiancée, although there would be no interdictions. The Provincial Government and the Supreme Sharia court started to investigate the case, whereby the local district Sharia court revealed that the Jewish fiancée had already earlier requested a conversion at the responsible authority. In October 1895 – meanwhile, the Provincial Government had not issued any concrete orders on how to proceed in this case – the district Sharia court in Banja Luka again reported that Muharem Biberić had not requested another marriage permission, but had gotten "privately" married and lived together with his fiancée. Apparently, the hurdles for a strategic conversion in order to obtain a marriage license seemed too big and the couple preferred to live in concubinage. It has to be noted, however, that after having received this information, the Supreme Sharia court pushed the Provincial Government to instruct the political authority to decide on the conversion request as soon as possible. However, the archival documents do not reveal if this appeal was successful.[33]

The issue around conversions was even more complicated if it dealt with marriage and conversion requests involving non-citizens of Bosnia and Herzegovina. Due to the special legal status of the occupied provinces, the local population was granted a specific provincial affiliation status (*zemaljska pripadnost/Landesangehörigkeit*). Nevertheless, the legal status of the local Bosnian population was not unambiguously defined as the Bosnian inhabitants were legally speaking still subjects of the Sultan until the enactment of the Provincial Statute (*Zemaljski ustav/Landesstatut*) in 1910.[34] While this insufficient citizenship definition caused problems and ambiguities mainly for Bosnian migrants, it also proved to be an obstacle for Bosnian citizens who wished to marry a non-Bosnian citizen. Only the Provincial Statute

[33] ABiH, VŠS, box 77, sign. E 1895/17.

[34] Benno Gammerl, *Staatsbürger, Untertanen und Andere. Der Umgang mit ethnischer Heterogenität im Britischen Weltreich und im Habsburgerreich 1867-1918*, Göttingen: Vandenhoeck & Ruprecht, 2010, 158. However, contemporary legal experts often debated whether Bosnia and Herzegovina was still under the sovereignty of the Ottoman Sultan or not. For an overview on these debates see Amila Kasumović, "Zemaljska pripadnost stanovnika Bosne i Hercegovine u prvim godinama austro-ugarske uprave", in: *Historijska traganja*, no. 6, Sarajevo: Institut za istoriju, 2010, 9-34, here 12-13.

from 1910 finally regulated that the provincial affiliation could be acquired by marrying a (male) citizen of Bosnia and Herzegovina.[35]

Marriages with non-Bosnian citizens were not very frequent, at least during the first years of the Habsburg occupation. Therefore, the case of Marija Mađarević (also Madjarević, Magjarević) – a Hungarian citizen from Mitrovica who had converted to Islam and wanted to marry the Muslim Hasan-aga Hadži Mehmedović in 1890 – caused ambiguities among the *kadi*s whether or not the marriage between the couple could be allowed. The district *kadi* Osmanagić in Tuzla seemed particularly unsure because Marija – or Fatima how she was called after her conversion – was an Austro-Hungarian national and, therefore, not from his district. Hence, he asked the Supreme Sharia court for further guidelines. This institution then forwarded the request to the Provincial Government, as there had not been any enacted guidelines for such a procedure with Austro-Hungarian citizens. Interestingly, the legality of the conversion itself had not been questioned by the district and Supreme Sharia court. This might be since the confirmation of the conversion to Islam of Marija/Fatima had been issued by the Ottoman religious authorities in Istanbul.[36] However, the final order from the Provincial Government then stated that as a Hungarian citizen, Marija/Fatima was not able to legally marry Hasan-aga Hadži Mehmedović, unless she could prove that she was no longer a Hungarian citizen. Furthermore, the order explained that by adopting the Islamic faith, a Hungarian citizen did not lose Hungarian citizenship.[37] It also outlined that Hungarian

[35] *Landesstatut für Bosnien und die Hercegovina*, Wien: Hof- und Staatsdruckerei, 2010, 3; A. Kasumović, "Zemaljska pripadnost", 15.
In the contemporary terminology, Bosnian nationals were not called "citizens", but "provincial affiliates" (*zemaljski pripadnik/Landesangehöriger)*.

[36] Unfortunately, there are no reasons indicated why this confirmation was issued in Istanbul, and thus, by Ottoman authorities.

[37] Interestingly, the Ottoman Empire usually granted Ottoman citizenship to converts during the mid-19th century. Thereby, several Hungarian refugees who had fled to the Ottoman Empire after the suppression of the Hungarian national uprising 1848/49, converted to Islam and subsequently became Ottoman citizens. This practice, however, changed at the end of the 19th century when access to Ottoman citizenship became gradually restricted. See S. Deringil, *Conversion*, 156-196.

citizens could neither convert to Islam according to Hungarian laws nor enter a lawful marriage with non-Christians, regardless of whether the person was inside or outside of the home country. Hence, the Supreme Sharia court ordered the district Sharia court in Donja Tuzla to reject the issuance of a marriage license for the mixed couple.[38]

This regulation hindered Hungarian citizens from converting to Islam and getting married by a Sharia court, but it was unclear if it could be extended to Austrian citizens too. Thus, when Subhi Bakarević and Esma Hannemann (also Hanaman), a native from Graz who was called Paula Marija before her conversion to Islam, requested a divorce at the district Sharia court in Visoko in February 1907, the different authorities started to investigate if the conversion and subsequent marriage had even been lawful. Initially, the district Sharia court in Visoko was just unsure regarding the regional competence, as Subhi Bakarević had stated his intention to move to Sarajevo, and therefore, turned to the Supreme Sharia court for advice. The Supreme Sharia court, however, started to discuss then if this divorce case would even fall under the jurisdiction of Sharia courts. The two *kadi*s Sulejman Šarac and Hasan Hadžiefendić reasoned that in this case exclusively Sharia law should be applied. Although the local district *kadi* Kuruzović had made some allegations that Paula/Esma did not follow Islamic practices nor dress as a Muslim woman,[39] the two *kadi*s considered the convert Paula/Esma and her son both as Muslims. Nevertheless, the three non-Muslim members of the Supreme Sharia court, the judges Kenđelić, Tschoffa, and Farkaš, disagreed and pleaded to submit this issue to the Provincial Government, which was competent to finally decide

[38] ABiH, VŠS, box 56, sign. E 1890/9. See also "16.629/III. Otpis zemaljske vlade od 28. marta 1890. na Vrhovni šerijatski sud", in: *Zbirka naredaba za šeriatske sudove u Bosni i Hercegovini. 1878-1900*, Sarajevo: Zemaljska vlada i Vrhovni sud za Bosnu i Hercegovinu, 104-105.

[39] Kuruzović highlighted in his message to the Supreme Sharia court that Paula/Esma was dressed "a la franka" and was wearing a hat. Moreover, he cited Paula/Esma's statement that she was not following the religious prescriptions, such as praying, although she had been veiled like a Muslim for a certain time.

if a court case fell into the competence of the Sharia or civil courts.[40] In their message to the Provincial Government, they argued that Paula/Esma could not convert to Islam as an Austrian citizen and referred thereby to the Provincial Government's regulation from 28 March 1890 No. 16.629, which had been issued in the case of the Hungarian citizen Marija Mađarević and implied that Hungarian citizens were not able to convert to Islam. Hence, they held that Paula/Esma Hannemann was still to be considered as a Catholic Austrian citizen who could get married exclusively according to her "native" law. Thereby, they stated that the civil code hindered her from marrying a Muslim, and her marriage with a Muslim could, thus, not be considered as lawful. Besides, according to the "Regulation on the Order and Scope of the Sharia Courts" from 1883, the Sharia courts were not competent in handling this case since Paula/Esma was considered a Catholic. However, the head of the Department of Justice at the Provincial Government, Adalbert Shek,[41] then issued a decree, stating that the regulation mentioned above from 28 Mach 1890 No. 16.629, according to which Paula/Esma would not be able to convert to Islam, referred only to Hungarian, and not to Austrian citizens. Hence, Paula/Esma's conversion had to be considered as lawful and the jurisdiction on the divorce of Paula/Esma and Subhi fell into the competence of Sharia courts.[42]

Whose Children? – Illegitimate Children and their Legal Status

Despite the hindrances towards mixed couples getting officially married, many couples still lived together in concubinage or so-called

[40] This was specified in Art. 13 of the "Regulation on the Organization and the Scope of the Sharia Courts".

[41] Adalbert Shek-Vugrovački was serving as a high official in the Provincial Government from 1883 until 1913, whereby he also held the position of a judge at the Supreme court in Sarajevo and from 1907 until 1913 of the head of the Department of Justice at the Provincial Government. In addition, he held several lectures as a professor at the Sharia Judge School for civil, criminal and state law. See Enes Durmišević, *Šerijatsko pravo i nauka šerijatskog prava u Bosni i Hercegovini u prvoj polovini XX stoljeća*, Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 2008, 124-125.

[42] ABiH, VŠS, box 26, sign. B 1907/13.

"wild marriages" (*divlji brakovi*)[43] and had children. However, problems often occurred around the religious affiliation, and in the case of the separation or death of a parent, also the legal custody of these children born out of wedlock. This often further caused discussions on the competence of these questions, and it was disputed if these issues should be regulated by the Sharia or civil courts.[44]

This happened in the case of the Muslim merchant Muharem-aga Sarač and the Catholic girl Anđa (also Andja, Ana) Stipičić (also called Lovrinović) from Jajce who had been living together for over 15 years and had a daughter named Faiza. When Muharem-aga suddenly left Anđa in autumn 1882, she decided to baptize her daughter. This triggered Muharem-aga to file a suit at the local Sharia court in Jajce against Anđa, in which he claimed that his daughter should be taken away from her mother and handed over to his mother as a third person. He justified the claim by stating that he had married Anđa according to Sharia law and that this had been agreed on during this alleged marriage, which he, however, could not prove.[45] As the local Sharia court confirmed Muharem-aga's claim, as well as the accusation of Anđa being a prostitute, Anđa lodged an appeal against the verdict at the Supreme Sharia court, in which she specifically objected to the testimony given during the trial. Since the concrete competence for this case seemed unclear, the Supreme Sharia court was asked by the Supreme court which authority would be competent to regulate the issue. In the end, the Supreme Sharia

[43] According to the instruction from 1891 No. 28.401, the government viewed concubinage as an unallowed relationship, but the authorities would interfere only in case of a criminal act or public protests. See H. Grunert, *Glauben*, 166; Amila Kasumović, "Konkubinat u Bosni i Hercegovinu na prijelomu 19. i 20. stoljeća", in: *Prilozi,* no. 47, Sarajevo: Institut za historiju, 2018, 69-90, here 75-76.

[44] The earliest such case found in the archival holdings of the Supreme Sharia court refers to the case between the Muslim Ibrahim Gušić and the Christian Paula Gebauer. In January 1880, the Provincial Government in Sarajevo requested the Supreme court to express its opinion on the marriage request of Ibrahim Gušić, and specifically on the religious state of the descendants, whereby this issue has also been discussed by the Supreme Sharia court. Unfortunately, the archival documents do not contain the final decision on this case.
See ABiH, VŠS, box 15, sign. B 1880/6.

[45] According to Muharem-aga, the marriage certificate had gotten lost during the Occupation campaign in 1878 and the responsible *kadi* had already passed away.

court responded that the litigation could be proceeded only at a Sharia court and confirmed the initial court ruling from the local Jajce Sharia court.[46]

While the regulation of the child's custody fell, in this case, entirely into the scope of Sharia courts and the Muslim father obtained custody, mainly because the court treated the mixed couple as a married couple, the questions of jurisdiction, custody, and faith of the children from mixed couples were not consistently interpreted. Thus, when in August 1892 the Catholic Mara Kovačević died, the district court in Sarajevo wanted to appoint a guardian for her children – the 8-year old Edhem and 4-year old Sadika. They were born out of wedlock with the Muslim Junus Kobiljak, with whom Mara had been living with for 12 years. The district court was confused as to who could be appointed as a guardian, as the children were raised by their Muslim father in the Islamic faith and had "Turkish names". Therefore, it turned to the Supreme court for further guidance, which in the following stated that the children had to be attributed to the mother's creed and had to be given the mother's family name.[47]

It is worth noting that the Supreme court referred in its ruling to an opinion issued by the Supreme Sharia court on 31 January 1887 on the recognition of paternity of children born out of wedlock to an unmarried Muslim couple. According to this opinion, Sharia law did not recognize any legal relationship – and hence no rights and obligations – between an illegitimate child and its father. Therefore, Sharia courts could not be competent for claims on paternity, alimentation, or heritage in such cases, and theoretically, also the civil courts could not accept any claims in this regard (if the parents, or at least the father, of the illegitimate child, were Muslim). However, since allegedly, the number of children born out of wedlock was increasing and "that thereby immorality would be even more supported when fathers were also further freed from any obligations"[48] – and at last, it could be seen as a

[46] ABiH, VŠS, box 17, sign. B 1883/6.

[47] ABiH, VŠS, box 65, sign. E 1892/8.

[48] Transl.: "da bi se tim nemoralnost još više podupirala, čime bi očevi dalje bili oslobođeni svake obveze". ABiH, VŠS, box 47, sign. E 1887/1, Mit Bezug auf die Verordnung der Landesregierung

"natural duty" (*naravskim dužnosti*) that fathers support their children - the Supreme Sharia court stated that it would fully agree if Muslim fathers also would be obliged by a civil court to maintain an illegitimate child.[49] Based on this opinion, the Provincial Government issued on 2 April 1887 a regulation that confirmed the sole competence of civil courts regarding claims on paternity and alimentation between a Muslim father and a child born out of wedlock – regardless of whether the mother was Muslim or not.[50]

Hence, this interpretation from 1887 assigned the competence for paternity and alimentation claims of illegitimate children to the civil courts, while it was silent on the issue of the religious affiliation of a child from a mixed couple. Based on this approach, the Supreme court concluded in the case of Junus Kobiljak and Mara Kovačević from 1891/1892 that the illegitimate father Junus had no rights towards the children, but was obliged to support them. Furthermore, it ruled that there should be an appointed Catholic guardian for the children, who should take care of their upbringing. Nevertheless, as in this case a Muslim person was involved, the Supreme court asked the Supreme Sharia court for its opinion on the matter. By and large, the Supreme Sharia court did not contradict to the Supreme court's interpretation of the law, arguing that there were no concrete Sharia laws regarding the children's family name, the belonging of the children to the mother's faith, and the illegitimate father's right to appoint a guardian. Thereby, it did not explicitly object to the fact that the Supreme court treated the children as Catholics. However, it clearly stated that only a Sharia court could appoint a guardian.[51]

vom 9. August 1893 Zl. 70961/III, Broj 327/šer ex 1886, predsjednik Scheuer - Zemaljska vlada, 15.

[49] ABiH, VŠS, box 47, sign. E 1887/1. However, it also stated that Sharia courts were competent to deal with claims on paternity and alimentation of children from a Muslim and a non-Muslim woman if they were born within a valid, invalid, or fictional marriage or after the dissolution of a marriage.

[50] "7984/III. Okružnica zemaljske vlade od 2. aprila 1887. na vrhovni sud u Sarajevu", in: *Zbirka naredaba 1878-1900*, 39-40.

[51] ABiH, VŠS, box 65, sign. E 1892/8. This case has also been described in: Hana Younis, "Nezakonita djeca pred zakonom. Dokazivanje očinstva u Bosni i Hercegovini na razmeđu 19. i 20. stoljeća", in: *Prilozi*, no. 47, Sarajevo: Institut za historiju, 2018, 45-67, here 51-52.

The inconsistency in the application of the law can be further seen in a similar case roughly ten years later, in which the opinion of the Supreme Sharia court turned out to be completely different: Due to a relevant court case in December 1901, the Supreme court asked the Supreme Sharia court about the religious affiliation and custody of a child born out of wedlock to a Muslim father and a non-Muslim mother, and also inquired about the competence to appoint a guardian for the child. The Supreme Sharia court clearly considered the child as a Muslim and stated that the (non-Muslim) mother could have the child's custody until, at the latest, the age of seven, whereby she had to raise the child in the Islamic faith. It further stated that the appointment of a guardian was clearly within the jurisdiction of a Sharia court, although the competence generally depended on the religious affiliation of the child.

The Supreme court found this opinion to be contradictory to the opinion issued in the case of Junus Kobiljak and Mara Kovačević, which took place in 1891/1892. Therefore, it requested the Supreme Sharia court to pinpoint the precise Sharia prescriptions on which they based their opinion, including any translations.[52] This highlights that, although the Supreme court judges tried to consider Sharia law in relevant cases, they lacked knowledge in Islamic jurisdiction, which is not based exclusively on codified legal texts.[53] Also, it demonstrates the inconsistencies in different

[52] ABiH, VŠS, box 95a, sign. E 1901/24.
The Supreme Sharia court denied any inconsistencies between their previous opinion from 1892 and their most recent one. They explained that the first opinion treated exclusively the question on the rights between an illegitimate father and child with regard to kinship, inheritance, and maintenance. It further outlined that they stated in 1892 that the Sharia rules do not contain any information if an illegitimate child would belong to the mother's faith. However, this would not object to their statement in the last opinion that an illegitimate child should be of Islamic faith if one of their parents was a Muslim.

[53] Islamic law is a highly institutionalized legal system, which is based on a broad body of literature, but also on divine revelation and an authoritative interpretation of religious texts. As Sartori and Shahar outlined, in many Muslim societies under colonial rule, the incorporation of Islamic law into an imperial administration led to a narrow selection of a few Islamic law books by the imperial administrators, which had a far-reaching effect on the Muslim society. In Bosnia and Herzegovina, Islamic law was never legally codified, but a compilation of the Sharia provisions on the

court cases on similar issues, and it can be assumed that the final decision on the custody, jurisdiction, and religious affiliation depended on the respective judges involved.

This can be further illustrated by the case between Paula/Esma Hannemann and Subhi Bakarević described above. Paula/Esma and Subhi had had a son shortly before the disputed conversion of Paula/Esma and the controversial marriage. Apparently, the son was first given the name Rudolf and was baptized, but was then converted, together with his mother, to Islam and thereby took the name Zuhdija. Initially, the parents agreed upon their divorce that the mother should have custody of the son. However, when the matter came to the Supreme Sharia court, the two *kadis* Sulejman Šarac and Hasan Hadžiefendić reasoned that in this case, exclusively Sharia law should be applied and confirmed that Rudolf/Zuhdija could be considered a Muslim due to his conversion together with his mother. Accordingly, the mother should not have the right to raise her 8-year old son, and a Muslim guardian should be appointed for him. Nevertheless, due to the vote of the three non-Muslim members of the Supreme Sharia court, the judges Kenđelić, Tschoffa, and Farkaš, the case was submitted to the Provincial Government. In the Supreme Sharia court's message to the Provincial Government, it was then argued that Rudolf/Zuhdija had to be considered as a child born out of wedlock and, therefore, as a Catholic and Austrian subject. The head of the Department of Justice at the Provincial Government, Adalbert Shek, confirmed this interpretation regarding the jurisdiction over the son Rudolf/Zuhdija and attested that he was considered an Austrian citizen whose guardianship had to be regulated by the

"Matrimonial, Family and Inheritance Law of the Mohammedans according to the Hanefite Rite" (*Eherecht, Familienrecht und Erbrecht der Mohamedaner nach hanefitischem Ritus*) was published in 1883 in German as a manual for the Habsburg officials. Nevertheless, besides the classical legal sources, also modern codifications from the *Tanzimat* period, such as the *Mecelle*, as well as some regulations from the Provincial Government had to be used as legal sources at Sharia courts. See E. Durmišević, *Šerijatsko pravo*, 80-84; Paolo Sartori/Ido Shahar, "Legal Pluralism in Muslim--Majority Colonies. Mapping the Terrain", *Journal of the Economic and Social History of the Orient*, vol. 55, No. 4/5, Leiden: Brill, 2012, 637-663, here 645-646.

competent authority in Graz.[54]

Such conflicts on the question of whether the conversion of a parent implied the conversion of the child were apparent in several cases of mixed couples, and it was not confined to the Muslim realm. As Grunert has indicated, also among Christian mixed couples between a Catholic and a Serbian Orthodox, the conversion often caused troubles on the religious affiliation of the children, mainly because the official regulation on conversions from 1891 prescribed that the convert had to be of full age.[55]

Hence, the question on the custody and religious affiliation of children from mixed couples, as well as on the competence to regulate these issues, was highly disputed. On top of that, the existing laws were interpreted differently, and misunderstandings were widespread. This was, however, at least partially due to the general dispute regarding the competences and the regulation of paternity and guardianship of children born out of wedlock.[56]

A New Regulation: The Process of Legalization

As outlined above, mixed couples usually faced a dilemma of being unable to get officially married, as the competence of Sharia courts under Austro-Hungarian rule was strictly limited to family, marriage, and inheritance matters among Muslim people. Generally, this restriction was based on the so-called "Regulation on the Order and the Scope of Sharia Courts" issued in 1883, which was seen to inhibit the registration of mixed marriages at Sharia courts. However, Sharia law, theoretically, allowed marriages between a Muslim man and a Christian or Jewish woman. As a consequence, conversion to Islam was usually a prerequisite for a mixed couple in order to get married at a Sharia court, or a marriage allowance for a subsequent wedding by an imam. Still, not every non-Muslim partner could or wanted to convert. The hindrances of conversion have already been outlined above.

[54] ABiH, VŠS, box 26, sign. B 1907/13.

[55] H. Grunert, *Glauben*, 210-211.

[56] See H. Younis, "*Nezakonita* djeca", especially 50-53.

However, in some cases, a conversion could be rejected out of personal, professional, or family reasons. This was the case when Andromaha Morait, a native from the Macedonian town of Veleš who was working as a teacher in different towns in Bosnia and Herzegovina, wanted to get married to a Muslim man. After she had been transferred from the Herzegovinian town of Bileća to Donji Vakuf in central Bosnia, she met the Muslim teacher and principal of the elementary school, Sabit Talić, with whom she fell in love. They started an intimate relationship and by the end of 1911, Andromaha fell pregnant. This triggered them to obtain an official marriage registration, and Sabit Talić requested it on 19 December 1911 at the county government in Bugojno, and one day later at the district Sharia court in Gornji Vakuf. This demonstrates that he apparently was not aware which authority had the jurisdiction on mixed marriage cases. The district Sharia court in Bugojno forwarded Sabit's request to the Supreme Sharia court and asked for approval of the intended marriage registration, whereby the request was further transferred to the Provincial Government. At the same time, an Austro-Hungarian county government official in Bugojno wrote a letter to the Provincial Government, in which he urged for quick approval of Sabit Talić's request. However, he also wished to express his worry about the effect the mixed marriage would have on the locals in the small town of Donji Vakuf. Nevertheless, the Provincial Government replied in late January 1912 that it had no jurisdiction over such marriage cases and did not undertake further measures, despite further messages by the district Sharia court and the county government.[57]

Hence, Andromaha Morait tried to mobilize her personal contacts and wrote on 29 June 1912 a letter to Zaim Muminagić, the district *kadi* in Gradačac, who seemed to be a friend of hers. In the letter, she recounted that she had meanwhile moved in with Sabit and that they had a son named Enver, who had been registered with the authorities as a Muslim under Sabit's name. Furthermore, she explained that she was facing a problem, since her six-month-long unpaid leave from her position as a school

[57] F. Buric, *Becoming Mixed*, 13-27.

teacher, which had currently prevented her from further consequences, was soon expiring and she needed to be Sabit's lawful wife before she could start working again.[58] However, she clearly stated that she wanted to stay in her Christian faith due to her employment and parents. She further indicated that she knew that Sharia law allowed such a mixed marriage and, therefore, asked Zaim Muminagić to permit their marriage.[59] A few days later, *kadi* Muminagić sent the letter to his former professor Adalbert Shek, who was at that time the head of the Department of Justice at the Provincial Government, and asked him for a solution. He also added that he generally rejected requests for mixed marriages, although Sharia law would allow it. However, he considered such marriages to be harmful for the Muslim population, among other things, because they would shed the "female Muslim world" in a bad light due to the lack of reciprocity.[60]

Based on the analyzed archival material, it is not clear what prompted the Provincial Government to take a measure finally – if it was the personal request via Adalbert Shek or the relative urgent nature of the case.[61] However, on 8 August 1912, the Provincial Government summoned the Supreme Sharia court to inform the district Sharia court in Bugojno, where Zaim Muminagić held the position as a district *kadi*, about a new regulation from 1 August 1912 No. 3558/praes. This directive ordered that the provincial authorities should not intervene in the solemnization of mixed

[58] The Austro-Hungarian administration imposed significant marriage restrictions for female teachers, and they were generally not allowed to marry, except if the spouse would be a teacher as well. See H. Grunert, *Glauben*, 165; "14. Verordnung der Landesregierung für Bosnien und die Hercegovina vom 11. Jänner 1908, betreffend die Eheschließung weiblicher Lehrkräfte", in: *Gesetz- und Verordnungsblatt für Bosnien und die Herzegovina. Jahrgang 1908*, Sarajevo: Landesdruckerei, 1909, 35.

[59] ABiH, VŠS, box 28, sign. B 1911/65, Andromaha Morait – Zaim ef. Muminagić, 29.06.1912.

[60] ABiH, VŠS, box 28, sign. B 1911/65, Zaim ef. Muminagić – Adalbert Shek-Vugrovečki, 04.07.1912. As mentioned before, Islamic law allows the marriage of a Muslim man with a Christian or Jewish woman, whereas Muslim women can only marry Muslim men, see footnote 10.

[61] Some documents analyzed by Fedja Buric indicate that also a county official in Bugojno requested the Provincial Government to repeal the ban on mixed marriages. Furthermore, he outlined that the parents of Andromaha's students wrote a letter to the county government, in which they were worried about finding a replacement for Andromaha who was on unpaid leave. See F. Buric, *Becoming Mixed*, 20-23.

marriages, as this fell into the competence of the respective religious institutions. Hence, a *kadi* could decide in every single case of a mixed marriage on his own, in line with Sharia law.[62] By the end of the month, the Supreme Sharia court had also informed the district Sharia court in Bugojno, where Andromaha and Sabit finally got married on 12 September 1912.[63]

This specific case is not only remarkable as it highlights the role of personal networks, but it also opened the gate for other mixed couples. In 1911, Muharem Hafiz Dabulhanić from Banja Luka requested several times at the district Sharia court as well as at the Supreme Sharia court a marriage license in order to marry the non-Muslim Ana Kanajet. Although the requests were transferred to the Provincial Government, this high body did not react until 8 August 1912, when it informed the district Sharia court in Banja Luka about the new regulation from 1 August 1912, which allowed *kadi*s in some instances to register mixed marriages.[64] On the same date, also the district Sharia court in Sarajevo was informed about the new directive. Namely, the court had forwarded a request for a marriage license by the nurse Salih Delić, who wanted to wed the non-Muslim Katica Tonković, to the Provincial Government in May 1912. Although the local *kadi* was aware that according to the "Regulation on the Order and Scope of the Sharia Courts", he was not competent to register a mixed marriage, he still asked for a particular allowance, as the couple was already cohabitating.[65]

It has to be mentioned that apparently, not all *kadi*s had been immediately informed about the new directive, as over the following few years, some *kadi*s still appealed to the Supreme Sharia court in order to obtain a specific marriage license for a mixed couple. They were then informed about the new regulation from 1 August 1912, after which mixed marriages

[62] ABiH, VŠS, box 2, sign. A 1913/5.

[63] ABiH, VŠS, box 28, sign. B 1911/65.
A detailed description of the case of Andromaha Morait and Sabit Talić can be found in F. Buric, *Becoming Mixed*, 13-27.

[64] ABiH, VŠS, box 28, sign. B 1911/12.

[65] ABiH, VŠS, box 29, sign. B 1912/37.

could be allowed in some instances upon a *kadi*'s discretion.[66] It has to be added that there were still some special provisions for non-citizens of Bosnia and Herzegovina, which were not always precisely followed. Hence, since a district Sharia court had neglected these provisions while solemnizing marriage between a Muslim and a non-citizen, the Provincial Government issued on 8 December 1912 a directive explaining the present provisions for non-Bosnian citizens. They mainly regulated which documents they had to obtain in order to prove their ability to marry.[67]

Although with this new regulation, Sharia courts could marry a mixed couple or issue a marriage license for them, such marriages were still not entirely accepted by society and *kadi*s. During a meeting of the Supreme Sharia court on a case where it had to explain the new regulation to the district Sharia court in Sanski Most, the Supreme Sharia judge Ali-Riza Prohić suggested adding a further explanation. He instructed the local Sharia court that a mixed marriage was still "mekruh",[68] and therefore all circumstances had to be carefully investigated before such a marriage could be approved.[69] It seems that the Supreme Sharia court still intended to keep the number of

[66] This happened in the following cases: ABiH, VŠS, box 30, sign. B 1913/54; ABiH, VŠS, box 31, sign. B 1914/23; ABiH, VŠS, box 31, sign. B 1914/38; ABiH, VŠS, box 31, sign. B 1914/47; ABiH, VŠS, box 31, sign. B 1915/13; ABiH, VŠS, box 31, sign. B 1915/19; ABiH, VŠS, box 31, sign. B 1916/8; ABiH, VŠS, box 31, sign. B 1916/11; ABiH, VŠS, box 32, sign. B 1917/43j; ABiH, VŠS, box 32, sign. B 1917/52; ABiH, VŠS, box 32, sign. B 1917/58; ABiH, VŠS, box 32, sign. B 1918/44.

[67] ABiH, VŠS, box 2, sign. A 1913/5
This regulation reproduced two earlier directives issued in 1898 and 1900. See "38. Verordnung der Landesregierung für Bosnien und die Hercegovina vom 20. März 1898, Z. 34.150/I, betreffend den Vorgang bei Eheschließungen der ungarischen Staatsbürger in Bosnien und der Hercegovina", in: *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1898*, Sarajevo: Landesdruckerei, 1898, 31-43; "14. Verordnung der Landesregierung für Bosnien und die Hercegovina vom 9. Jänner 1900, Z. 185.879 ex 1899, betreffend den Vorgang bei Eheschließungen österreichischer Staatsbürger, das ist Angehöriger der im Reichsrathe vertretenen Königreiche und Länder in Bosnien und der Hercegovina", in: *Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1900*, Sarajevo: Landesdruckerei, 1900, 148-149.

[68] "Mekruh" (ar. makrūh) means, according to Islamic law, that a certain act corresponds with the law, but that it is reprehensible. See Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1964, 121-123.

[69] ABiH, VŠS, box 31, sign. B 1915/13, Šeriatski Vrhovni Sud, sjednica od 19.05.1915, broj 234/šeriat.

solemnized mixed marriages relatively low, although it was visibly growing after the new regulation in 1912. The author could analyze a total of 18 cases of mixed marriages that were regulated at a Sharia court after the new directive from 1912. Interestingly, in 15, and thus almost all of the cases, the bride was a non-citizen of Bosnia and Herzegovina and mostly came from another part of the Habsburg Monarchy.[70]

Nonetheless, with the easements in the registration of mixed marriages, the corresponding increase did not automatically result in greater acceptance of mixed marriages throughout society. In July 1918, Sead-beg Kulović, the son of the famous mayor of Sarajevo Esad Kulović, married at the district Sharia court in Tuzla a Catholic girl from Sarajevo, which triggered protests from several people against this matrimony. On the day of the wedding, Ibrahim Maglajlić, the mufti of Tuzla, sent a telegram to the *reis-ul-ulema*[71] Čaušević asking him to impede the marriage via the Provincial Government. A few days later, the office of the mufti (*muftinski ured*) and the district Vakuf commission (*kotarsko vakufsko-mearifsko povjerenstvo*) in Tuzla also sent a petition to the *ulema-medžlis*[72] in Sarajevo asking for a restriction on mixed marriages in Bosnia and Herzegovina as well as criticizing the directive from 1912 in allowing the solemnization of such marriages. This petition was followed by a personal letter from Sead-beg's mother Rašida Kulović and his aunt Tahira Tuzlić[73] to the *ulema-medžlis*, in which they asked the high authority to cancel the marriage. On the one hand, they protested against the procedure of the district Sharia court, which was not ready to postpone the wedding for a few hours and performed the wedding procedure with a

[70] In two cases, the bride was a German citizen, and in one case, a Russian citizen. See ABiH, VŠS, box 30, sign. B 1913/31; ABiH, VŠS, box 32, sign. B 1917/58; ABiH, VŠS, box 32, sign. B 1918/11.

[71] The office of the *reis-ul-ulema* was established in 1882 and represented the highest Islamic authority within Bosnia and Herzegovina.

[72] This body was administering religious and educational life of the Muslim population in Bosnia and Herzegovina.

[73] It has to be mentioned that Sead-beg Kulović had inherited the administration of an *evladijet vakuf* (a family charity endowment under Islamic law) from Tahira Tuzlić one year prior to his marriage. This was probably a factor that had contributed to the severity of the protest. See Adnan Jahić, *Muslimansko žensko pitanje u Bosni i Hercegovini (1908-1850)*, Zagreb: Grafomark, 2017, 371.

representative outside the court. On the other hand, the two women pleaded that Sead-beg's marriage harmed and humiliated their old family as well as hurt their souls and religious feelings. At last, they indicated that as women, they were dependent on Sead-beg, who represented the family's name, fortune, and fame. Nevertheless, these pleas could not effect a reversal of the marriage. In December 1918, the Supreme Sharia court decided to reject the appeal on the cancellation of Sead-beg's marriage, although they could detect minor irregularities in the procedure of the marriage registration.[74]

This case highlights that the allowance to solemnize mixed marriages by Sharia courts did not directly lead towards greater social acceptance of mixed marriages. Several people still perceived a marriage between a Muslim and a non-Muslim as harmful for the Muslim society of Bosnia and Hercegovina. Nevertheless, an increasing number of mixed marriages was solemnized by Sharia courts upon the lifting of the ban on registering mixed marriages in 1912.

Conclusion

As a result of the incorporation and reform of the Sharia court system in Bosnia and Herzegovina after the Habsburg occupation in 1878, the competences of Sharia courts were significantly restricted. This also affected the solemnization of mixed marriages, which did not only cross religious, but also institutional, legal, and social boundaries. As this paper outlines in the first part, the "Regulation on the Order and the Scope of the Sharia Courts" from 1883 brought a limitation of the competences of Sharia courts to the Muslim population. This, however, led to an unclear definition of the jurisdiction in cases of mixed marriages, and it was, hence, disputed if Sharia courts were competent in this matter. Although Islamic law allowed marriages between a Muslim male and Christian or Jewish woman, the Provincial Government held that Sharia courts were not competent to register mixed marriages or issue a marriage license for such marriages since the scope of Sharia courts

[74] A. Jahić, *Muslimansko žensko pitanje*, 371-374; ABiH, VŠS, box 32, sign. B 1918/41.

encompassed exclusively Muslim persons. Thereby, the Habsburg administration bound the regulation of matrimonial and family affairs to the religious/confessional affiliation and followed in this field a strict principle of confessionalism, just like in other administrative areas.

The article, furthermore, examines the role of strategic conversions to Islam as a means to legalize a mixed marriage. The analysis of the documents from the Supreme Sharia court indicates that such conversions were frequent among mixed couples, whereas usually, the woman converted. However, some of the investigated court cases imply that this strategy did not always turn out as successful since the state authorities increasingly restricted conversions. Also, there were specific regulations for conversions of non-citizens of Bosnia and Herzegovina, and particularly Hungarian citizens were banned from adopting the Islamic faith and marrying a Muslim. Although Austrian citizens faced less strict rules, it was still disputed if they could convert to Islam and get married at a Sharia court.

Consequently, many mixed couples lived in concubinage and usually had children. Thus, the article also addresses the issue of the legal status and religious affiliation of these children born out of wedlock. The archive documents reveal that these questions were particularly relevant in the case of a separation or the death of a parent, which required defining the legal custody and guardianship of the children. In addition, they highlight that the respective court decisions were highly inconsistent. Hence, the regulation of the child's custody and religious affiliation, as well as the jurisdiction of such cases, were decided on a case-by-case-basis, and often depended on the opinion of the particular judges.

As portrayed in the last part of the paper, the legal situation changed, however, in 1912 when the Provincial Government allowed *kadi*s to solemnize mixed marriages at their own discretion. Although the number of mixed marriages that were registered at Sharia courts subsequently increased, such marriages were, nevertheless, not entirely accepted throughout society, as several protests against them still indicate.

SOURCES AND LITERATURE

Archival sources

Arhiv Bosne i Hercegovine (ABiH)

Fond Vrhovnog Šerijatskog suda za Bosnu i Hercegovinu (VŠS), 1879-1918.

Österreichisches Staatsarchiv (OeStA), Wien, Austria

Allgemeines Verwaltungsarchiv (AVA), Justiz, JM, Allgemein, Sign. 1, A1238, Bosnien, Regelung des Justizwesens, Post 11-55, 1881-1917. Ad Zahl 9.249/BH. ex 1912.

Published Sources

Eherecht, Familienrecht und Erbrecht der Mohamedaner nach hanefitischem Ritus, Wien: K. und k. Hof- und Staatsdruckerei, 1883.

Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1891, Sarajevo: Landesdruckerei, 1891.

Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1898, Sarajevo: Landesdruckerei, 1898.

Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1900, Sarajevo: Landesdruckerei, 1900.

Gesetz- und Verordnungsblatt für Bosnien und die Herzegovina. Jahrgang 1908, Sarajevo: Landesdruckerei, 1909.

Gesetz- und Verordnungsblatt für Bosnien und die Hercegovina. Jahrgang 1913, Sarajevo: Landesdruckerei, 1913.

Landesstatut für Bosnien und die Hercegovina, Wien: Hof- und Staatsdruckerei, 1910.

Sammlung der Gesetze und Verordnungen für Bosnien und die Hercegovina. Jahrgang 1883, Sarajevo: Landesdruckerei, 1883.

Sladović, Eugen, *Islamsko pravo u Bosni i Hercegovini*, Beograd: Izdavačka knjižarnica Gece Kona, 1926.

Zbirka naredaba za šeriatske sudove u Bosni i Hercegovini. 1878-1900, Sarajevo: Zemaljska vlada i Vrhovni sud za Bosnu i Hercegovinu.

Literature

Books

Deringil, Selim, *Conversion and Apostasy in the Late Ottoman Empire*, Cambridge: Cambridge Univ. Press, 2012.

Donia, Robert J. *Islam under the Double Eagle. The Muslims of Bosnia and Hercegovina. 1878-1914*, New York: Columbia University Press, 1981.

Durmišević, Enes, *Šerijatsko pravo i nauka šerijatskog prava u Bosni i Hercegovini u prvoj polovini XX stoljeća*, Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 2008.

Gammerl, Benno, *Staatsbürger, Untertanen und Andere. Der Umgang mit ethnischer Heterogenität im Britischen Weltreich und im Habsburgerreich 1867-1918*, Göttingen: Vandenhoeck & Ruprecht, 2010.

Grunert, Heiner, *Glauben im Hinterland. Die Serbisch-Orthodoxen in der habsburgischen Herzegowina 1878-1918*, Göttingen: Vandenhoeck & Ruprecht, 2016.

Hasani, Mustafa, *Tumačenje i primjena šerijatskog prava o mješovitim brakovima u Bosni i Hercegovini u periodu od 1930. do 1940. godine*. Sarajevo: El-Kalem, 2014.

Jahić, Adnan, *Muslimansko žensko pitanje u Bosni i Hercegovini (1908-1850)*, Zagreb: Grafomark, 2017.

Karčić, Fikret, *Šerijatski sudovi u Jugoslaviji 1918-1941*, Sarajevo: Fakultet islamskih nauka, 2005.

Okey, Robin, *Taming Balkan Nationalism. The Habsburg "Civilizing Mission" in Bosnia. 1878-1914*, Oxford: Oxford University Press, 2007.

Ruthner, Clemens, *Habsburgs "Dark Continent". Postkoloniale Lektüren zur österreichischen Literatur und Kultur im langen 19. Jahrhundert*, Tübingen: Narr Francke Attempto, 2018.

Schacht, Joseph, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1964.

Vrankić, Petar, *Religion und Politik in Bosnien und der Herzegowina (1878-1918)*, Paderborn: Schöningh, 1998.

Articles

Bećić, Mehmed, "Novi pogled na transformaciju šerijatskih sudova u Bosni i Hercegovini. Da li je 1883. godine nametnut kolonijalni model primjene šerijatskog prava?", in: *Godišnjak*, No. LX, Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 2017, 59-82.

Botev, Nikolai, "Where East Meets West. Ethnic Intermarriage in the Former Yugoslavia", in: *American Sociological Review*, vol. 59, No. 3, 1994, 461-480.

Donia, Robert J, "Fin-de-Siecle Sarajevo. Habsburška transformacija osmanskog grada", in: *Prilozi*, No. 32, Sarajevo: Institut za istoriju, 2003, 149-178.

Durmišević, Enes, "Šerijatski sudovi u Bosni u drugoj polovini XIX stoljeća", in: *Anali,* No. 12, Zenica: Pravni fakultet Univerziteta u Zenici, 2013, 75-89.

Gelez, Philippe, "Vjerska preobraćenja u Bosni i Hercegovini (c. 1800-1918)", in: *Historijska traganja*, No. 2, Sarajevo: Institut za istoriju, 2008, 17-75.

Kasumović, Amila, "Zemaljska pripadnost stanovnika Bosne i Hercegovine u prvim godinama austrougarske uprave", in: *Historijska traganja*, No. 6, Sarajevo: Institut za istoriju, 2010, 9-34.

Kasumović, Amila, "Konkubinat u Bosni i Hercegovinu na prijelomu 19. i 20. stoljeća", in: *Prilozi,* No. 47, Sarajevo: Institut za historiju, 2018, 69-90.

Mrđen, Snježana, "Etnički mješani brakovi na prostoru bivše Jugoslavije, 1970-2005", in: *Zbornik matice srpske za društvene nauke,* No. 131, Novi Sad: Matica Srpska, 2010, 255-267.

Sartori, Paolo, Shahar, Ido, "Legal Pluralism in Muslim-Majority Colonies. Mapping the Terrain", in: *Journal of the Economic and Social History of the Orient*, vol. 55, No. 4/5, Leiden: Brill, 2012, 637-663.

Younis, Hana, "*Nezakonita* djeca pred zakonom. Dokazivanje očinstva u Bosni i Hercegovini na razmeđu 19. i 20. stoljeća", in: *Prilozi*, No. 47, Sarajevo: Institut za historiju, 2018, 45-67.

Žíla, Ondřej, "Sebeidentifikace, statistika a její interpretace. Etnicky smíšená manželství, Jugoslávci a muslimská otázka v Bosně a Hercegovině v kontextu národnostní politiky socialistické Jugoslávie", in: *Historický časopis*, vol. 61, No. 3, Bratislava: Historický ústav SAV, 2013, 513-532.

Unpublished

Buric, Fedja, *Becoming Mixed. Mixed Marriages of Bosnia-Herzegovina during the Life and Death of Yugoslavia*, Dissertation, University of Illinois, Urbana, Illinois 2012.available:http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.957.6472&rep=rep1&type=pdf (accessed: 24. 6. 2019).