

FORGING A HABSBERG ISLAMIC LEGAL SYSTEM: LEGAL TRANSFORMATION AND LOCAL AGENCY IN BOSNIA AND HERZEGOVINA (1878–1918)

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Abstract

The integration of Islamic law into the Habsburg administrative structures of Bosnia and Herzegovina following the 1878 occupation by Austria-Hungary marked a significant shift in the existing Islamic legal system. The Habsburg bureaucracy made notable reforms to the Islamic judiciary and reduced the application of Islamic law to the private sphere of family and marriage, which entailed the establishment of a two-tier court system, including a state-controlled Supreme Sharī‘a Court in Sarajevo. This paper examines the impacts of these legal reforms, focusing on the agency of local qāḍīs and plaintiffs in the process. Its analysis suggests that the integration of the sharī‘a courts into the Habsburg administration launched a process of translation of legal norms, knowledge, values, and practices, resulting in a unique blend of Ottoman Islamic legal practices and Habsburg legal structures and values. The paper argues that despite increased government control, local actors, including qāḍīs and plaintiffs, still managed to retain some autonomy and thereby significantly shape the legal system.

Keywords: Bosnia and Herzegovina, Austria-Hungary, Southeastern Europe, Islamic law, Muslim minority, family law, legal transformation

INTRODUCTION

The Congress of Berlin in 1878 marked a significant break for Muslim communities in the hitherto Ottoman territories of Southeastern Europe. The Treaty of Berlin redrew the region's borders and placed Muslims under (predominantly) Christian rule in the newly established successor states to the Ottoman Empire, while guaranteeing them civil and political rights as well as the free practice of their faith.¹ It also gave Austria-Hungary the mandate to occupy the province of Bosnia and Herzegovina, which remained a *de jure* part of the Ottoman Empire (until its formal annexation by Austria-Hungary in 1908). As stated in the Habsburg emperor's proclamation to Bosnia's inhabitants of July 1878, and specifically defined in the Habsburg-Ottoman Novi Pazar Convention of April 1879, the occupation mandate guaranteed freedom of worship to all inhabitants, including Muslims.²

To fulfill this obligation, the newly installed Austro-Hungarian authorities had to integrate Islamic institutions, including its legal system, into their own (secular) administrative structures. Following the occupation, *sharī'a* courts were allowed to continue ruling on legal matters according to Islamic law, however, the Habsburg authorities soon introduced significant reforms. According to a report from the Austro-Hungarian finance minister Benjamin Kállay to the Cisleithanian prime minister Eduard Taaffe in 1883, the authorities aimed to control the *sharī'a* courts and local *qāḍīs*, while also guaranteeing the free practice of Islam. Kállay thought that the Habsburg administration should lead to the "assimilation of a large part of the

1 A general overview on civic and religious rights of Muslims in post-Ottoman Southeastern Europe is provided by EMILY GREBLE, *MUSLIMS AND THE MAKING OF MODERN EUROPE* (2021).

2 *Proclamation an die Bewohner von Bosnien und der Hercegovina: Wiener Zeitung vom 28. Juli 1878, Nr. 172*, in SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: I. BAND 3 (1880); *Convention zwischen Oesterreich-Ungarn und der Türkei vom 21. April 1879*," in SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: I. BAND 5, Art. 2 (1880); MUSTAFA IMAMOVIĆ, *PRAVNI POLOŽAJ I UNUTRAŠNJO-POLITIČKI RAZVITAK BiH OD 1878. DO 1914.*, 9–20 (2007).

Mohammedan-confessional legislation with that of the state,” and believed that these reforms would be well received by the Muslim population due to the allegedly “increasingly evident undeniable merit of our laws.”³

Kállay’s concept of a “civilizing mission” aimed at modernizing and assimilating the Islamic judiciary aligned with the overall Habsburg “quasi-colonial” effort in Bosnia, characterized by asymmetrical power dynamics in governmental structures.⁴ However, several studies have highlighted that this did not lead to the demise of Islamic law but, rather, led to marked transformations within it. As Fikret Karčić’s seminal research has shown, much Ottoman-Islamic law “survived” in post-Ottoman Bosnia, while the Habsburg reforms were similar to those introduced elsewhere in European colonies, such as in Algeria and India.⁵ Mehmed Bečić has argued that the Austro-Hungarian reforms were based on colonial models of administering the

3 Report by Benjamin Kállay, to Austrian Minister-President Eduard Taaffe (June 5, 1883) (Austrian State Archives (AT-OeStA), Allgemeines Verwaltungssachiv (AVA), Justiz JM Allgemein Sig 1 A1238, Fasc. I N I Vz.1a, 20: ad 9343-1883/J.M.).

4 Scholars use a variety of terms to describe the asymmetrical relationship between Bosnia and the Habsburg monarchy’s core. Since describing Bosnia as a “colony” can be controversial, a variety of specific terms, such as “proximate colony” (Donia), “semi-” or “quasi-colony” (Detrez), or “colonial governmentality” (Aleksov) have been proposed. This paper uses “quasi-colonial” to emphasize that Habsburg rule had many characteristics of colonial rule. See Bojan Aleksov, *Habsburg’s “Colonial Experiment” in Bosnia and Herzegovina Revisited*, in *SCHNITTSTELLEN: GESELLSCHAFT, NATION, KONFLIKT UND ERINNERUNG IN SÜDOSTEUROPA* 201–16 (Ulf Brunnbauer, Andreas Helmedach, and Stefan Troebst, eds., 2007); Raymond Detrez, *Colonialism in the Balkans: Historic Realities and Contemporary Perceptions*, available at <http://www.kakanien-revisited.at/beitr/theorie/RDetrez1.pdf>; Robert J. Donia, *The Proximate Colony: Bosnia-Herzegovina Under Austro-Hungarian Rule*, available at <http://www.kakanien-revisited.at/beitr/fallstudie/RDonia1.pdf>. Clemens Ruthner provides an overview of the historiographical assessment of Austro-Hungarian rule in Bosnia as colonial rule: Clemens Ruthner, *Bosnien-Herzegowina als k. u. k. Kolonie: Eine Einführung*, in *BOSNIEN-HERZEGOWINA UND ÖSTERREICH-UNGARN: 1878–1918*, 15–44 (Clemens Ruthner and Tamara Scheer, eds., 2018).

5 See FIKRET KARČIĆ, *ŠERIJATSKI SUDOVI U JUGOSLAVIJI 1918–1941* (2005), esp. at 21–26; Fikret Karčić, *Survival of the Ottoman-Islamic Laws in Post-Ottoman Times in Bosnia and Herzegovina*, in *KONFLIKT UND KOEXISTENZ: DIE RECHTSORDNUNGEN SÜDOSTEUROPAS IM 19. UND 20. JAHRHUNDERT* 43–69 (Thomas Simon, ed., 2017).

Islamic judiciary.⁶ By building upon these discussions of continuity and change in the Islamic legal system following the Habsburg occupation of Bosnia in 1878, this paper aims to investigate how the Ottoman Islamic legal system was adapted towards the new Austro-Hungarian political and administrative framework by focusing on legal practice at *sharīʿa* courts and the local Muslims' agency therein.

To date, most studies on the Islamic legal system in Habsburg Bosnia have emphasized its structure and legal norms,⁷ although recent years have witnessed an increased interest in legal practice at *sharīʿa* courts. Hana Younis, for instance, has assessed the everyday life of Bosnian *qāḍīs* who, she argues, had to contend with the loss of their prestigious status, as well as limitations to their jurisdictional functions.⁸ Other historians have also increasingly used *sharīʿa* court records to analyze the regulation of marriage and family issues.⁹ Beyond the study of Islamic law, the situation of Muslims in Habsburg Bosnia is relatively well-studied and the most recent works have

6 Mehmed Bečić, *Novi pogled na transformaciju šerijatskih sudova u Bosni i Hercegovini: Da li je 1883. godine nametnut kolonijalni model primjene šerijatskog prava?*, LX GODIŠNJAK PRAVNOG FAKULTETA U SARAJEVU 59 (2017).

7 In addition to Karčić and Bečić, Enes Durmišević also made a key contribution to the historiography of Islamic law under Habsburg rule, see, e.g., ENES DURMIŠEVIĆ, ŠERIJATSKO PRAVO I NAUKA ŠERIJATSKOG PRAVA U BOSNI I HERCEGOVINI U PRVOJ POLOVINI XX STOLJEĆA (2008); Enes Durmišević, *Šerijatski sudovi u Bosni i drugoj polovini XIX stoljeća*, 12 ANALI PRAVNOG FAKULTETA UNIVERZITETA U ZENICI 75 (2013).

8 See HANA YOUNIS, BITI KADIJA U KRŠĆANSKOM CARSTVU: RAD I OSOBLJE ŠERIJATSKIH SUDOVA U BOSNI I HERCEGOVINI 1878.–1914. (2021). Younis also examined the legal practice at *sharīʿa* courts on several selected topics, such as divorces, “prodigality”, and children born out of wedlock. See Hana Younis, *Razvjenčanja kroz dokumente Vrhovnog šerijatskog suda Sarajevo u prvim decenijama nakon Austro-Ugarske okupacije*, in PROCEEDINGS OF THE FIFTH INTERNATIONAL CONGRESS ON ISLAMIC CIVILIZATION IN THE BALKANS 419–36 (Eren Halit, ed., 2015); Hana Younis, *Rasipništvo u praksi šerijatskih sudova u Bosni i Hercegovini od 1878. do 1914. godine*, 44 PRILOZI 81 (2015); Hana Younis “*Nezakonita*” *djeca pred zakonom: Dokazivanje očinstva u Bosni i Hercegovini na razmeđu 19. i 20. stoljeća*, 47 PRILOZI 45 (2018).

9 See, e.g., Ninja Bumann, *Marriage Across Boundaries: Mixed Marriages at the Supreme Sharia Court in Habsburg Bosnia and Herzegovina*, 19 HISTORIJSKA TRAGANJA 151 (2020); Ninja Bumann, *Contesting Juridical Authority: Shari'a, Marriage, and Morality in Habsburg Bosnia and Herzegovina*, 53 AUSTRIAN HISTORY YEARBOOK 150 (2022); ADNAN JAHIĆ, MUSLIMANSKO ŽENSKO PITANJE U BOSNI I HERCEGOVINI (1908–1850) (2017); Amila Kasumović, *Konkubinatski u Bosni i Hercegovini na prijelomu 19. i 20. stoljeća*, 47 PRILOZI 69 (2018).

specifically focused on the Ottoman cultural legacy and the ongoing trans-Ottoman networks and entanglements among Bosnian Muslim intellectuals.¹⁰

This growing historiographical interest in Islam and Muslims in post-Ottoman Bosnia corresponds to a broader trend to investigate the lives and the legal status of Muslims in South-eastern Europe following the cessation of Ottoman rule. Several recent studies have explored how Muslim communities became minorities in the newly established nation-states of Bulgaria, Greece, and Serbia, arguing that this resulted in the incorporation and transformation of the Ottoman legal heritage as well as the restructuring of Islamic institutions.¹¹ The present paper contributes to this growing scholarship by focusing on the transformation of the Islamic legal system in Habsburg Bosnia in court practice. In so doing, it also draws upon a growing body of literature relating to the incorporation of Islamic legal systems in colonial administrations of the late nineteenth century, such as in Russian Central Asia or African and Southeast Asian territories under French and British rule.¹²

Such legal transformations have been studied from different theoretical perspectives, while recently, the legal historian

10 See Leyla Amzi-Erdoğdular, *Alternative Muslim Modernities: Bosnian Intellectuals in the Ottoman and Habsburg Empires*, 59 *COMPARATIVE STUDIES IN SOCIETY AND HISTORY* 912 (2017); Harun Buljina, *Empire, Nation, and the Islamic World: Bosnian Muslim Reformists Between the Habsburg and Ottoman Empires, 1901–1914* (Ph.D. dissertation, Columbia University); Dennis Dierks, *Scripting, Translating, and Narrating Reform: Making Muslim Reformism in the European Peripheries of the Muslim World at the Turn of the 19th Century*, in *KNOWLEDGE ON THE MOVE IN A TRANSOTTOMAN PERSPECTIVE: DYNAMICS OF INTELLECTUAL EXCHANGE FROM THE FIFTEENTH TO THE EARLY TWENTIETH CENTURY* 157 (Evelyn Dierauff et al., eds., 2021).

11 See GREBLE, *supra* note 1; STEFANOS KATSIKAS, *ISLAM AND NATIONALISM IN MODERN GREECE 1821–1940* (2021); MILENA B. METHODIEVA, *BETWEEN EMPIRE AND NATION: MUSLIM REFORM IN THE BALKANS* (2021); ANNA M. MIRKOVA, *MUSLIM LAND, CHRISTIAN LABOR: TRANSFORMING OTTOMAN IMPERIAL SUBJECTS INTO BULGARIAN NATIONAL CITIZENS, C. 1878–1939* (2017); Jelena Radovanović, *Contested Legacy: Property in Transition to Nation-State in Post-Ottoman Niš* (2020) (Ph.D. dissertation, Princeton University).

12 An overview of legal pluralism and the role of Islamic law in Muslim majority-colonies is offered by Paolo Sartori and Ido Shahar, *Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain*, 55 *JOURNAL OF THE ECONOMIC AND SOCIAL HISTORY OF THE ORIENT* 637 (2012).

Lena Foljanty has suggested viewing legal transfers as translations of knowledge, practices, and values. Through this process, legal transfers create hybrid legal models and norms that are characterized by an amalgamation of different practices and understandings.¹³ Similarly, Lauren Benton's studies on the role of law in colonial cultures outline that the incorporation of indigenous and Islamic law into colonial pluralistic legal orders is characterized by negotiations about jurisdictional and cultural boundaries. She highlights how cultural and legal intermediaries have played a significant role in translating and brokering between imperial administrators and local societies. At the same time, she points out that colonial pluralistic legal systems often inhibited tensions and contests about legal authority and how these facilitated phenomena such as "legal jockeying" between different legal and jurisdictional orders.¹⁴ Starting from these theoretical considerations, this article assumes that the translation of Ottoman Islamic law into the Habsburg framework should be analyzed beyond merely describing changes to legal structures and norms. Rather, the agency of local actors, including imperial administrators and judges, *qāḍīs*, and plaintiffs, in conflicts and negotiations, as well as the emergence of new norms and legal practices resulting from the amalgamation of different legal cultures are this study's focus.

This study's findings rely on the analysis of archival documents from the Supreme Sharī'a Court (Bosnian: Vrhovni Šerijatski Sud) in Bosnia and Herzegovina, installed by the Habsburg authorities in July 1879 as an appeal body for local *sharī'a* courts. The court records stored in the State Archives of Bosnia and Herzegovina (Bosnian: Arhiv Bosne i Hercegovine) in Sarajevo provide information on first-instance district *sharī'a* court proceedings as well as on appeal procedures before the Supreme Sharī'a Court. Due to the Habsburg legal interventions and archival practices, the available court records do not entail *sicils*, or *qāḍī* court registers, that are traditionally used for

13 Lena Foljanty, *Rechtstransfer als kulturelle Übersetzung: Zur Tragweite einer Metapher*, 98 KRITISCHE VIERTELJAHRSSCHRIFT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT 89 (2015).

14 LAUREN A. BENTON, *LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400–1900* (2002), esp. at 1–30.

studying legal practice in the Ottoman context.¹⁵ Rather, they include correspondence between the local court and the Supreme Sharī'a Court, the plaintiff's appeal, and the decisions of the Supreme Sharī'a Court. Since the type and number of archived documents vary from case to case, some also include additional material, such as minutes of court hearings, the verdicts of local trials of the first instance, and other types of correspondence and text material from different administrative institutions. The court material is to a large extent written in Bosnian (Latin script) and to a lesser extent in Ottoman Turkish (OT) and German.¹⁶

A close reading of selected cases from the Supreme Sharī'a Court offers insights into the transformation of Islamic legal practice and the ensuing negotiations on jurisdictional and cultural boundaries as well as legal authority between different local actors. Besides describing the Habsburg structural reforms of the Islamic legal system, as outlined in the subsequent section, the analysis focuses on four key issues: the role of the Ottoman Turkish language and script for the continuity of Islamic legal practices; the rise in proceduralization and legal formalism in *sharī'a* court proceedings; the formulation of Islamic legal opinions and the development of legal doxa; and finally, the responses of local plaintiffs to the Habsburg legal reforms by utilizing the new legal structures to make claims. Thereby, this paper argues that the Habsburg transformation of the Islamic legal judiciary led to a hybrid legal model, in which some parts of the Ottoman legal heritage were intentionally preserved, while others were replaced with Austro-Hungarian concepts or colonial legal models. This legal amalgamation was, however, not only shaped by top-down efforts of the Habsburg authorities to muzzle and control local *qāḍīs*, but equally, by local agents who managed to retain some autonomy within the Islamic legal system.

15 Coşgel and Ergene give a concise overview of the use of *sicils* and methodological discussions for studying Ottoman legal practice, while, however, overly favoring and advertising a quantitative approach: METIN COŞGEL AND ERGENE BOĞAÇ, *THE ECONOMICS OF OTTOMAN JUSTICE: SETTLEMENT AND TRIAL IN THE SHARIA COURTS* 13–26 (2016).

16 Arhiv Bosne i Hercegovine (ABiH), Vrhovni Šerijatski Sud (VŠS), 1879–1918.

SHARĪʿA COURTS UNDER HABSBURG RULE

From the fifteenth century, when Bosnia came under Ottoman rule, Islamic culture and institutions played a vital part in local society. The population consisted of four different confession-al groups: Muslims (38 percent according to an official census from 1879), (Serbian) Orthodox Christians (43 percent), Catholics (18 percent), and a small Jewish community.¹⁷ Non-Muslim groups were afforded considerable autonomy in administering family and matrimonial affairs, with the resulting pluralistic legal order referred to as the *millet* system. The term *millet*, ultimately derived from Arabic *milla*, roughly corresponded to a confessional community. However, this should not be equated with a clearly defined systematic order: Jurisdiction was fluid, and non-Muslims also used *sharīʿa* courts to regulate various issues, including family and matrimonial questions, according to Islamic law.¹⁸

Before the Danube Monarchy took over Bosnia in 1878, the mid-nineteenth-century Tanzimat (OT, Reorganization) reforms that aimed to modernize the empire and its administration by incorporating elements from European legal and administrative models had already significantly reshaped the Ottoman legal system. This had traditionally been based on Islamic law as well as the *qānūn*, or the sultan-issued state administrative regulations. The Tanzimat reforms introduced new legal codifications, some of which were based on a selective reception of European law, as well as courts. Thus, new penal (1840, 1858) and commercial codes (1850) were drafted that emulated French models. In the same vein, secular Nizamiye (OT, Regular) courts were established in 1865/66 in Bosnia, which regulated all civil legal affairs except for those issues that fell under the purview of separate commercial, consular, *sharīʿa*, or ecclesiastical courts. As of 1868, the Divan-i Ahkām-i Adliyye (OT, Council

17 ROBIN OKEY, TAMING BALKAN NATIONALISM: THE HABSBURG “CIVILISING MISSION” IN BOSNIA, 1878–1914, 8 (2007).

18 A summary of the *millet* system and current historiographical debates is provided by Karen Barkey and George Gavrilis, *The Ottoman Millet System: Non-Territorial Autonomy and Its Contemporary Legacy*, 15 ETHNOPOLITICS 24 (2016).

of Judicial Ordinances) was established as the highest court in the multi-level Nizamiye court system, putting appeal mechanisms under the control of a secular institution. Another significant step was the drafting of an Ottoman civil code, the *Mecelle-i Ahkâm-i Adliyye* (OT, Digest of Legal Rules; hereafter *Mecelle*) between 1870 and 1877, the form of which was akin to that of “European” codified law, while its content was based on Islamic law. Thus, on the eve of the Habsburg occupation of Bosnia, European legal concepts had been introduced into the Ottoman legal system, and the competences of the *sharī‘a* courts were already being drastically curtailed to (at least in theory) the administration of family, marriage, and inheritance affairs.¹⁹

The 1870s not only saw major legal and administrative reforms and changes in the Ottoman Empire but also the so-called Great Eastern Crisis, which led to several uprisings and wars, that challenged the empire’s rule in Southeastern Europe. Following the Russo-Ottoman War of 1877–78, European powers intervened to redraw the region’s borders. The initial peace treaty, signed at San Stefano in March 1878, was soon revised at the Congress of Berlin in June and July of that year, and resulted in the establishment of new nation-states (Romania, Bulgaria, Serbia, and Montenegro) which enjoyed varying degrees of independence from the Ottoman Empire. Austria-Hungary, which had remained neutral during the war, was granted the mandate to occupy and administer the Ottoman province of Bosnia and Herzegovina, which remained legally part of the Ottoman Empire until its annexation by the Habsburg Monarchy in 1908.

Due to this convoluted legal status, the Habsburg emperor, Franz Joseph, guaranteed the preservation of the existing legal system and laws, at least initially.²⁰ The Austro-Hungarian authorities soon implemented changes in the local court system to reduce the authority and jurisdiction of local *qāḍīs*. Several months after occupying Bosnia, they replaced local judges

19 NİYAZI BERKES, *THE DEVELOPMENT OF SECULARISM IN TURKEY 160–72* (1964); SAMI ZUBAIDA, *LAW AND POWER IN THE ISLAMIC WORLD* 129–33 (2003).

20 *Proclamation an die Bewohner von Bosnien und der Hercegovina: Wiener Zeitung vom 28. Juli 1878, Nr. 172*, in *SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: I. BAND 3–4* (1880).

at the “regular” (Nizamiye) civil courts with imperial officials, significantly limiting the *qāḍīs*’ role, as they had previously often served at both *sharī‘a* and civil courts.²¹ This move was motivated by the Habsburgs’ general mistrust of local officials, who had hitherto served under the Ottoman government. While a few of them left Bosnia at the beginning of the occupation, those who remained were viewed with suspicion. A government decree in January 1879 even stated that the Ottoman officials who remained in the country were either “unsuitable” or “insufficiently trustworthy.”²²

In this spirit, the Habsburg government sought to restrict the jurisdiction of *qāḍīs* while fulfilling its international obligations and guarantees. In accordance with its occupation mandate, as specified in the Novi Pazar Convention of April 1879, the Austro-Hungarian authorities were bound to uphold freedom of religion for all inhabitants of Bosnia, including Muslims.²³ Thus, it was imperative that they preserve Islamic institutions as well as *sharī‘a* courts, yet limit their scope to marriage and family affairs. This jurisdictional limitation resembled the legal autonomy in the area of marriage and family that had been afforded to the non-Muslim communities under Ottoman rule. It was formalized through an 1883 decree on the “Organization and Scope of Sharī‘a Courts,” which defined the responsibilities and jurisdiction of these courts exclusively to cover family, marriage, and inheritance matters among Muslims.²⁴ Although the Tanzimat reforms had already encroached upon the jurisdiction of *sharī‘a* courts, both Muslims and non-Muslims turned to *sharī‘a* courts in Bosnia to settle family and other civil disputes until the early years of the Habsburg occupation. However, the

21 Bečić, *supra* note 6 at 66.

22 *Erlass des gemeinsamen Ministeriums vom 1. Jänner 1879, Nr. 693 B. H., betreffend die Organisation der Justizverwaltung*, in SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: II. BAND 6 (1881).

23 *Convention zwischen Oesterreich-Ungarn und der Türkei vom 21. April 1879*, in SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: I. BAND 5, Art. 2 (1880).

24 *Verordnung über die Organisation und den Wirkungskreis der Scheriatogerichte: No. 7220/III*, in SAMMLUNG DER GESETZE UND VERORDNUNGEN FÜR BOSNIEN UND DIE HERCEGOVINA 538–43 (1883).

1883 reform introduced by the Austro-Hungarian government established strict jurisdictional boundaries, effectively undermining the previous practice of jockeying or “shopping” between different courts. This change transformed *sharī‘a* courts into institutions with “special jurisdiction” (German: *Sondergerichtsbarkeit*) for Muslims in family and marriage issues.²⁵

Such a “special jurisdiction” granted to religious institutions for marriage and family matters was also extended to the territory’s other confessional groups. Hence, these issues were exempt from the jurisdiction of the civil courts and civil marriage did not exist in Habsburg Bosnia. Thus, while Muslims had to consult *sharī‘a* courts for such matters, the Serbian Orthodox, Catholic, and Jewish communities needed to turn to their respective religious institutions for settling marriage and family affairs.²⁶

In some ways, this was similar to the autonomy that had been granted to non-Muslims under Ottoman rule, usually referred to as the *millet* system. In this sense, the Habsburg authorities transformed the Muslim community into a *millet*, exercising autonomy in the realms of marriage and family. Other post-Ottoman states in Southeastern Europe such as Bulgaria or Greece also used the Ottoman model as a template for granting autonomy to their Muslim population.²⁷ At the same time, applying different religious norms for regulating marriage and divorce was not alien to the Habsburg Empire. Since the Austro-Hungarian Compromise of 1867, Austria-Hungary was effectively divided into three legal regimes as far as marriage and family matters were concerned: The Austrian Civil Code of 1811 provided a legal framework for Cisleithania (Austria) based on Catholic-Canonic legal norms; Hungary and Transylvania fell

25 Mehmed Bečić, *Das Privatrecht in Bosnien-Herzegowina (1878–1918)*, in *KONFLIKT UND KOEXISTENZ: DIE RECHTSORDNUNGEN SÜDOSTEUROPAS IM 19. UND 20. JAHRHUNDERT* 117–18 (Thomas Simon, ed., 2017); EDUARD EICHLER, *DAS JUSTIZWESEN BOSNIENS UND DER HERZEGOVINA* 196, 242–50 (1889).

26 Bečić, *supra* note 25 at 122–25.

27 See Nobuyoshi Fujinami, *Defining Religion in a State That Wasn’t: Autonomous Crete and the Question of Post-Ottoman Millet System*, 63 *JOURNAL OF CHURCH AND STATE* 256 (2020); GREBLE, *supra* note 1 at 53–80; Stefanos Katsikas, *Milletts in Nation-States: The Case of Greek and Bulgarian Muslims, 1912–1923*, 37 *NATIONALITIES PAPERS* 117; 1912 (2009).

under a wide array of confessional marriage laws until the introduction of mandatory civil marriage in 1894; and Croatia-Slavonia enjoyed some degree of autonomy since the Croatian-Hungarian Compromise of 1868 and applied civil law based on the Austrian Civil Code.²⁸

Nevertheless, the Islamic judiciary did diverge from the other ecclesiastical courts in Bosnia that regulated family and marriage affairs in several ways. Most importantly, the *sharī'a* courts were integrated into the regular court system under government control, due to the introduction of specific supervisory mechanisms. In July 1879, the Austro-Hungarian authorities created the Supreme Sharī'a Court in Sarajevo, which served as an appeal body for the local *sharī'a* courts of first instance. The latter could be found, before as well as after 1878, in each district town. From 1882, *sharī'a* courts fell under the authority of the (local) district office; when independent district courts were established in 1906, the local *sharī'a* courts became a division of each (local) district court.²⁹ The Supreme Sharī'a Court in Sarajevo operated within the framework of the Supreme Court, the highest appeal body for the civil courts. Thus, from 1883 to 1913, only two out of the five judges that served on this body were Bosnian Muslim *qāḍīs*. The other three were non-Muslims and simultaneously judges at the Supreme Court, while its president also chaired the Supreme Sharī'a Court. As such, these judges almost exclusively hailed from other parts of the Habsburg Empire and had studied law in Vienna, Prague, Zagreb, or other Austro-Hungarian universities. After 1913, the Supreme Sharī'a Court was composed of three Muslim *qāḍīs* and a (non-Muslim) member of the Supreme Court, whereby the latter only had an advisory role and no voting power.³⁰

Although classical Islamic law foresaw some types of review mechanisms and the late Ottoman Empire had established a review committee for *sharī'a* court rulings, the Meclis-i

28 Jana Osterkamp, *Familie, Macht, Differenz: Familienrecht(e) in der Habsburgermonarchie als Herausforderung des Empire*, 31 L'HOMME 17 (2020), esp. at 24, 30.

29 Cf. Bečić, *supra* note 6 at 80–81; BERICHT ÜBER DIE VERWALTUNG VON BOSNIEN UND DER HERZEGOWINA 1906, 512 (1906).

30 Bečić, *supra* note 25 at 85–86, 115.

Tedkikat-i Şer'iyye (OT, Assembly of Sharī'a Inquiries) within the office of the *şeyhülislam* (OT, the Ottoman chief *muftī*), the idea of a formal, state-controlled appeals body was a novelty within the Bosnian Islamic judiciary. Similar, two-tiered *sharī'a* court systems could be found, however, in other Muslim societies under European colonial rule, such as Algeria and India.³¹ As Mehmed Bečić has aptly demonstrated, this similarity was the result of an attempt on the part of Habsburg administrators to "transplant" a colonial model of Islamic law from Algeria to Bosnia.³²

These reforms also raised questions about the relationship between *sharī'a* courts and other Islamic institutions. First, Austro-Hungarian authorities reduced the role of the highest religious authority in Istanbul, the *şeyhülislam*, and established a local religious head for Bosnian Muslims in 1882, the *reis-ul-ulema* (Bosnian, "head of the '*ulamā*'"). This position also served as the chair of the newly created four-member Ulema-Medžlis (Bosnian, Council of Scholars), which regulated Islamic affairs and education in Bosnia.³³

The local population of Habsburg Bosnia had mixed reactions to the occupation and reforms. While some Muslims, including *qāḍīs*, chose to leave Bosnia for the Ottoman Empire to avoid living under Christian rule, others accepted Habsburg governance and collaborated with the occupation regime. For instance, in a November 1878 declaration, several members of the Muslim elites, such as the pro-Habsburg Sarajevo *muftī*, Hilmi Mustafa Omerović (the first *reis-ul-ulema*), and the supreme *qāḍī* Sunulah Sokolović expressed support for the Habsburg emperor and advocated for the establishment of a local Islamic hierarchy independent of Istanbul, a proposal that was eventually implemented in 1882.³⁴ Bosnians had, in general, only limited

31 KARČIĆ, *supra* note 5 at 23–24.

32 Bečić, *supra* note 6 at 72–75.

33 On the Habsburg reforms of Islamic institutions and hierarchies, see, e.g., Zora Hesová, *Towards Secularity: Autonomy and Modernization of Bosnian Islamic Institutions Under Austro-Hungarian Administration*, in *IMAGINING BOSNIAN MUSLIMS IN CENTRAL EUROPE: REPRESENTATIONS, TRANSFERS AND EXCHANGES* 104 (František Šístek, ed., 2021).

34 Cf. YOUNIS, *supra* note 8 at 44–46; IMAMOVIĆ, *supra* note 2 at 131.

ability to shape or oppose the legal system at the administrative level. Irrespective of their religious affiliation, Bosnians were excluded from political participation until the establishment of the Bosnian parliament in 1910, which granted limited forms of political rights. As a result, the religious sphere remained the only area where the male population could actively participate, since religion was considered the main structural feature of the Habsburg administration in Bosnia. For this reason, local protest movements were often framed along religious demands.³⁵

In this vein, a movement for religious autonomy emerged among the Muslim population in Bosnia around the turn of the century. Research literature points to the 1899 conversion to Catholicism of a young Muslim woman from Mostar as the catalyst for the widespread protest movement, largely supported by the landowning Muslim elite. Their main demand was greater autonomy in religious and educational affairs, as articulated through petitions to the government. However, the Habsburg authorities did not accept these demands and even banished one of the leaders, Mostar Muftī Ali Fehmi Džabić, when he traveled to Istanbul in 1902, resulting in the movement's temporary stagnation. It regained momentum in 1905, leading to the formation of the first proto-national political party in Bosnia, the Muslim People's Organization (Bosnian: Muslimanska Narodna Organizacija, MNO). The MNO leaders continued to advocate for religious autonomy, which was eventually granted after Bosnia's formal annexation in 1908 through the Autonomy Statute in 1909.³⁶

Despite the new regulation, the central demands of Muslim autonomists regarding the Islamic legal system were not fully addressed. These included enlarging the *qāḍīs'* competences so that they could implement and enforce their verdicts, as well as restructuring the Supreme Sharī'a Court without

35 Heiner Grunert, *Interreligiöse Konkurrenz und Kooperation im Imperium: Orthodoxe, Muslime und Katholiken in Bosnien-Herzegowina unter habsburgischer Verwaltung*, in *KOOPERATIVES IMPERIUM: POLITISCHE ZUSAMMENARBEIT IN DER SPÄTEN HABSBURGERMONARCHIE* 266, 269, 277–78 (Jana Osterkamp, ed., 2018).

36 XAVIER BOUGAREL, *ISLAM AND NATIONHOOD IN BOSNIA-HERZEGOVINA* 17–20 (2018); ROBERT J. DONIA, *ISLAM UNDER THE DOUBLE EAGLE: THE MUSLIMS OF BOSNIA AND HERZEGOVINA, 1878–1914* (1981), esp. at 128–59; NUSRET ŠEHIĆ, *AUTONOMNI POKRET MUSLIMANA ZA VRIJEME AUSTROUGARSKÉ UPRAVE U BOSNI I HERZEGOVINI* (1980).

interference from non-Muslim judges. Although the latter demand was granted in 1913, the former was never realized and remained a persistent request voiced by Bosnian *qāḍīs*, particularly during World War I.³⁷ Despite the limited opportunities to implement structural changes in the Habsburg-controlled Islamic legal system, Bosnian Muslims did utilize these legal forums as *qāḍīs* and plaintiffs. As the following will illustrate, Bosnian Muslims were able to maintain a certain level of autonomy in legal practice, actively shaping the application of Islamic law on the ground.

PRESERVING THE OTTOMAN TURKISH LANGUAGE AND SCRIPT

Despite the significant Habsburg interventions in the Islamic judiciary, as outlined above, much of the Ottoman Islamic legal heritage was preserved under Habsburg rule. Imperial officials understood that it would be crucial to maintain certain established Islamic legal practices in order to hold to their guarantee of the free exercise of Islam and to stabilize their rule, albeit it was not quite clear which practices and their extent. This can be best observed around the issue of the administrative language to be used at *sharīʿa* courts.

In the newly formed Austro-Hungarian administration, Ottoman Turkish was officially replaced with Bosnian (designated the “provincial language” in contemporary terminology) and German. However, the Habsburg authorities refrained from issuing a general language regulation and instead specified the use of language for each institution. As noted by the historian Dževad Juzbašić, this blurred the boundary between the administrative use of German and Bosnian.³⁸ While German dominated at most legal institutions in Bosnia, the situation was different at *sharīʿa* courts. In contrast to most other courts that were run by judges from elsewhere in the empire, local Bosnian *qāḍīs* could continue to adjudicate at *sharīʿa* courts. While

37 Bumann, *Contesting*, *supra* note 9; DURMIŠEVIĆ, *supra* note 7 at 99, 124–25; ŠEHIĆ, *supra* note 36 at 275–78.

38 DŽEVAD JUZBAŠIĆ, JEZIČKO PITANJE U AUSTRO-UGARSKOJ POLITICI U BOSNI I HERCEGOVINI PRED PRVI SVJETSKI RAT 7–15 (1973).

the language of communication at courts under Ottoman rule was likely a mixture of Bosnian and Ottoman Turkish, *qāḍīs* were trained and prepared documentation in the official Ottoman Turkish language, as explained by Tatjana Paić-Vukić.³⁹ Thus, a complete shift towards Bosnian, despite being the local population's native language, was deemed impractical by Habsburg officials, and *qāḍīs* continued issuing their written opinions and judgments in Ottoman Turkish, as it was considered the language in which they could most accurately formulate their explanations.⁴⁰

At the same time, the use of Ottoman Turkish soon became an obstacle for communication with other legal and administrative institutions. In 1896, the Supreme Sharī'a Court acknowledged that the many documents issued in Ottoman Turkish by the *sharī'a* courts were causing difficulties for many court parties and authorities who were not familiar with the language. To address this issue, the supreme *qāḍīs* requested that local *qāḍīs* use Bosnian in their official functions.⁴¹ The president of the Supreme Court, Martin Kendelić, who also presided over the Supreme Sharī'a Court, clarified several months later in a circular letter that this request was not intended to affect *sharī'a* law, nor was it meant to prohibit the use of Ottoman Turkish in *sharī'a* courts: The *qāḍīs* were to continue issuing their judgments, which fell within the jurisdiction of the *sharī'a* courts, in Ottoman Turkish, but were encouraged to draft official documents and communications in Bosnian if able to do so.⁴²

Moreover, the use of Ottoman Turkish at *sharī'a* courts represented more than just practical considerations. It became

39 TATJANA PAIĆ-VUKIĆ, THE WORLD OF MUSTAFA MUHIBBI, A KADI FROM SARAJEVO 47 (Margaret Casman-Vuko, Tatjana Paić-Vukić, and Miroslav Vuko, trans., 2011).

40 Supreme Court to the Supreme Sharia Court (June 5, 1880) (ABiH, VŠS, box 1, A 1880-5: no. 1761, p. 2).

41 340. 2719/Praes. Naredba vrhovnog suda za Bosnu i Hercegovinu od 17. novembra 1896, in ZBIRKA NAREDABA ZA ŠERIJATSKE SUDOVE U BOSNI I HERCEGOVINI: 1878–1900, 210–20 (Sarajevo: Zemaljska vlada i Vrhovni sud za Bosnu i Hercegovinu).

42 346. 484. Okružnica Predsjedništva Vrhovnog Šerijatskog suda od 21. marta 1897, in *Id.* at 229–30.

a symbol of the preservation of the Islamic jurisdiction and the ongoing connection to the “trans-Ottoman” cultural and communication sphere.⁴³ Despite the shift by most Muslim intellectuals towards the use of Bosnian in public discourse after the Habsburg occupation of 1878, Ottoman Turkish and Arabic continued to be used under Habsburg rule. Ottoman Turkish periodicals such as the literary-political *Servet-i Fünun* (*The Wealth of the Arts*) circulated in Bosnia while Ottoman Turkish newspapers, such as *Vatan* (*Fatherland*) or *Rehber* (*Guide*), were published under the Austro-Hungarian administration. In this manner, Bosnian Muslims could continue participating in “trans-Ottoman” discourses and debates.⁴⁴

Due to its symbolic importance, the Supreme Sharī‘a Court emphasized the maintenance of Ottoman Turkish language and writing style in court documents. Judges at the Supreme Sharī‘a Court reviewed local *qāḍī* verdicts to ensure their conformity to the traditional *sharī‘a* court recording practice, known as the *sakk-i şer’î*, written in Ottoman Turkish.⁴⁵ When Mustafa Redžić, a Sharia court trainee in Bihać, was unable to comply with the *sakk-i şer’î* due to his limited knowledge of Ottoman Turkish, the supreme *qāḍīs* encouraged him to write the verdict in Ottoman Turkish as best as he could. Since Redžić refused to do so, a disciplinary investigation against him was opened. However, the Bihać County Court ultimately ruled that the issue was not with the language used but rather Redžić’s unauthorized signing of official documents.⁴⁶ The chairman of the Bihać County Court, Marian Turzanski, did, however, comment on the language matter:

43 For a conceptualization of the term “trans-Ottoman” as describing a trans-imperial sphere of communication and interactions, see Stephan Conermann, Albrecht Fuess, and Stefan Rohdewald, *Einführung: Transosmanische Mobilitätsdynamiken. Mobilität als Linse für Akteure, Wissen und Objekte*, in *TRANSOTTOMANICA -OSTEUROPÄISCH-OSMANISCH-PERSISCHE MOBILITÄTSDYNAMIKEN: PERSPEKTIVEN UND FORSCHUNGSSTAND 47–57* (Stefan Rohdewald, Stephan Conermann, and Albrecht Fuess, eds., 2019).

44 Amzi-Erdoğdular, *supra* note 10 at 923–25.

45 For an example, see Supreme Sharia Court to District Sharia Court in Tešanj (November 13, 1912) (ABiH, VŠS, box 29, B 1912-59, no. 776).

46 ABiH, VŠS, box 27, B 1910-24.

Undoubtedly, Redžić himself must know best whether he knows the Turkish language well enough or not, and also undoubtedly, as a Muslim and a *sharī'a* judge, he would like to know this language well enough to be able to issue his *ilams* [Bosnian, “verdict”] in this language according to the regulations, and all the more so, as certainly every *sharī'a* judge must perceive it as a flaw if he does not know the Turkish language well enough, this flaw also does not recommend him to his superiors and therefore hinders his progress.⁴⁷

With his lack of knowledge of Ottoman Turkish, Redžić was arguably an extreme example, however, his case highlights that both Muslims and non-Muslims attached symbolic importance to the use of language in official *sharī'a* court documents. Another example can be seen in the curriculum of the *sharī'a* judge school established in Sarajevo by the Austro-Hungarian government in 1887 for prospective *qāḍīs*. In addition to studying classical Islamic law and Austro-Hungarian law, students were taught how to compose legal documents in the *sakk-i şer'î* in Ottoman Turkish.⁴⁸ This created tensions with the Habsburg education system's language policy, in which Bosnian was the main language of instruction and only Arabic, as opposed to Ottoman Turkish, was taught as a foreign language at Muslim educational institutions (starting from 1885). In addition, by the end of the nineteenth century, most Muslim writers had switched to Bosnian for participating in public debates and discussions.⁴⁹ Nevertheless, the Ottoman Turkish language remained in use among Bosnian Muslim intellectuals, as the above-mentioned circulation of Ottoman periodicals illustrates. This was also due to the fact that several Bosnian *qāḍīs* and members of the '*ulamā*' complemented their studies at the Sarajevo Sharī'a Judge School (Bosnian: Šerijatska Sudačka Škola) with earlier

47 Chairman Turzanski, to the Supreme Court for Bosnia and Herzegovina, no. 979 Praes (June 29, 1911) (ABiH, VŠS, box 27, B 1910-24).

48 Raspored predmeta po časovima i nastavnima šk[ole]. 1900.–1908. god. (ABiH, Fond Šerijatska sudačka škola Sarajevo, box 49, 3). On the subject of the term *sakk* and its meaning, see DURMIŠEVIĆ, *supra* note 7 at 113n68.

49 Dierks, *supra* note 10 at 175–76, 200–2.

or later studies in the Ottoman Empire, and therefore, possessed excellent knowledge of the Ottoman Turkish language.⁵⁰

All the same, the use of the Ottoman Turkish language in the verdicts issued by *sharī'a* courts was not without controversy. With the rise of the Muslim autonomy movement around the turn of the century, the state of the Islamic legal system became a pressing topic in negotiations between representatives of the movement and the Habsburg government. During a 1908 discussion on potential reforms of the *sharī'a* courts, the question of language and form in the courts' rulings was raised. Adalbert Shek, the chair of the Justice Department at the provincial government (the highest administrative institution in Bosnia), supported the demands of conservative Muslim elites like Šerif Arnautović of the Muslim autonomy movement to maintain the traditional form of the *sakk-i şer'î*. Shek stated that "pragmatic *sharī'a* matters must remain as they have been from time immemorial."⁵¹ At the same time, he acknowledged that communication with other authorities could be in different forms and thus, also in Bosnian. The *qāḍī* Hilmi Hatibović, however, countered that the *sakk-i şer'î* was not prescribed by the *sharī'a* and therefore, the form of *sharī'a* court judgments could be modernized. Despite this, he did not object to retaining the *sakk-i şer'î* (in Ottoman Turkish).⁵²

Proponents of maintaining *sakk-i şer'î* may have recognized that any alteration in the language and format of official *sharī'a* court documents could have direct and undesirable legal ramifications. For example, Bečić has highlighted that the introduction of land registers (Bosnian: *gruntovnica*) between 1885/86 and 1910 resulted in the registration of *mukataalı vakıf* property (OT, buildings on *waqf* lands subject to rent) as private ownership of tenants. Despite protests from the Muslim

50 Apart from the *reis-ul-ulema* Džemaludin Čaušević (1914–30), these also applied, among others, to the following supreme *qāḍīs*: Salih Mutapčić, Hilmi Hatibović, and Ali Riza Prohić. Bumann, *Contesting*, *supra* note 9 at 167.

51 Enquete über die Reform der Scheriatgerichte abgehalten vom 2. März 1908 bis 27. April 1908: II. Zapisnik od 9. marta 1908 sastavljen kod zemaljske vlade za Bosnu i Hercegovinu u Sarajevu, sa članovima ankete u pitanju reorganizacije šerijatske sudačke škole, te šerijatskih sudova prve i druge molbe, p. 25 (National and University Library Zagreb (NSK), Sign. R 5698).

52 *Id.* at 24–25.

community against this transformation of ownership structures in legal practice, the civil courts, which had jurisdiction over property relations, upheld the changes.⁵³ As noted above, Habsburg authorities only considered the realms of marriage, family, and inheritance to be within the purview of *sharīʿa* courts, in which they would not directly interfere. The civil courts, in contrast, often applied Austrian laws for the regulation of civil matters in practice, although de jure much of the Ottoman Tanzimat legislation, including the Mecelle, remained in force.⁵⁴

Despite tendencies to retain the Ottoman Turkish language and style in *sharīʿa* court records, in practice changes were manifold, as many *sharīʿa* court documents were issued in Bosnian. This is also reflected in the available archival material of the Supreme Sharīʿa Court as well as selected local district *sharīʿa* courts. Even though Ottoman Turkish is common in the documents written by *qāḍīs* during the very first years of the occupation, starting from the late 1880s, more documents appear in Bosnian. Mostly, the *sharīʿa* courts used the same preprinted forms as found at other Habsburg courts. The prevalence of Bosnian in archival documents is also, in part, attributable to archival practices, according to which the documents of the local district *sharīʿa* courts were not systematically archived. Even though individual document collections are currently being sorted, organized, and indexed, only a few documents from specific years have been handed down for local first instance *sharīʿa* court proceedings; whereby the archival holdings do not contain any *sicils* (the traditional Ottoman *qāḍī* court registers).⁵⁵

Apart from that, the archival holdings of the Supreme Sharīʿa Court contain communications between the first instance district court and the appeal body and rarely include any official

53 Mehmed Bečić, *Pretvaranje mukata vakuḫa u Bosni i Hercegovini u privatno vlasništvo posjednika*, 17 GODIŠNJAK PRAVNOG FAKULTETA U SARAJEVU 33 (2019).

54 Bečić, *supra* note 25 at 87–113.

55 See, for example, the fonds of the Supreme Sharīʿa Court in Sarajevo as well as of local district *sharīʿa* courts in Sarajevo, Mostar, and Tuzla: ABiH, VŠS, 1879–1918; Historical Archive Sarajevo (HAS), Kotarski Šerijatski sud Sarajevo, 1882–1916; Archive of the Canton of Hercegovina-Neretva, Mostar (AHNKŽ), Kotarski Šerijatski sud Mostar, 1888–1918; Archive of the Canton of Tuzla (ATKT), Kotarski Šerijatski sud Tuzla, 1894–1918.

documents, such as an *ilam* or *hudžet* (Bosnian, “deed”), issued by local *qāḍīs*.⁵⁶ Thus, the Ottoman legal heritage was only partially preserved, while Habsburg standards of language and court documentation to a great extent replaced it. This was accompanied by some changes in the legal practice of the *sharī‘a* courts, such as the form of court proceedings or the role of legal sources, as discussed in the following section.

PROCEDURALIZATION AND LEGAL FORMALISM

While some elements of the Ottoman Islamic legal tradition were retained during Austro-Hungarian rule, significant changes were made to *sharī‘a* court proceedings. At the local district level, court proceedings continued to be conducted orally in front of plaintiffs, defendants, witnesses, and experts, following the provisions outlined in the Mecelle.⁵⁷ As the Mecelle lacked provisions for appeal procedures, Austrian procedural law was adopted by the Supreme Sharī‘a Court, which was regulated by special laws and decrees.⁵⁸ These stipulated that the Supreme Sharī‘a Court should make decisions based on written appeals and other court documentation collected during the proceedings at the local *sharī‘a* court.⁵⁹ During its legal review, the Supreme Sharī‘a Court also evaluated compliance with these procedural regulations such as the proper composition of protocols and court documentation.

In practice, not all *qāḍīs* followed these provisions in detail, instead acting as the first point of contact when conflict arose. Often, they attempted to mediate conflicts outside of court. For example, in the spring of 1906, a marital dispute between Hamid Pašić, a shoe merchant from the town of Tešanj, and his wife Rašida was settled informally by Qāḍī Abid Sadiković. The disagreement was related to financial matters, but the exact circumstances cannot be reconstructed from archival materials.

56 See ABiH, VŠS, 1878–1918.

57 FRANJO KRUSZELNICKI, POSTUPAK PRED ŠERIJATSKIM SUDOVIMA U BOSNI I HERCEGOVINI: OTISAK IZ “MJESEČNIKA” BROJ 11 I 12 IZ G. 1916 I BROJ 1, 2 I 3 IZ G. 1917, 37–48 (1917).

58 KARČIĆ, *supra* note 5 at 121–22.

59 KRUSZELNICKI, *supra* note 57 at 49–54.

Compared to several other archival files, this one, with thirty pages of documents in Bosnian, contains quite a large amount of information. This includes a written appeal by Hamid Pašić submitted to the Supreme Sharī‘a Court, protesting the actions of Qāḍī Sadiković and his court clerk Mustafa Handžić, statements submitted by Sadiković and Handžić retorting Pašić’s complaint, two short messages from the Supreme Sharī‘a Court to the District Sharī‘a Court in Tešanj, as well as one notice from the Tešanj District Office to the Supreme Sharī‘a Court.⁶⁰

The contradictory statements contained in the file allow only a few conclusions to be drawn about the case: The couple had a similar dispute several months earlier, therefore, Qāḍī Sadiković decided in the most recent marital conflict against a regular court hearing in favor of an informal agreement between the two parties. In the end, the spouses reconciled, however, Hamid was displeased with how the *qāḍī* had interfered. More specifically, he claimed that the *qāḍī* and his clerk had urged him to divorce Rašida. The Supreme Sharī‘a Court’s ensuing investigation revealed that the *qāḍī* had violated legal regulations by mediating outside of court, as opposed to initiating a regular court hearing, including its proper written documentation. In its final decision, the Supreme Sharī‘a Court refrained from intervening but warned that in further suits, the *qāḍī* had to act properly and document his actions in writing or face the consequences.⁶¹

Less than a year later, however, Qāḍī Sadiković again ignored procedural regulations: In March 1907, Ejub Bajraktarević sent a telegram to the Supreme Sharī‘a Court, complaining about Qāḍī Sadiković’s misconduct. He alleged that Sadiković, without an official court hearing and assisted by police, had forcefully returned his cousin’s fiancée to her father and prevented the two from marrying. According to the plaintiff, this action was unlawful and violated “religious and legal institutions.”⁶² In the subsequent investigation, it was found that Ejub’s cousin had practiced the widespread tradition of “bride kidnapping” (Bosnian: *otmica*) and had taken his fiancée Zineta Kapetanović

60 ABiH, VŠS, box 25, B 1906-13.

61 *Id.*

62 Telegram from Ejub Bajraktarević, to the Supreme Sharī‘a Court (March 30, 1907) (ABiH, VŠS, box 26, B 1907-19).

(with her consent) to his abode during the night. As a result, Zineta's father had asked Qāḍī Sadiković to intervene. Sadiković justified his direct intervention without a formal court hearing by pointing to the inconvenient timing of the event at three hours after sunset. Moreover, he claimed that since the two families belonged to rival political factions, the elevated potential for violence had necessitated an immediate response. The Supreme Sharī'a Court took note of this justification, however, did not pursue the matter further against Sadiković. This might have been owing to the fact that he had filed an official report with the District Sharī'a Court in Tešanj immediately after the incident to justify his (otherwise) unlawful actions.⁶³

These cases demonstrate that the Supreme Sharī'a Court focused on ensuring proper procedure in local *sharī'a* courts. However, this supervision of *qāḍīs* by the Supreme Sharī'a Court stands at odds with the common description of traditional premodern Islamic jurisprudence as a mediation mechanism within local communities that operated outside of government control. Local conflicts within the neighborhood, or *mahala*, were typically resolved through informal arbitration by the *qāḍī*, village elder, or imam. As a result, disputes could often be settled without formal court intervention. Similarly, a *qāḍī*'s ruling generally aimed at reaching a compromise that preserved social equity within the local community, rather than exclusively favoring one party.⁶⁴

Nevertheless, as early as the eighteenth century, the jurisdiction of *qāḍīs* in the Ottoman Empire came under greater state administrative control,⁶⁵ and the Tanzimat reforms, as described previously, increasingly centralized the Ottoman legal system, creating a multilevel judicial system with formal appeal bodies and widespread oversight mechanisms. Despite these changes,

63 ABiH, VŠS, box 26, B 1907-19.

64 See, e.g., WAEL B. HALLAQ, AN INTRODUCTION TO ISLAMIC LAW 57–64 (2009); LESLIE P. PEIRCE, MORALITY TALES: LAW AND GENDER IN THE OTTOMAN COURT OF ANTAIB 4–8, 142 (2003).

65 See, e.g., ROSSITSA GRADEVA, *On Judicial Hierarchy in the Ottoman Empire: The Case of Sofia, Seventeenth–Beginning of Eighteenth Century*, in WAR AND PEACE IN RUMELI: 15TH TO THE BEGINNING OF 19TH CENTURY 151 (ROSSITSA GRADEVA, ed., 2010); HALLAQ, *supra* note 64 at 93–103.

qāḍīs did not entirely forfeit their traditional role as mediators. The two court cases involving Qāḍī Sadiković highlight how *qāḍīs* continued to remain the first point of contact in local conflicts and that informal arbitration was still common.

The process of proceduralization fostered by the supervisory role of the Supreme Sharīʿa Court was not, however, a simple top-down process. Rather, locals seeking justice increasingly turned to the Supreme Sharīʿa Court with procedural claims. This was closely related to the increased involvement of lawyers in *sharīʿa* court proceedings. In the tradition of Islamic law, professional lawyers did not exist, although there were some forms of legal representation in court. This is often attributed to the fact that *sharīʿa* courts tended to reach solutions that were agreeable to all parties involved, thus favoring arbitration over adjudication. Avi Rubin explains the rise of professional lawyers in Ottoman courts with the consolidation of legal formalism in the 1870s. However, professional lawyers in the Ottoman Empire provided their services for legal representation not in Sharia courts, but in the newly developed Nizamiye courts, which fostered legal formalism with their inherent system of judicial review.⁶⁶

In Habsburg Bosnia, legal representation was formally regulated as early as 1883, setting legal standards for the official recognition of lawyers and strictly limiting their number.⁶⁷ However, official documents indicate that civil courts regularly ignored these standards and allowed legal representation by unauthorized persons. More interestingly, the Attorney Regulations of 1883 only required candidates to pass an examination covering all civil and criminal law, as well as financial and administrative law. Knowledge of Islamic law was not a necessity, suggesting that lawyers were not specifically provided or envisioned for *sharīʿa* courts.⁶⁸

Nonetheless, we can observe that lawyers in Habsburg Bosnia increasingly represented parties at *sharīʿa* courts. For example, two brothers from Sanski Most, Sulejman-beg and Ibrahim-beg Bišćević, wanted to prevent the marriage of their

⁶⁶ AVI RUBIN, OTTOMAN NIZAMIYE COURTS: LAW AND MODERNITY 102–3 (2011).

⁶⁷ Bečić, *supra* note 25 at 113.

⁶⁸ ADVOCATEN-ORDNUNG FÜR BOSNIEN UND DIE HERCEGOVINA 4 (1883).

sister to Sulejman Bilajbegović. They first claimed that their sister was only 13 years old when she was allegedly abducted and forced to marry Sulejman Bilajbegović. In addition, they asserted that the marriage violated the Islamic legal principle of equality (OT: *küff[ü]v*; Ar. *kuf*⁶⁹), which required both spouses to be of equal religious, social, and financial status. To underline their claims, the brothers hired Halid-beg Hrasnica, a lawyer, to file an appeal against the local *qāḍī*'s approval of their sister's marriage in early 1913.⁶⁹

Hrasnica had studied law in Vienna and returned to Sarajevo after graduating, where he opened a law office. Although he had no official training in Islamic law, he agreed to represent the two brothers at the *sharī'a* court. Their appeal was based on an alleged failure to comply with procedural requirements, and stated that the original verdict did not specify how the investigation was conducted, who the witnesses were, and how the "marriageability" of the allegedly 13-year-old child had been determined. It also criticized the fact that the witnesses suggested by the brothers had not been questioned. Taken together, the written appeal decried the entire process as flawed and that the proceedings had been conducted "superficially."⁷⁰

The concept of formal legalism was not widely adhered to in *sharī'a* courts. Historically, Ottoman *qāḍīs* enjoyed significant discretion and were not required to provide a justification or legal basis for their rulings. However, the Ottoman codification efforts in the nineteenth century brought greater standardization of court procedures and legal formalism, primarily in the Nizamiye courts.⁷¹ Despite this, *qāḍīs* in Habsburg Bosnia were not necessarily bound by strict legal formalism and were not obliged to validate the legal basis of their verdicts. For instance, even though Qāḍī Sadiković had been admonished on several occasions by the Supreme Sharī'a Court for violating

69 ABiH, VŠS, box 29, B 1912-54.

70 Appeal by Sulejman Bišćević and Ibrahim Bišćević submitted at the District Sharī'a Court in Sanski Most (January 18, 1913) (ABiH, VŠS, box 29, B 1912-54).

71 Avi Rubin, *The Positivization of Ottoman Law and the Question of Continuity*, in *STATE LAW AND LEGAL POSITIVISM: THE GLOBAL RISE OF A NEW PARADIGM* 162 (Badouin Dupret and Jean-Louis Halpérin, eds., 2022).

procedural regulations, it upheld his verdict in the appeal filed by Hrasnica.⁷²

The Supreme Sharī‘a Court’s ruling, in turn, followed its usual formalistic approach, carefully stating the legal basis of its decision. As a result, the court dismissed the appeal and upheld the verdict of the local *qāḍī* by pointing out that both spouses met the criteria of equality, which had been confirmed by the *sharī‘a* court in Sanski Most, based on oral testimony. The Supreme Sharī‘a Court also referred to two important legal sources, the *Dürer* of Molla Hüsrev (that is, *Durar al-ḥukkām fī sharḥ Ghurar al-aḥkām* by the fifteenth-century scholar Mullā Khusraw), and the *fatwā* collection of Kadīhan (Fakhr al-Dīn al-Qāḍīkhān, d. 1196), both of which were well-known standard works in the Ḥanafī legal tradition and included in seventeenth-century bibliographical compilations of the Ottoman imperial canon.⁷³ On the other hand, the Supreme Sharī‘a Court stated that the plaintiff’s sister was of marriageable age and could therefore marry whomever she desired, referencing the Mecelle.⁷⁴

The use of a combination of legal sources, including the Ottoman Ḥanafī canon from the seventeenth century and Tanzimat codifications, was common in Habsburg *sharī‘a* courts. Indeed, Habsburg administrators published in 1883 a manual on *Matrimonial, Family, and Inheritance Law of the Mohammedans according to the Ḥanafī Rite*, based on a compilation by Muḥammad Qadrī Bāshā, an Egyptian Islamic scholar, but never formally codified it into Islamic law for use in *sharī‘a* courts.⁷⁵ Instead, the provincial government issued additional regulations, which were used alongside classical Ḥanafī legal works and Ottoman Tanzimat laws as sources in *sharī‘a* courts.⁷⁶

The Supreme Sharī‘a Court’s formal and detailed approach to citing the legal basis of its ruling was strengthened by

72 ABiH, VŠS, box 29, B 1912-54.

73 GUY BURAK, THE SECOND FORMATION OF ISLAMIC LAW: THE HANAFI SCHOOL IN THE EARLY MODERN OTTOMAN EMPIRE 132–35, 149, 234, 240 (2015).

74 Message of the Supreme Sharī‘a Court, to the District Sharī‘a Court in Sanski Most (March 26, 1913) (ABiH, VŠS, box 29, B 1912-54).

75 See EHERECHT, FAMILIENRECHT UND ERBRECHT DER MOHAMEDANER NACH HANEFITISCHEM RITUS (1883).

76 DURMIŠEVIĆ, *supra* note 7 at 80–84.

the fact that the Habsburg authorities had implemented Austrian procedural law for court proceedings at this appeal body. Consequently, the latter's records to a large extent reflected Austrian procedural concepts.⁷⁷ Still, the supreme *qāḍīs* did not refer to concrete legal texts and sources in every judgment they handed down. When the Supreme Sharī'a Court could not ascertain a need to specify their legal sources or was not explicitly asked to do so, it included only a short formulation as to whether a certain set of facts complied generally with the "*sharī'a* regulations" (Bosnian: *šerijatski propisi*) or the "*sharī'a* law" (Bosnian: *šerijatski zakon*).⁷⁸

Moreover, citing legal sources and texts for the interpretation and application of Islamic law was also practiced in the Ottoman judiciary. According to Guy Burak, referring to authoritative texts of the Ḥanafī legal tradition dates to the sixteenth century and was accompanied by supervisory mechanisms. This was particularly evident in the case of provincial *mufītīs*, who were expected to cite the texts they relied on for their rulings.⁷⁹ In the same vein, Rubin has observed a "positivization of Ottoman law" in the Nizamiye courts of the late nineteenth century, which partially drew on previous practices but was also inspired by French models. Still, he argues that older practices could change their meanings in the new setting of positivist legalism.⁸⁰ Similarly, the following section claims that references to Ḥanafī legal sources should not be seen only as a consequence of formal procedural requirements but also a means through which Bosnian *qāḍīs* could maintain their legal authority under Habsburg rule.

77 KARČIĆ, *supra* note 5 at 121–22.

78 See, for example, the following cases: Supreme Sharī'a Court, to the District Sharī'a Court in Jajce (February 1, 1883) (ABiH, VŠS, box 17, B 1883-6, p. 12); Supreme Sharī'a Court, to the Provincial Government (October 13, 1898) (ABiH, VŠS, box 88, E 1898-49).

79 BURAK, *supra* note 73 at 130–35.

80 Rubin, *supra* note 71 at 150–77.

NEGOTIATING LEGAL AUTHORITY

Despite the growing standardization and legal formalism in *sharī'a* courts, the Ḥanafī legal doctrine continued to be applied in court practice. Habsburg reforms of *sharī'a* courts did, however, affect the interpretation of Islamic law, particularly in resolving disputes pertaining to the limited jurisdiction of *sharī'a* courts or legal reform. Historically, Islamic law was known for its diversity of legal interpretations, relying on a system based on divine revelation, a vast juridical literature, and authoritative legal interpretations. The *sharī'a*, which encompasses not only legal norms but also general rules for Muslim life, such as regulations for prayer, could not easily be divided into individual areas of law, making it difficult to limit its scope solely to marriage and family. This resulted in multiple interpretations and, at times, conflicting legal opinions, particularly regarding the scope of Islamic law under Austro-Hungarian rule. These issues were frequently encountered in cases of interreligious marriages, concubinage, extramarital sexuality, and paternity.⁸¹

This state of affairs generated confusion, particularly among Habsburg officials and judges, who were mostly unfamiliar with Ottoman and Islamic legal traditions and who attempted to standardize *sharī'a* court decisions and legal opinions by documenting them. This included, on the one hand, the compilation of the abovementioned *Matrimonial, Family and Inheritance Law of the Mohammedans according to the Ḥanafī Rite*.⁸² It made the basic Ḥanafī legal principles understandable for Habsburg judges that had mostly come to Bosnia from other parts of the empire and were familiar with codified Austrian civil law.⁸³ On the other hand, the Habsburg administration created a legal repository for future use by registering and archiving the court files of the Supreme Sharī'a Court. Its records also reveal that judges referred to prior rulings, judgments, and legal opinions stored in this administrative archive for guidance

81 See Bumann, *Marriage*, *supra* note 9; Bumann, *Contesting*, *supra* note 9; Kasumović, *supra* note 9; Younis, "Nezakonita," *supra* note 8.

82 See EHERECHT *supra* note 75.

83 Bečić, *supra* note 25 at 84–85, 99–100.

in resolving then current legal matters. Owing to these factors, Islamic legal practice under Austro-Hungarian administration witnessed the amalgamation of two different legal cultures and traditions—the Ḥanafī and Habsburg.

As Paolo Sartori has documented for Islamic legal culture under Russian rule in Central Asia,⁸⁴ Habsburg authorities also expected definitive legal opinions from *qāḍīs*. However, Islamic law was characterized by a variety of opinions, despite the growing canonization of the Ḥanafī school in the Ottoman Empire since the sixteenth century.⁸⁵ Nevertheless, the Habsburg government did not codify Islamic law in regard to marriage and family, making it difficult to enforce an Islamic legal orthodoxy from the top down. Instead, they relied on the expertise of local Muslim legal scholars for Islamic legal questions, enabling the latter to retain their legal authority and continue to apply the Ottoman Ḥanafī legal tradition.

This was demonstrated in the 1901 case of Avdo Kolašović. The Supreme Court sought the Supreme Sharīʿa Court’s opinion on the religious affiliation and jurisdiction of this illegitimate child, born to a Muslim father and non-Muslim mother. Nur Hafizović and Sulejman Šarac, the supreme *qāḍīs*, stated that, as the child of a Muslim parent, Avdo was Muslim. Their opinion was that the jurisdiction for guardianship must align with religious confession, meaning that the *sharīʿa* courts had jurisdiction in the case. They also emphasized that the guardian must be a Muslim, and the non-Muslim mother had to raise the child in the Islamic faith until the age of seven.⁸⁶ Although the supreme *qāḍīs* provided references to classical Ḥanafī collections of *fatwās*, including the works of Muftī Ibn ʿĀbidīn from Damascus (1784–1836), and to the Mecelle, their legal opinion generated confusion among the non-Muslim supreme judges.

They had consulted a similar case from a decade earlier, in which the responsible supreme *qāḍīs* had reached a slightly

84 See PAOLO SARTORI, *VISIONS OF JUSTICE: SHARĪʿA AND CULTURAL CHANGE IN RUSSIAN CENTRAL ASIA* 250–305 (2016).

85 On the creation of an Ottoman Ḥanafī legal canon, see BURAK, *supra* note 73.

86 ABiH, VŠS, box 95a., E 1901-24.

different opinion. Then, the Supreme Sharī'a Court had concurred with a Supreme Court ruling that a Catholic guardian should be appointed for the illegitimate children of a Muslim father and a recently deceased Catholic mother.⁸⁷ Due to these ambiguities, the Supreme Court asked Hafizović and Šarac to explain the difference vis-à-vis the previous case and to translate the exact Islamic legal stipulations they referred to in their opinion in Kolašović's case.

The Supreme Sharī'a Court subsequently clarified that the 1892 opinion, addressing the legal relationship between a father and his illegitimate child, was limited to the realm of kinship and inheritance, and thus did not broach the subject of religious affiliation. To support their December 1901 opinion, the supreme *qāḍīs* included Arabic quotes in Latin transliteration from authoritative Ḥanafī works, which they also translated into Bosnian. Hafizović and Šarac quoted two passages from the *Dürer*, a work that compiled and explained the Ḥanafī doctrine's most important legal opinions and one of the most important legal commentaries in the late nineteenth century alongside the *Mülteka* (the *Multaqā 'l-abḥur* of Ibrāhīm al-Ḥalabī). They also referred to a passage from 'Alā' al-Dīn al-Ḥaṣkafī's seventeenth-century *al-Durr al-mukhtār* and three passages from Ibn 'Ābidīn's nineteenth-century *Radd al-muḥtār 'alā 'l-Durr al-mukhtār*, a commentary on the former. Both works were considered authoritative and regularly cited in *sharī'a* court rulings in Bosnia.⁸⁸

The case's ultimate outcome is not documented in the archives, however, what can be ascertained shows that the Ottoman Ḥanafī legal tradition remained in use under Habsburg rule. At the same time, it is possible to see that the efforts of Habsburg officials to standardize and regulate Islamic jurisprudence were dogged by their lack of expertise in Islamic law and over-reliance, if not outright dependance on the knowledge and interpretation of Bosnian *qāḍīs*. As a result, the Muslim supreme *qāḍīs* were able to maintain their authority in interpreting Islamic law and to continue applying the Ḥanafī legal tradition

87 ABiH, VŠS, box 65, E 1892-8. This court case has been described in greater detail in Younis, "Nezakonita," *supra* note 8 at 51–52.

88 ABiH, VŠS, box 95a, E 1901-24; DURMIŠEVIĆ, *supra* note 7 at 70–72, 103, 111–14.

with some adaptations to the legal practices prevalent in the Habsburg Empire. These modifications included references to codified Islamic law, such as the Mecelle and the 1883 Austro-Hungarian compilation of Ḥanafī legal norms on marriage, family, and inheritance.

In fact, this tendency to modernize and codify Islamic law had already begun during the Ottoman Tanzimat reforms, when legal codifications of Islamic law, such as the Mecelle, were drafted.⁸⁹ The difference in the Habsburg period was that the *qāḍīs* were supervised by state officials who sought to standardize legal opinions and sources but who lacked sufficient knowledge of Islamic jurisprudence. As a result, Bosnian *qāḍīs* had to present their legal opinions in a form that was understandable to Habsburg judges and officials, which meant including references to authoritative legal works and codifications of Islamic law translated into Bosnian. Through this process, Bosnian *qāḍīs* were able to retain their legal authority.

However, when we examine attempts to reform the interpretation and application of Islamic law, we see that the *qāḍīs* were unable to significantly deviate from established legal practices. Often, explicit approval from above, including the Supreme Sharīʿa Court, the Ulema-Medžlis, and even the Habsburg provincial government, was necessary to bring about legal innovations and new practices. For example, in the mid-1890s, several district *qāḍīs* turned to the Supreme Sharīʿa Court because of the growing number of deserted wives. Since many of their husbands had emigrated to the Ottoman Empire, these women had been left without property or alimony, while also being both destitute and unable to remarry.

The Ḥanafī legal school (OT: *mezheb*; Ar. *madhhab*) followed in Bosnia had rather unfavorable provisions for such situations: A wife could only dissolve her marriage to a missing husband if he was declared dead. In the absence of official documentation, Ḥanafī jurists generally held that this was possible after a period of ninety to 120 years, making divorce unviable for

⁸⁹ On the emergence of legal positivism in the Ottoman Empire during the nineteenth century, see Rubin, *supra* note 71.

abandoned women.⁹⁰ A *qāḍī* from the town of Visoko suggested in 1894 that in such cases the Mālikī doctrine, which allowed the dissolution of a marriage if the husband was absent and his whereabouts were unknown for at least four years, should be applied. After the Ulema-Medžlis issued a similar legal opinion, the Supreme Sharī'a Court ruled on December 30, 1895, that in such serious cases, the *qāḍīs* could refer to the Mālikī school, which allowed the dissolution of a marriage under the above-mentioned conditions.⁹¹

Not all women who had been abandoned by their husbands were eligible for divorce, however. For example, if they had been left less than four years earlier or if they knew the whereabouts of their husbands, they could not file for divorce. The outbreak of World War I increased the number of such women due to the male population's mobilization and the ensuing economic hardship, reigniting debates about possible reforms of Islamic divorce. In this context, the reform-oriented Bosnian *reis-ul-ulema* Džemaludin Čaušević was inspired by a decision of the *meşihat* (OT, the office of the *şeyhülislam*) in Istanbul to adopt Hanbalī provisions allowing women to divorce if their husband had deserted them more than twelve months previously and left no property for their support. This facilitation of divorce was introduced by a *fatwā* issued by the *şeyhülislam* on February 28, 1916, which became effective by an *irade-i seniyye* (OT, "imperial rescript") on March 5, 1916.⁹² After this legal reform, in mid-1916, Čaušević consulted with the *şeyhülislam* Ürgüplü Mustafa Hayri Efendi and proposed to do the same for Habsburg Bosnia. Therefore, the Supreme Sharī'a Court drafted a similar decree, which was issued as a circular to all district *sharī'a* courts after receiving formal approval from the provincial government in January 1917.⁹³

90 Selma Zečević, *Missing Husbands, Waiting Wives, Bosnian Muftis: Fatwa Texts and the Interpretation of Gendered Presences and Absences in Late Ottoman Bosnia*, in *WOMEN IN THE OTTOMAN BALKANS: GENDER, CULTURE AND HISTORY* 344–49 (Amila Buturović and Irvin C. Schick, eds., 2007).

91 ABiH, VŠS, box 1, A 1895-10.

92 Nihan Altınbaş, *Marriage and Divorce in Early Twentieth Century Ottoman Society: The Law of Family Rights of 1917*, 143–46 (2014) (Ph.D. dissertation, İhsan Doğramacı Bilkent University).

93 ABiH, VŠS, box 31, B 1916-2; ABiH, VŠS, box 2, A 1917-1.

Achieving legal solutions by borrowing from another legal school, a phenomenon known as *takhayyur*, was common in the late nineteenth-century Muslim world in order to reform Islamic legal practices.⁹⁴ Already in the mid-eighteenth century, as Selma Zečević has pointed out, some Bosnian *muftīs* found it permissible for a woman to change legal school to obtain a divorce from a missing husband.⁹⁵ However, there were some general obstacles to legal borrowing in Ottoman court practice. Judith Tucker has explained how in eighteenth-century Ottoman Syria and Palestine, Ḥanafī judges strictly followed Ḥanafī doctrine, according to which deserted women seeking a divorce would turn to Shāfi‘ī or Ḥanbalī judges, who would then apply the more favorable provisions of their respective schools, allowing for the marriage’s annulment in cases of desertion and nonpayment of alimony.⁹⁶

Yavuz Aykan, on the other hand, has shown that some *muftīs* considered it impermissible to turn to other legal doctrines for a divorce. For example, the *muftī* of Medina Esad al-Medeni (d. 1704), wrote a *fatwā* according to which a Ḥanafī woman could not go to a judge of another legal school for a divorce. However, he found a case from 1664 in which a woman from the city of Amid (modern-day Diyarbakır) converted to the Shāfi‘ī school to obtain a divorce. Yet, the annulment of the marriage was performed by a *müderriis* (OT, a religious professor) of the Shāfi‘ī school and not by a judge of the Ottoman Ḥanafī court. Aykan views this as an indication of the limited authority of Ottoman *qāḍīs*, who, as judges of Ḥanafī institutions, could not easily turn to other schools of jurisprudence.⁹⁷

Such limited borrowing between legal schools is also evident in Habsburg Bosnia, where *qāḍīs* sought explicit permission from above to apply other doctrines. This indicates that

94 FIKRET KARČIĆ, DRUŠTVENO-PRAVNI ASPEKT ISLAMSKOG REFORMIZMA: POKRET ZA REFORMU ŠERIJATSKOG PRAVA I NJEGOV ODJEK U JUGOSLAVIJI U PRVOJ POLOVINI XX VIJEKA 208–10 (1990).

95 Zečević, *supra* note 90 at 348.

96 JUDITH E. TUCKER, IN THE HOUSE OF THE LAW: GENDER AND ISLAMIC LAW IN OTTOMAN SYRIA AND PALESTINE 83–84 (2019).

97 YAVUZ AYKAN, RENDRE LA JUSTICE À AMID: PROCÉDURES, ACTEURS ET DOCTRINES DANS LE CONTEXTE OTTOMAN DU XVIIIÈME SIÈCLE 164–66 (2016).

the Bosnian *qāḍīs* adhered to legal doxa, which generally crystallized in the Ottoman Empire in the late nineteenth century and eventually led to various codifications of Islamic law, such as the Mecelle.⁹⁸ Although Islamic law in the fields of marriage and family was not codified by the Habsburg authorities, Austro-Hungarian officials were supportive of issuing decrees that outlined clear provisions for regulating Islamic marriage and divorce, especially when it involved borrowing from other legal doctrines not traditionally practiced in Bosnia.

CONTESTING LOCAL *QADĪS*

As outlined above, modifications to the Islamic legal system made by the Habsburg administration were contested among Bosnian Muslims and actively challenged by the Muslim autonomy movement. Nevertheless, Bosnian Muslims did use the newly established legal institutions, such as the Supreme Sharīʿa Court, to appeal the decisions of local *qāḍīs*.

According to official figures, the Supreme Sharīʿa Court registered 578 petitions in 1888 and 868 in 1905.⁹⁹ However, there remained several obstacles to filing a complaint with the Supreme Sharīʿa Court: Unlike the first instance proceedings in local *sharīʿa* courts, which were conducted orally by a *qāḍī*, the judges of the Supreme Sharīʿa Court decided on appeals on the basis of the documented appeal and written court documents, without the plaintiffs being physically present. Since eighty-eight percent of the Bosnian population was illiterate, at least according to official figures from 1910,¹⁰⁰ submitting a written appeal could be problematic.

⁹⁸ See, e.g., Yavuz Aykan, *From the Hanafi Doxa to the Mecelle: The Mufti of Amid and Genealogies of the Ottoman Jurisprudential Tradition*, in *FORMS AND INSTITUTIONS OF JUSTICE: LEGAL ACTIONS IN OTTOMAN CONTEXTS* (Yavuz Aykan and Işık Tamdoğan, eds., 2018), available at <http://books.openedition.org/ifeagd/2334>.

⁹⁹ This represented approximately 3 percent (1888) and 1 percent (1905) of all petitions filed in the first instance district *sharīʿa* courts. The decline was mainly attributable to a dramatic increase in the total number of petitions to the district *sharīʿa* courts. In 1888, 17,409 petitions were filed, compared to 75,842 in 1905. BERICHT, *supra* note 29 at 519, 522.

¹⁰⁰ FABIO GIOMI, *MAKING MUSLIM WOMEN EUROPEAN* 82–83 (2021).

Alternatively, plaintiffs could file an appeal with the local *qāḍī*, who would write up the petition and forward it to the Supreme Sharīʿa Court.¹⁰¹ At the same time, written petitions allowed local plaintiffs, even from geographically remote areas, to communicate directly with the judicial authorities in Sarajevo, bypassing the local *qāḍī*'s authority. This was further facilitated by the expansion of communication infrastructure, such as efficient postal services and telegraph lines, which had been established under Ottoman rule and allowed for quick and direct correspondence with the Supreme Sharīʿa Court.¹⁰² Most complaints filed at the Supreme Sharīʿa Court sought a revision of a local *qāḍī*'s judgment, often using arguments based on Islamic legal stipulations of the Ḥanafī tradition. However, we can observe that local plaintiffs used the Supreme Sharīʿa Court to contest the local *qāḍī*'s authority, such as by claiming that he acted inappropriately or corruptly.

For example, in the spring of 1880, some Muslim citizens of Travnik filed a complaint against the local *qāḍī*, Jakub Arnaut, for alleged incompetence.¹⁰³ Or in the town of Derventa, in 1892, Mustafa Omer Efendić filed a complaint against the local *qāḍī* for an alleged insult.¹⁰⁴ In both cases, the provincial government, which had to rule on the charges, rejected them as baseless. The authorities only intervened in individual cases of accusations against *qāḍīs*, especially when there was evidence of embezzlement of state funds and official fees. On these occasions, *qāḍīs* were prosecuted and sentenced to prison or, for lesser offenses, reprimanded.¹⁰⁵ The rare interventions against local *qāḍīs* may have been primarily driven by insufficient evidence and unverifiable accusations. In addition, the latter were subject to strict administrative control and, particularly during the first years of the occupation, were regularly checked for

101 The official procedural rules also explicitly provided for this possibility. See KRUSZELNICKI, *supra* note 57 at 49–50, 53–54.

102 On communication infrastructure in late Ottoman Bosnia, see, e.g., ZAFER GÖLEN, TANZİMÂT DÖNEMİNDE BOSNA HERSEK: SİYASÎ, İDARÎ, SOSYAL VE EKONOMİK DURUM 358–62 (2010).

103 ABiH, VŠS, box 15, B 1880-63.

104 ABiH, VŠS, box 65, E 1892-23.

105 YOUNIS, *supra* note 8 at 302, 310.

their ability and trustworthiness by Habsburg officials and the Supreme Sharī'a Court.¹⁰⁶ Moreover, *qāḍīs* had to meet the same general employment requirements as other Habsburg officials, such as swearing an oath to the emperor.¹⁰⁷ These measures likely helped build a certain level of trust between the Habsburg government and local Bosnian *qāḍīs*.

Another reason for the administration's non-intervention was that Habsburg officials and the Supreme Sharī'a Court judges often suspected plaintiffs of weaponizing complaints about *qāḍī* misconduct. For example, in 1890, in response to a complaint filed by Asif-beg Kapetanović of Derвента against the district *qāḍī*, the Supreme Sharī'a Court stated that it was common practice among local *begs* (noblemen) to accuse *qāḍīs* of petty crimes, especially when the latter did not rule in the former's favor. Therefore, it found Asif-beg Kapetanović's complaint unfounded and his accusations mostly untrue.¹⁰⁸

Even if in the present case archival documents do not clearly show the extent to which the Supreme Sharī'a Court's assessment was actually correct, it is more pronounced in other court cases in which plaintiffs used accusations against *qāḍīs* as a means of supporting their legal claims. For example, Haso Bešlagić from Cazin complained to the provincial government at the end of October 1896 that the local *qāḍī* in Cazin, Hadžić, had offended him by insulting his wife. He also accused the *qāḍī* of accepting a bribe from his wife's brother.

Several days earlier, Haso had taken Zlata Oraščanin from the village of Pištaline to marry him. However, it was disputed whether Zlata had joined Haso voluntarily, as her brother Miralem intervened against the planned marriage. Specifically, he complained to the *sharī'a* court in Cazin that Zlata had been abducted against her will. After hearing Zlata's testimony, District

106 *Circularerlass der Landesregierung in Sarajevo vom 25. Februar 1880, Nr. 757 Just., betreffend die Gehalte der Scheriatrichter*, in SAMMLUNG DER FÜR BOSNIEN UND DIE HERCEGOVINA ERLASSENEN GESETZE, VERORDNUNGEN UND NORMALWEISUNGEN: II. BAND. JUSTIZVERWALTUNG 30 (1881), 30; YOUNIS, *supra* note 8 at 52.

107 Verordnung über die Organisation und den Wirkungsbereich der Scheriatgerichte, *supra* note 24, art. 5.

108 ABiH, VŠS, box 59, E 1890-45.

Qāḍī Hadžić ruled that she should return to her brother, as she was both a minor and did not want to marry Haso. Nevertheless, Haso filed a complaint with the Supreme Sharīʿa Court, which subsequently opened an investigation and questioned several witnesses to the trial, all of whom contradicted one another.

The *muhtar* (Bosnian, neighborhood headman) from Cazin, Osman Toromanović, confirmed the accusations against Qāḍī Hadžić, describing how during the trial he became irate and pulled down Zlata's *feredža* (Bosnian, a type of garment typically worn in public by Muslim women), veil, and boots, while insulting her and Haso. On the other hand, the *muhtar* from Velika Kladuša, Omer Okanović said that Qāḍī Hadžić did not swear. At the same time, he questioned Qāḍī Hadžić's judgment because he testified that Zlata had voluntarily gone to Haso and should be able to marry without a proxy. Qāḍī Hadžić vehemently denied these accusations, which were also supported by the testimony of a *hodža* (Bosnian, a religious teacher) from a nearby village and the Cazin Sharīʿa Court's clerk. Because of these contradictory statements, the provincial government decided in May 1897 not to intervene in the matter, and Haso's complaint was rejected.¹⁰⁹

At other times, false accusations could have legal consequences: A complaint written on October 2, 1903, in the name of the "citizens of Banja Luka" accused the local district *qāḍī* Sadik Džumhur and a trainee at the *sharīʿa* court, Mehmed Česović, of having issued a false power of attorney for Hamid Husedžinović, according to which the latter could manage the assets of Meleća Šibić. The latter was quickly suspected of having written the complaint, which she ultimately confirmed during interrogation on October 21, 1903.

The story behind the complaint was that Meleća had been placed under guardianship in 1902 owing to "prodigality" and could therefore no longer manage her property herself. As she was unsatisfied with the choice of guardian to manage her property, she appealed to the local *sharīʿa* court against the appointment of her uncle Hamid Husedžinović. However, Qāḍī Džumhur rejected her complaint and confirmed that Husedžinović

109 ABIH, VŠS, box 20, B 1896-22.

should administer Meleća's property as guardian. Subsequently, in September 1903, Meleća filed an appeal with the Supreme Sharī'a Court against Qāḍī Džumhur's ruling.

Nevertheless, she did not even wait for the decision of the Supreme Sharia Court and drafted the abovementioned complaint in the name of the "citizens of Banja Luka" on October 2, 1903 with the help of a lawyer and his clerk. In it, she accused Qāḍī Džumhur and the trainee Ćesović of abuse of office. Džumhur, however, did not accept her slander and filed a complaint with the criminal court for "the wrongful accusation of abuse of office." As a result, Meleća was sentenced to seven days in prison by the criminal authorities. Meleća's appeal did cause the proceedings to be reopened, however, the result is not documented among the archival files.¹¹⁰

These cases illustrate how plaintiffs strategically used allegations of misconduct against *qāḍīs*, albeit often with moderate success due to insufficient or contradictory evidence. As Sartori has convincingly shown with reference to the Islamic legal system in Central Asia under Russian rule, the tendency of local populations to portray *qāḍīs* as corrupt can be seen as a consequence of colonial administration. There, Russian authorities viewed local *qāḍīs* with great suspicion and local plaintiffs integrated their doubts into their complaints. Thus, *qāḍīs* became "colonial scapegoats" who were blamed for making certain legal claims.¹¹¹

The situation in Habsburg Bosnia is quite similar: The Austro-Hungarian authorities often regarded the Bosnian *qāḍīs* as untrustworthy and established mechanisms to control them—first and foremost the Supreme Sharī'a Court in Sarajevo. As with the other civil servants, serious misconduct among *qāḍīs*, delineated in a law passed in 1907, was punishable by transfer, demotion, or suspension.¹¹² This influenced the legal consciousness of the local population, who were well informed that *qāḍīs* faced serious repercussions for misconduct. Accordingly, plaintiffs adapted arguments in their complaints and did not base claims solely on Islamic legal principles.

110 ABiH, VŠS, box 105, E 1903-54.

111 SARTORI, *supra* note 84 at 129–56.

112 YOUNIS, *supra* note 8 at 303.

Nevertheless, it should be mentioned that allegations of corruption and misconduct against *qāḍīs* had been widespread during Ottoman rule of Bosnia, and did not solely emerge during the Habsburg occupation. The Bosnian scholar Muhamed Emin Isević, for example, criticized the state of the administration in his treatise on *The Situation in Bosnia (Ahval-i Bosna)*, written in the early nineteenth century, that described the *qāḍīs* and *naibs* (Bosnian and OT, a substitute judge) as extremely corrupt and incompetent.¹¹³

Plaintiffs also used other strategies to challenge the authority of local *qāḍīs* and to attempt to assert their legal claims in court proceedings. If they were dissatisfied with a *qāḍī*'s judgment, they appealed not only to the Supreme Sharī'a Court but sometimes also to the Ulema-Medžlis. Such "jurisdictional jockeying" can be traced to the fact that the responsibilities of the Supreme Sharia Court and the Ulema-Medžlis for the interpretation and application of Islamic law were not clearly delineated.¹¹⁴ For example, some plaintiffs who wanted to appeal a decision of a local *qāḍī* sent their complaint directly to the *reis-ul-ulema*, the chief *mufī* and highest religious authority for Muslims in Habsburg Bosnia.¹¹⁵

In one case, the plaintiff even explicitly asked to be judged by the *reis-ul-ulema* instead of a *qāḍī*: Džiha Imamović, the widow of a former *qāḍī* from Bijeljina, wrote a letter to the *reis-ul-ulema* just a few days after filing an appeal against the local *qāḍī*'s verdict. She disagreed with the latter's decision that she, as her son's guardian, should give the bride's prompt dower (Bosnian: *mehri muaddžel*; OT: *mehr-i muaccel*; Ar.: *mahr mu'ajjal*) and the trousseau (Bosnian: *džihaz*; OT: *cihaz*) to her daughter-in-law. In her letter to the *reis-ul-ulema*, she also demanded that her case not be judged by a *qāḍī* but by the *reis-ul-ulema* himself, stating: "I do not want a *qāḍī* to judge me, but the *reis-ul-ulema*."¹¹⁶

113 Ahmed S. Aličić, *Manuscript Ahval-i Bosna by Muhamed Emin Isević (Early 19th Century)*, 50 PRILOZI ZA ORIJENTALNU FILOLOGIJU 232 (2002).

114 KARČIĆ, *supra* note 5 at 116–17.

115 See, e.g., ABiH, VŠS, box 32, B 1918-41.

116 Gjiha Imamović, rođ. Smajić, to the *reis-ul-ulema*, Bjeljina (March 10, 1913) (ABiH, VŠS, box 30, B 1913-15).

Džiha presumably hoped for a more favorable ruling from the *reis-ul-ulema* than from the Supreme Sharī'a Court. And her letter did have an impact on the final verdict: After initially upholding the local *qāḍī*'s verdict on appeal, the Supreme Sharī'a Court overturned the decision after the *reis-ul-ulema* forwarded Džiha's letter to the appeal court. Instead, the supreme *qāḍī*s recommended that her son and daughter-in-law seek a mutual agreement leading to a *khul'* divorce (one initiated by the wife and granted with the husband's consent; Bosnian and OT: *hul*) before the local *qāḍī* in Bijeljina. However, if no agreement could be reached, the court would have to further clarify the exact distribution of goods and money.¹¹⁷

CONCLUSION

The integration of Islamic law into the newly established Habsburg administrative structures in Bosnia ushered in significant changes to the extant Islamic legal system. At the same time, some aspects of the Ottoman Islamic legal tradition were preserved. Based on an analysis of archival documents from the Supreme Sharī'a Court, this article argues that the modifications made by the Habsburgs led to an amalgamation of the Ottoman Islamic legal tradition with Austro-Hungarian legal concepts in court practice, paving the way for new legal understandings and practices.

More specifically, the restructuring of the Islamic legal system under Habsburg rule granted external administrators more control over Islamic jurisdiction, while its scope was strictly reduced to marriage, family, and inheritance matters among the Muslim population. Concurrently, a significant part of the Ottoman Ḥanafī legal tradition, including the use of the Ottoman Turkish language and script and Ḥanafī legal provisions and textual sources, continued to be applied. This hybrid legal system witnessed frequent negotiations about how Austro-Hungarian and Ottoman Ḥanafī legal practices could be combined in practice or where boundaries between the two should be drawn. Simultaneously, this fostered new legal practices, such as increased

117 ABiH, VŠS, box 30, B 1913-15.

proceduralization and legal formalism at *sharī'a* courts. Although the Habsburg authorities certainly made significant interventions, some of the concepts they introduced were already familiar to the Ottoman legal system. Thus, a multi-level legal hierarchy with oversight mechanisms or legal formalism could be also found in the Ottoman Empire of the late nineteenth century.

Overall, Habsburg reforms to the Islamic judiciary were met with both opposition and approval. While *qāḍīs*, particularly those serving at the Supreme Sharī'a Court, were actively involved in promoting legal changes, the supporters of the Muslim autonomy movement opposed the reduced jurisdictional function of Bosnian *qāḍīs*. Nevertheless, local actors, including *qāḍīs* and plaintiffs, actively shaped the Islamic judiciary under Austro-Hungarian administration. Despite the efforts of Habsburg officials to standardize and unify Islamic legal practice, Bosnian *qāḍīs* maintained some autonomy and the ability to further apply the Ḥanafī legal doctrine due to their legal expertise. Yet, their authority was simultaneously challenged by local plaintiffs who made use of the new legal institutions, such as the Supreme Sharī'a Court, to focus on procedural and formal correctness as well as on accusations of misconduct or corruption to support their legal claims.

In conclusion, the integration of Islamic law into the Austro-Hungarian administrative structures in Bosnia can be seen as a process of translation of values, knowledge, and practices, resulting in a “hybridization” of the Ottoman Islamic legal tradition with Habsburg legal structures. Existing studies of Islamic law under Habsburg rule have primarily focused on legal norms and structures, thereby automatically emphasizing continuities or ruptures.¹¹⁸ By zooming in on the micro-level, the present article offers a more nuanced view of the implications these changes had for Islamic legal practices on the ground. Rather than thinking solely about changes or continuities, this paper has highlighted the negotiations surrounding the amalgamation of new and old traditions that created new meanings and practices as well as the agency that local actors had in actively shaping legal practices.

118 Karčić, *supra* note 5; Bečić, *supra* note 6.

Equally, this article has contributed to the recently growing interest in the status of Muslim communities in the post-Ottoman Balkans. In the neighboring nation-states that emerged following the Congress of Berlin 1878, Muslims were also guaranteed religious freedom and autonomy. Similarly to Habsburg Bosnia, Islamic religious and legal institutions were integrated into the new administrative structures and thereby played a crucial role in ensuring the rights of Muslim communities under Christian rule.¹¹⁹ However, in contrast to Bulgaria, Serbia, or Montenegro, Bosnia was administered by another empire, the rule of which is often characterized in a historiographic sense as “quasi-colonial.” It does not come as a surprise, therefore, that Habsburg reforms of the Islamic judiciary were, to some extent, inspired by colonial models, such as those in French Algeria. In the same vein, Islamic legal practice under Habsburg rule produced similar phenomena as in other Islamic legal systems under colonial rule, such as in Russian Central Asia. Consequently, examining Islamic legal practices under Habsburg rule can enhance our understanding of encounters between Islamic law and European or other legal traditions that occurred outside the Balkans.

119 See, e.g., GREBLE, *supra* note 1; METHODIEVA, *supra* note 11.