

Laura Beck Varela,
Pablo Gutiérrez Vega,
Alberto Spinosa
(ed.)

Crossing Legal Cultures

Martin Meidenbauer »»

system of *fideicommissa* untouched. Shortly afterwards it became obvious to the Hungarian nobles that they would have to find a legal institution that could make it possible to restrain the alienation of the property and concentrate the mass of their properties in the hands of one member of their family. Thus, they began to explore the institution of the *fideicommissum* again and to live with this possibility. The number of *fideicommissa* founded increased in hugely, with 80 per cent of the 96 *fideicommissa* founded in Hungary commencing during the nineteenth century.⁴⁴ As a result, the nineteenth century was the period that brought popularity to *fideicommissa*, centuries after the other countries of Europe, and by the time they entered their golden era in Hungary, they had already been abolished in the rest of Europe.

⁴⁴ According to this tendency the legislation of the *fideicommissum* also became more detailed.

The Matrimonial Law of the Muslims of Croatia, 1916-41*

Mirela Krešić

In 2002, the Government of the Republic of Croatia and representatives of the Islamic Community of Croatia signed an agreement known as the Treaty on the Points of Common Interest. This Treaty lays out the position of Croatia's Islamic religious community, considering "the historical and the present roles of the Islamic Community in Croatia".¹ Under Article 8 of the Treaty, *Shari'a* marriage is granted the status of a civil marriage, provided certain legal requirements are met. The existence and recognition of *Shari'a* matrimonial law in Croatian legislation is not new; indeed, as we shall see, *Shari'a* matrimonial law was in force for Croatia's Muslim citizens between the two world wars.

Today, Croatian Muslims are primarily an ethnic rather than a religious community, made up mostly of Muslim citizens with their origins in Bosnia and Herzegovina. In the former Yugoslav Federation, Muslims from Bosnia and Herzegovina were granted the status of a nation under the constitutional amendments of 1971. Since the break-up of Yugoslavia and the creation of the independent state of Bosnia and Herzegovina, Muslims there have been given the ethnic title "Bosniak". This paper will use the term "Muslim" to denote the religious as well as the national identity of Croatian citizens of the Islamic faith during the inter-war period.

1. Islam and the Muslims in Croatia, 1916-18

Introduction. Muslim communities in western European countries are recent arrivals, whereas Croatian Muslims have been present on the territory of Croatia continuously for more than a century. However, Croatian ties with the Islamic world go further back in history and can be traced through three periods: the pre-Ottoman period; the Ottoman period, which left a significant mark in the national, religious, cultural and political history of the region and played a significant role in the creation of mod-

* This paper was written as a part of the research project entitled "Croatian Legal Culture in European Context: Tradition and Modernization", led by Professor Dr. Dalibor Čepulo and supported by the Ministry of Science, Education and Sports of the Republic of Croatia.

¹ From the Preamble of the Treaty on the Points of Common Interest. See: *Narodne novine Republike Hrvatske* (2003) No. 196.

ern-day Croatia;² and the final period, which began with the occupation of Bosnia and Herzegovina by the Austro-Hungarian Monarchy. From this period onwards, the presence of Muslims on the territory of Croatia has been unbroken up to the present day.

The Legal Recognition of Islam in the Austro-Hungarian Monarchy. Following the occupation of Bosnia and Herzegovina in 1878, the Austro-Hungarian authorities managed to guarantee conditions conducive to the survival of the Muslim population and, more than other states, to put into practice the equality of religions regulations laid down in the Treaty of Berlin and its accompanying agreements.³ The recognition of Islam had particular significance in this process.

The process by which Islam would be given legal recognition in the Austrian part of the Monarchy was initiated in 1909, and the Austrian Act on the Recognition of Islam According to the *Hanefi* Ritual as a Religious Society was finally adopted by the Imperial Diet in 1912. This Act came into force in the Austrian part of the Monarchy, which included Istria and Dalmatia, Croatian territories whose annexation was confirmed by the "Austro-Hungarian Compromise" of 1867. According to the law in place at the time, the Act of 9 April 1870 on the Marriages of Parties not Affiliated to Any of the Recognized Religions was applicable to Muslims. The stipulations laid out in the Austrian General Civil Code (ABGB) applied to Muslim marriages, which were performed by the civil authorities and under the competence of the regular courts dealing with matrimonial disputes.

The Hungarian parliament passed the Act on the Recognition of the Islamic Religion in 1916.

² During the sixteenth century, Turkish forces occupied a vast area of the Croatian interior. At the same time, the Croatian part of the Adriatic coast was occupied by Venice, while the "remains of the remains of the once great and glorious Croatian Kingdom" (*reliquiae reliquiarum olim magni et incliti regni Croatiae*) were ceded to the Habsburg Monarchy in 1527.

³ According to Article XXV of the Treaty of Berlin (1878), Austria-Hungary was entitled to occupy and administer Bosnia and Herzegovina, although the sovereignty of the Turkish Sultan was still recognized. In 1879, by the Constantinople Convention Austro-Hungarian Monarchy, in direct agreement with the Ottoman Empire, accepted the commitments which led to the granting of certain rights to the Muslim majority of Bosnia and Herzegovina. By the Protocol on Bosnia and Herzegovina and the Former Novi Pazar sandjak, signed after the Austro-Hungarian annexation of Bosnia and Herzegovina (1908), the Monarchy renounced its designs on Sandjak, a move rewarded by permission from Turkey to abolish the Constantinople Convention, together with Turkey's recognition of the annexation. Degan, Vladimir Đuro: Međunarodno uređenje položaja Muslimana s osvrtom na uređenje položaja drugih vjerskih i narodnosnih skupina na području Jugoslavije. In: *Prilozi za istoriju radničkog pokreta* (1972) 8, pp. 66-75.

The Legal recognition of Islam in the Kingdom of Croatia and Slavonia.

The new period of Croatian-Muslim relations started with the arrival of Muslims in Croatian territories after the Austro-Hungarian occupation of Bosnia and Herzegovina in 1878. This period of the formation of the Muslim socio-cultural region in Croatia has been described as the period of "psychological adjustment"⁴ for Muslims to life in a country where the supreme authority was not Muslim and in which Islam was not a state religion. The majority of immigrants stayed only temporarily in Croatia, for individual reasons, as well their inability to obtain the right to reside in Croatia, i.e. Hungarian-Croatian citizenship.

According to the "Croato-Hungarian Compromise" of 1868, which regulated the position of Croatia within the Austro-Hungarian Monarchy, Croatia had autonomy in religious matters. Accordingly, the Croatian Diet passed legal acts regulating the position of religious communities and their members. These included Jews (1873), Orthodox Christians (1887) and the evangelical Augsburg and Helvetian confession (1898) respectively, while the relations between the various religions were regulated by the Act on the Inter-Religious Relations (1906).⁵

The legal position of Islam was regulated by the Act on the Recognition of Islam in the Kingdom of Croatia and Slavonia, which came into force on 27 April 1916.⁶ The Act was concise and only contained nine articles. Islam was incorporated into the group religions given legal recognition in the Kingdom, and Muslims were granted, subject to their compliance with the law, the right of public worship, as well as independence in matters of religion, education and association (Art. 1). The Muslim community had the same legal protection as that of the other legally recognized religions. Legal protection was granted to the religious officials, as well as to Islamic teachings, acts and customs, unless these were found to be contrary to the legal regulations in force (Art. 2). The foundation of a religious council and regulation of the religious community were also planned, based on the religious structure of Bosnia and Herzegovina, as well as bringing Islamic religious officials from Bosnia and Herzegovina, subject to the central government's approval, and their activity even prior to the establishment of the religious

⁴ Čičak-Chand, Ružica: Islam i Muslimani u Hrvatskoj: skica stvaranja muslimanskog-bošnjačkog sociokulturnog prostora. In: *Migracijske teme* (1999) 4, pp. 454-55.

⁵ Čepulo, Dalibor: *Prava građana i moderne institucije. Europska i hrvatska pravna tradicija*. Zagreb: Pravni fakultet, 2003, p. 170.

⁶ *Sbornik zakona i naredaba valjanib za kraljevine Hrvatsku i Slavoniju*, Year 1916, Vol. I-XX, No. 1-98. Zagreb 1917, pp. 149-51.

council (Arts. 3, 4 and 5). The central authorities were at liberty to impose various sanctions on the Islamic community, its council and its bodies for any breach of authority or illegal activity (Art. 6). Matrimonial law for Muslims was subject to ABGB, but the powers granted to religious bodies by the ABGB were, for Muslims, transferred to administrative bodies, subject to the person's place of residence. The municipal courts had jurisdiction over these matters, provided that they did not infringe on the religious duties of Muslims during marriage (Art. 7). The task of administering the registry of Muslim births, marriages and deaths was also entrusted to the administrative bodies, and the ensuing official records and certificates were considered to be valid public documents (Art. 8). The implementation of the Act was entrusted to the Croatian Governor (*Ban*) who also passed the Decree of Implementation of the Act dated 27 April 1916 on the Recognition of Islam in the Kingdom of Croatia and Slavonia, on 3rd May of the same year (Art. 9).⁷ One of the more significant consequences of the legal recognition of Islam was the permission to grant residency or citizenship to the Muslims of the Kingdom of Croatia and Slavonia, eventually leading to their permanent residency.

Matrimonial law. The Act on the Recognition of Islam underlined the authority of Chapter II of the ABGB until a separate act had been passed to regulate Muslim matrimonial law. No separate act was passed during Croatia's period under the Austro-Hungarian Monarchy, although the Decree on the Implementation of the Act on the Recognition of Islam developed and complemented the provisions on marriage made in the ABGB. The application of *Shari'a* matrimonial law was not envisaged for Muslims.

In the Kingdom of Croatia and Slavonia, Muslims were only allowed to conclude civil marriages. The ABGB considered marriage to be a contract entered into by two parties of different gender, of their own free will, with the intention to cohabit, procreate and raise children and to support each other (Art. 44). A banns of marriage was prescribed for validity of marriage and with the aim of gaining publicity and preventing the conclusion of invalid marriages. The institution of marriage banns is typical of the Christian Church and was absorbed into European civil codes of 19th century. It was not part of *Shari'a* law, yet since it was not actually contrary to the *Shari'a* law, it was applied to the Muslims as well.⁸ The marriage process

was initiated when a written request or statement was lodged by the couple, their legal representatives or some other authorised person. The Decree also stipulated that the request was lodged with the relevant administrative body in the place of residence of either of the parties, or, if the parties were not resident in the same county, with the attachment of certain documents (Art. 2). The documents required for this purpose were the following: a birth certificate or exemption from submitting a birth certificate; evidence of the father's permission or that of a legal representative or custodian in the case of an under-age marriage; proof of the legal dissolution of any previous marriage; a widow's pardon and other relevant pardons; a marriage licence based on Law of defence; a marriage licence for certain categories of clerk; and finally, if the couple were foreigners, a certificate to confirm that they were eligible to enter into marriage according to the law of their country of origin (Art. 3). The administering body could refuse the banns if it found itself to be unauthorized for the announcement, if the applicants were not eligible to apply, if some of the required documents had not been submitted, or if the submitted documents indicated the existence of legal impediments to the marriage. Refusal based on any of these specifications had to be explained and presented to the parties (Art 4).

A competent administrative body would announce the couple's intention to marry on the office board as well as through the municipal government of the area where the couple was resident. If they were not residents of the same county, the county office where the application was lodged would ask the other county office where the other party was resident to post the announcement as well. The announcement was posted for a period of 14 days, although this period could be reduced to seven days at the request of the parties. Under exceptional circumstances not explicitly stated, the announcement could be waived. In that case, the couple had to state for the record the non-existence of any legal impediments to their entering into marriage (Art. 6). On the expiry of the time-limit, a certificate of the announcement was issued together with statement that no diriment impediments to marriage had been recorded. Next, after presenting the certificate and birth certificates, the couple would declare their intention to marry before the head of the administrative body and in the presence of two witnesses and the registrar. The marriage would then be recorded in the register of marriages, administered for Muslims by the administrative body (Art. 10). The register and copies of the certificates counted as valid personal documents (Art. 8). These had to be administered according to the regulations applicable to registries of other legally recognized religions (Art. 12),

⁷ *Sbornik zakona* (as in 6), pp. 152-56.

⁸ The institution of the banns was introduced in Turkey as well by The Family Act of 1917. Sladović, Eugen: *Zenitbeno pravo*. Zagreb: Zaklada tiskare Narodnih Novina, 1925, pp. 31, 48.

and to utilize forms designated for the administration of the registers of Jewish births, marriages and deaths (Art. 13). The registers were kept in the Croatian language.

The marriage could only take place if no impediments had been found to it. Consanguinity and "in-law" affiliation were two such impediments mentioned particularly in the Article 7 of the Act on the Recognition of Islam, which referred to the application of Article 125 of the ABGB. This article refers to the precedent in matrimonial law adopted for Jews, which was then extended to Muslims. According to the Article 125 of the ABGB, kinship constitutes a marital impediment in the collateral line, that is, between brother or sister, as well as between the sister on one side and the son or grandson of her brother or sister on the other. "In-law" affiliation is an impediment in the case of dissolution of a marriage: the ex-husband is forbidden from marrying any of his former wife's relatives on either the ascending or descending lines, and from marrying his wife's sister. Furthermore, a woman is forbidden to marry any of her ex-husband's relatives in either the ascending or the descending line, his brother and the son or grandson of his brother or sister. An existing marriage was also considered to be a legal impediment to marriage for Muslims. No party to a legal marriage could enter into another marriage while the previous marriage was still valid. A spouse could marry again only after divorce or on death of the other spouse (ABGB, Art. 62).

Regarding the dissolution of Muslim marriage, the Act on the Recognition of Islam refers specifically to the application of Arts. 115, 116, 133 and 134 of the ABGB. A spouse, both man and woman, could request the dissolution of their marriage in case of adultery, the perpetration of a crime carrying a sentence of five years of incarceration, abandonment of the matrimonial union with no intent of reconciliation, undertaking actions directed at harming the life or health of the spouse and repeated abuse (Art. 115). A Muslim could also request the dissolution of marriage if her/his spouse had converted to Catholicism. This stipulation was important, since as dissolution of marriage did not apply to Catholics (Art. 116). The consensual dissolution of marriage could be requested by both spouses on the grounds of hatred not likely to cease (Art. 115). Prior to the dissolution, in this case, the household would first have to undergo a trial separation, and if following that the failure to achieve reconciliation was established, the dissolution of the marriage would be granted by the court. The court's ruling had a constitutive character so that upon its validity the marriage was considered null and void. Also, the consensual dissolution of marriage was

possible without stating relevant reasons via a letter of dissolution (Art. 133). Both members of the couple were obliged to register their intention to dissolve their marriage with the administrative body in order for a process of reconciliation to be initiated. Reconciliation between the couple was attempted three times, with periods of eight days in-between each attempt and minutes had to be taken at each (Decree, Art. 11; ABGB, Art. 134). If reconciliation proved impossible to achieve, the administrative body would issue a certificate of the failure of the reconciliation procedure and the couple would then be referred to the court which had jurisdiction over their place of residence. The court was authorized to delay the decision for a period of one or two months if it was estimated that there were still circumstances under which reconciliation might be reached. If the reconciliation was still unsuccessful or the improbability of reconciliation was evident from the start, the court would allow the husband to hand over the letter of dissolution to his wife. Both spouses would have to attend the next appointed session and declare that they had decided of their own free will to hand over or receive, respectively, the letter of dissolution. After this, the court would rule that the letter should be handed over or received. The marriage was considered dissolved upon the handing over or receipt of the letter of dissolution, and the court's decision was declaratory.

2. Islam and Muslims in Croatia, 1918-41

Introduction. On 29 October 1918, the Croatian Diet reached the decision to sever all sovereign and legal ties with Austro-Hungarian Monarchy, declaring Croatia as an independent state, and to accede to the newly declared State of Slovenes, Croats and Serbs. The State of Slovenes, Croats and Serbs, encompassing the south Slavic area of Austria-Hungary, entered into an alliance with the Kingdom of Serbia and Montenegro, forming on 1 December 1918 the Kingdom of Serbs, Croats and Slovenes (hereinafter KSCS).

At the Paris Peace Conference which followed World War I, it was necessary not only to determine the borders of the new European states but also to regulate the position of the national and religious minorities in those states.

The Minorities Protection Treaty. On 10 September 1919, at the Paris Peace Conference, KSCS signed the Minorities Protection Treaty. This Treaty was part of the minority protection system imposed by the victorious states on their enemies, now defeated; on the countries of the Central

and Eastern Europe which fought on the Allied side; and on all countries wishing to join the League of Nations. Article 10 of the Minorities Protection Treaty signed by the KSCS granted the Muslims of the Kingdom the internationally recognized minority status of a religious community. In the Kingdom, the term "Muslim" encompassed the entire Muslim population – Muslims from Bosnia and Herzegovina, the Muslim nationals of Albania and Turkey, most of whom lived on the territories of Kosovo and Macedonia, the Roma population and all the other citizens of Islamic faith, regardless of their nationality. Pursuant to this Treaty, the Kingdom agreed to introduce regulations permitting Muslim family and personal status to be regulated by Muslim customs, and to guarantee conditions conducive to the appointment of the *Reis-ul-ulema*, chief religious scholar and superior of Islamic religious community. Furthermore, the Kingdom committed itself to the protection of mosques, graveyards and other Muslim religious institutions, as well as the provision of subsidies and permits for existing Muslim foundations (*vakufi*) and religious charities. The Kingdom accepted the obligation not to deny subsidies for the foundation of new Muslim religious and charity institutions granted when such subsidies had been granted to other private institutions of the sort.⁹ The Minorities Protection Treaty was ratified in 1920 by the Provisional Assembly of the KSCS.

Constitutional framework. The Constitution of the KSCS (1921) guaranteed freedom of confession so that all adopted religions were equal before the law. "Adopted" religions were those that had previously enjoyed legal status in any part of the Kingdom (Art. 12, paras. 1 and 3). It was specifically regulated for Muslims that the state's *Shari'a* judges should have authority in the cases concerning family and succession matters (Art. 109, para. 3). Similar provisions were incorporated into the 1931 Constitution of the Kingdom of Yugoslavia (Art. 11, paras. 1 and 3; Art. 100, para 3)¹⁰. It should be noted that the international legal protection of the Muslim population, accepted by the Kingdom, referred only to the permission to regulate the family and personal matters of the Muslims through "Muslim customs". Muslim customs do not equate to *Shari'a* law, although it should not be overlooked that *Shari'a* did indeed shape and partly determine Muslim customs. On the other hand, to permit is not the same as to impose. However, the option of enforcing Muslim customs with regard to Muslim family

⁹ Degan (as in 3), pp. 55, 90-91.

¹⁰ In January 1929, King Alexander abolished the Constitution of KSCS, proclaimed the dictatorship and renamed the KSCS to the Kingdom of Yugoslavia. The new Constitution was declared by the King in September 1931.

and personal matters provided for in the 1919 Treaty was transformed into a constitutional obligation to appoint *Shari'a* judges, i.e. courts ruling according to the *Shari'a* law on Muslim family matters and matters of succession.

Act on the Regulation of *Shari'a* Courts and *Shari'a* Judges. The obligatory application of *Shari'a* law and the existence of *Shari'a* courts came about for internal political and legal reasons. The Kingdom was a state with six legal areas, characterised by legal particularism.¹¹ The territories which had acceded to the Kingdom in 1918 retained independence in their legal systems even after the uniting. The generation of a unified legal order was a demanding task, and one that was not completed during the existence of the Yugoslavian Kingdom. One of the non-unified branches of law was civil law, and within its scope the question of religious matrimonial law posed a particular problem.

Considering the legal system of the Kingdom, and in accordance with the retention of its existing legal system, the implementation of *Shari'a* law and the activity of *Shari'a* courts was logical. The continuation of their activity in those areas where they existed previously provided religious, legal and political security to the Muslim population.

Thanks to the constitutional provision on the jurisdiction of *Shari'a* judges, it was necessary to organize *Shari'a* courts in those areas where they had not previously existed. Although the legal regulation of the *Shari'a* courts came into force immediately with the 1921 Constitution, the entire process was of significant duration and the Act on the Regulation of the *Shari'a* Courts and the *Shari'a* Judges was not sanctioned by the King Alexander until March 1929.¹² In terms of administration, *Shari'a* courts were part of the district courts system, or that of the appeal courts, and as such they constituted part of the legal system of the Kingdom (Art. 1). The judicial decisions were made in the name of the King (Art. 5) who would also appoint *Shari'a* judges following a proposal by the Minister of Justice (Art. 30). As the *Shari'a* judges also had to be granted authority by the supreme religious leader (Art. 4), *Shari'a* courts were considered special courts, or a compound of state and religious bodies.¹³ These courts had competence

¹¹ For more see Krešić, Mirela: Yugoslav Private Law between the Two World Wars. In: Giaro, Tomas (ed.): *Modernisierung durch Transfer zwischen den Weltkriegen*. Frankfurt am Main: Vittorio Klostermann, 2007, pp. 151-68.

¹² *Službene novine Kraljevine Srba, Hrvata i Slovenaca* (1929) No. 23/XXIX, pp. 422-26.

¹³ Karčić, Fikret: *Šerijatski sudovi u Jugoslaviji 1918-1941*. Sarajevo: Vrhovno starješinstvo Islamske zajednice u SFRJ, 1986, p. 84.

over Muslim family and succession matters, and the issue of the Islamic *vakufs*, whereby the practice of the *Shari'a* law was introduced according to the personal principle (Art. 1). Particularly important was the competence of the *Shari'a* courts on the matters of matrimonial law: marriages could be performed by persons authorized by a *Shari'a* court (Art. 2, para 1, subpara. 1). In their work, *Shari'a* judges were guided by the large number of legal works and collections of thought of Islamic legislators. The non-existence of an official codification of *Shari'a* family, succession and *vakuf* law provided grounds for taking measures to ensure legal certainty for citizens, balancing legal practice and accepting novelties "in the spirit of times, within the framework of the *Shari'a* foundations".¹⁴ A solution was borrowed from the authority granted to the Supreme *Shari'a* Court in Sarajevo during the period of Austro-Hungarian reign. Although it was not adopted in the Act on the Regulation of the *Shari'a* Courts and the *Shari'a* Judges, it was retained in practice. Namely, the Supreme *Shari'a* Court was authorized to issue circular letters and binding decrees to the district *Shari'a* courts. These documents contained compulsory interpretations of *Shari'a* regulations, which contributed to the reform of *Shari'a* law reform to a certain extent, and particularly to the balancing of court practices.¹⁵ Apart from the Supreme *Shari'a* Court, *Shari'a* regulations were interpreted by the Supreme Religious Council. Thus, according to the law, the Supreme *Shari'a* Court was entitled to seek the opinion of a competent supreme religious leader (Art. 15). Nor were procedural acts codified although, according to the law, the fundamental principles of procedural law were laid down and authority was given to the Minister of Justice to introduce the ordinance stipulating rules of procedure for the work of the *Shari'a* courts (Art. 27). Although the Draft Code of Procedure for the *Shari'a* courts was completed, the process of codification of the *Shari'a* Law on Procedure was not.

The Founding of Muslim Religious Institutions in Croatia. After 1918, a period of intensive settlement of the Muslims from Bosnia and Herzegovina followed, particularly in Zagreb, an important industrial, trading and business centre in the KSCS. The head office of the Croatian-Slavonian area Imam was therefore established in Zagreb in 1919. After years of campaign by Croatian Muslims, the Kingdom's Ministry of Divinity finally promoted the Zagreb Imam's office to the level of *mufti* in 1922. Soon afterwards, at the end of 1924, the Ministry withdrew this status, due to the

¹⁴ Karčić (as in 13), p. 114.

¹⁵ Karčić (as in 13), p. 116.

insufficient number of Muslim citizens in Croatian-Slavonian area. The highest religious representative of the Muslims in Croatia did, however, retain the status of a *mufti*.¹⁶ The Croatian Islamic community became part of the Islamic religious community of Yugoslavia in 1930, after the unification of the Islamic religious authority and all the Muslims in the Kingdom became part of an independent religious community headed by the *Reis-ul-ulema*. The first Islamic religious parish for Croatia was founded in Zagreb in 1934.

The *Shari'a* Court in Zagreb. The Act on the Regulation of *Shari'a* Courts and *Shari'a* Judges enabled the establishment of *Shari'a* courts in areas where they did not exist previously. The Ministry of Justice was competent to establish the *Shari'a* courts and to determine their residences, taking into account the size of the Muslim population. *Shari'a* courts were established as parts of the district courts system within the competence of any area with at least 5,000 Muslim inhabitants (Art. 3). Although the Zagreb *mufti* requested the establishment of the state *Shari'a* judiciary system on Croatian territory on more than one occasion, the first *Shari'a* court was established in 1935, and was operational at the end of that year as a separate department of the Zagreb District Court. The scope of this county's authority was the largest in the Kingdom, encompassing a large part of today's Croatia and the whole of Slovenia. After 1937, the Zagreb *Shari'a* judge held "official days" in all larger settlements within the units mentioned in order to facilitate the access to the Court for Muslims living outside Zagreb. The district *Shari'a* court of Trebinje (Bosnia and Herzegovina) was competent for the Dalmatian area.

As part of the reorganization of the Kingdom of Yugoslavia and regarding the settlement of the Croatian issue, the Autonomous Banovina of Croatia was founded in 1939. The question of the competence over district *Shari'a* courts, incorporated into the newly established independent units, turned into a legal and a political dispute. Thanks to this new territorial reorganization, instead of one *Shari'a* court (in Zagreb) there were now 16 courts. As authority over the justice system was transferred to the sphere of Croatia's independent affairs, the question was raised as to whether the *Shari'a* courts were now under the authority of state (Yugoslavian) or Croatian government bodies and whether they would retain the competence of the Supreme *Shari'a* Court in Sarajevo. As the district courts were under the competence of the Autonomous Banovina of Croatia, the *Shari'a* courts, as

¹⁶ Sladović (as in 8), p. 97.

their special departments, should have been too. This solution demanded the establishment of a Supreme *Shari'a* court in Croatia. However, the political and the religious representatives of Bosnia and Herzegovina's Muslims resisted the establishment of an independent *Shari'a* judiciary on the Croatian territory. They thought such a development would tarnish the autonomy of Bosnia and Herzegovina, especially since their efforts were also directed towards the establishment of Bosnia and Herzegovina as an independent unit, similar to that of Croatia.¹⁷ The dispute was resolved politically: it was agreed that the district courts in the Croatia should come under the competence of Autonomous Banovina of Croatia, while their *Shari'a* departments should come under the competence of the Ministry of Justice of the government of the Kingdom of Yugoslavia.

The *Shari'a* district court in Zagreb ceased activity in May 1945, although the ultimate ban on the activity of all state *Shari'a* courts was imposed in 1946.

***Shari'a* Matrimonial Law.** When the Constitution of the KSCS was adopted in 1921, the Act of the Croatian Diet on the recognition of Islam was abandoned for the Croatian-Slavonian legal area, which introduced Chapter II of the ABGB. The introduction of these new legal regulations meant that family and succession matters were resolved according to *Shari'a* law and in *Shari'a* courts. Since the Act on the Regulation of the *Shari'a* Courts and *Shari'a* Judges was only passed in 1929, and the first *Shari'a* court was not established until 1935 in Croatia, the question remains as to what had been happening in the meantime. The consensus was that before the establishment of the *Shari'a* courts, regular civil courts should continue to have jurisdiction over Muslim family and succession matters, subject to *Shari'a* directives.¹⁸ However, the practice was different.

The Muslims of the Kingdom considered *Shari'a* matrimonial regulations to be more religious than legal in nature. This understanding prompted the *Shari'a* courts to emphasise the legal character of *Shari'a* regulations and institutions. As early as 1919, the Supreme *Shari'a* Court in Sarajevo issued an order for Muslim marriages to be concluded exclusively before *Shari'a* courts.¹⁹ Due to the non-existence of a *Shari'a* court in Croatia, by the decree of the *Reis ul-ulema* of 1919, the Zagreb Imam was given the authority

to practice all Imam duties on the Croatian-Slavonian territory, subject to *Shari'a* provisions. These duties included performing *Shari'a* marriages for the Muslims living within his jurisdiction, palliative care, religious education of the young and other activities usually performed at the mosque. Pursuant to the authorization granted by the Ministry of Divinity of the KSCS, since 1922 the Zagreb *mufti* had been authorised to perform mixed marriages between male Muslims and female non-Muslims. Upon the establishment of the *Shari'a* court in Zagreb in 1935, a *Shari'a* judge was appointed and assumed all duties previously performed by the Zagreb *mufti*. The *Shari'a* judge also took over the task of resolving succession matters as well as the custody of Muslim children, which was until then a matter for the regular courts.

Regardless of some public discontent with some *Shari'a* provisions regarding the matrimonial law, the application of *Shari'a* law was incontestable. Reform of the *Shari'a* regulations was demanded, and the most prominent demands were directed at the ban of polygamy and the limitation of the husband's right to unilateral divorce. However, in the Croatian-Slavonian legal area, mixed marriages posed a particular problem.

Mixed Marriages. Although the Constitution stipulated that marriage was under the protection of the state, the state nonetheless failed to regulate the question of marriage. Religious matrimonial law still applied, which constituted a difficulty in a multi-confessional community such as the Kingdom with regard to marriages between parties of different religions. In a religious context, the conclusion of mixed marriages threw up various questions such as the question of competence to conclude marriages. The religious education of the children born out of a mixed marriage also posed a particular problem.

Shari'a law recognized the institution of the mixed marriage. The option to conclude a mixed marriage applied exclusively to male Muslims, who could marry female non-Muslims, i.e. Christians or Jews, whereas a female Muslims were only permitted to marry other Muslims. As a rule, male Croatian Muslims tended to marry female Christians, predominantly Catholics, in church. They would consent to this either prompted by the fiancée or out of their opportunistic motives. Also, although being married in church, they were not forced to change their faith. Children born of such marriages were entered in the register of births and christenings. The number of marriages concluded in church was large enough to concern the Zagreb *mufti* who deemed them illegal. In 1922, the *mufti* was authorized to conclude mixed marriages, thus enabling the Croatian Muslims to enter

¹⁷ For further details see Muradbegović, Hasib: Šerijatski sudovi u Hrvatskoj. In: *Savremenič* (1940) 1, pp. 365-366; Muradbegović, Hasib: Još o šerijatskim sudovima u Banovini Hrvatskoj. In: *Savremenič* (1940) 3-4, pp. 95-96; Karčić (as in 13), pp. 77-78.

¹⁸ Sladović (as in 8), p. 97.

¹⁹ Karčić (as in 13), p. 134.

into legal mixed marriages. However, even after this authorization, Muslims continued to get married in church. Following the *mufti's* protests, the Croatian authorities issued a warning to the church authorities to cease performing these marriages. This measure did not have much success as the practice continued in some areas. One example concerns so-called "compromise double marriages"²⁰ in which a Muslim man and Catholic woman would marry first before the *Shari'a* court in Bosnia and Herzegovina, and then in a Roman Catholic church in Croatia. The Zagreb *mufti* requested an opinion from the Islamic authorities in Sarajevo as to whether Muslim who had married a Christian in church should still be considered Muslim, requesting that such marriages be ruled null and void according to the *Shari'a* as well as civil law. Since the conclusion of marriage came under the jurisdiction of the *Shari'a* courts, the Supreme *Shari'a* Court in Sarajevo took a stand on the matter. In 1934, the court rejected the attempt to pronounce these marriages null and void because, according to the Court, *Shari'a* marriage should not be valued solely on the basis of the institution which had performed the marriage or the ceremony itself, but on the substance of the marriage; the potential nullity of the marriage, it continued, could be reviewed on a case-by-case basis. The reaction of the Islamic religious authorities came only in 1938, when they took the position that a marriage between a Muslim man and a non-Muslim woman performed in church or according to the rites of another religion could not be legalized, and that Muslims who had concluded such marriages ceased to be members of the Islamic religious community.

Mixed marriages were performed before the Zagreb *mufti* as well, and later before *Shari'a* judges. In the period between 1923 and 1941, 529 marriages were performed, of which as many as 351 were mixed marriages. Of this figure, the largest share were with women of the Catholic (291), Jewish (23)²¹ or Orthodox Christian faiths (20), members of the Evangelical

²⁰ Hasanbegović, Zlatko: *Muslimani u Zagrebu 1878-1945. Doba utemeljenja*. Zagreb: Islamska zajednica, 2007, p. 349.

²¹ At the end of the 1930s, mixed marriages with Christian women began to be superseded by mixed marriages with Jewish women. At the Zagreb *Shari'a* court, more marriages were performed in this period than in all the previous years, as many as 14. These women were mainly Austrian Jewish women who, having fled the Nazi prosecution, were trying to find a basis for legal entry into the country or to legalize their stay in the country. Thanks to the simple procedure necessary for divorce under *Shari'a* law, these marriages could be dissolved by an ordinary statement on the part of the husband. As these were marriages with no lasting intention of cohabitation, and this, according to the *Shari'a* law, constituted a basis for the nullity of marriage, the Supreme *Shari'a* Court ordered the *Shari'a* district courts to cease

church (13) or the Greek Catholic church (4).²² As part of the marriage ceremony, the non-Muslim bride had to state for the record that the couple understood that the marriage was performed according to *Shari'a* regulations which carried certain consequences, such as the rule that their children should be raised according to the Islamic faith, and the right of the husband to dissolve the marriage, subject, however, to the stipulation that the bride could keep her own faith. The requirement to raise the children in the father's faith was often disregarded as the mothers tended to convert the children to their own faith after divorce from or the death of their father.

The Islamic religious community reacted to the large number of mixed marriages and the problems associated with them in 1938 by issuing a "Conclusion" which was formally applied until 1945. The contents of this Conclusion were affected by the position of the *Reis-ul-ulema* regarding the full ban on mixed marriages. As a rationale for this position, he stated the opinion of numerous Islamic jurists regarding the ban on mixed marriages: namely, the negative consequences of mixed marriages for the Islamic community and the other religious communities, but also for the preservation of the inter-confessional peace in a multi-confessional Kingdom. There were also claims that Muslim children were becoming estranged from the Islamic community, as well as concerns about the number of Muslim women who remained unmarried, given that *Shari'a* law forbade them to marry non-Muslims.²³ In accordance with this position, pursuant to the Conclusion of the Broader *Reis-ul-ulema* Council, the performance of mixed marriages between Muslim men and non-Muslim women was nominally banned. An exception was made for the Muslims living in areas with a sparse Muslim population, who required an additional written approval from the *Reis-ul-ulema*.²⁴

The Conclusion of the Islamic religious authorities regarding the ban on mixed marriages was not observed by the *Shari'a* court in Zagreb. Pursuant to the position of the Supreme *Shari'a* Court in Sarajevo of 1934, mixed marriages continued to be performed subject to none of the limitations laid out in the Conclusion. The Zagreb *Shari'a* judge conducted this practice us-

performing marriages between Muslim men and women of foreign citizenship. A similar caveat was issued by the Ministry of Justice. Karčić (as in 13), p.141; Hasanbegović (as in 20), p. 351.

²² Hasanbegović (as in 20), pp. 350-51.

²³ Omerdić, Muharem: *Živjeti u islamu*. Sarajevo: R&R., 1995, pp. 187-88.

²⁴ Hasanbegović (as in 20); Omerdić, *Živjeti u islamu* (as in 23), p. 189.

ing the justification that the Islamic religious administration, namely the *Reis-ul-ulema*, had no legal authority in matters of *Shari'a* law, and therefore in the matrimonial matters, and that *Shari'a* law was not familiar with any nominal ban on mixed marriages for men. In addition, the validity of marriages performed at the Zagreb *Shari'a* court was confirmed by the Supreme *Shari'a* court in Sarajevo.²⁵

3. Conclusion

Numerous factors have influenced the present position of the Muslims of Croatia, distinguishing them from the Muslim communities of the western European countries. These include their continuous presence in Croatia since the end of the nineteenth century, the recognition of Islam in Croatia and the setting up of religious and other institutions there. The period between the two world wars stands out as the period of enforcement of *Shari'a* law and of the existence of the *Shari'a* courts as legal warranties of the religious existence of Muslim citizens. *Shari'a* was a constituent part of the religion and its enforcement, the confirmation of the freedom of the Islamic religion in a society built on Christian foundations. This was an important moment for the integration of Muslims, which enabled and facilitated the process of their Europeanization. While *Shari'a* law regulated relations within the Muslim group, legal relations with other citizens were subject to the provisions of general civil law. Therefore, there was no impediment to the Muslims' integration into the legal community of a European civil society. On the contrary, they were developing their identity as European Muslims. This practice has continued in Croatia until today as Croatian Muslims are integrated into the historical, political, cultural and social community. On the occasion of the signing of the Treaty on the Points of Common Interest between the Islamic community of Croatia and the Government of the Republic of Croatia in 2002, the representative of the Islamic community also declared that the Muslims of Croatia would promote Islamic values with a European orientation. In its everyday activities, the Islamic community of Croatia, which marked the ninetieth anniversary of Croatia's formal recognition of Islam in 2006, works on the inter-religious and inter-cultural dialogue, demonstrating responsibility towards its own worshippers as well as towards the Croatian present and future to which they also belong.

²⁵ Hasanbegović (as in 20), pp. 337-38, 352.