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OFFICIALS SPECIALIZED IN SHARI'AH LAW DURING THE AUSTRO-HUNGARIAN PERIOD IN BOSNIA AND HERZEGOVINA (1878 1918)*

During the Austro Hungarian period in Bosnia and Herzegovina, a number of non Muslim Austro Hungarian officials, as well as Bosnian Muslims themselves, specialized in shari'ah law. Their interest in shari'ah law was motivated by a desire to become acquainted with what formed an integral part of the traditional civilization code of Bosnia and Herzegovina's Muslims. In that way, they correspond exactly to the concept of European orientalists who studied Islamic civilization.

Adalbert Schek, Franjo Kruszelnicki, Mihail Zobkow, Ljudevit Farkaš and Eugen Sladović are among the Austro Hungarian legal practitioners and scholars in Bosnia and Herzegovina who studied shari'ah law, and achieved important results in that field.

Though it may have served the purposes of the occupation, the contribution of Austro Hungarian professionals to the study of shari'ah law cannot be denied. They added to the understanding of shari'ah law from the perspective of the European concept of law, which covers a narrower range of issues than does shari'ah law. Their contribution is particularly marked in the use of a scholarly methodology and in their recognition of and identifying comparisons with similarities between European and shari'ah law. They were merely to confirm the belief among Muslims that orientalists and Islamic jurists have different starting points in their study of shari'ah law. The starting point of orientalists was cultural, economical and political subordination of the Islamic World to the West, while the starting point of the Islamic jurists was to secure independancy of the Islamic World through the reform of the Shari'ah law.

Key words: *Shari'ah law. Bosnia and Herzegovina. Muslims.*

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The first shari'ah legal practitioners and scholars who were influenced both by European legal ideology and by late XIX and XX century Islamic modernism, the movement which aspired on one hand to restore the political unity of the Islamic world during the early centuries of Islamic history and, on the other, to combine classic Islamic thought with European modernism, appeared in Bosnia and Herzegovina during the Austro-Hungarian occupation of 1878–1918. The thinkers who had the greatest impact on the Muslims of Bosnia and Herzegovina were, without doubt, Jamaluddin al Afghani (Jamāl al-Dīn al-Afghānī, 1838–1897) and Muhammad Abduh (Muḥammad 'Abduh, 1849–1905). Following the 1878 Congress of Berlin, at which the European Great Powers gave Austria-Hungary the mandate to occupy and administer Bosnia and Herzegovina after the withdrawal of Ottomans from that territory, Bosnia's Muslims awaited the new occupying power with trepidation, and fears for their identity.

At that time numerous branches of shari'ah law were still not codified in Bosnia and Herzegovina. However, a number of non-Muslim Austro-Hungarian officials, as well as Bosnian Muslim legal practitioners and scholars specialized in shari'ah law. Their interest in shari'ah was motivated by a desire to become acquainted with what forms an integral part of the traditional civilization code of Bosnia and Herzegovina's Muslims. In that way, they corresponded exactly to the concept of European orientalists who studied Islamic civilization for the interests of the European colonial powers which were governing the territories inhabited by the Muslims from the Atlantic to the Pacific (North Africa, the Middle East, the Indian subcontinent and south-east Asia).

Though some orientalists observed Islam and Muslims through the lenses of medieval Christian missionaries and their prejudices, there is no doubt that oriental studies, whatever their original purpose, shed considerable light on the image of the Orient and Islam in the West, and provided the Muslim world with some extremely important works. However, "almost all of them, consciously or unconsciously, were at the service of imperialist advances and the subjugation of the Arab world, and some, like T. E. Lawrence, were even full-blown secret agents".¹

Some authorities see the orientalists as the forerunners of European hegemonistic policy. Thus Edward Said, a Christian American of Palestinian origin, defines orientalists² "as against all 'those' non-Europeans,

¹ M. Hofmann, *Islam kao alternativa* [Islam as the Alternative], Bemust, Sarajevo 1996, 182.

² The author (or perhaps the translator into Bosnian of Said's work) slightly misquotes Said as specifically defining "orientalists" in these terms, whereas Said's text, though clearly adumbrating the "orientalist" mentality, actually refers to "'us' Europeans" in general.

and indeed it can be argued that the major component in European culture is precisely what made that culture hegemonic both in and outside Europe: the idea of European identity as a superior one in comparison with all the non-European peoples and cultures. There is in addition the hegemony of European ideas about the Orient, themselves reiterating European European superiority over Oriental backwardness, usually overriding the possibility that a more independent, or more skeptical, thinker might have had different views on the matter”.³

There is no doubt that “European colonialists did not conquer Asia and Africa to disseminate their humanist heritage, nor to establish a global tradition of human rights. They sought raw materials and new markets rather than seeking to universalize the values of human dignity. A collateral effect of their conquests was, to use a Hegelian term, *List der Vernunft* (‘the cunning of reason’): the dissemination of the European cultural heritage in which human rights are of crucial importance”.⁴

Official Austro-Hungarian policy, too, treated Bosnia and Herzegovina as a colonial possession, despite the fact that under the terms of the Treaty of Berlin the country was to remain under Ottoman sovereignty after the occupation. To facilitate the task of administering Bosnia and Herzegovina, therefore, the Austro-Hungarian authorities needed to familiarize themselves with the legal tradition, of which shari’ah law was a part, that had been in force there for more than four hundred years.

³ E. W. Said, *Orientalism*, Penguin Books, London 1985, 7. “In a quite constant way, Orientalism depends for its strategy on this flexible *positional* superiority, which puts the Westerner in a whole series of possible relationships with the Orient without ever losing him the relative upper hand. And why should it have been otherwise, especially during the period of extraordinary European ascendancy from the late Renaissance to the present? The scientist, the scholar, the missionary, the trader, or the soldier was in, or thought about, the Orient because he *could be there*, or could think about it, with very little resistance on the Orient’s part. Under the general heading of knowledge of the Orient, and within the umbrella of Western hegemony over the Orient during the period from the end of the eighteenth century, there emerged a complex Orient suitable for study in the academy, for display in the museum, for reconstruction in the colonial office, for theoretical illustration in anthropological, biological, linguistic, racial, and historical theses about mankind and the universe, for instances of economic and sociological theories of development, revolution, cultural personality, national or religious character”, *ibid.*, 7-8.

“Oriental studies world wide are undoubtedly of great scholarly merit, but since they were institutionalized they have been subject to extremely powerful ideological instrumentalization. They have *constantly been in close collusion with colonialism*, and a significant number of orientalist authorities have fostered this kind of methodological approach which defines the Orient as the subject of expertise, *as an object of the hegemony of European culture*” (emphases added E. D.), E. Duraković, “Orijentalistika problemi metodologije i normiranja” [Orientalism problems of methodology and norm], *Znakovi vremena* 9 10/2000, Ibn Sina Institute, Sarajevo 2000, 275.

⁴ E. Ihsanoğlu, *et al.*, *Zapad i islam ka dijalogu* [The West and islam towards a dialogue], El Kalem Publishing centre of the Rijaset of the Islamic Community of Bosnia and Herzegovina, Sarajevo 2001, 74.

Adalbert Schek, Franjo Kruszelnicki, Mihail Zobkow, Ljudevit Farkaš and Eugen Sladović are among the Austro-Hungarian legal practitioners and scholars in Bosnia and Herzegovina who studied shari'ah law, and achieved important results in that field.

Adalbert Vugrovački Schek was a senior civil servant in the Provincial Government, head of the Justice Department, a Supreme Court judge in Sarajevo and a professor of secular law (which encompassed general civil law, penal law, the legal order of the Austro-Hungarian monarchy and of Bosnia and Herzegovina, the organization of cadastral records, the courts etc.) and shari'ah procedure at the Shari'ah Law school in Sarajevo.

He studied the nature of land ownership in shari'ah law and the way in which it had evolved and been modified in the Ottoman state, comparing it with corresponding institutions in German, Hungarian and European law. What is more, he addressed the problem of translation with respect to the use of appropriate legal terminology. His interpretation of the enforceability of decisions issued by the shari'ah courts in Bosnia and Herzegovina shows his wide knowledge of shari'ah law. His opinion in this regard was sought in cases where Muslim women left their husbands without the husband's approval.

One of the demands of the Muslim movement for autonomy was that "decisions of the shari'ah court become legally binding".⁵ This demand was reiterated before the Provincial Government at the time when the Muslim movement for autonomy already started fading out. In the statement of reasons for his demand, the government representative, Adalbert Schek, pointed out that there were no instances of review of decisions by the shari'ah court except when the qadis had not been unanimous in their interpretation of the shari'ah provisions. This was prompted by a case when a district court was uncertain whether to enforce a decision of the shari'ah court, since it was not certain what was required under the terms of the ruling which stated that the defendant, the wife, was required to return to her husband "according to the effects of the shari'ah".

In these circumstances, a request for clarification asking to provide a shari'ah interpretation of the disputed issues had to be submitted to the Supreme Shari'ah Court via Provincial Government. Shortly after receiving such request, the Supreme Shari'ah Court gave its interpretation. Any woman "who without true cause leaves her husband and does not wish voluntarily to return, and whose husband files a complaint against her on that account before the shari'ah court, shall be warned according to the provisions of the shari'ah to return to her husband, and in the event of

⁵ *Spisi islamskoga naroda Bosne i Hercegovine u stvari vjerskoprosvjetojnog uređenja i samouprave* [The scripts of the islamic people of Bosnia and Herzegovina on the system of religious education and selfgovernment], Rad, Novi Sad 1902, 137.

failure to comply with the order, shall lose her right to maintenance and shall be declared a fugitive”.⁶ The explanation provided by the Supreme Shari’ah Court went on to note that such a woman cannot be forced to return to her husband if she is living with relatives or those with whom she cannot enter into marriage (*mahrem* – E.D.). However if such a woman is living with a person with whom she could enter into marriage (“has become involved with or met with another’s husband, which could raise doubts as to unseemly behaviour”), in that case the shari’ah court could sentence her to *ta’zir*.⁷

In the specific case, the civil court had jurisdiction over the execution of the punishment, since the woman had left her lawful husband and started living with another person [a man with whom she could enter into marriage, i.e. to whom she was not related – E.D.], which constituted “reasonable grounds for suspecting that she intended to marry him or to live in an adulterous relationship with him”. In such cases, the lawful husband would normally file a complaint with the criminal court, and it was therefore only logical that the shari’ah court had no jurisdiction. Even if the complaint was filed with the shari’ah court, such court was bound to forward it to the competent criminal court *ex officio*.

Adalbert Schek, representing the Provincial Government, said in his explanation of the opinion of the Supreme Shari’ah Court in Sarajevo that civil proceedings did not pertain to matrimonial law, and that the civil courts had jurisdiction only over the issues arising out of the property aspects of matrimonial law. Thus, if the civil court had no jurisdiction over the personal aspects of matrimonial law, it could not enforce the decisions rendered by shari’ah courts if they pertained to the personal rights and duties arising from marriage.

In Adalbert Schek’s view, all this was strictly a shari’ah affair, and the civil courts should refrain from acting in such matters. As a result, the 1883 Shari’ah Courts Ordinance was seen as “simply requiring the civil courts to enforce shari’ah judgement, [and] the law simply requires the shari’ah courts to include an enforcement clause, while the civil court need not examine the contents and pertinence of the requirement, but [shall] simply enforce the ruling, regardless of whether it derives from marital or family law”.⁸

⁶ N. Šehić, *Autonomni pokret Muslimana za vrijeme austrougarske uprave u Bosni i Hercegovini* [The Muslim movement for autonomy during the Austro Hungarian administration in Bosnia and Herzegovina], Svjetlost, Sarajevo 1980, 276.

⁷ *Ta’zir*, in shari’ah law, is a punishment administered at the discretion of the judge, as opposed to the fixed punishments known as *hadd*. For such a woman, it usually consisted of either corporal punishment or house arrest, “setting apart from [their] bed”.

⁸ Archives of Bosnia and Herzegovina, Sarajevo (ABH), Muslim Conference, 1908. Minutes of sessions of negotiations between the Provincial Government and representatives of the Muslim movement for autonomy, Minutes of 2nd session, 11 January 1908, 4.

The notes from Adalbert Schek's lectures were used in the Shari'ah Law school to teach state law, penal law, civil law and the organization and functioning of the shari'ah courts, or shari'ah procedure. Schek taught these subjects as a freelance lecturer from 1889 to 1907. The Gazi Husrev-bey Library contains a lithograph copy of a textbook by Schek entitled *The Structure and Jurisdiction of Shari'ah Courts*, published in Sarajevo in 1905.

Eugen Sladović Sladoevički was born in Jelsa on the island of Hvar in 1882, and graduated from law school in Zagreb in 1906. He then joined the civil service in Bosnia and Herzegovina during the Austro-Hungarian occupation. After World War I he returned to Zagreb, where he worked until 1945 as a professor and as dean and rector of the School of Economics and Commerce. While working in Bosnia and Herzegovina he was under-secretary for religious affairs and education in the Provincial Government in Sarajevo. He is the author of an important work entitled *Manual of Law and Ordinances for the Civil Service in Bosnia and Herzegovina*, which was published in 1915.

In his preface to the manual, Sladović noted that "everyone certainly noticed the lack of a handbook which would comprise all the laws and ordinances currently in force". The manual includes numerous aspects of shari'ah law, and was an important reference work for shari'ah judges during the Austro-Hungarian occupation of Bosnia and Herzegovina.

Sladović wrote many other books, monographs and textbooks. His *Administrative Studies and Administrative Law of Bosnia and Herzegovina* and *The Subjective Public Rights of Citizens as Governed by Law in Both States of the Austro-Hungarian Monarchy* were published in 1916 and 1918 in Sarajevo, and were both used as textbooks in the Shari'ah Law school. After World War I, his *Islamic Law in Bosnia and Herzegovina* was published in Belgrade in 1926. He also wrote more than three hundred articles on almost every branch of law.⁹

Of particular importance for the legal history of Bosnia and Herzegovina is his *Matrimonial Law*, published in Zagreb in 1925, in which he elucidates Muslim matrimonial law and the customs pertaining to this branch of the law among the Muslims of Bosnia and Herzegovina. He clearly perceives the difference between the status of shari'ah judges and that of the priesthood of other religions in the matter of the marriage ceremony, along with the right of shari'ah judges (qadis) to intervene in the case of marriages between Muslim men and "people of the Book" (the

⁹ For more see: *Pravni fakultet u Zagrebu* [Faculty of Law in Zagreb] 1776 1996 (ed. by Ž. Pavić), vol. IV, Faculty of Law, Zagreb 1996, 591 613.

term used to denote the followers of the revealed religions, in this instance non-Muslims – Christian or Jewish women, – E. D.).¹⁰ He seems to condemn the common practice in Bosnia and Herzegovina of having imams (religious officials) rather than qadis marry Muslims on the basis of an *izunnama* (marriage licence). “In 1919, however, since this practice had led to various predicaments, it was decreed that henceforth qadis may not issue *izunnamas* but must themselves perform the marriage ceremony, as a rule in a shari’ah court. The marriage ceremony may be performed if the parties wish on certain reasonable grounds before an emissary of the shari’ah court or any other place outside the shari’ah court”.¹¹ He also stigmatizes the practice of certain Muslims, residing temporarily away from home, who entered without impediment into further marriages, even though they were already married. Such practice represented the undermining of the shari’ah provision “according to which it is *haram* [prohibited] to enter into a marriage if the *nakih* (bridegroom) is not in a position to perform his marital duties or is unable to maintain his wife”. The Supreme Shari’ah Court reacted to this abuse in a circular numbered 480/šer. dated December 4, 1916, requiring qadis not to perform such marriage ceremonies.¹² Sladović made a very pertinent observation that “in the way in which it is performed, a shari’ah marriage ceremony is a purely civil marriage, except that it is entered into before a shari’ah judge and not an administrative body”.¹³ He ends his work by discussing the issue of polygamy in shari’ah law, citing the provisions of the law in the Republic of Turkey according to which monogamy is the rule and polygamy constitutes an exception permissible only if the bridegroom provides evi-

¹⁰ “In conformity with the distinctive features of the religious institutions of Islam and in the light of the state organization of Bosnia and Herzegovina’s shari’ah courts, the position of a qadi in regard to religious affairs is not the same as that of the priesthood of other religions to their religious affairs. According to Article 140 of the Islamic Autonomy statute of Bosnia and Herzegovina of April 15, 1909 shari’ah courts cannot be regarded solely as provincial (state) authorities, but the provisions of Article 109 of the Constitution of June 28, 1921 designates them as organs of state”, E. Sladović, *Ženidbeno pravo* [Matrimonial Law], Narodne novine, Zagreb 1925, 43.

¹¹ The last ordinance issued by the Supreme Shari’ah Court, no. 101/šer. Of 20 February 1919, was issued with the agreement of the presidency of the Ulema Council and the approval of the Government of the National Council of the Kingdom of Serbs, Croats and Slovenes for Bosnia and Herzegovina in Sarajevo, *ibid*, 83.

¹² *Ibid*, 84.

¹³ *Ibid*, 85. “The husband must bear all the burdens of married life, and the wife is not required to make any contribution. According to the shari’ah, the wife is not required to work in the home (prepare meals, wash, clean) or on the land, and in particular is not required to breast feed her children. All these form part of the wife’s moral duties only, not her legal obligations. Under shari’ah law, women enjoy an exceptionally [privileged] position, except that it must be secured, which can be achieved by a nuptial contract, which will also secure her future economic position in the event of *ṭalāq* [divorce] or the death of her husband”, *ibid*, 85–86.

dence in court that it is essential that he takes another wife and if the first wife agrees to such marriage.

Discussing inheritance law in his *Islamic Law in Bosnia and Herzegovina*, Sladović takes the view that in shari'ah law, inheritance law does not fall within material law but is, rather, the legal basis (titulus) for the acquisition of property rights, and that the position of shari'ah law is more equitable than that of Austrian private law.¹⁴

Interestingly, on November 11, 1913 the Provincial Government responded to a proposal by the teaching staff of the Law School in Zagreb by forming a Chair of Bosnian Law. The subject was first taught in the academic year 1916/1917 by Ljudevit Farkaš, who continued to teach it until 1921, when he resigned from his post as professor. From then until 1930 the subject was taught by Eugen Sladović. The curriculum for Bosnian law included legal history of Bosnia and Herzegovina, agrarian law, agrarian legal relations in Bosnia and Herzegovina and family law in Bosnia and Herzegovina. At a session held on July 9, 1930 the faculty members of the Law School in Zagreb abolished the subject with the explanation that there was “no need for [these] lectures”.¹⁵ Sladović also published about 270 articles, treatises and reviews in various periodicals dealing with shari'ah law, patent law, the law of cheques, reversionary law, bankruptcy law, canon law, matrimonial law and the customary law.

Mihajlo Zobkow (originally Zobkiv), chair of the Senate of the Supreme Court in Sarajevo and long-time professor of Roman and civil law at the Law School in Zagreb, was born in 1864 in Lipica Gorna in Galicia (Ukraine). He studied law in Vienna and Berlin, and gained his doctorate in Vienna. Unable to make a university career for himself in his native land for political reasons, he remained in Vienna, where he was a judge and lawyer, until 1891, when he moved to Sarajevo as a senior court official in the Austro-Hungarian administration. He spent one academic year, 1907/08, teaching at the Law School in Sofia, where he taught Bulgarian civil law. He completed his judicial career as President of the Supreme Court in Sarajevo, where he died in 1928.¹⁶

Apart from several dozen articles dealing with Roman and civil law, Zobkow also published a number of papers on shari'ah legal issues, such as *The Alienation of mirija*¹⁷ *Landholdings in Bosnia and Herzegovina*¹⁸,

¹⁴ E. Sladović, *Islamsko pravo u Bosni i Hercegovini* [Islamic Law in Bosnia and Herzegovina], Belgrade 1926, 110.

¹⁵ *Faculty of Law in Zagreb*, Vol. I, 404, and Vol. II, 330.

¹⁶ *Ibid.*, Vol. II, 25 and 232.

¹⁷ *Mirija* [*miri*] landholdings were government by separate legal provisions introduced by the Ottoman Land Law, the *Erazi kanunnamesi* or Ramadan Law, after the month of Ramadan 1274 AH (1858) when it was enacted, under the terms of which these lands belonged to the state and the holder had only limited rights of disposal.

¹⁸ M. Zobkow, “Alijenacija mirijskih zemljišta u Bosni i Hercegovini” [The Alienation of mirija Landholdings in Bosnia and Herzegovina], *Mjesečnik* 3/1909, 201 216

*The Application of the Austrian General Civil Code in Bosnia and Herzegovina*¹⁹, *Shari'ah Courts*²⁰ and *The Right of Option to Purchase/First Refusal in Ottoman Bosnian Legislation*.²¹

Explaining his reasons for publishing *The Application of the Austrian General Civil Code in Bosnia and Herzegovina*, Zobkow notes: "I see the need to publish this paper in Croatian or Serbian, *even though it may appear that Ottoman legislation will soon be of no more than historical relevance to Bosnia and Herzegovina* [emphasis added – E. D.]. On the other hand, however, the literature on Bosnian 'local' law is extremely limited, while German writings are inaccessible on account of their short print runs".²² In this article he deals mainly with the differences between the *Mecelle* (Ottoman Civil Code) and the Austrian General Civil Code and the practice of the courts in Bosnia and Herzegovina in regard to *erazi miri*, *mülk*,²³ joint ownership, inheritance law, the statute of limitations and so on. In his *Pravo preče kupnje u otomansko-bosanskom zakonodavstvu*, Zobkow concludes that Bosnian legislation had retained cases of the legal right of option or first refusal to purchase as part of material law in Ottoman legislation. The right is treated differently in regard to *mülk* and *erazi miri* landholdings. In Ottoman law, the former is known as the right of *şufe* – *şefilik*, and the latter the right of precedence or first refusal (*hakki rüchan*).

Ljudevit Farkaš was born in 1856 in Donje Vidovac in Međumurje. He attended grammar school in Varaždin and Zagreb, and studied law in Zagreb and Budapest. After completing law school he served as a judge in Ivanac and Osijek. He came to Bosnia and Herzegovina in 1879, where he served as a judge in Visoko and Bosanska Kostajnica before gaining a position in the civil service for the Provincial Government in Sarajevo in 1881. This was followed by terms as district prefect in Ljubuški and Jajce, and then as court adviser in the district courts of Travnik, Tu-

and 4/1909, 343–361.

¹⁹ M. Zobkow, "Primjenjivanje Austrijskog općeg građanskog zakonika u Bosni i Hercegovini" [The Application of the Austrian General Civil Code in Bosnia and Herzegovina], *Mjesečnik* 8/1921, 313–334. This latter was originally published in German with the title *Die Anwendung des allgemeinen bürgerlichen Gesetzbuches in Bosnien und der Hercegowina in Festschrift zur Jahrhundertfeier des allgemeinen bürgerlichen Gesetzbuches*, vol. I, Vienna, 1911.

²⁰ M. Zobkow, "Šerijatski sudovi [Shari'ah Courts]", *Arhiv za pravne i društvene nauke* 1/1923, 49–59.

²¹ M. Zobkow, "Pravo preče kupnje u otomansko bosanskom zakonodavstvu" [The Right of Option to Purchase/First Refusal in Ottoman Bosnian Legislation], *Mjesečnik* 5/1926, 196–203 and 6/1926, 176–187.

²² M. Zobkow, *Primjenjivanje austrijskog općeg građanskog zakonika u Bosni i Hercegovini* [The Application of the Austrian General Civil Code in Bosnia and Herzegovina], Grafičko nakladni zavod d. d, Zagreb 1921, 3.

²³ In the Ottoman Empire, private property was known as *mülk* or *erazi memluke*, by contrast with *erazi miri* as state owned property.

zla and Mostar. In late 1896 he became senior court adviser, and in 1913 chair of the senate of the Supreme Court of Bosnia and Herzegovina. Not long after this, in 1915, he was pensioned off for political reasons, so he moved to Zagreb where he taught Bosnian law at the Law School until 1921, when he returned to Sarajevo and became president of the Supreme Court. He held this post until 1926, when he was finally retired at the age of 70. He died in Zagreb in 1944.²⁴

He began writing and taking an interest in jurisprudence at a very early age. His main sphere of interest was Bosnian law and he published the following articles:

1. *The Law of 7 Ramadan 1274 (1858) on Landholdings (with the laws and ordinances closely associated with it);*²⁵
2. *Material and Formal Law on Matters of Inheritance in Bosnia and Herzegovina. With 1 chart;*²⁶
3. *Serf-based Agrarian Relations and Agrarian Legislation in Bosnia and Herzegovina;*²⁷
4. *On Waqfs and the Management of Waqf Property in Bosnia and Herzegovina;*²⁸
5. *Waqf Real Estate in Bosnia and Herzegovina. Is the Cadastral Registration of Real Estate of Waqf Character under Art. 24 of the Cadastre Act of Bosnia and Herzegovina Valid in the Light of the Nature and Character of Waqfs?*²⁹

²⁴ Faculty of Law in Zagreb, Vol. III, 111

²⁵ Lj. Farkaš, “Zakon od 7. ramazana 1274 (1858) o zemljišnom posjedu (Sa za koni i naredbami, stojećimi s njime u tiesnom savezu) [The Law of 7 Ramadan 1274 (1858) on Landholdings (with the laws and ordinances closely associated with it)], *Mje sečnik* 4/1891, 177 184, 5/1891, 227 233, 6/1891, 274 283, 7/1891, 324 331, 8/1891, 376 385, 9/1891, 431 442 and 10/1891, 483 489.

²⁶ Lj. Farkaš, “Materijalno i formalno pravo u ostavinskim stvarima u Bosni i Hercegovini. Sa 1 tabel. šemom” [Material and Formal Law on Matters of Inheritance in Bosnia and Herzegovina. With 1 chart], *Mjesečnik* 1/1910, 22 32, 2/1910, 127 137, 3/1910, 205 216, 4/1910, 325 342, 5/1910, 401 416, 6/1910, 515 527 and 7/1910, 593 604.

²⁷ Lj. Farkaš, “Kmetovski agrarni odnošaj i agrarno zakonodavstvo u Bosni i Hercegovini” [Serf based Agrarian Relations and Agrarian Legislation in Bosnia and Herzegovina], *Obzor* 1/1920, 3 7 and 13/1920, 1 2.

²⁸ Lj. Farkaš, “O vakufima i o uređenju uprave vakufskih dobara u Bosni i Hercegovini” [On Waqfs and the Management of Waqf Property in Bosnia and Herzegovina], *Arhiv za pravne i društvene nauke* 4/1928, 271 283 and 5/1928, 352 369.

²⁹ Lj. Farkaš, “Vakuf nepokretnosti u Bosni i Hercegovini. da li je gruntovnički upis nekretnina vakufskog svojstva, po članu 24. Gruntovnog zakona za Bosnu i Hercegovinu, ispravan s obzirom na prirodu i svojstvo vakufa?” [Waqf Real Estate in Bosnia and Herzegovina. Is the Cadastral Registration of Real Estate of Waqf Character under Art. 24

6. *Landholding Legislation in Bosnia and Herzegovina*;³⁰
7. *The Inheritance Rights of Muslims in Bosnia and Herzegovina* (in association with Jusuf Zija ef. Midžić),³¹ and
8. *The Origins and Development of Serf-Based Agrarian Relations and Agrarian Legislation in Bosnia and Herzegovina*.³²

Ljudevit Farkaš's deep knowledge and erudition rapidly earned him a considerable reputation among lawyers in Bosnia and Herzegovina. He was particularly well versed in civil law and Bosnian law. This earned him his promotion to the post of president of the Supreme Court in Sarajevo. He was an almost permanent member of the commission of the Provincial Government's Justice Department in Sarajevo, and was involved in drafting of all the laws and ordinances issued by the Provincial Government. In 1908 the Austro-Hungarian authorities decorated him with the Order of the Iron Crown Third Degree in recognition of his assiduity. As a legal practitioner, he did a great deal to promote the law in Bosnia and Herzegovina.

Franjo Kruszelnicki was a senior court adviser to the Supreme Court in Sarajevo. He also wrote a paper on shari'ah procedural law entitled *Proceedings in the Shari'ah Courts in Bosnia and Herzegovina*³³ and edited the *Penal Code on Crimes and Misdemeanours for Bosnia and Herzegovina with the new Penal Code and Usury Law*³⁴ and *Rules of Civil Proceedings for Bosnia and Herzegovina with the new Rules of Civil Proceedings and other Ordinances and Directives for the Courts*.³⁵ In his introduction

of the Cadastre Act of Bosnia and Herzegovina Valid in the Light of the Nature and Character of Waqfs?], *Arhiv za pravne i društvene nauke* 5 6/1925, 321 333.

³⁰ Lj. Farkaš, "Zemljišno zakonodavstvo u Bosni i Hercegovini" [Landholding Legislation in Bosnia and Herzegovina], *Arhiv za pravne i društvene nauke* 3/1925, 169 182, 4/1925, 266 283 and 5 6/1925, 388 399.

³¹ Lj. Farkaš, "Nasljedno pravo Muslimana u Bosni i Hercegovini" [The Inheritance Rights of Muslims in Bosnia and Herzegovina] (in association with Jusuf Zija ef. Midžić), *Mjesečnik* 7 8/1929, 330 365.

³² Lj. Farkaš, "Postanak i razvitak kmetovskih agrarnih odnošaja i agrarno zakonodavstvo u Bosni i Hercegovini" [The Origins and Development of Serf Based Agrarian Relations and Agrarian Legislation in Bosnia and Herzegovina], *Mjesečnik* 11 12/1929, 465 503.

³³ F. Kruszelnicki, *Postupak pred šerijatskim sudovima u Bosni i Hercegovini* [Proceedings in the Shari'ah Courts in Bosnia and Herzegovina], (in association with Salih eff. Mutapčić, supreme shari'ah judge), Dionička tiskara, Zagreb 1917.

³⁴ *Kazneni zakon o zločinima i prestupcima za Bosnu i Hercegovinu sa objema novelama kaznenom zakonu i sa zakonom o lihvi* [Penal Code on Crimes and Misdemeanours for Bosnia and Herzegovina with the new Penal Code and Usury Law], ed. Franjo pl. Kruszelnicki, senior court adviser to the Supreme Court in Sarajevo, Knjižara Leon Finzi, Sarajevo 1914.

³⁵ *Građanski parnični postupnik za Bosnu i Hercegovinu s novelom gr. p. p. i drugim naredbama i upustvima za sudove* [Rules of Civil Proceedings for Bosnia and

to *Proceedings in the Shari'ah Courts in Bosnia and Herzegovina*, Kruszelnicki noted that "these regulations do not govern the entire scope of proceedings in the shari'ah courts". He held the view that until the time when the lacunae would be filled by legislation, they should be filled by the regulations governing proceedings in the ordinary civil courts, since the purpose of both shari'ah and civil courts was to protect "rights that are endangered or have been violated. As a result, nothing could be more natural, in cases where changing circumstances have led to lacunae in the legislation, than to apply the provisions of civil proceedings, which have the same purpose as that of proceedings in the shari'ah courts".³⁶

Even though shari'ah is essentially religious law, unlike European law, which is secular in nature, the contribution of Austro-Hungarian experts in shari'ah law, though it may have served the purposes of the occupation, is indisputable. They added to the understanding of shari'ah law from the perspective of the European concept of law, which covers a narrower range of issues than does shari'ah law. Their contribution is particularly marked in the use of a scholarly methodology and in their recognition of and identifying comparisons with similarities between European and shari'ah law. They were merely to confirm the belief among Muslims that orientalist and Islamic jurists have different starting-points in their study of shari'ah law. The starting-point of orientalist was cultural, economical and political subordination of the Islamic World to the West, while the starting-point of the islamic jurists was to secure independancy of the Islamic World through the reform of the Shari'ah law.

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BEAMTE DER ÖSTERREICHISCH-UNGARISCHEN
VERWALTUNG IN BOSNIEN UND HERZEGOWINA 1878
1918 EXPERTEN FÜR DAS SCHARIA-RECHT

Zusammenfassung

Mit dem Scharia Recht befassen sich während der österreichisch ungarischen Verwaltung in Bosnien und Herzegowina hauptsächlich bosnisch herzegowinische Autoren, die der muslimischen Gemeinde angehören. Neben ihnen befassen sich mit

Herzegovina with the new Rules of Civil Proceedings and other Ordinances and Directives for the Courts], ed. Franjo pl. Kruszelnicki, Knjižara I. Finzi, Sarajevo 1918.

³⁶ F. Kruszelnicki, (1918), 3.

der Scharia auch österreichisch ungarische Beamte, Nichtmuslime. Deren Interesse ist durch ihr verstärktes Wissen über das Scharia Recht, das als ein fester Bestandteil des universellen Zivilisations Codes der bosnisch herzegowinischen Muslime angesehen wird, motiviert. Sie entsprechen vollständig dem Profil europäischer Orientalisten, die sich mit der islamischen Zivilisation befasst haben.

Von den österreichisch ungarischen Juristen in Bosnien und Herzegowina, die Interesse am Scharia Recht gezeigt haben, sind besonders Adalbert Schek, Franjo Kruszelnicki, Mihail Zobjkow, Ljudevit Farkaš und Eugen Sladović zu nennen.

Der Beitrag der österreichisch ungarischen Experten zur Wissenschaft des Scharia Rechts ist allseits anerkannt. Sie trugen durch ihr europäisches Rechtskonzept zum Verständnis des Scharia Rechts bei. Dieses umfasst einen deutlich weniger umfangreichen Anwendungsbereich als das Rechtskonzept der Scharia. Der Beitrag der österreichisch ungarischen Rechtswissenschaftler zur Scharia Rechtswissenschaft in Bosnien und Herzegowina ist, bezüglich der Nutzung wissenschaftlicher Methoden und Vergleichung ähnlicher Rechtsinstitute des europäischen und des Scharia Rechts, besonders herausragend. Sie bestätigen das Verständnis der Muslime, dass Orientalisten und islamische Juristen in den Studien der Scharia zwei unterschiedliche Ziele zur Grundlage nehmen. Das Ziel der Orientalisten war die kulturelle, wirtschaftliche und politische Unterordnung der islamischen Welt zum Westen, während die islamischen Juristen, durch die Reform der Sharia, das Ziel der Unabhängigkeit der islamischen Welt verfolgt haben.

Schlüsselwörter: *Scharia Recht. Bosnien und Herzegowina. Muslime.*