KOTAR SHARIA COURT TUZLA 1899 - 1929

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ABSTRACT

The main topic of this work is related to the Sharia marriage law. The work has been divided into three parts, the organisation of the Sharia courts and application of the Sharia law, the procedure of joining two people in marriage and ending a marriage. The subject of the research concerns the time period during the Austro Hungarian Monarchy and the Kingdom of Yugoslavia when the Sharia law was implemented to regulate the private law relations amongst Muslims. Taking into consideration that Islam was one of the accepted religions during this period, the religious rules are separated from the state rules and according to that the Sharia courts have continued their existence, which were established on the grounds of Bosnia and Herzegovina during the Ottoman Empire. According to the norms of the Sharia law the Sharia courts were resolving the private law relations amongst Muslims. With the aim to present a full review on this topic various court decisions have been researched in the Archives of the Tuzla Canton and which are related to the Kotar Sharia court Tuzla 1899 – 1944.

INTRODUCTION

After the Ottoman administration, since 1878 to 1914, Bosnia and Herzegovina was under the Austro Hungarian administration. Amongst the law sources of Bosnia and Herzegovina during the Austro Hungarian reign, amongst others, were the Sharia law, that is, the Sharia marriage law. Together with the Austro Hungarian ruling and numerous documents, such as the Constantinople convention, all religious communities had the freedom to practice their religion as well as the freedom to resolve their private law, above all family and heritage relations through the law of their religion. When it comes to the power of the court and the development of the Sharia courts it is important to mention that the courts during the Ottoman Empire were governed by the cadis. The cadis conducted court as well as administrative jurisdiction; they solved private law litigations amongst Muslims and non-Muslims, if they ask for it, as well as criminal litigations regardless of the religion. The Sharia law was applied according to a personal principal while the state law, Kanun, was applied in accordance with the territorial principal. During the Austro Hungarian administration in Bosnia and Herzegovina Kotar courts were established as regular courts keeping in mind that within every Kotar court there is a Sharia court in charge of handling the private law relations among Muslims according to the Sharia law. Following the regulations of the Sharia law people resolved both the questions of two people entering a marriage community as well as divorcing one. When talking about the norms of the Sharia law the continuity in applying the basic sources of it is indisputable and they have also used other numerous sources which include the rules of the Sharia law.

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First of all I am referring to the Mecelle, the official codification of the Sharia law as well as many other private codifications of the Sharia law. Within the archives of the Tuzla Canton, according to the available data concerning the Kotar Sharia court in Tuzla, there are no records of couples entering in marriages apart from numerous documents where the existence or non-existence of marriage impediment are mentioned, while on the other hand there are some records relating to marriage litigations, divorces, financial support for the woman after the marriage has ended and similar.

JUDICIARY ORGANISATION AND THE APPLICATION OF THE SHARIA LAW

„With the Ottoman conquests and the expansion of Islam during the 15th century and later, the people who lived in the Western Balkan (Bosnia and Herzegovina, Montenegro, Croatia, Kosovo, Macedonia and Serbia) came in contact with the Sharia law. (Karčić, 2005b, p. 207), The Sharia law was applied to the Muslim population in Bosnia and Herzegovina and it regulated their social and private lives. "In Bosnia and Herzegovina, which was occupied by the Austro Hungarian monarchy in 1878, Islam became a religion accepted by the law and the Sharia continued to be as powerful as it was during the Ottoman administration" (Karčić, 2005b, p. 219). The acceptance of Islam comes as a result of many proclamations directed by the Austro Hungarian rule to the population of Bosnia and Herzegovina and which were later confirmed by forming a Worldly Statute for Bosnia and Herzegovina.[2]

The Sharia law continued to be used during the Austro Hungarian reign in order to regulate all the private law relations amongst the Muslim population. In order to solve these relations amongst Muslims, the Sharia judges[3] utilised different sources of the Sharia law, above all the primary sources which included the Qur'an, Sunnah, Ijma and Qiyas, but also many other codifications of the Sharia law from which Medzela, the official codification of the Sharia law, had a special importance. "Codes and orders for Bosnia and Herzegovina dated 30th of October, 1883 stipulated that the cases which concern the Islamic marriage rights and cases concerning the rights and duties between parents and children come under the jurisdiction of the Kotar sharia courts, while both the processes of entering into marriage and divorce are conducted in front of an imam, that is cadi" (Durmišević, 2008, p. 88.).
The function of the judge in the Ottoman Empire was conducted by the cadi within his distric court, however, within the reforms conducted by the Ottoman Empire there was also a reform concerning the judicial system. "Firstly mixed courts are formed, then commercial courts and in the end the courts of civil jurisdiction. As far as the Sharia courts were concerned their jurisdiction was regulated by the Sharia Court Application Act" (Durmišević, 2008, pp. 91-92). The Sharia courts continued their practice during the Austro Hungarian rule by forming a Conformation and Domain Act of Sharia courts (Codes and orders for Bosnia and Herzegovina (1883), Sarajevo, World Press). The following fall under the jurisdiction of the Sharia courts: a) Duties, which relate to the Mohammedan marriage act, if both the husband and wife belong to the Mohammedan Sharia without any differences, regardless of whether it is a matter of property or other duties; b) in the same vicinity discussing or resolving all duties connected to the rights and obligations between the Mohammedan parents and children; c) discussing about the inheritance of the Mohammedans and its division, if it consists of Mulk-property (movable or immovable property, which are defined as Mulk property); d) discussing and resolving all the lawsuits regarding inheritance previously mentioned, as well as lawsuits regarding the records (properties donated to charity and other individuals as stipulated in the testament), or other regulations formed in case of death. (Codes and orders for Bosnia and Herzegovina, 1883, Article 10).

[2]Article 8: All citizens of Bosnia and Herzegovina are guaranteed the freedom to religion and conscientiousness. Nobody could have been persecuted nor denied their rights because of their religion. Everybody was granted the right to practice their religion in the privacy of their home while members of recognised religious organisations were allowed to practice it publicly as long as it wasn't against the public rules. According to the Constitution the recognised religious organisations were: Muslim, Serbian Orthodox, Roman and Greek Catholicism, Augsburg and Helvetic Evangelist law and Judaism. (Imamović, 2003, p261).

[3]The Sharia court staff in Bosnia and Herzegovina during this period was educated in the Sharia court school in Sarajevo, founded by the Austro Hungarian administration in 1887. This school was the first centre for educating the modern Muslim intelligence in Bosnia and Herzegovina. (Karčić, 2005, p. 225)

First instance cases were governed by judges of individuals while the complaints were governed by the Council of the Sharia Supreme Court consisting of four judges. In 1906 the Act of Kotar Courts Organisation in Bosnia and Herzegovina was formed (Codes and orders for Bosnia and Herzegovina, (1885), Sarajevo, World Press) which passed the duties of the Kotar courts acting as Sharia courts to the Sharia Kotar courts which were a division of the Kotar court.

With the forming of the Kingdom of Serbs, Croats and Slovenians, later known as the Kingdom of Yugoslavia, the same position and freedom to religion of the recognised religious institutions were kept.[4] The Vidovdan Constitution accepted the division of the church from the mosque and guaranteed the freedom to conscience and religion. The religious institutions got the status of public institutions with a special position in the country with privileges and authorities to conduct certain duties in the name of the country.[5] Within the Vidovdan Constitution it was stipulated that the marriage was protected by the (Vidovdan Constitution, Article28.http://projuris.org/RETROLEX/Ustav%20kraljevine%20SHS_Vidovdanski%20ustav%20%281921%29.pdf – accessed 05/13/2015). Besides this, it was determined that the judicial authority is governed by the state courts, where there is no regulation that excludes the authority of spiritual courts when it comes to marriage questions, hence, the rule that the same state which existed before the constitution was accepted (Vidovdan Constitution, Article 48). This meant that the spiritual court authorities of recognised religions in Bosnia and Herzegovina had the authority when it came to marriage issues of their believers, if it is not a matter of legal property rights in which case the authority belonged to the public courts (See more, Karčić, 2005, p. 88). Within the Vidovdan Constitution it was stipulated that the marriage was protected by the (Vidovdan Constitution, Article28.http://projuris.org/RETROLEX/Ustav%20kraljevine%20SHS_Vidovdanski%20ustav%20%281921%29.pdf – accessed 05/13/2015). Besides this, it was determined that the judicial authority is governed by the state courts, where there is no regulation that excludes the authority of spiritual courts when it comes to marriage questions, hence, the rule that the same state which existed before the constitution was accepted (Vidovdan Constitution, Article 48).

[4]During the First World War, under the influence of the European public opinion, an idea for the protection of civil, religious and language minorities was created. For the SHS Kingdom this obligation was kept in the peace agreement with Austria, which the Main federal and united forces signed with this country in Saint Germain on the 10th of September, 1919. Besides the general regulations on the minority protection, the contract included regulations concerning the Muslims defined in Article 10. It stipulates that the SHS Kingdom is taking over the obligation to regulate the family and private status of Muslims, appointing the Reis-el-ulema, protection of mosques, cemeteries and other religious establishments, as well as providing the necessary benefits to the waqfs and other charitable institutions (Karčić, 2005a, p. 34)

[5]The Kingdom had inherited a segmented legal system, that is, a legal particularism, which was defined by a paralleled existence of multiple legal domains in the same country territory: Croatian-Slovenian and Dalmatian-Slovenian, Vojvodina and Međumurje, Serbia, Montenegro and Bosnia and Herzegovina. The diverse legal system also conditioned a disharmonious application of the law. Together with the Serbian lived the Austrian, Hungarian, Sharia and Montenegrin law. This legal variety was specific not only for the private sphere, that is public law, but also for the general Criminal law, especially for regulating family relations, where the last ruling was given by the religious institutions, causing the most complicated plots and collisions by trying to resolve problems amongst people of different religions.
(Kraljevina SHS i njeni narodi - http://www.znaci.net/00001/93_2.pdf - accessed 05/13/2015)

This meant that the spiritual court authorities of recognised religions in Bosnia and Herzegovina had the authority when it came to marriage issues of their believers, if it is not a matter of legal property rights in which case the authority belonged to the public courts (See more, Karčić, 2005, p. 88)

"The period from 1918 to 1929 is characterised by maintaining the existing state of applying the Sharia law and making various attempts to uniformly solve this issue for the entire territory of the country. These attempts were not successful until 1929 which is why the Sharia law in Bosnia and Herzegovina was conducted by the cadis, the Sharia judges". (Karčić, 2005b, p. 234)

THE PROCEDURE OF ENTERING A MARRIAGE

"Marriage is a contract of a unified life between two parties of opposite sexes which is concluded in a particular form with the aim to: morally fulfil and improve the husband and bear children" (Begović, 1936). According to Islam, marriage is a apart of the Sharia religious right because it is founded on the basis of the Sharia law and it falls under the public law, hence it is a type of free contract which creates commitments, duties and rights for both spouses.[6] In order for two people to be joined into marriage it is necessary that they are single, mentally healthy, old enough to get married and that it is their free will, that there is no relation between them which is according to the Sharia a marriage impediment. Here we are talking about the necessary material conditions for getting married. In order for a Sharia marriage to be valid it is necessary to fulfil certain formalities which refer to a specific norm, and that is the statement from both spouses that this decision is their free will and the presence of two witnesses.[7]

The statement of will from both spouses is directed towards entering the marriage and it must be gives by both spouses at the same time and at the same place otherwise it has no legal grounds. There will be no marriage if the husband has made an offer at one place and the wife accepted it at another. The conditions asked for while entering the marriage are the offer of a marriage community, accepting the marriage obligations, declaration of the marriage community which must be given at the same place and at the same time, freely and wholly, and the presence of witnesses.[8] "The presence of the witnesses has for a goal to prove the marriage, which is an important relation for gaining many rights. The statements of the able witnesses serve as valid evidence of the existence of the marriage existence and duties." (Begović, 1936, p. 65).

Sharia law recognises marriage impediments which, if they exist, prevent the validity of the marriage. "The following are considered as absolute impediments: being related (blood, related by in-laws or by milk), number of wives, marriage status of the wife, different religions, unworthiness, excessive divorces and iddah" (Festić, 1998, p. 142).

Kinship as a marriage impediment – there are three types of kinship that are considered to be impediments when joining a Sharia marriage, blood kinship, in-law kinship and milk kinship.

[6]The marriage law includes legal rules which refer to marriage. Marriage is the legal basis of a family, and represents an ethical relation between the two parties who are in it. However, taking into consideration the aims and consequences of marriage, this unity does not only exist within the morale sphere, but also the law, which according to its legal elements gives it a general external characteristic (Sladović, 1926).

[7]The Sharia does not stipulate a specific form or place for joining two in marriage. The mentioned formality stipulated consists of the fact that the husband and wife should present their observations about joining the marriage in front of witnesses. A valid marriage can be formed only if there are no marriage impediments. Marriage can be joined conditional, but the condition has to be valid. (Sladović, 1926, p. 48)

[8]When it comes to the Sharia law relation concerning the concubinage it is necessary to mention that the Islamic marriage law stipulates a way in which two individuals of opposite sexes can live in a community as husband and wife. Living in this kind of unity outside the defined rules is forbidden according to that marriage law, and it is partially under the authority of the cadi to try and separate such individuals who live in such communities. In such cases the Sharia law is appointed upon a made claim. (Sladović, 1926, p. 48)

"It is forbidden for two individuals to be joined into marriage if they are directly related, regardless of its level. If they are indirectly related, it is forbidden to be joined into marriage with a sister, cousin (on the sister's of brother's side) and aunt" (Džananović, 2004).

In-law kinship was introduced as a marriage impediment due to moral reasons, in order to ensure respect between the relatives of the spouses.[9] Milk kinship is a special marriage impediment specific for the Sharia law and it is formed between the baby on one side and the wet nurse and her relatives on the other side, if the nursing was conducted during the first two years of the baby's life.[10]

Number of wives as a marriage impediment – the Sharia law allows a man to live in marriage with four women at the same time, where these women can be of those religions to which he is allowed to get married. There are opinions amongst the Islamic lawyers that according to the Sharia monogamy is a rule, but that polygamy is only allowed in special cases. When it comes to polygamy there are certain rules and limitations that have been set, a man who has four wives must be morally able to live with four women, provide them with equal opportunities and support them.[11]

As far as the first wife is concerned she cannot forbid her husband to take a second wife but contracting is allowed, mostly during the marriage, that her marriage will be over if he takes another wife.[12]

The marriage status of the wife as an impediment – polygamy applied to men while women were only entitled to monogamy, she could be married only to one man.[13]

Difference in religion as a marriage impediment – the position of almost every religious law is that a different religion is considered to be an impediment. "The Islamic law has principally adopted this fact as a marriage impediment. This principal is completely implemented in the case of Muslim women, because she can only marry a Muslim man. However, this is not the case when it comes to Muslim men. He is allowed to be joined in marriage not only with a Muslim woman but also a Kitabia, a woman of the Christian or Jewish religion." (Begović, 1936). A man is forbidden to marry a non-believer, a polytheistic or member of any sect that opposes the founding principles of practicing a religion (believing in one God, Prophets and the Books presented).

[9]Marriage affinities and adultery are considered permanent marriage impediments. In this case adultery is equal to the marriage relation. In contrast to the accidental legal interpretation of affinities, there is another difference and that is that amongst Muslims only the man is taken into consideration in this instance and only towards female ascendants and descendants of the wife. In-laws include mother-in-law, step daughter, step mother, as well as wives of sons and their offspring. (Sladović, 1926, p. 55)

[10]According to the mentioned ayahs and Hadith, Islamic lawyers have drawn out conclusions of who can be related by milk. This kinship includes: mother and all wet nurses (regardless of the lineage and degree of kinship), daughter and her daughters (granddaughters) by milk regardless of the kinship degree, sister by milk (from both the mother's and father's side), sister's daughter by milk, brother's daughter by milk, the sister of the mother's father by milk, son's wife by milk and father's wife by milk. (Džananović, 1976, p. 12)

[12]The statistics taken in the Arabian Islamic countries on the entering marriage and divorce point out that the percentage of those who have married two or more wives is negligible and barely reaches one percent. The reason for this is very clear, social progress and the increased standard of life as well as the increased schooling and healthcare expenses (Mustafa es-Sibai, 2004, p. 99).

[12]In most Muslim countries polygamy was limited after the 50's in the 20th century. Family legislations of the Muslim countries today have three ways in which they resolve the questions of polygamy. In Turkey, Cyprus and Tunisia polygamy has been abolished. There is a group of countries where polygamy is not abolished: Saudi Arabia, Qatar, Bahrain, Oman, Mauritania, Sudan and Brunei. In all other Muslim countries many different measures are being taken in order to try and abolish polygamy (for entering a polygamous marriage there are many conditions that need to be met, for example, court permission, that the first wife id terminally ill and unable give birth, that she agrees with her husband taking another wife, to submit evidence of the ability to treat all the wives equally, etc.) (Begović, 2005, p. 33)

[13]Two sisters or two cousins who are in such a degree of kinship cannot be in marriage relation to one man at the same time. Therefore, two sisters cannot be married to the same man at the same time, unless one of them dies or is let go. (Sladović, 1926, p. 55)

The main reason why a Muslim woman is not allowed to marry a Christian or a Jew is because in such a marriage she does not have the conditions to fulfil her religious duties and raise her children in the spirit of Islam.[14]

Iddah as a marriage impediment – this marriage impediment is related to the woman. Iddah is a term which defines the post-marriage period after a divorce or after the death of the husband when she cannot marry another man for some time (unless she returns to her first husband). The duration of this period or the iddah depends on the way in which the marriage has ended, through divorce or death, as well as if the woman is pregnant or not. If the marriage ended due to the death of the husband, the woman is obligated to wait the period of four Hijri months and ten days, and if she is pregnant until birth. If the marriage ended due to divorce, the woman must wait the period of three month cycles or three Hijri months, if she is pregnant then until birth. These post-marriage periods have been introduced in order to avoid eventual paternity disputes.[15]

According to the available data from the Archives of Tuzla Canton on the Kotar court Tuzla ruling 1899 – 1941. (Funds and collections of the Archives of Tuzla Canton, Judiciary, Kotar Sharia Court Tuzla 1899-1941) The data on forming a marriage community refer to the decisions on marriage impediments. There are numerous similar decisions, where the Kotar court as the Sharia court in Donja Tuzla, and later the Kotar Sharia court Tuzla, states that the groom has no impediments to be joined into marriage. All the available decisions of the court come down to the court's opinion that there are no marriage impediments, mostly on the groom's part. However, there are certain documents and data from other courts stating that there are no impediments for joining two spouses in marriage but in these documents there are certain information concerning the bride and whether there are these kinds of impediments on her part. These documents only contained the bride's residence which was under the jurisdiction of a different Sharia court and if there were any impediments they would be referred to the court of her previous residence. Although the marriage was joined in front of a cadi the data of such joined marriages do not exist in the documents of the court.

DISSOLUTION OF MARRIAGE

The Sharia law accepts the principle of marriage dissolution. "According to the Sharia the dissolution of marriage (talak) is a legal matter, but God does not like it" (Imamović, 2003, p. 134). There are two ways of ending a marriage, as a result of death of one of the spouses or through legal action which includes divorce and annulment. A marriage may be ended through termination, a mutual agreement, in accordance to a court ruling or annulment.[16]

[14]Every speech concerning mixed marriages in Islam comes down to the conclusion that a marriage can be formed between a Muslim man and a non-Muslim woman, but only if she is a Christian or Jew. However, one Islamic lawyer says, that such a marriage "is an evil to our religious community, even though these marriages are allowed according to the Sharia law, or to be more precise, endured." Another, with a more gentle opinion, says that such a marriage "even though permitted, is not a desirable and nice thing." The ability for a Muslim man to marry a Kitabia (a woman of a different religion) is based on a ayah from Qur'an (El-Maide, 5) which says: "And you are allowed pure believers and honest women of those to whom the Book was given before you, when you give them their wedding presents, with the intention to marry them, not to commit adultery or make them your lovers." (Vukšić, 2007, pp. 231-232)

[15]A woman who is not pregnant is obligated to stay in her husband's house, where she was during his death and she is not allowed to move to a different house, unless there is a justified reason as is fear for her own personal safety, forced transfer, living in a rented house from which she is evicted or for which she can no longer pay rent and other reasons. Proof for that are the words of the Prophet s. a. v. s.: „Wait in the house where the news of your husband's death have reached you." (Conveyed by Ebu-Davud, Tirmizi, Nesai and Ibn-Majah).
(Priček, iddet, propisi o razvodu - https://islamskiedukativni.wordpress.com/2013/01/06/pricek-iddet-propis-o-razvodu-braka-2/ - accessed 05/06/2015)

[16]Because the dissolution of marriage in the Muslim community is a simple thing, many husbands have the practice to get married and divorced several times, and the Sharia courts cannot do anything about it. However, the Sharia courts can, while joining two people in marriage, try to negotiate a mahr in the amount which fits the opportunity and in this way also participate in regulating the marriage relations. For decades the Sharia courts have been trying with all their power to limit the dissolution of marriage as much as possible. With this as their aim they have achieved to at least avoid the situation where the women are being let go and reach an uncontested divorce. (Sladović, 1926, p. 76)

Marriage termination by natural causes occurs when one of the spouses passes away. There is also the possibility of a marriage termination due to a so-called presupposed death, in other words, when death cannot be confirmed with certainty but it can be assumed based on some facts. Upon suggestion made by interested parties the court can declare such a person deceased.[17]

Marriage termination is a right only allowed to the man, to a woman is come cases. It is a rule taken from Arabian customs law. The woman can terminate a marriage only if there are valid reasons and if such a right was agreed upon while entering the marriage. In order for the husband and wife to terminate a marriage certain conditions must be met. A marriage can be terminated only for valid reasons, if the husband has the ability to terminate the marriage, using the divorce formula, termination possibility and if it the husbands intent to end the marriage. The person who wants to terminate the marriage must be an adult, mentally healthy, and able to understand the importance of this act. Termination possibility refers to the condition that only a valid marriage can be terminated and that is from the moment it started to the moment it ended.[18]

Analysing the document number 3984 dated October 6th, 1901 of the Kotar Sharia court Tuzla it is obvious that man could give a statement to the court in which they are letting the woman go although they were not obligated to do so, but was done so for the sake of keeping records and proving more easily that the marriage has ended. In one of the mentioned court statement given by a man in court, he says "I am letting my married wife go, from this moment on she is no longer my wife". An uncontested divorce of spouses is known to the Sharia law because it accepts the theory of marriage – contract. It is necessary to fulfil two conditions in order to have an uncontested divorce and those are the divorce agreement between the spouses and a justified reason, which include the inability to fulfil the marriage duties.[19] The consent between the spouses exists when one offers it and the other accepts it. In this was the marriage would end based on the agreement of the parties which means that they need to give their consents in a form of statements in front of witnesses or court, although there is a suggestion to give the statement in front of the court, not because of formality but because in this way it is easier to prove that the marriage has been terminated later on. Agreeing on the reimbursement is not one of the important conditions to an uncontested divorce. The reimbursement in favour of the husband is given as an equivalent to the mahr, which is the present the husband gave to the wife. The husband has the right to a reimbursement if it was agreed upon in the divorce and if he is not to be blamed for the inability to continue their lives together. The value of the reimbursement is not stipulated in the regulation but is determined by the spouses.[20]

[17]We differentiate between a factual and a presupposed death. With the first, the fact of death is clearly and undoubtedly presented, which means it was determined by an authorised body. Matrimonial law consequences of such an incident are such that the living spouse, that is wife if the husband has passed away, must go through the so-called iddah which lasts for four months and ten days if the wife is not pregnant, and if she is the iddah lasts until the birth. The presupposed death happens when it cannot be determined with certainty whether the death is factual, which occurs if the person is missing for a particular period of time and it cannot be determined whether he is alive or not. (Andrić, 2008, p. 107)

[18]For a valid marriage termination by the will of the husband it is necessary to realise three conditions: 1) have the termination ability (allowed to an adult, mentally healthy person and a person who is fully aware of consequences of such an act).) Some authors consider that a drunk person cannot make a valid marriage termination), 2) use the divorce formula (clear – sarih, equivocate – kinaya). A recall on the termination of marriage exists only in cases where a simple or double divorce formula was used together with the existence of some other conditions. A termination conducted in such a way does not represent an immediate end to the marriage community, but rather a form of separation, because there is a possibility that such a termination could be recalled during the period of the post-marriage waiting period. 3) Termination possibility (mostly only during the duration of the marriage) and 4) the intent of the husband to end the marriage (Habul, 2006, p. 461).

[19]Two suras – En' Nisau and El' Bekare, always allow the usage of this institution when the spouses realise that they cannot respect the boundaries defined by God. These boundaries in theory are described as the moment when the spouses become aware that they will not be able to fulfil their marriage duties and treat one another in the way which is defined by the Sharia law. If the spouses are not able to bring satisfaction through their marriage duties this also can be seen as the basis for an uncontested divorce, which can be seen from the cited suras (Habul, 2006, pp. 462-463).

[20]The value, reimbursement fee is not stipulated by law. It is left to the husband and wife to define its value according to their abilities. They are advised not to negotiate a full reimbursement amount of the one paid by the husband to the wife as mahr. The subject of the reimbursement can be any obtainable object which is allowed to be owned by Muslims (Begović, 1936, p. 122).

Divorce in court is a decision mostly used by women, rarely by man, because he could end a marriage in a simpler way, by terminating it. The court reaches a decision to end a marriage in accordance with the lawsuit of one of the spouses. The husband can ask for a court divorce in the situation when the wife has broken her commitment of fidelity or obedience. In these cases, if the accusations are proven, the husband is exempted of financial support; the woman loses her right to mahr, and the right to support during iddah. "According to Islam, the woman does not have as many options to a divorce as the man does, but she has the right to a divorce and she can ask for it in certain situations which will be mentioned below and which are not a form of being let go, which depend on the will of the man, but a divorce through a court procedure" (Bušatlić, 1934, pp. 152-160) The woman can ask for a court divorce if the husband does not fulfil his marriage duties and if he is suffering from an incurable disease.[21] "In cases when the man in incapable to support his obedient wife (a woman who fulfils her family duties), or he is capable but does not want to support her, and her support cannot be achieved in an executive way, because the husband does not have any properties or finances from which the wife could be supported, the woman is allowed to end her marriage." (Huseinspahić, 2012, p. 172) Besides this the woman can ask for a divorce if the husband is missing, if he is absent, because he converted to a different religion or because of adultery.

There are several cases of marriage litigations in the Kotar Sharia court Tuzla, more precisely lawsuits for marriage termination. One of them, No. 10/19 dated 01/01/1919, relates to the lawsuit for marriage termination submitted by M.B. against E.Đ, asking the court to reach the decision to end the marriage because her husband had previously declared in front of two witnesses that he is terminating the marriage. Taking into consideration that E.Đ has stated in court that he had not terminated the marriage and after many disputes, the court decided to reject the lawsuit as unsubstantial, and because of the husband's statement and the fact that he is asking the plaintiff to come back home.

Case No. 156/19 dated August 1st, 1908, relates to the marriage lawsuit of the wife F.H. against her husband I.T. where the wife is asking for support, due to the fact that the marriage was terminated, for herself and her children who were born during her marriage to the defendant. After the conducted procedure and the hearing of witnesses the Kotar Sharia court Tuzla reached a decision to rule in favour of the plaintiff, determining that the marriage community has ended, that there was a divorce and that the defendant is obligated to ensure the support asked for. After the ruling the defendant submitted a complaint to the Supreme Sharia court of Bosnia and Herzegovina in Sarajevo. After considering the lawsuit, the documents and the decision made by the Kotar Sharia courty Tuzla, the final decision was reached. The Supreme Sharia court confirmed the ruling made by the Kotar court Tuzla and rejected the lawsuit as unsubstantial. Therefore, in this case the court had reached that the husband is obligated to support his wife and children after the marriage has ended.

CONCLUSION

The Sharia law had been applied in the territory of Bosnia and Herzegovina, as an exclusive law, to regulate the private law relations amongst Muslims which includes marriage relations up until 1946 when marriage received a laic character with the passing of the Basic marriage law of the Socialist Federal Republic of Yugoslavia. During the application of the Sharia law as the exclusive law Muslims had the freedom to religion and the right to resolve their private law regulations on the ecclesiastical court, the Sharia court. Sharia courts implemented the Sharia law, the primary Sharia law, to a large degree where numerous official and private codifications of the Sharia law in all litigations were applied and had the final ruling in such courts. During the Austro Hungarian reign the Supreme Sharia court was established, as the highest jurisdiction, to which the parties could turn to if they were dissatisfied with the final ruling.

[21]When a woman finds her husband to be impotent (unna), incapable of a sexual intercourse, she can seek divorce under the condition that she did not know about this deficiency (flaw) and his inability to perform before entering her marriage. In this case the woman can present this fact in court if she wants to end the marriage and if the husband does not want to let her go and if he admits his deficiency in court, the court will give him a time limit of one year to work on his power and physical improvement. If after this year the husband shows no improvements and cannot perform sexually and the woman appeals to the court with the petition to end the marriage the court will order him to let her go and if he does not want to do so, the court will end their marriage (Bušatlić, 1934, pp. 152-160)

Analysing the records of the Archives of Tuzla Canton, which relate to the Kotar Sharia court Tuzla, it is noticeable that there is a vast number of documents related to marriage termination, marriage litigations, and especially concerning requests for financial support after the marriage had ended, and similar. What can be drawn as a general conclusion is that the Sharia marriage law was implemented on the territory of Bosnia and Herzegovina since the Ottoman Empire until the passing of the Basic marriage law in 1946, where the continuity of this implementation can be noticed. Even after the repeal of the Sharia courts and the implementation of the civil marriage, Muslims could enter into a religious marriage, of course in front of a religious official, by the regulations of the Sharia law but after they enter into a civil marriage.

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