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PRAGMATIC CONVERSIONS: MIXED MARRIAGE AND  
FLEXIBILITY OF SHARI'A IN INTERWAR YUGOSLAVIA

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**MAX WEBER PROGRAMME**

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**Abstract**

The paper discusses the cases of pragmatic conversions to, and out of, Islam in interwar Yugoslavia. It analyzes these cases in the context of Sharia law, which, in the Kingdom of Serbs, Croats, and Slovenes (Kingdom of Yugoslavia from 1929), regulated the family affairs of the country's Muslim population. Through these cases, the paper seeks to understand the complicated interaction between the Yugoslav state law and the Sharia, arguing that contrary to common perception, Sharia allowed for flexibility for those individuals who wished to move between the categories of official identity. The waning influence of state law over Sharia during the disintegration of Yugoslavia in the late 1930s, in the lead-up to the Second World War, made it easier for individuals to game the system. The discussion shows that despite being based on the integrationist ideology of Yugoslavism, the Yugoslav interwar state was straddled with an unwieldy legal system, which made the movement of individuals between categories extremely cumbersome.

**Keywords**

Kingdom of Yugoslavia, Sharia, conversion, mixed marriage, identity.

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## Introduction

By the late nineteenth century conversions in Bosnia-Herzegovina had become an explosive issue, not only politically but also literally, as they often provoked a fury of communal unrest. In a country with a legal system based on confessional segregation, dating back to the Ottoman *millet* system, where national neatly overlapped with religious boundaries, it could not have been otherwise. The Ottoman retreat, and the occupation by the Austro-Hungarians in 1878, upended the messy, but long established, political equilibrium, dislodging the dominance of the Muslims and prompting a vibrant but divisive political life. In this atmosphere religious conversions became an extension of the political fighting, particularly between the Muslims, who saw themselves as existentially threatened under the Catholic Habsburgs, and the Croats, who felt greater affinity towards the regime due to their shared faith. The behavior of the Sarajevo Archbishop Stadler, who openly proselytized, infuriated Muslim clerics who seized on every conversion as evidence of a plot by the regime-backed Catholic establishment to destroy Islam.

The explosive nature of conversions became evident in two cases that gripped the Herzegovinian countryside, and later the entire country, during the last two decades of the 19<sup>th</sup> century. In 1881, a small village near Mostar was rocked by the news that a young Muslim woman, by the name of Saja Čokić, had fled her father's home, converted to Catholicism and married her Catholic boyfriend. A local mufti organized a delegation, led by the girl's outraged father, to the local Austro-Hungarian officials, demanding that the girl be returned home and the conversion immediately annulled since she was a minor. The mufti further argued that the whole operation had been concocted by the local Catholic priest and the girl's Catholic in-laws. The authorities were worried enough to summon the newlyweds to court where Saja defended her decision to convert to Catholicism, insisting that she had done so out of her own free will, and most remarkably, that she was not fifteen, as her father had claimed, but twenty-two. It is not clear how, but the court eventually arrived at the "medical opinion" that the girl was indeed an adult and closed the case. The father, however, continued to press the case at the district Shari'a court, which even arrested Saja for a brief period of time, but was then forced by state officials to release her. Although the saga may have been traumatic for the girl—particularly given the possibility that she had to undergo a medical exam to determine her age—the controversy remained largely confined to the Mostar region and eventually petered out amidst a peasant rebellion which erupted in January 1882.<sup>1</sup>

Following this incident, the Austro-Hungarian authorities attempted to prevent another outbreak of communal unrest by more tightly regulating conversions, but another conversion scandal erupted at the turn of the century, threatening the very stability of the regime. Because many conversions were followed by accusations by representatives of all communities that the clergy of the opposing community had been actively involved in "stealing" the convert, the authorities engaged in extensive negotiations with the religious representatives of all communities in drafting a conversion law. The conversion statute of 1891 allowed for all concerning parties to have unfettered access to the convert, and mandated a waiting period for the conversion to take effect.<sup>2</sup> Eight years later, when the news of Fata Omanović's disappearance spread through another Muslim village in Herzegovina, the Mostar mufti gathered a delegation of over 1000 Muslims and marched on the local government offices, demanding government intervention. The accusations were familiar enough: the unsuspecting Muslim girl had been kidnapped under the cover of night by a group of nuns, ferried to a monastery, converted, and married off to a Habsburg officer, all under the watchful eye of the Sarajevo Archbishop Stadler. The authorities attempted to quell the unrest by arresting and exiling some of the Muslim leaders, but the effort backfired and within a year what had been a village based protest over the fate of a young woman escalated into a Bosnia-wide Muslim movement for religious autonomy. The Fata Omanović affair sparked numerous delegations and petitions, both to Pest and Vienna,

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<sup>1</sup> Robert J. Donia, *Islam under the Double Eagle: The Muslims of Bosnia and Herzegovina, 1878-1914*. (New York: Columbia University Press, 1981), 93-98

<sup>2</sup> Robert J. Donia. *Sarajevo: A Biography*. (Ann Arbor: University of Michigan Press, 2006), 99.

forcing the regime to eventually issue the Autonomy Statute in 1910, granting the Muslim community a wide-ranging autonomy in the management of its religious, educational, and business affairs.<sup>3</sup> Fata eventually resurfaced, almost forty-years later, under the name of Darinka Prijatelj, a Slovenian living in Maribor, when she gave a newspaper interview in which she revealed that she had left her village voluntarily with the helps of nuns, worked at a Split monastery until 1910 when she married a Slovenian officer, converted, and moved to Maribor.<sup>4</sup>

It is partly due to this volatile history of conversions that the post-WWI Yugoslav state strictly regulated movement between official categories and effectively placed the individual citizen into a confessional straightjacket. The Yugoslav Constitution adopted the 1906 Austro-Hungarian law, which besides regulating the identity of mixed marriage children and conversions, also mandated that each citizen declare one of the recognized religions as his public identity.<sup>5</sup> Individuals who trespassed across the inter-confessional boundary could disappear, quite literally. In one case, after the death of her husband, a retired police officer, his wife could not obtain his death certificate because his name had not been entered into any official record. It turns out that Jozo Ivić, a Catholic married to an Orthodox woman had asked to be buried in an Orthodox graveyard, next to a grave reserved for his wife. The local Orthodox priest later claimed that he had accepted to bury Jozo “out of religious tolerance,” but could not enter his name into Orthodox death records because Jozo had not converted. The Catholic priest from Jozo’s parish also refused to enter his name into Catholic records because he had effectively excommunicated himself by being buried in an Orthodox graveyard. Jozo’s wife desperately petitioned all relevant authorities, asking for a death certificate so that she could inherit his meager pension. It would take more than a year—from October 1922 to January 1924—and multiple interventions by the Bosnian government for a death certificate at last to be issued.<sup>6</sup> Another example of the importance of religious identity in interwar Yugoslavia is the case of Helena Kopčenek, an American woman from Chicago who was denied the permission to marry a Muslim man from Trebinje, Sajto Dilić, because she did not declare her affinity with either of the recognized religions. Even though the Supreme Shari’a Court overturned this decision by a district court, arguing that Helena could marry if her witnesses could testify that she was not already married, the highest court still mandated that she declare herself under one of the confessional categories. It is not clear if the two ever married.<sup>7</sup>

Although national identity was made obligatory for most Europeans after World War I<sup>8</sup>, what makes the case of Bosnia-Herzegovina unique is that the interaction between the Shari’a and state law opened up new possibilities for individuals wanting to game the system. Despite the heavy social and financial costs of conversion, as religious communities had a monopoly over individual’s inheritance rights, there was still a substantial number of Bosnians converting for purely pragmatic purposes. The federal Ministry of Faiths warned, as early as 1922, about the increasing frequency of what it called “speculative conversions”, mostly done for marriage or divorce purposes.<sup>9</sup> By the late 1930s these conversions had become worrying even for the highest Islamic authority in Bosnia, *Ulema medžlis*, which issued a memorandum to the clergy, warning them against approving such conversions.<sup>10</sup>

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<sup>3</sup> The most thorough summary of the affair can be found in Donia, *Islam under the Double-Eagle*, 97-113.

<sup>4</sup> “Razgovor R. Kadića s Darinkom Prijatelj. Fata Omanović—djevojčice čiji je slučaj zatalasao Herceg-Bosnu otkriva svoju dramatsku tajnu.” *Jugoslovenski list*, 21 VIII. 1940, p. 6. As cited in Zoran Grijak, “Predstavka Episkopata Vrhbosanske Metropolije iz 1903. godine u svjetlu austrougarske vjerske politike u Bosni i Hercegovini.” *Croatica christiana periodica (CCP)* 62 (2008): 78.

<sup>5</sup> Zlatko Hasanbegovic. *Muslimani u Zagrebu, 1878-1945. Doba utemeljenja*. (Zagreb: Ivo Pilar, 2007), 348.

<sup>6</sup> Pokrajinska Uprava, Kutija 127, Arhiv BiH.

<sup>7</sup> Ostavština Ajni Abdulaha Bušatlića, 230/32, 18 May 1932.

<sup>8</sup> Tara Zahra, “Imagined Noncommunities: National Indifference as a Category of Analysis.” *Slavic Review*, Spring 2010: 101. Zahra argues that once the empires turned into nation-states after 1918 citizens were forcibly made by the new states to declare themselves as belonging to one of the nations.

<sup>9</sup> Hasanbegović, 357.

<sup>10</sup> Vrhovni Šerijatski sud u Sarajevu, 143/39.

Shari'a scholar Ibrahim Džananović has pointed out that during the 1930s, "fictitious" conversions to Islam were "especially widespread."<sup>11</sup> Taking advantage of the flexibility and informality of Shari'a marriage laws, these individuals converted to Islam in order to obtain a divorce when their own religious authorities would not grant it, marry a second wife over the protests of the first one, or more ominously, save their lives in the midst of World War II.

It is important to note that in their overwhelming majority these individuals were men. Reminding us once again that nations are imagined, articulated, and regulated by men<sup>12</sup>, women had a particularly difficult time in obtaining legal benefits through conversion. As Veena Das argues in her seminal study of women kidnapped during the partition of India, and as the above cases of conversion controversies show, women's bodies are often "a sign through which men communicated with each other."<sup>13</sup> As it will be shown, women converts to Islam were viewed with suspicion by both secular and religious authorities as cunning manipulators of men, as anti-state spies, or as prone to vice. However, despite the male dominated legal system which actively discriminated against them, women still found ways to punch holes through the rigid inter-confessional boundary and game the system. The gendered nature of conversions aside, what the following stories show is that a state that was officially based on the ideology of integral Yugoslavism—which strove to unify all of the different religions into an overarching national identity—was saddled with a clumsy and inflexible legal system that actually discouraged any tinkering with traditional identities. But it was the Shari'a that made the system more flexible.

### **The Supreme Shari'a Court and Speculative Conversions**

During the first half of the 1930s, the Sarajevo Supreme Shari'a Court (VŠS) took a position on speculative conversions that was similar to its position on mixed marriage: it gave precedence to state law. Even though the Hanafi school of the Shari'a stipulates that if a spouse in a non-Muslim marriage converts to Islam and the other spouse refuses, the marriage becomes dead, the VŠS insisted that it had no jurisdiction in these cases. The law which the judges cited in justifying this position was the 1929 "Law on the organization of Shari'a courts and Shari'a judges," which stipulated that for a marriage to be under the jurisdiction of a Shari'a court either both spouses had to be Muslim or the marriage had to be concluded in front of a Shari'a judge (Article 2, clause 1). This clause empowered country's Shari'a courts to regulate mixed marriages in which the husband was Muslim (for Muslim women, mixed marriage was strictly forbidden), but as Fikret Karčić has pointed out, it also precluded the Shari'a from extending its reach over non-Muslim marriages in which only one spouse converted to Islam. For a non-Muslim marriage to come under the jurisdiction of the Shari'a, both spouses had to convert to Islam.<sup>14</sup> The reformist chief justice Abdulah Bušatlić, who was on the bench during the first half of the 1930s, argued that state law had to be given precedence in these cases for the sake of peace in the multi-religious country, "...it is far more important to maintain religious tolerance between citizens of a multi-confessional state such as ours than allow certain individuals to stir up religious antagonism and hatred by converting from one faith to another all with the purpose of dissolving or entering marriages."<sup>15</sup> The Shari'a scholar Mehmed Begović argued at the time that for a Shari'a judge to grant these conversions would have been tantamount to religious propaganda, "A

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<sup>11</sup> Ibrahim Džananović. *Primjena šerijatskog porodičnog prava kroz praksu Vrhovnog Šerijatskog Suda 1914.-1946.* (Sarajevo: Fakultet Islamskih Nauka, 2004), 36.

<sup>12</sup> The literature on the gendered nature of nations is simply too vast to summarize here, but the most seminal article is Anne McClintock, " 'No Longer in a Future Heaven': Nationalism, Gender and Race," 260-286. In *Becoming National: A Reader*. Geoff Eley and Ronald Grigor Suny, eds. (New York: Oxford University Press, 1996).

<sup>13</sup> Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India*. (Bombay: Oxford University Press, 1995): 56

<sup>14</sup> Fikret Karčić, Karčić, Fikret. *Šerijatski sudovi u Jugoslaviji 1918-1941*. (Sarajevo: Fakultet Islamskih Nauka, 2005), 68-69.

<sup>15</sup> Bušatlić, "Nešto o nadležnosti za sklapanje brakova pomuslimanjenih lica," *Mjesečnik* br. 1/1923, 24, quoted in Karčić, *Šerijatski sudovi*, 128).

Shari'a judge as a state official is not allowed to conduct religious propaganda and proselytize by inviting one spouse into Islam even if the other spouse had already converted."<sup>16</sup>

Thus, when he petitioned the court to convert to Islam, Vjekoslav Palfi stood little chance. Nevertheless, he was quite honest in his explanation of why he wanted to become a Muslim: he wanted to divorce his wife and marry another woman in order to "save her honor." In his handwritten letter to the Supreme Shari'a Court in Sarajevo, dated 9 May 1932, this employee of the Yugoslav Ministry of Finance admitted that this was not the first time he wanted to change his faith. He had left Catholicism in order to join the "Old-Catholic" church—a relatively liberal denomination that split from the Catholic church in 1870 over papal infallibility—for the same practical purpose of divorcing his wife who had adamantly refused to grant him a divorce. However, even the comparably more liberal divorce laws of the Old Catholic church required him to provide evidence of adultery, which he could not, and refused to grant him a divorce. His situation seemed to have been more tolerable while he was living in Belgrade, separately from his wife, but after moving back to Zagreb he was, "forced by pressure from many sides", to move back in with his wife. Even while attempting to give his intended conversion the appearance of ideological adherence to Islam, Vjekoslav made it clear that his newfound love for Islam was mostly strategic and not ideological,

Because I intend to marry a woman whose honor I am duty-bound to save, I studied the books: "Nauka Islama [The Doctrine of Islam]" by Muhamed Seid Serdarević, as well as "Der Islam," and "Der islamische Mensch" by Sadr-ud-Din and having become assured of the soundness of the doctrine of Islam I have decided to convert to Islam.<sup>17</sup>

Although it is certainly possible that while reading these books Vjekoslav might have become a devout Muslim, it is more likely that his mention of these books was a mere afterthought, designed to give his petition a cloak of ideological veracity. In fact, he never offered an elaboration of his rather vague statement that he had become, "assured of the soundness of the doctrine of Islam." Instead, in the very next sentence Vjekoslav returned to the main reason for his petition, "My current wife persistently refuses to grant me a divorce or agree to a support settlement, and thus I cannot get either a divorce or any settlement." Having been informed by the local Shari'a court that to conclude a Muslim marriage he would have to submit either divorce papers or a support settlement, he admitted that he could provide neither and plead with the Supreme Shari'a court to excuse him from submitting such documents, allow him to convert to Islam, and marry another woman, "in front of any Shari'a court in Bosnia." The matter was so urgent for Vjekoslav that after a week of not hearing from the court he wrote another letter, urging them for a swift solution, and yet another on 24 May 1932, two weeks after his initial petition.<sup>18</sup> Based on this, one can safely infer that saving the honor of the lady with whom he had been involved took precedence over any ideological infatuation with Islam.

For its part, the Supreme Shari'a Court in Sarajevo followed the precedent it had established in most other cases of divorce-inspired conversions, by refusing to take up the case on jurisdictional grounds. During its deliberations on 17 May, the judges unanimously agreed that the court did not have territorial jurisdiction over the case and informed Vjekoslav of its decision not directly, but via the Zagreb city government, which was the reason why Vjekoslav had not heard of the decision until at least the 24<sup>th</sup> when he wrote the last letter to the court.<sup>19</sup> The court's refusal to adjudicate Vjekoslav's divorce, or even establish a direct line of communication with him, but instead to involve the Zagreb city government, reflected the sensitive nature of the case in a multi-confessional state in which conversions, more often than not, triggered conflicts between the confessional communities over their "lost" members.

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<sup>16</sup> Mehmed Begović, *Šerijatsko Bračno Pravo: sa Kratkim uvodom izučavanja šerijatskog prava*. (Beograd: Izdavačko i knjižarsko preduzeće Geca, 1936), 142.

<sup>17</sup> VŠS, 1932/21, No. 233, p. 2, ABiH.

<sup>18</sup> VŠS, 1932/21, 2B, 4B

<sup>19</sup> VŠS, 1932/21, 269.

Until 1940, the Sarajevo Supreme Shari'a court consistently confirmed the decisions of district Shari'a courts, in which the latter refused to dissolve non-Muslim marriages and in which one spouse had recently converted to Islam, often resisting pressure from the *Ulema medžlis* for a more active stance in granting what the latter saw as a legitimate right of recent converts. For example, in 1920 a woman by the name of Naila Curinaldy petitioned the Sarajevo district Shari'a court to approve her divorce from her husband Marin Curinaldy, confirm her conversion to Islam, and allow her to marry a Muslim. Despite the fact that her husband had agreed to a divorce, and that the *Ulema medžlis* had issued a confirmation of this divorce, the district Shari'a court in Sarajevo rejected her petition, citing a law issued during the Austro-Hungarian rule in 1883 (Order No. 7220/III, clause 10), which had restricted the jurisdiction of Shari'a courts to marriages in which both spouses were Muslim. In rejecting Naila's appeal and confirming the district court's original decision, the Supreme Shari'a judge Mutapčić wrote that the only way the Shari'a court could have dissolved Naila's marriage with Marin would have been by summoning the spouses to a court hearing, but he warned that state law prohibited Shari'a courts from holding hearings for non-Muslims. The judge reaffirmed the precedence of the state over the Shari'a law and noted that the *Ulema medžlis* had overstepped state regulations in issuing the divorce confirmation,

Therefore, in this case, where one litigant is a non-Muslim it is not allowed for either the district Shari'a court or the Supreme Shari'a court to apply Shari'a marriage law, and because it did not consider that it was limited by state law, the *Ulema medžlis* issued the aforementioned decision [about the validity of Naila's divorce].<sup>20</sup>

Given the fact that judge Mutapčić who signed this decision was purged at the onset of King Alexander's dictatorship in 1929, because his loyalty to the regime was seen as questionable<sup>21</sup>, his decision in this case was hardly motivated by his sympathies to the royal regime. Rather, it reflected the professional and legal obligation most Shari'a judges felt they had in strictly limiting the use of the Shari'a whenever it could impact the inter-confessional relations in the country. As they were state—and not religious officials—Shari'a judges often came into conflict with the *Ulema medžlis*, as in the case of Naila Curinaldy, and with the local clergy, who often viewed the court's decisions as apathetic towards the interests of Islam. However, judges continued to adhere to state law—at the expense of the Shari'a—invoking first, the Austro-Hungarian 1883 law, and later the Yugoslav 1929 “Law on the organization of Shari'a courts and Shari'a judges”—in their attempt to minimize potential conflicts between the country's confessional communities over conversions.

At times, district Shari'a courts hesitated in restricting the right to divorce to recent converts and asked for confirmation from the Sarajevo Supreme Shari'a court that their rulings had been valid. When in 1933, Muhamed Topčija from the village of Mihaljević near Srebrenica petitioned the Srebrenica Shari'a court to approve his marriage to Zlata (formerly Roza) Mlakar—who two months before had converted to Islam in order to divorce her husband Franjo Kubiček—the lower court rejected him, citing both the Shari'a and state law. The judge referred to the clauses 20 and 132 of *akhjami-shari'a* according to which Zlata was still considered Franjo's wife because their marriage had still not “died” (*utrnuo*) and because she had not passed *iddet*, the three menstruation cycles-long period of waiting a divorced woman had to go through before she was eligible for another marriage. Second, the Srebrenica judge declared that his court's competence in this matter had been curtailed by Article 2 of the “Law on the organization of Shari'a courts and Shari'a judges.”<sup>22</sup> The Sarajevo Supreme Shari'a court rejected Muhamed's appeal to the decision of the lower court, arguing that the Shari'a marriage rules still considered Zlata's marriage to Franjo valid. However, the opinion of the high court also confirmed that, “with her conversion to Islam, she [had] obtained the right to judicially dissolve her marriage [to Franjo],”<sup>23</sup> but the court did not elaborate as to how she could exercise this

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<sup>20</sup> VŠS, 225/20, 3 April 1920, p.2, ABiH.

<sup>21</sup> Karčić, 96.

<sup>22</sup> VŠS, 118/33, 1933/33, 8 June 1933.

<sup>23</sup> VŠS, 287/33, 1933/33, 23 June 1933.

right, given the fact that the state law prevented Shari'a courts from dissolving or solemnizing marriages of non-Muslims. From a letter the Srebrenica court wrote to the Sarajevo Supreme Shari'a court some four months after the latter had rejected Muhamed's appeal, we can infer that Zlata and her husband had once again petitioned the lower court to solemnize their marriage. In the letter, the Srebrenica judge asked the Sarajevo court to confirm his opinion that, "in this matter [this court] is absolutely incompetent to conduct a hearing and dissolve a marriage between a Muslim convert and a non-Muslim..."<sup>24</sup> The Srebrenica judge further argued that even though Shari'a marriage rules empowered the court to dissolve Zlata's marriage to Franjo and solemnize her new marriage to Muhamed, it was state law that made the possibility of any hearing in this matter "an illusion."<sup>25</sup> Despite the tone of certainty in his declaration of incompetency, the Srebrenica judge was still uncertain whether to give more weight to the Shari'a or the state law, which seemed to be in opposition in this case, "even though Shari'a rules allow this [the dissolution of Zlata's marriage to Franjo], state laws, which the district Shari'a court is obligated to follow equally, do not. This court cannot independently decide to which set of laws to give precedence, and which set of laws to apply in this matter."<sup>26</sup> In its response, the Sarajevo Supreme Shari'a court confirmed the Srebrenica judge's opinion that the Shari'a did not have jurisdiction in this matter, and that the judge had been correct in giving precedence to state law.<sup>27</sup> Thus, in these cases state law stifled the flexibility of the Shari'a marriage rules and placed some recent converts in a legal limbo: while officially considered Muslim they could not fully exercise some rights—such as to divorce and (re) marry—that they would have been entitled to had they been born Muslim.

For its part, the Islamic clergy seemed torn between its desire to expand the Muslim community by admitting new members, and its efforts to strengthen the religious devotion of its members, particularly by weeding out those who converted for pragmatic reasons. Thus, even though it occasionally intervened with Shari'a courts on behalf of recent Muslim converts—as was in the case of Naila Curinaldy—by 1939, the *Ulema medžlis* had become alarmed by the increasing frequency of conversions to Islam, many of which had been "speculative," in the words of an *Ulema medžlis* circular sent to all religious officials on January 11, 1939. In the circular, the *Ulema medžlis* warned that these types of converts had harmed the Islamic community,

In recent times conversions from other faiths to Islam have become more frequent. The reasons for these conversions have mostly been of speculative nature, for marriage or other material reasons. In many cases, the public behavior of the majority of such converts has proved the main reason for their conversion. In the majority of cases, even after their conversion, these people remained what they had always been, the least of which was Muslim. Because of this the Islamic religious community has suffered considerable damage.<sup>28</sup>

In order to make sure that the Islamic community accept only those who will become true Muslims, the circular outlined a more robust conversion procedure, approved by the *Reis-ul-ulema* a month earlier, that was to be supervised by the *Ulema medžlis* office. An individual who wanted to become a Muslim would approach his local *imam* and submit his or her marriage status form, as well as the confirmation from their priest that they had left their previous faith. After receiving these documents, the local *imam* was obligated to thoroughly investigate the motive behind the conversion and forward all the documents, including his observations regarding the motive of the conversion, to the *Ulema medžlis* office where the final decision would be made. In the case that the convert was rejected, he or she had fourteen days to appeal, but the appeal would be considered by the *Ulema medžlis*. By centralizing the conversion procedure, the *Ulema medžlis* strove to tighten its control over the inter-confessional boundary which, in its eyes, had become too permeable in the recent years.

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<sup>24</sup> VŠS, 190/33, 1933/33, 26 October 1933.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> VŠS, 449/33, 1933/33, 28 October 1933.

<sup>28</sup> VŠS, 9160/38, 120/39, 11 January 1939.

The increasing surveillance of conversions was a part of the more widespread mobilization within the Islamic community to combat what was perceived as a serious weakening of the community, the main cause of which was the increasing frequency of mixed marriages. In fact, on the same day the *Ulema medžlis* sent its circular outlining the new procedure on conversions, it also instructed all the branches of the Islamic religious community to strictly follow the ban on mixed marriage, which the *Reis-ul-ulema* and his High Council had issued during their session on 21 December 1938. While speculative conversions might have weakened the Islamic community, they were nothing compared to the damage wreaked on the community by mixed marriages. According to the *Ulema medžlis*, “It is indisputable that what has contributed the most to the weakening of the Islamic religious community are mixed marriages which have multiplied among the Muslims in recent years...”<sup>29</sup> The most pernicious consequence of such marriages, according to the circular, were children who “have become a problem,” since often they were “given up” to their Christian mothers, who would baptize them with or without the permission of their Muslim fathers. Summarizing the provisions of the ban on mixed marriage the *Reis* had adopted, as well as his order to excommunicate those Muslims who had solemnized their marriage in a church or in accordance with rituals of another faith, the *Ulema medžlis* instructed the clergy to use their Friday prayers to talk to their congregations about the, “bad consequences of every kind of mixed marriage.”<sup>30</sup> Immediately upon receiving the circular, every *imam* was to check if there were any Muslims in his region who had concluded their marriage in accordance with the rituals of another faith and, if so, he was to summon such men, and in a “polite and appropriate manner” inform them of the conclusions of the *Reis* and his High Council. The offending Muslim was then to be given three months to remarry in front of his local Shari’a court, but only after either his wife had converted to Islam or he had obtained the permission from the *Reis* to conclude a mixed marriage. Otherwise, the *imam* would be required to delete his name from the Muslim registry, thus effectively excommunicating him.<sup>31</sup> The two circulars of the *Ulema medžlis* echoed two contradictory sentiments: while one warned the clergy to be vigilant against pragmatic conversions, the circular on mixed marriage would have made pragmatic conversions of non-Muslim women the only alternative mixed marriage spouses had to save their marriage.

As it can be seen, in addition to mixed marriage, speculative or pragmatic conversions also became a part and parcel of the campaign to buttress Islamic identity in the late 1930s Bosnia-Herzegovina. Similarly to mixed marriage, during the first half of the decade the issue elicited division between the Shari’a judiciary and lower-level clerics over the extent to which the Shari’a should submit to the jurisdiction of the state law. But while the clergy seemed relatively united over the need to ban mixed marriage, their sentiments regarding pragmatic conversions were much more ambivalent and at times contradictory. While on the one hand they were enthusiastic in inducting new members into the community, and sometimes even intervened for their petitions to be approved, they were also forced to acknowledge the pragmatic nature of these conversions and felt these weakened the already questionable religious discipline. What is particularly interesting is that as the Islamic elite homogenized during the second half of the 1930s in an attempt to cement the inter-confessional boundary, the waning influence of the state law made it easier, not harder, for some individuals to slip through this boundary.

For example, for Jakub (formerly Janko) Zupančić from Zagreb the eagerness of some Islamic officials to grant new converts the right to divorce—even if this meant ignoring state law—meant that he was able to dissolve his Catholic marriage and marry an Orthodox woman in accordance with the Shari’a. In 1923, Janko married Paula Rakić in a Catholic church in Banja Luka (Bosnia), but on 24 May 1937 he converted to Islam, when he took the name Jakub, and almost exactly one month later on 25 June married Julka Radić in front of the Shari’a court in Zagreb. His first wife Paula sued him at the Zagreb Shari’a court, claiming that his marriage to Julka was invalid, given that their Catholic marriage had never been properly dissolved. In her petition to the Zagreb court, Paula’s lawyer

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<sup>29</sup> VŠS, 9156/38, 120/39, 11 January 1939.

<sup>30</sup> Ibid., 2.

<sup>31</sup> Ibid.

referred to Clause 62 of the “General Civil Code” (*Opšti građanski zakonik*) which treated an existing marriage as an obstacle to a new marriage. However, in its rejection of Paula’s suit, the Shari’a district court in Zagreb noted that, “[f]or marriages solemnized before Shari’a courts, the rules of the Shari’a, and not the rules of the General Civil Code, are valid.”<sup>32</sup> Acknowledging that in practice Shari’a courts had considered an existing marriage to be an obstacle to a new marriage, the Zagreb Shari’a court argued that Jakub had proved that he and Paula agreed to dissolve their marriage in front of the Sisak (Croatia) court in 1934. Paula appealed the decision of the Zagreb court at the Sarajevo Supreme Court, arguing adamantly that the divorce agreement between her and her husband had never happened,

The decision [of the Zagreb court] wrongly states that [Jakub] proved that he was divorced because he cannot and does not have any proof of this. And for a marriage to be concluded in accordance with Islam, it is necessary for his first wife to give her husband the approval. I have never given him such approval so he could not have provided the evidence of the same.<sup>33</sup>

Even though Paula’s interpretation of the Shari’a marriage rules was not quite correct—since the Shari’a does allow the husband to marry up to four wives with or without the first wife’s approval—the precedence Shari’a courts had established in these cases, and the Supreme Shari’a court had repeatedly confirmed, suggest that Paula’s petition would have been approved, and Jakub’s marriage to Julka would not only have been declared invalid, but would not have been solemnized by a Shari’a court in the first place. Even had Jakub presented the proof of a divorce agreement, we need only recall the 1920 case of Naila Curinaldy in which, despite the husband’s agreement to grant her a divorce, the Supreme Shari’a judge Mutapčić rejected her petition, arguing that the state law prevented the Shari’a court from meddling in the matter. That the Sarajevo Supreme Shari’a court would confirm Jakub Zupančić’s new marriage—in face of his first wife’s steadfast opposition to it—reflected the waning influence of the state law on the Shari’a judges. In rejecting Paula’s suit against Jakub and confirming the validity of his Muslim marriage, the Supreme court claimed that as a Muslim, Jakub enjoyed the right to have two (and up to four) wives at a time,

Therefore, according to the Shari’a, Jakub Zupančić as a Muslim could, beside his wife Paula Rakić, who belongs to the Catholic faith, and without her permission, also marry the second wife Julka Sadrić, who belongs to the Orthodox faith, so he currently has two wives.<sup>34</sup>

State policies, designed to maintain inter-confessional peace in the country, threatened legal sanctions against religious officials who transgressed the boundaries of their jurisdiction.

The court’s decision in the Zupančić case not only broke its own precedence, but it also violated the criminal code of Yugoslavia, particularly Article 399, clause 2, which threatened a prison term for, “a religious representative who marries an individual who had previously entered a marriage in accordance with the rituals of any religion accepted in the Kingdom of Yugoslavia or who had previously entered into a civil marriage.”<sup>35</sup> While contrary to the state law, the decision was based on the directives of the Shari’a court from 1922 (No. 503) and 1924 (No. 211), both of which claimed that the Shari’a court had jurisdiction over a non-Muslim marriage in which the husband converted to Islam because the Shari’a allowed polygamy.<sup>36</sup> However, in 1926, the reformist judge and Shari’a scholar Abdulah Bušatlić argued that, even though Shari’a courts might be competent to solemnize these marriages, the individual Shari’a judge could still excuse himself from such cases because, “even though in certain instances, polygamy is allowed and is not a crime for the Muslims of Bosnia-Herzegovina, I believe that such marriages can be denied because this is a very uncomfortable

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<sup>32</sup> VŠS, 647/40, 243/1940, 23 December 1940.

<sup>33</sup> *Ibid.*, 2.

<sup>34</sup> *Ibid.*, 3.

<sup>35</sup> Begović, 57-58. (translation mine).

<sup>36</sup> *Ibid.*, 57.

situation and in the cases of mixed marriage, it is up to the individual judge to decide.”<sup>37</sup> The fact that both, the Zagreb and Sarajevo courts ignored their own precedent, and the state law, revealed the growing independence of the Shari’a judiciary from the state’s embrace.

That the Sarajevo-based Islamic establishment grew increasingly indifferent to the political consequences of pragmatic conversions is illustrated by the case of the conversion of an Orthodox priest in September 1940. If the conversion of an ordinary citizen could stir up animosities between the religious communities, the conversion of a priest to Islam could be interpreted as a full frontal attack on a community, and could cause an explosive, country-wide scandal with far-reaching repercussions. Thus, when in September 1940, the Orthodox priest Nikola Vuković from the tiny Serbian village of Aldinac walked into the office of *imam* Idris ef. Hajrulah in Skoplje (Macedonia) and asked to be accepted into Islam, the *imam*’s immediate reaction was shock mixed with suspicion. Not knowing what to make of the priest’s highly unusual request, the *imam* wrote a letter to the *Reis-ul-ulema* Fehim Spaho and asked for instructions. Ef. Hajrulah wanted to consult with the *Reis* before making a decision because he wanted to, “make sure that this is not some special mission of the priest,” and hoped “to peer deeper into his motives.” As to the motives of the conversion, in a long conversation with the *imam*, priest Vuković claimed that he had become “embittered” against his church,

The reason for this is that, according to him, church authorities have been abusing, punishing, and persecuting him, especially by making him eat his meals in a bar [*kafana*] because his wife died and he cannot get married again and he is struggling with his child and cannot bear to stand the unjust persecutions [from the church].<sup>38</sup>

It seems that the only specific grievance the priest had against his church was that, by not allowing him to get remarried, it had denied him a chance to have someone cook for him and take care of his child. Nonetheless, the priest was so angry with his church that he asked for no official position within Islamic institutions, promised to ask for no financial reward, and asked for his case to be published in the paper. It must have been this last unusual request that prompted the *imam* to confess to the *Reis* that “I do not dare to act before receiving your highly respected opinion.”<sup>39</sup> *Reis*’ terse and resolute response, however, contrasted with the hesitant and shocked tone of the *imam*’s letter, “In the matter of the petition of priest Nikola Vuković for his conversion to Islam, I find that there is absolutely no obstacle for the approval of his petition, and it is my opinion that this should be done.”<sup>40</sup>

Seen in conjunction with the decision of the Supreme Shari’a court in the Zupančić case, some three months later, *Reis*’ lack of hesitancy in accepting the priest into the Islamic fold reflected the increasing tendency of the Sarajevo-based Islamic establishment to focus strictly on the letter of the Shari’a, without taking into consideration the effects this would have on the inter-confessional relations in the country. Thus, in the midst of the efforts of the Islamic establishment to tighten the inter-confessional boundary, the growing gap between the state and mosque, and the inclinations of the Shari’a judiciary towards the letter, occasionally made pragmatic transgressions of the boundary more desirable, (as new converts obtained the right to remarry), and more easy, (as potentially explosive conversions were approved).

### **I have “cleansed myself from Islam,” the Conversions of Women**

If the clergy were ambivalent towards conversion of men they were particularly suspicious, and even hostile, to conversions of women, a sentiment they shared with secular authorities. In particular, women, who through their conversion to Islam crossed the boundaries of citizenship, could quickly become objects of police scrutiny. For example, on 15 August 1921, the Regional Ministry of Interior of Bosnia-Herzegovina responded to a police inquiry from the Bosnian town of Vlasenica in which the

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<sup>37</sup> Hafiz Abdulah Bušatlić. *Šerijatsko sudski postupnik sa formularima*. (Sarajevo: Islamska dionička štamparija, 1927), 19.

<sup>38</sup> Idris ef. Hajrulah-Reis, 18 September 1940, 350/40, SF 2239.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., 21 September 1940, SF 2239.

police had informed the headquarters about the recent arrival from Russia of two (Bosnian) Muslim men, along with their Russian wives who had recently converted to Islam and obtained Yugoslav citizenship. Because their Yugoslav citizenship prevented the authorities from exiling the women, the official from the Ministry of Interior Nikolić instructed the local authorities to, “place [the women] under the most discreet surveillance and monitor their actions and movements”<sup>41</sup>, in uncovering their potential anti-state activities. Nikolić warned his subordinates not to hesitate in punishing the women if it turned out they were working against the state, “In case their anti-state activities are proved, the most severe legal action is to be pursued against them, like it would be against anyone else, and which is stipulated by the most recent law on the protection of public order and the state.”<sup>42</sup> The suspicion of foreign women who obtained Yugoslav citizenship through intermarriage became particularly intense after Hitler’s annexation of Austria in March 1938, when the country’s main newspapers published stories of wealthy, Viennese Jewish women marrying naïve, poor Muslim men only to save their lives and property. Symbols of the foreign body politic, women often became the means through which the press, the public, religious, and state officials communicated their own anxieties about the stability of the Yugoslav state.

While the scorn against foreign women who (pragmatically) obtained Yugoslav citizenship was particularly vociferous, Yugoslav women who dared cross the inter-confessional boundary were often the subjects of equally intense scrutiny by an alliance between secular and religious authorities. As the inter-confessional boundary cemented in December 1938, with *Reis Spaho*’s ban on mixed marriage, conversion to Islam became the only option for non-Muslim women who wanted to marry Muslim men. However, their conversions became vulnerable to the suspicions of secular authorities, rumors from the local community, and to the increasing determination of Islamic authorities to guard the entrance into the Muslim community. Thus, when in 1939, Vida Stojović from the eastern Bosnian village of Rogatica attempted to marry Zaim Zulejkić by converting to Islam, both the religious and secular authorities joined forces in thwarting their plans in order to protect Zaim from, “an immoral woman who was given to prostitution and other vice.”<sup>43</sup> This is how the chief of the local police described Vida in his letter to the district Shari’a court in Podgorica (Montenegro), where Zaim’s petition to be married was currently being considered. After receiving the petition, the Rogatica Shari’a court had forwarded the request to the Podgorica court asking for a *murasela*, an authorization to solemnize the marriage. In the letter, the police chief informed the Podgorica court that Zaim, a peasant shoe-maker (*opančar*), was already married with five children and would be ruined if he married Vida, a waitress who had reportedly prostituted herself while working at local cafes. In fact, her reputation was so damaging to the community that the police had exiled her to her place of birth in Montenegro, and it was during her exile that she converted to Islam. The police chief urged the Podgorica court to prevent her from marrying Zaim, insisting that the citizens of Rogatica shared his concerns,

The citizens who know Vida as an immoral woman given to prostitution and vice cannot stand her behavior, so many respectable Muslims beg of you to prevent this marriage because it is well known that Vida did not convert to Islam because of her beliefs but out of purely speculative reasons so that she could marry Zulejkić and with her immoral life destroy him, his property, his wife and his five children.<sup>44</sup>

It seems that the letter of the Rogatica chief of police achieved the desired effect because on 1 April 1939, the Podgorica Shari’a court refused to issue a *murasela* because Vida was, “an extremely immoral woman, given to prostitution and other vices, and her conversion to Islam was done only for speculative reasons, and because the *imam* in Nikšić who converted her to Islam did not have

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<sup>41</sup> Okružna oblast, 7.971/1921, 2534/1.

<sup>42</sup> Ibid.

<sup>43</sup> VŠS, “Opštinska straža u Rogatici—sreskom šerijatskom sudu u Podgorici,” 24 March 1939, 336/39, 265/1939.

<sup>44</sup> Ibid.

territorial jurisdiction to do so.”<sup>45</sup> Informing the Supreme Shari’a court of this case, the Rogatica court noted that both Zaim and Vida had been informed in person of the final decision and that the case had been closed.<sup>46</sup>

As the increased surveillance of the inter-confessional boundary resulted in longer waiting periods for potential converts, intervention by men who were familiar with the *Reis-ul-ulema* could sometimes speed up women’s petitions. This was the case with Mujaga Jasarević from Banja Luka who, on 3 August 1939, pleaded with *Reis* Spaho to intervene with the Sarajevo *Ulema medžlis* and approve the conversion to Islam of his future daughter-in-law. His son had become involved with a Catholic woman by the name of Marija Jesenak and she had had his child, but they had still not been able to marry. In desperation, Marija had petitioned the Sarajevo *Ulema medžlis* to be allowed to convert to Islam and marry his son, but two months had passed and they had not heard from the authorities. Worrying that his son might convert to Catholicism instead, Mujaga pleaded with the *Reis*, “I think you will understand the position I am in and that you will get involved if not for them then at least for me because I’d rather see him dead than for him to convert to Catholicism.”<sup>47</sup> Even though it was obvious that the conversion was purely strategic, the *Reis* intervened the very same day with the *Ulema medžlis* and wrote to Mujaga that “the matter will be resolved today.”<sup>48</sup> Possibly concerned with “losing” Mujaga’s son to Catholicism, the *Reis* acted with great urgency in intervening with the clergy establishment to approve Marija’s conversion petition.

Although the flexible Shari’a marriage laws could encourage conversions of men to Islam, for Muslim women trapped in unbearable marriages, conversion *out* of Islam often remained the only option. This was largely due to the divorce provision of the Hanafi school, which allowed for a marriage to be dissolved only with the consent of the husband (unless he is mentally ill, impotent, or unable to support a wife).<sup>49</sup> The issue of divorce in the Shari’a and in particular the practice of *talaq*—a husband-initiated dissolution of marriage which he could achieve simply by repeating three times his intent to divorce his wife—had been a cause for many Islamic reformers. Considering the practice outdated, prone to manipulation, and damaging to the Muslim family, the famous Egyptian reformer and the Grand Mufti of Egypt, Muhammad Abduh, campaigned against the *talaq* and advocated for the right of divorce to be extended to women.<sup>50</sup> Muhammad Abduh’s argument was later picked by the Sarajevo Shari’a judge Abdulah Bušatlić who, during his tenure as the chief of the Supreme Court, urged the *Ulema medžlis* to help women dissolve unbearable marriages by using the precedence of other Shari’a schools, which, “are more appropriate in the particular circumstance and the spirit of the time.”<sup>51</sup> However, the resurgence of the conservatives within the Shari’a courts during the second half of the 1930s meant the abandonment of reforms. Consequently, the practice of *talaq* continued relatively unimpeded, with some corrupt judges granting instant divorces to husbands, leaving women without any means of support.<sup>52</sup> The Shari’a scholar Ibrahim Džananović has pointed

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<sup>45</sup> VŠS, 417/38, 265/1939.

<sup>46</sup> Ibid.

<sup>47</sup> HAS, FS, 1747

<sup>48</sup> Ibid., 534/39.

<sup>49</sup> There is some dispute about this provision. The Shari’a does allow the woman to divorce her husband through *khula*, divorce by redemption, where a woman asks the husband to consent to a divorce and she might be required to pay back the dowry (*mehr*). This interpretation is based on the hadith of Jamila, the wife of Sabit Qais who came to the Prophet and expressed her desire to divorce her husband because she could no longer stand him. The prophet allowed her to do so under the condition that she return the garden she had received from Sabit as her *mehr*. However, Shari’a scholars have interpreted this to mean that the wife can divorce her husband only with his consent. (Jamila Hussein. *Islam its law and society*. Sydney: The Federation Press, 2003, 106-107).

<sup>50</sup> Ron Shahan, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Shari’a Courts 1900-1955*. (New York: Brill, 1997), 6.

<sup>51</sup> Ostavština Ajni Abdulaha Bušatlića, 97/30, 15 January 1930

<sup>52</sup> Karčić, *Šerijatski sudovi*, 99.

out that despite the existence of other more liberal approaches to the issue, the Shari'a institutions in Bosnia-Herzegovina stuck with the practice, causing "many Muslim women to commit apostasy."<sup>53</sup>

One such woman was Ajiša Šahinagić of Sarajevo who converted out of Islam in order to divorce her husband Ismetaga. After unsuccessfully trying to divorce Ismetaga for seven years, on 28 May 1934 Ajiša sent a note to the Sarajevo district Shari'a court in which she declared that she no longer felt herself to be Muslim and demanded that the court annul her marriage to Ismetaga. In accordance with the Shari'a rule (Article 303 of *akhjami sharia*), which states that a marriage in which one of the spouses converts out of Islam becomes "dead" (*utrut*) at the moment of the conversion, the local Sarajevo court issued a confirmation of her conversion and the annulment of her marriage that same day. Rather than bringing Ajiša's seven-year struggle to an end, however, the court's decision triggered a two-year court battle during which Ismetaga contested Ajiša's right to divorce him, even at one point demanding that the court order the police to arrest her, force her to convert back to Islam, and bring her back to him. Ismetaga won his first appeal against the decision of the lower court, and the Supreme Shari'a Court instructed the lower court to hold a proper hearing at which Ajiša would be summoned and asked to confirm her intent to convert. At the hearing on 1 November 1934, almost six months after she had decided to convert, Ajiša once again expressed her determination to leave the faith. In the words of a Sarajevo district Shari'a judge,

At the hearing held on 1 November 1934 and in accordance with the aforementioned decision of the Supreme Shari'a court [in which the high court ordered the hearing] the petitioner personally confirmed what she had previously said in her written statement, that she left Islam because it is not right for a husband to have the right to *talaq*, but the Shari'a does not grant the same right to a woman, so she no longer has anything to do with Islam, that *she has cleansed herself from Islam*, that is, she left Islam.<sup>54</sup>

Ajiša's decision to convert was thus more than simply strategic, as it was also the result of her disillusionment with Islam due to what she perceived as the Shari'a's unfair treatment of women. In fact, if one is to take the stenographic record to be accurate, Ajiša's statement that she had, "cleansed herself from Islam," hints at her disgust with the religion. Her seven-year struggle to end her marriage led her to view her faith as a dirty substance that had to be washed off her body. Unlike Vjekoslav Palfi's conversion *to Islam*, which seemed purely strategic, Ajiša Šahinagić's conversion *out of Islam*, besides being strategic, was also an emotional rejection of her faith.

Rather than seeing her conversion as voluntary, her husband and the Supreme Shari'a court interpreted it as an impulsive act, one she had concocted at someone else's urging. The husband challenged the court's jurisdiction in the matter, arguing that since the state law prevented the Shari'a court from imposing the punishment the Shari'a prescribed for apostasy, such as lashing and a prison sentence, it also prevented the court from dissolving the marriage. Second, he contested Ajiša's agency in this matter by insisting that she was still a Muslim, regardless of her intent to convert.<sup>55</sup> Finally, he insisted that her conversion was a culmination of her furious court battle to divorce Ismetaga,

...it is notoriously known...that for the past 7 years the litigant has pursued different lawsuits against Ismetaga only with the purpose of dissolving her marriage to him and after she had failed to achieve this, she obtained the declaration of her conversion out of Islam, so it is clear that her action is purely formal...<sup>56</sup>

In her response, Ajiša's lawyer insisted that her apostasy had not been impulsive, "...she issued her statement of intent [to convert] not out of excitement or anger, which is confirmed by the fact that she

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<sup>53</sup> Džananović, 222.

<sup>54</sup> VŠS, 488/1934/13, 1. (emphasis mine)

<sup>55</sup> Ibid., 2.

<sup>56</sup> Ibid., 3.

said today what she had first said 5 months ago, so she had *clearheadedly* thought about it...”<sup>57</sup> In rejecting Ismetaga’s appeal and confirming Ajiša’s apostasy and the annulment of her marriage, the district Shari’a court in Sarajevo defended its jurisdiction in this matter, acknowledging that while the state had taken away the right of the Shari’a to punish apostasy, it had still granted it the jurisdiction over Muslim marriage. The court also insisted that since Ajiša had converted “in front of a witness [*na oči*], while in a full possession of her faculties [*pri svijesti*], and without coercion,”<sup>58</sup> it did not matter if her real motivation had been purely pragmatic. Even though this conclusion suggested Ajiša’s act had been clearheaded, the court suggested that it was also an act of desperation, for which it blamed the husband,

The husband’s statement that the litigant has for 7 full years pursued different lawsuits in order to free herself from this marriage and only when this failed, she did this, *in accordance with someone’s bad advice*, does not speak well for the husband because it could be suggested that it was these lawsuits that have led the litigant to commit such an infamous act.<sup>59</sup>

Thus, even though Ajiša converted, “while in a full possession of her faculties,” “without coercion,” and had for five months been declaring her desire to leave Islam, the court still considered the conversion an act of a desperate woman, which had been concocted on someone else’s (bad) advice. While it is certainly possible, if not probable, that Ajiša had been given the idea to convert out of Islam by someone knowledgeable about the Shari’a, it is curious that the court did not even question the assumption that Ajiša could have done so out of her own desire to leave Islam.

While he had previously questioned the jurisdiction of the Shari’a courts in this matter, in his final appeal to the Supreme Shari’a court, Ismetaga demanded that the Shari’a authorities arrest Ajiša, whom he still considered to be his lawful wife, force her to convert to Islam, and to marry him again, but this time with a minimum amount of financial support (*mehr*). Rejecting his appeal, the Supreme court argued that since Islam was not a state religion, but one among many in a multi-confessional state, the Shari’a authorities could not arrest Ajiša let alone force her to convert back to Islam or remarry Ismetaga. But, “even if the husband’s wish was to be carried out and the fugitive [*bjegunica*] forced to come back to his home, she would be placed in such a hopeless and desperate situation that one fears could make her *commit yet another rash act, but this time with graver consequences* [*teže naravi*].”<sup>60</sup> Thus, even though the final decision confirmed Ajiša’s conversion out of Islam and the annulment of her marriage to Ismetaga, the court still presented her as an impulsive individual who, if forced back into her marriage, could even commit suicide. The court ignored the deliberate nature of Ajiša’s actions—reflected in the fact that she reconfirmed her desire to convert five months after her initial conversion—and silenced the possibility that Ajiša was leaving Islam not *just* because she wanted to divorce Ismetaga, but *also* because she had become disillusioned with Islam due to what she saw as its discriminatory attitude towards women.

While for Ajiša and other Muslim women apostasy remained a way out of a marriage, for non-Muslim women married to Muslim men, neither the state nor the Shari’a left any path by which to leave an unbearable marriage, even in cases of adultery and domestic abuse. For Blanka Mešanović from Sarajevo conversion was not a possible route out of her marriage with Alija Mešanović, so she left her husband without officially divorcing him and then later sued him at the district Sarajevo Shari’a court for failing to support her financially. At the hearing, held on 27 December 1938, Blanka insisted that she had been forced to leave her husband because he had been beating her, an accusation she supported by offering three witnesses, Marica Kebeljić, a lawyer by the name of Dr. Atijas Zekić and the Shari’a judge effendi Osman Omerhodžić. However, she expressed her willingness “to return to her husband under the condition that he secure a decent apartment, support her financially, treat her respectfully and nicely, and kick out his unlawful wife Esma Gackić with whom he had been living in

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<sup>57</sup> Ibid. (emphasis mine)

<sup>58</sup> Ibid.

<sup>59</sup> Ibid., 6.

<sup>60</sup> VŠS, 492/35, 1934/20, 24 February 1936, 4.

concubinage.”<sup>61</sup> The husband strenuously denied that he had ever beaten her, accused her of leaving him without a reason, and forcing him to find another woman to take care of him. Answering the husband’s argument that, “had there been any terror [in the house] she would have left him immediately,” Blanka claimed that she had to wait for him to leave because she “was all bloody,” and once again offered her witnesses.<sup>62</sup> However, in a move that reflected the legal discrimination non-Muslims faced in Shari’a courts, the judges refused to allow the non-Muslim witnesses to testify against a Muslim, making the Shari’a judge Osman Omerhodžić the only witness. Omerhodžić, however, could not confirm that Alija had ever beaten Blanka. He remembered trying to mediate between the two after Blanka had become upset over a letter Alija had received from another woman, but could not recall that Alija “had ever in front of him admitted that he had beaten her.”<sup>63</sup> Not having been able to prove the accusation of physical abuse, the Sarajevo court rejected Blanka’s petition for financial support and ruled that, “she is obligated to return to her husband and continue living in a marriage with him, and he is obligated to receive her, treat her respectfully, [and] support her financially...”<sup>64</sup> Although the court threatened him with “legal sanctions” in case he abused her, it is hard to see how Blanka could ever prove that he abused her unless the abuse happened in front of a Muslim who would be willing to testify. In the end, Blanka was ordered to pay the full sum of court costs, totaling 1518 dinars. Thus, unlike Ajiša Šahinagić, who could leave her marriage by converting out of Islam, Blanka faced the impenetrable obstacle in both the discriminatory judicial practice of the Shari’a, and also in the inability of the state law to create a mechanism through which the impact of this discrimination could have been cushioned. Instead, faced with the obligatory jurisdiction of the Shari’a over her mixed marriage, and poorer for 1518 dinars, Blanka was forced to return to her reportedly abusive, adulterous husband.

## Conversions during World War II

There is no doubt that the Islamic establishment in Sarajevo greeted Hitler’s partition of Yugoslavia and Bosnia’s annexation by the Nazi-backed Independent State of Croatia (NDH) with enthusiasm. Immediately after the annexation in April 1941, the *Führer* of the NDH, the fanatically anti-Serbian Ante Pavelić branded the Bosnian Muslims, “a flower of the Croatian nation,” appointing the head of the Yugoslav Muslim Organization (JMO) Džafer Kulenović as his Vice-President. Pavelić’s main ideological emissary in Bosnia was Hakija Hadžić, a well known Muslim politician of pro-Croat orientation, whose anti-Semitic and anti-Serbian views rivaled only those of Pavelić. In addition, many Muslims enthusiastically joined the Ustaša ranks and many committed vicious atrocities against Serb civilians, particularly in eastern Bosnia, inviting reprisals from the recently organized Serb resistance forces collectively known as the Četniks. But, as the historiography of the Second World War in Yugoslavia has shown, the relations between the Muslim leadership and the NDH quickly soured over the Ustaša atrocities of civilians, the curtailing of Bosnian autonomy, and what the Islamic establishment saw as the regime’s preferential treatment of Catholicism over Islam.<sup>65</sup>

The establishment of the NDH, and the spread of unimaginable violence directed against the Serbs and the Jews, triggered a flood of conversions—as terrified people struggled to save their lives—thanks to the regime’s open policy of forcible conversions to Catholicism. The historian of Zagreb, Zlatko Hasanbegović, has pointed out that while during the entire interwar period there had been only seventeen conversions of Orthodox Serbs to Islam, during the first few months of the NDH there were thirty-one conversions to Islam.<sup>66</sup> The Catholic Church, led by the Archbishop Alojzije Stepinac, conducted a well publicized campaign of forcible conversions of Serbs to Catholicism, an

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<sup>61</sup> VŠS, 78/1938, 158/38, 2.

<sup>62</sup> *Ibid.*, 3.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, 1.

<sup>65</sup> Enver Redžić, *Bosna i Hercegovina u drugom svjetskom ratu*. (Sarajevo: Bosanska razmedja, 1998).

<sup>66</sup> Hasanbegović, 365.

effort that would cost the Archbishop a hefty prison sentence under the Communists.<sup>67</sup> These continued until the summer of 1942, when the NDH regime created the farcical Croatian Orthodox Church, effectively ending conversions. In the first few years after the war, the Communist regime demanded that all Catholic and Islamic institutions submit detailed lists of all those who converted to either Catholicism or Islam during the war, so that these could be annulled. In this the regime encountered stiff resistance from the Catholic church officials in Bosnia, and in particular the Mostar bishop Josip Čule, who claimed simultaneously that their parish had never converted anyone during the war, and that all the records had been destroyed. Nevertheless, after months of often threatening correspondence the lists began to trickle in from across all of Bosnia, showing a total of 5145 conversions of Serbs and some Jews.<sup>68</sup> Of course, the list was far from complete as some parishes still failed to submit their lists, some had been destroyed, many conversions had never been recorded, while some were destroyed after the converts had been murdered.

It is clear that the Sarajevo *Ulema medžlis* approved conversions to Islam, and *Reis-ul-ulema* Fehim Spaho intervened on behalf of recent converts with the NDH authorities to save their lives. By September 1942, these conversions had become so alarming for the Travnik Shari'a judge Abdulah Škaljić that he was prompted to write a letter to the Sarajevo Supreme Shari'a Court, asking that these no longer be approved. In fact, because these converts had, "put shame not only on individuals but Muslims in general," the judge suggested that the authorities create a "black book" with the names of those who could potentially ask to be converted. However, in a terse response, the chief justice Mujagić noted that, "nothing should be done regarding this matter given the situation in our country."<sup>69</sup> After receiving reports that Jews and Serbs who had converted to Islam were still being taken to concentration camps, *Reis-ul-ulema* Spaho wrote to Vice President Kulenović complaining that, "there has been a different treatment of those Greek-Orthodox and Jews which have left their faith and converted to Islam, as the change of faith has not in the least improved their personal position or their position vis-à-vis the state."<sup>70</sup> He outlined the cases of some Serbs who had been murdered, despite having converted to Islam, and pointed out that in some places, the Jews who had converted to Catholicism had been allowed to take off the Star of David, while the same privilege had not been granted to those who converted to Islam. The accusations of differential treatment of those who converted to Islam from those who had converted to Catholicism, soon became bound up with Muslim fears of Catholic proselytism, as news spread that Bosnian Muslim children who were living in refugee camps in Croatia had been baptized.<sup>71</sup> Once it became clear that Jews could no longer be saved by converting to either Islam or Catholicism, Spaho continued to intervene on behalf of Serb converts. In a letter to a friend, he professed helplessness in saving the Jews, "because in the last few days the Germans have taken all the Jews from Sarajevo regardless of whether they had converted to Islam or Catholicism. The Germans are doing this and there is no point in intervening with our authorities." He still held out hope, however, that Serb converts could be saved, pointing out that at his intervention Kulenović had issued a circular ordering an equal treatment of all converts.<sup>72</sup> That the discriminatory treatment against Muslim converts did not stop, however, became clear in a letter *Reis* Spaho wrote to a friend in the Ministry of Faiths later that year, complaining that in the Bosnian town of Velika Kladuša all conversions to Islam had been annulled by the local authorities.<sup>73</sup> Despite government's promises that these incidents would be remedied, the practice continued contributing to the growing gulf between the Sarajevo Muslim establishment and NDH authorities.

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<sup>67</sup> Miroslav Akmadza. *Katolicka Crkva u Hrvatskoj i Komunisticki Rezim, 1945.-1966.* (Rijeka: Otokar Kersovani, d.oo, 2004).

<sup>68</sup> Komisija za vjerske poslove Narodne Skupštine Bosne i Hercegovine, ABiH.

<sup>69</sup> 494/42, VŠS, ABiH.

<sup>70</sup> Quoted in Hasanbegović, 362.

<sup>71</sup> Ibidem, 362-365.

<sup>72</sup> FS, 763.

<sup>73</sup> FS, 773.

In addition to the dispute over conversions, the news of indiscriminate and brutal Ustaša violence against civilians led to the eventual disillusionment of the Muslim elites with the NDH regime. On 12 October 1941, a Memorandum issued by a group of leading Muslim intellectuals and clerics, including the respected conservative cleric and the founder of the *El-Hidaje* journal Mehmed Handžić, called on, “all Muslims to act in the spirit of high-minded directions of their faith Islam and in the interests of the state and stay away from all crimes.” The petitioners expressed regret for the violence that had been visited upon the country’s innocent civilians and, as if to pre-empt accusations of Muslim participation in these crimes, pointed out that some Ustaša units had worn *fezes* during their rampage in order to provoke Serb reprisals. The memorandum also accused Catholic priests of fomenting hatred against Islam, “despite all kinds of statements from highest ranks which speak of equality of both faiths.” Finally, they outlined seven demands the NDH government had to fulfill in order to create a safer environment, including, “to ensure the safety of life, honor, property and faith for all citizens in the state without any discrimination.” In addition, they requested that the state authorities prevent any further actions that might incite inter-ethnic or inter-religious reprisals, and demanded that all of those who committed crimes be punished, and that help must be provided to those in need.<sup>74</sup> The Memorandum may have fallen on deaf ears because two months later, the prominent Muslim representatives sent a letter to Vice President Kulenović in which they insisted that the NDH-sponsored violence had become intolerable,

Killings of priests and other prominent citizens without trials or convictions, executions by firing squad and torture of masses of completely innocent people, evictions of entire families from their homes...and their deportation to unknown destinations, expropriation of their property, destruction of their places of worship...forcible conversions to Catholicism, all of these are facts which have shocked every decent human being and have appalled us, the Muslims of this region.<sup>75</sup>

The petitioners complained that “one part of the Catholic clergy considers this to be their moment, and they are exploiting it so unscrupulously that one is reminded of the Spanish Inquisition.” Not only had many Orthodox citizens been forcibly converted to Catholicism, but converts to Islam had not been treated with respect, despite official NDH proclamations about the equality of Catholicism and Islam. Moreover, the Muslims of the Bosnian town of Banja Luka—where the Vice President of NDH had moved his residence a few months earlier—were appalled at the murder of the town’s famous *imam* Edhem Hodžić, who had been murdered in the middle of the hospital yard, in daylight, by *Ustaša* Josip Babić. Signaling the rising popularity of Communist Partisans among the Muslims, the petitioners complained that the Muslims were being unjustly persecuted by the regime for their pro-Communist sympathies. They implored the Vice President to use his position to stop the killings, insisting that, “had we wanted to kill, persecute and cleanse the Serbs and others we could have done so much more easily hundreds of years ago, when we had much more power than today and when those actions could have been more easily justified than they could be today.”<sup>76</sup> The Memorandum and the letter signaled an irrevocable split between the Bosnian Islamic establishment and the NDH regime.

As the historiography of World War II in Yugoslavia has shown, the continuing violence of the NDH against civilians, the growing evidence of Pavelić’s cynical exploitation of Islam for political purposes, fears about the proselytizing activities of the regime-backed Catholic church, led many Muslims to join the Partisan ranks, and *Reis* Spaho to publicly distance himself from the regime.<sup>77</sup> For example, in October and November 1941, as the Muslim intellectuals were writing protest letters to the government, Spaho refused to write contributions for the main Ustaša publications, complaining that he simply had no time. In addition, Spaho continued to intervene for both Muslims and non-Muslims, in trying to protect them from the murderous regime. Thus, in a letter dated 20 September

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<sup>74</sup> FS, 759.

<sup>75</sup> FS, 775

<sup>76</sup> Ibidem.

<sup>77</sup> Redžić, *Bosna i Hercegovina u drugom svjetskom ratu*.

1941 he wrote to the NDH Minister of Education, Mile Budak, asking that two teachers, a mixed marriage couple, be moved back to Sarajevo, after they had been transferred to a small, purely Serb village. Even though the husband, a Muslim, had for a time worked for a pro-Serb organization before the war, Spaho assured Budak that he was not sympathetic to the Serbs. In this case, Spaho used the wife's Catholicism as a bargaining chip, reminding Budak that the man was in a mixed marriage.<sup>78</sup> Even though Budak politely replied, it is highly improbable that the *Reis*' intervention helped the couple. Nonetheless, Spaho would intervene repeatedly also on behalf of non-Muslims, including a Serb woman by the name of Mara Radić who had been summarily fired from her job as a teacher even though, according to Spaho, "she has never been in conflict with any Catholics or Muslims." He begged Budak to either give her the job back, or to ensure that she received a pension. An official from the Ministry later wrote to Spaho, letting him know that Mara had been kept in her position and that this was the only such case.<sup>79</sup>

The ambivalent position of the Sarajevo Muslim establishment vis-à-vis the NDH regime may have saved it from the same policy the Communists adopted towards the Catholic church after the war, considering the latter as having been unequivocally supportive of the *Ustaša* regime. Thus, following the war, the Islamic establishment was generally supportive of the Communist efforts to secularize marriage, to ban the full veiling of women, and to promote the doctrine of "brotherhood and unity." The same, however, could not be said for the Catholic Church hierarchy, as is evident in the well-publicized trial of Archbishop Alojzije Stepinac, in Tito's strained relations with the Vatican, and in the persecution of Herzegovina Franciscans, who struggled to reconcile themselves to the Communist victory.

## Conclusion

Despite the confessional segregation of interwar Yugoslavia, which was enshrined in its very Constitution, and the heavy costs associated with trespassing confessional boundaries, Yugoslavs converted in socially significant numbers throughout this period. That they proved willing to change their official identity for marriage purposes, seems to run counter to Fredrik Barth's observation that adoption of different identities happens only, "because [the previous identity] is consistently unrewarding to act upon."<sup>80</sup> The examples Barth and other structuralist sociologists provide entail much more significant changes in individual lifestyles, but it cannot be denied that the conversions discussed above were often very costly for the individuals involved. This was particularly the case for women converts, who could find themselves objects of police surveillance or exposed to lengthy court proceedings. Of course, as Barth reminds us, the occasional "osmosis of personnel" between confessional categories did not lead to a flood or to the erasure of these identities. If anything, it made them even more socially salient.<sup>81</sup> But it is precisely the marginal status of these conversions that made them the object of frantic attempts by both secular and religious authorities, to police them.

Besides revealing the pragmatic nature of individuals at times of inter-ethnic polarization—the trait that has been amply documented by the literature on national indifference in Europe—these conversions also reveal an interesting interaction between the Shari'a and Yugoslav state law. Contrary to the widespread alarmist view of the Shari'a as static and inflexible,<sup>82</sup> in the case of Yugoslavia it was the Shari'a that enabled many individuals to game an opaque secular legal system. Although the literature on the Shari'a has documented many examples where Shari'a judiciaries

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<sup>78</sup> FS, 749.

<sup>79</sup> FS, 694.

<sup>80</sup> Fredrik, Barth, ed. *Ethnic Groups and Boundaries: The Social Organization of Culture and Difference*. (Long Grove, Illinois: Waveland Press, 2<sup>nd</sup> edition, 1998), 30.

<sup>81</sup> *Ibid.*, 21.

<sup>82</sup> Christopher Caldwell. *Reflections on the Revolution in Europe: Immigration, Islam, and the West*. (New York: Doubleday, 2009).

proved not only agile in responding to social problems, but also pro-active in enacting reforms<sup>83</sup>, the historiography of interwar Yugoslavia has largely passed on the opportunity to do so. Finally, the preceding story also shows that a country that was purportedly based on integralist efforts to create an overarching and multi-confessional Yugoslav nation, was saddled with a clumsy and unwieldy legal system, which made movement between official categories all but impossible. Therein may lie another explanation for the failure of the Yugoslav project.

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<sup>83</sup> Aharon Layish. *Women and Islamic Law in a Non-Muslim State. A Study Based on Decisions of the Shari'a Courts in Israel*. New York: John Wiley and Sons; Jerusalem: Israel Universities Press, 1975; Nahda, Shehada, "Flexibility versus Rigidity in the Practice of Islamic Family Law." *PoLar*, Vol. 32, No. 1, May 2009.

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