

HANA YOUNIS

A QADI IN THE CHRISTIAN EMPIRE

THE STAFF AND WORK OF THE SHARIA COURTS
IN BOSNIA AND HERZEGOVINA 1878-1914

Hana Younis

A QADI IN THE CHRISTIAN EMPIRE

THE STAFF AND WORK OF THE SHARIA COURTS IN BOSNIA AND HERZEGOVINA 1878-1914

HISTORICAL MONOGRAPHS

Book 25

Publishers:

University of Sarajevo – Institute of History

Podgaj 6, 71000 Sarajevo, Bosnia and Herzegovina

<http://www.iis.unsa.ba>

Federal Ministry of Education and Science

dr. Ante Starčevića bb, 88000 Mostar, Bosnia and Herzegovina,

<http://www.fmon.gov.ba>

Editor-in-chief:

Dr. Sedad Bešlija

Reviewers:

Prof. dr. Fikret Karčić

Prof. dr. Zijad Šehić

ISBN 978-9958-649-56-1 (Institute of History University)

ISBN 978-9958-11-168-6 (Federal Ministry of Education and Science)

CIP zapis dostupan u COBISS sistemu

Nacionalne i univerzitetske biblioteke BiH

pod ID brojem 54716166

UNIVERSITY OF SARAJEVO – INSTITUTE OF HISTORY

Hana Younis

A QADI IN THE CHRISTIAN EMPIRE

THE STAFF AND WORK OF THE SHARIA
COURTS IN BOSNIA AND HERZEGOVINA
1878-1914



FMON

Federalno ministarstvo obrazovanja i nauke

Sarajevo – Mostar, 2023



To my daughter Mejsun





TABLE OF CONTENTS

PREFACE.....	9
INTRODUCTION.....	13
I. SHARIA COURTS IN BOSNIA BETWEEN THE EMPIRES	25
Sharia between East and West.....	25
Where and when Sharia courts were formed.....	37
Court outside the court.....	45
Qadis within political interests.....	48
II. WORK OF THE SHARIA COURTS	77
Jurisdiction and dilemmas through documents.....	77
From the parties' point of view	87
<i>Family law</i>	87
<i>Inheritance</i>	98
<i>Legalization of signatures</i>	104
<i>Other responsibilities</i>	106
Language of documents of the Sharia courts.....	111
III. WORK OF THE COURTS THROUGH FIGURES.....	135
Statements: The reflection of the work of Sharia courts	135
Main Business Statements of the Sharia Courts in Bosnia and Herzegovina for 1885-1907, 1911 and 1913.....	148
IV. STAFF: QADIS, TRAINEES, SCRIBES	251
Sharia courts staff.....	251
<i>Recruitment and promotion</i>	253

<i>Working day and relocation</i>	273
Rights of the staff of the Sharia courts	281
<i>Salaries</i>	282
<i>Leave of absence</i>	295
<i>Retirement (Permanent state of peace)</i>	301
Association of Sharia judges.....	308
Under the scrutiny.....	310
Sharia court staff.....	323
CONCLUSION	369
LIST OF CITED SOURCES, LITERATURE AND WEBSITES	381
APPENDICES.....	393
LIST OF APPENDICES	402
LIST OF TABLES, DOCUMENTS AND PHOTOS IN THE TEXT	402
INDEX OF PERSONAL NAMES	407
INDEX OF GEOGRAPHICAL TERMS.....	421
LIST OF ABBREVIATIONS.....	427
ABOUT THE AUTHOR	429

PREFACE

Depicting the life and work of the Sharia court staff in the period after 1878 was a major challenge that occupied me for almost a whole decade. That is exactly how long it took to collect documents for this hitherto neglected subject. These pages of archived material revealed, in some cases directly and in others indirectly, their wishes and hopes, material status, marital status, way of thinking, and how they fit into the new system. Eventually, I was able to gather enough information about these once respected and influential individuals to attempt to bring them closer to scientific understanding. The analysis of the documents was sometimes surprising, sometimes deeply saddening, and it sometimes made me laugh, but the truth is none of those documents left me indifferent, and at the end of the research, I was stunned by the image of the life, work, and status of the Sharia court staff during the period of Austro-Hungarian occupation. Although the documents of the Sharia courts were destroyed forever, based on the available funds, I tried to depict every segment of the life and work of the staff of the Sharia courts. I tried to write the text so that it would be readable and clear for both experts and the general reading public, so that through the picturesque daily life of the Sharia court staff, the reader could gain a greater understanding of the turbulent historical period of the intertwining of East and West.

After its publication in Bosnian, the book sold out within a few months, to my great surprise, won the award for “Best Publishing Enterprise of the Year” at the XXXIII International Sarajevo Book and School Fair 2022, and found its readers outside the scientific community, which was particularly important to me. I am particularly pleased that the Ministry of Science, Higher Education and Youth has provided funds for the translation of the book into English. Language limitations have prevented the great works of Bosnian historiography

from being properly recognized, so I consider it of the utmost importance that the book be published in a language that is widely spoken throughout the world. This will enable the researchers and scientists around the world to gain insight into this topic. My sincere hope is that the English version will reach the readership and introduce them to what it was like to be a qadi in the Christian empire, what it was like to represent Islam under Christian rule, and what it was like to live in Bosnia and Herzegovina during that turbulent time, when everything was divided between *alla turca* and *alla franca*, old and new, east and west, traditional and modern.

My family, colleagues, and friends have played an essential role in the development of the book from an idea into a tangible work. For the final version of the book, I would like to express my deepest gratitude to the reviewers: the late Prof. Dr. Fikret Karčić and Prof. Dr. Zijad Šehić, whose constructive comments and instructions made the book substantially better and more understandable. Furthermore, I would like to thank Hafiz Prof. Dr. Halilović Safvet and his wife Muvedeta for the detailed explanations they provided regarding a number of fiqh doubts I encountered during the writing process. Additionally, I am grateful for the colleagues at the Archive of Bosnia and Herzegovina, the Tuzla Canton Archives, the Herzegovina-Neretva Canton Archives, the Historical Archives of Sarajevo, and the Gazi Husrev-Bey's Library, who have always been patient while I searched for additional documents. I am thankful to our dear colleagues at the Institute of History, who have always taken the time to listen to all my great discoveries, but also to numerous dilemmas: Dr. Dženita Sarač-Rujanac, Dr. Sanja Gladanac-Petrović, Mr. Mehmed Hodžić and Dr. Enes Dedić. I am especially grateful to the director and editor Dr. Sedad Bešlija for his thoughtful comments, his support at all times, and for enabling me to conduct research in archives outside of Sarajevo.

While everything that we write is a reflection of ourselves, the selfless support of my husband, whose endless understanding made writing much easier, is evident in the many lines of thought, analysis, and conclusion in this text. The same applies to my daughter and son-in-law who, even though thousands of kilometers away, were always by my side, willing to listen to me and encourage me to go forward with their enthusiasm. It is incredibly difficult for me to find

the words to express how grateful I am for everything; without them all my work would be meaningless.

Sarajevo, January 2023





INTRODUCTION

An important event in the history of the Bosnian Vilayet was the withdrawal of the Ottoman state from its territory. As a result, nothing remained the same in everyday socio-political life. An overnight change of rule brought the epitome and symbol of Islamic way of life and order, the Sharia courts, under the authority of a Christian ruler. Many topics in our historiography have been completely or partially neglected; either for objective reasons or on purpose. One of them is the work of Sharia courts in Bosnia and Herzegovina under the rule of the Austro-Hungarian monarchy, with a special emphasis on its staff. History has not examined in depth what it was like to represent Islamic laws in the Austro-Hungarian monarchy. A discussion of their role in socio-political life was not provided, nor was there any discussion on how equal they were to other civil servants and what rights they enjoyed in those position.

Sharia courts as legal instances have been extensively studied by legal historians. There is a significant number of indispensable works dealing with Sharia law and judiciary in Bosnia and Herzegovina in the second half of the 19th century until the First World War. Fikret Karčić made an immense contribution to these topics in several studies and syntheses.¹ Enes Durmišević and Mehmed Bečić also wrote papers on this topic.² While their attention is focused on the legal aspect and legal frameworks of Sharia courts' work and activities, it is extremely important for historiography to examine the continuity of legal frameworks and the competences of qadis.

¹ Karčić 2005a; Karčić 2005b; Karčić 2011; Karčić 1985; Karčić 2013.

² Durmišević 2008a; Durmišević 2004; Durmišević 2008b; Bečić 2017; Bečić 2015.

In some instances, Sharia courts and certain prominent individuals have been at the center of interest in religious matters.³ Qadis' decisions and their interpretation from an Islamic perspective is a topic that is mainly dealt with by Sharia jurists.⁴ An immeasurable contribution in that field was especially made by Džananović Ibrahim, whose book *Primjena porodičnog šerijatskog prava kroz praksu Vrhovnog šerijatskog suda (Application of family Sharia law through the practice of the Supreme Sharia Court)* is indispensable for understanding this complex issue.⁵ When it comes to Islamic sciences, it is necessary to mention that a number of researchers dedicated their works to qadis. In particular, this applies to those qadis who ascended the religious hierarchy or left written works related to religious topics.⁶ However, it should be noted that these monographs mostly refer to the period before or after the Austro-Hungarian occupation and administration.

Most historians avoided the topic of Sharia courts and their staff during the Austro-Hungarian period or only mentioned them incidentally in other works.⁷ This is a difficult phenomenon to explain. On the other hand, if we examine the source material on which they would base their analysis, then it becomes more understandable. The source materials of Sharia courts are mostly either destroyed or inaccessible. The only exception to more than 50 Sharia courts are the Sharia courts in Tuzla, Mostar, Sarajevo, and Livno, but their source materials are just partly preserved and partially accessible. Most of the information on the work and activities of Sharia courts and staff can

³ Thus, in *Leksikon bošnjačke uleme*, we can also find basic information about individual qadis. See: Mehmedović 2018.

⁴ Hasani 2014.

⁵ Džananović 2004; Džananović 1996.

⁶ Halilbegović 2000; Kasumović 1996; Kreševljaković 1955; Spahić / Lavić 2013; Begović 2007; Nakičević 2012.

⁷ Among historians, mentions of Sharia staff are mainly limited to qadis, and only to those qadis who are related to the topics they are dealing with. Even there we have no more information about them, but only the mention of their names. Thus, Kreševljaković mentions several distinguished qadis who had a notable role during the Austro-Hungarian occupation. In the study of bey's possessions, Kamberović also mentions the qadi Resulbegović as a member of this important family. In his book on the Muslim women's issue in Bosnia and Herzegovina (1908-1950), Jahić also mentions several qadis as supporters or opponents of some decisions related to the issue of women. See: Kreševljaković 1991, 175; Kamberović 2005, 427; Jahić 2017, 218, 151, 154, 272, 279.

be found in the documents of the National Government (Zemaljska vlada).⁸ That source material has been partially edited and is therefore available. Given that the staff of the Sharia courts was directly accountable to the National Government, their position in the administrative structure can be clearly seen in these documents. Documents of the Supreme Sharia Court, which are also available, are vital sources for this research.⁹ The fund of the Supreme Sharia Court includes sources from the period between 1878 and 1946. Despite the fact that it is a fairly long period of time during which several changes took place in the state-legal framework and the structure of the country as a whole, the most extensive source material comes from the occupation and administration of the Austro-Hungarian Empire. It seems logical considering that the jurisdiction of Sharia courts was removed in the later periods, and Sharia courts were marginalized and ultimately abolished. Each source in that fund has a special historical value, and is among the inexhaustible sources for analyzing the historical trends and changes of that turbulent era in Bosnia and Herzegovina. Aside from archival documents, the daily and weekly press of that time was a valuable resource for understanding the questions that arose during the writing process. A critical source of information regarding the public's perception of Sharia courts and their staff was the press.

In the course of the research, the lack of certain documents posed a significant obstacle, and thus some issues were unable to be fully examined. Also, a major challenge was the volume of source material dealing with the staff of Sharia courts in the National Government fund. Several hundred boxes containing the codes of court staff had to be reviewed. Numerous handwritten and redacted documents simply could not be deciphered. We had a similar problem during the decryption of the Main Business Statements of district offices as Sharia courts (*Glavni poslovni iskazi kotarskih ureda kao šerijatskih sudova*), considering that all the tables were created, written and bound manually, and their legibility depended on the person filling it in. Certain statements are extremely well written and every piece of information can be clearly read, however, certain

⁸ Arhiv Bosne i Hercegovine (Archive of Bosnia and Herzegovina) (hereinafter: ABiH), Zemaljska vlada za Bosnu i Hercegovinu – Sarajevo (National Government for Bosnia and Herzegovina – Sarajevo) (hereinafter: ZVS).

⁹ ABiH, Vrhovni šerijatski sud (Supreme Sharia Court) (hereinafter: VŠS).

tables were crossed out and corrected, mostly over already written text or figures, so deciphering the numbers and names from those tables was quite complicated.¹⁰ It has been difficult to find any information about some of the staff members of the Sharia courts, despite reviewing a large number of documents. Scribes were particularly difficult to identify, as they were frequently mentioned only by their first or last names. It was sometimes impossible for us to determine what happened to an employee of the Sharia Court after he had no longer been mentioned in the documents. Each piece of information that did not correspond to the press or literature, or even the archival materials, was checked from multiple sources, and only the version identified by multiple sources as correct was included in this list. The process of creating a staff list was extremely complex for a number of reasons. First of all, some individuals are mentioned under more than one name, while others have only their first name listed. It was very time-consuming and often futile to attempt to determine who it was and whether it was one or more people. There was also a lack of consistency regarding surnames during this period, so some individuals felt free to use different versions of their surname, sometimes completely different versions. The spelling of names and inconsistencies in surnames from one year to the next were completely confusing. Only a few preserved documents mention qadis and other staff members in the early years following the occupation. In rare documents, with their stamps which we managed to decipher, we discovered a trace of their existence, but unfortunately, we did not discover anything further about them.

The purpose of this text is to provide an authentic reflection of the life and work of the Sharia court staff during a very turbulent period, where they, as representatives of Islam, became part of the civil service of a Christian monarchy. Therefore, the research subject of this publication is the work of Sharia courts in practice, as well as the lives of their staff during a time when they represented something undesirable in their homeland. It was impossible to analyze the topic without using a comparative, analytical, and statistical approach. In light

¹⁰ How difficult it was to decipher numbers and names is best illustrated by the fact that in 1889, the clerk of the Supreme Sharia Court who filled out the table *Main Business Statements of Sharia courts* based on individual annual statements failed to decipher the name of the scribe of the Sharia court in Zvornik, so in the original table he put dots and a few letters that he managed to read.

of the available source material, we believe that the chosen methodological approach enabled the topic to be analyzed and rounded to the greatest degree of authenticity. From a historical perspective, it is impossible to understand Sharia courts without understanding qadis, apprentices, and scribes. The role they played, their position, and their attitude towards everyday social and political changes are an authentic reflection of how educated Muslims lived and worked during that turbulent time. Chapter themes and analyses were derived from the source material, which in its abundance raised numerous questions from a new perspective. There is no doubt that almost every name in this book deserves special attention. Our goal with this text is to shed light on the work and lives of these individuals.

A detailed analysis of the Supreme Sharia Court in Sarajevo has not been included in this work, as we believe this institution merits a more comprehensive study than a passing mention. Chronologically, we covered the period from the occupation in 1878 until 1914 and the beginning of the First World War. After the war, the perspective on work and life has completely changed, and in the text that was the stopping point. This book discusses a number of topics both directly and indirectly. However, the key was to examine the work and role of the staff in the period when they represented something that should have left. We have left the terms *vježbenik* (trainee), *praktikant* (apprentice), *naib* (deputy), as well as the names of places and cities, as authentic as the text allowed, in order to portray the image as authentically as possible.

Documents pertaining to this topic, which came to light while conducting research for another project, had been collected for several years. They simply piled up and pointed to a historiographic gap in relation to the staff of Sharia courts and their work. Documents are often quoted in the book because only their original expression fully reflects that time. The book uses mostly unpublished and hitherto unexploited archival material. We wanted these documents to speak specifically about their time and describe it in detail. Although we realize that this topic could have been approached differently and that many topics were only hinted at, our aim was to raise awareness of a significant and neglected aspect of the life and work of some of the most prominent members of the Muslim intelligentsia from an entirely new perspective.

In addition to the *Introduction, Conclusion, Appendices, List of sources and literature, Index of names and geographical terms*, the text contains four basic units in which we thematically rounded up the formation and work of Sharia courts, but also the work and life of their staff through documents.

Sharia courts in Bosnia and Herzegovina between the Empires is the title of the first unit. It is further divided into four chapters. The first chapter is entitled *Sharia between East and West*, and in that chapter we will present basic information about the formation of Sharia courts and their work throughout history, especially in the Bosnian Vilayet towards the end of the Ottoman administration. *Where and when Sharia courts were formed* is a chapter that questions their establishment as well as the premises in which they were located. Ultimately, the goal is to gain an insight into the working conditions of Sharia courts as well as the way of life inside them. The National Government for Bosnia and Herzegovina, as the successor of the Vilayet Government, took over the division of the territory of Bosnia and Herzegovina, turning the administration of a sanjak into a county, and of a kadiluk into a district. Based on this division, Sharia courts were formed in certain districts and branches, the highest instance of which was the Supreme Sharia Court in Sarajevo. Special attention is paid to the way Sharia courts are formed, their construction and the appearance of the courtrooms. Given that the work of the staff also took place outside the court premises, it was inevitable to highlight that segment as well, in the chapter *Court outside the court*. The last chapter under the title of *Qadis within political interests* talks about the changed reality that resulted from the occupation of Austria-Hungary. Through specific examples, we will demonstrate the position of qadis, and what their fate was. Nevertheless, in order to do this, it is critical to clarify the role played by the staff of the Sharia courts, especially a qadi, during the political changes of the late 19th and early 20th centuries. In light of these events, it is important to determine what happened to the Sharia court staff during this unstable period, and whether the key processes in the history of that period had a mutual or one-sided influence, that is, whether the processes were influenced by them or whether they influenced the processes. Furthermore, this chapter examines the government's relationship with the staff, from the appointment of Reis-ul-ulema and the movement for religious-educational autonomy to the formation of the first Muslim political parties.

The second unit is entitled *Work of Sharia Courts* and it illustrates the work of Sharia courts through specific examples. This unit is divided into three chapters that complement each other thematically. The first chapter, *Jurisdiction and Dilemmas*, utilizes documents to illustrate the confusion surrounding the jurisdiction of Sharia courts during the Austro-Hungarian period. Special attention is paid to how it all looked *From the parties' point of view* with regard to issues of family law, particularly marriage, inheritance, and legalization of signatures as well as other problems. A question arises from this chapter as to how much was the jurisdiction limited by Sharia rules, and how much by state law. Among the numerous dilemmas, one was also the script of the documents, which in itself represented a special problem, and was analyzed separately in the chapter *Language of the Documents of the Sharia courts*.

The third unit, *Work of the courts through figures*, is an indicator of how well the courts worked through specific annual tables of all Sharia courts. In the chapter *Statements: The reflection of the work of Sharia courts*, the *Main Business Statements of district offices as Sharia courts* (Glavni poslovni iskazi kotarskih ureda kao šerijatskih sudova) are separately presented. These findings demonstrate that court provenance represents an inexhaustible, unique and significant historical source, which unfortunately is often unfairly neglected. As a result of numerous obligations, and occasionally the carelessness of the staff, some annual reports have remained incorrect, and therefore it is necessary to indicate where these errors can be found. For a clearer picture, *Tables* are presented separately, as a clear indicator of the work and efficiency of all Sharia courts during the period of Austro-Hungarian occupation and administration.

The fourth unit, *Staff: qadis, trainees and scribes*, talks about the representatives of Sharia courts. Through five chapters: *Sharia courts staff*, *Rights of the staff of the Sharia courts*, *Association of Sharia judges*, *Under the scrutiny*, *Sharia court staff*, we provide a glimpse into the lives and work of qadis, apprentices, and scribes. In this unit, we explored the rights and obligations they had. Separate analyses were conducted on the manner in which they were employed, the conditions under which they were required to work, and what became of the inherited Ottoman staff. Regarding their rights, it was imperative to address the question of their salary, and in order to clarify the picture, it was necessary

to compare them with other employees. Further questions were raised regarding retirement and whether the pension would be inherited by the family. In this regard, it was necessary to emphasize the right of the staff to organize themselves separately. Thus, we discussed the attempt to form an association of Sharia judges and trainees prior to the First World War. As a result of the organization of civil servants and the staff of Sharia courts as part of them, the issue of their punishment arose. This aspect of everyday life is impossible to complete without considering public and secret slanders, disciplinary punishments, reports, and reprimands. The fourth chapter is particularly important because it contains the names of the entire staff of the Sharia courts in the period 1878-1914. Starting from the qadis all the way to the *dnevničar* (lowest government clerk). Although this list can certainly be supplemented, we have tried to get every name that the sources and literature provide. Additionally, we wanted to provide some information about what happened to them after they left the Sharia court.

Lastly, we would like to point out that some readers may feel the book contains excessive amounts of details, examples, names, and quotations, but that is the only way to present the authentic situation, allowing those forgotten people to express what it truly was like to live and bear the burden of Sharia in that turbulent, and for them, a new era.

