


Extended Abstract


Muslim and Christian Women in the Principality of Serbia in 19th Century: Between Religious Law, State Regulations, Tradition and Stereotypes

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The impression of the priority of family and social community over the individual and married couples is in relation with the cultural identity of the individual. As a notion, *culture* is defined as the way of implementation of human knowledge, beliefs and tradition; while *identity* refers to commonality and equality. The identity of Muslim women in marriage was based on elements of Sharia Law and the Muslim community – *umma*, while the identity of Christian (Orthodox) women was derived from their belonging to a church community and the implementation of the tradition, beliefs and customs of the rural or urban community she belonged to. The socio-political atmosphere in the Principality of Serbia in 19th century brought changes on the Christian marriage relations, but had no influence on the Muslim population. Changes in the marital union of the Muslim population were conditioned by general socio-political changes which the Muslim community gradually adjusted to. This paper intends to analyze and compare the basic conditions on which women entered marriage in the 19th century: elements of Sharia Family Law (Muslim women) and church canons and state laws (Christian

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women). The content of this paper confirms the (un)enviable position of women whose status was a subject of discussion of many others who wrote from different perspectives using “*wrong*” interpretations, and so took part in the creation of their identity.

A marital union consisting of a man and a woman is, perhaps, the oldest social institution. Relations established within one marital union were dictated by religious regulations, its representatives, but also by the state (Вулетих, 2008: 4). When researching the development of this kind of social institutions, as is marriage, it becomes obvious that women enjoyed a special position. Muslim women became the subject of scientific interest in Europe after the study of Ronald C. Jennings, *Woman in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri* which was published in 1975. Christian women and their status in marriage in the 19th century were researched in details in the monography of Aleksandra Vuletić, *Marriage in the Principality of Serbia*.

If we begin with the idea of analyzing the status of women within the process of family making and getting married in 19th century Serbia, we should consider the fact that there were two major religious communities. When trying to determine the status of Muslim women we referred to elements of Sharia Law the content of which dictated all conditions in accordance with which two young people were united in marriage. While researching on this subject, sources of Ottoman origin were very useful, considering the fact that the Ottoman Empire was a theocratic state which drew its principles from the Sharia Law and the Qanun of the Sultan (Kolaj Ristanović, 2018: 130-134). Sources of Serbian provenance which use terminology different from the Ottoman one were considered too. The individual status upon getting married and while in marriage was shaped by multiple factors: Islamic/Christian law, as well as the tradition and the laws of the state. Lacking knowledge of the matter, many Western contemporaries presented their baseless image of the women in this part of the Ottoman Empire/Principality of Serbia.

The Ecclesiastical Court of the Principality of Serbia was founded in 1822 in the City of Kragujevac. The founding of the court represents the first attempt in advancing the work of the church. This court did not resolve martial disputes. The Principality of Serbia issued the first ecclesiastical law in 1836 (Вулетих, 2008: 29-30).

The Principality of Serbia was “*a vassal state of the Ottoman Empire as suzerain*” for almost the entire 19th century. After proclamations of Hattisherif in 1830, Ottoman

authorities were present as representatives of Ottoman administrative and executive authority, as well as representatives of juridical authority which had jurisdiction over Muslim population. (Karčić, 2012: 72; Kolaj Ristanović, 2019: 212) In the Principality of Serbia “*marriage jurisdiction over Christians belonged to Orthodox Church, but creation of basic guidelines of marriage policy and its implementation was under the state authorities*” (Вулетић, 2008: 3). In the Principality of Serbia, «*the marital jurisdiction concerning the Christian population officially belonged to the church, but the creation of the basic guidelines of the marital policy and their implementation was taken over by the state*» (Vuletić, 2008: 3).

At a time when the establishment of various institutions was still in its dawn, the institution of marriage served as a pillar of the Serbian society. Even since the time of the First Serbian Uprising in 1804, insurgent authorities issued regulations prohibiting the abduction of girls in the County of Valjevo (Вулетић, 2008: 20-21). Criminal Law, later, included a punishment for those who abduct girls: imprisonment for ten years (Николић, 1991: 234). Serbian authorities tried to reduce influence of the Ottoman administrative, executive and juridical authorities especially after the Second Serbian Uprising. Three years after the uprising ended, the state issued the Regulation on marriage. As jurisdiction over married couples was not defined yet, the people consulted different representatives of the state and church (Вулетић, 2008: 24-25).

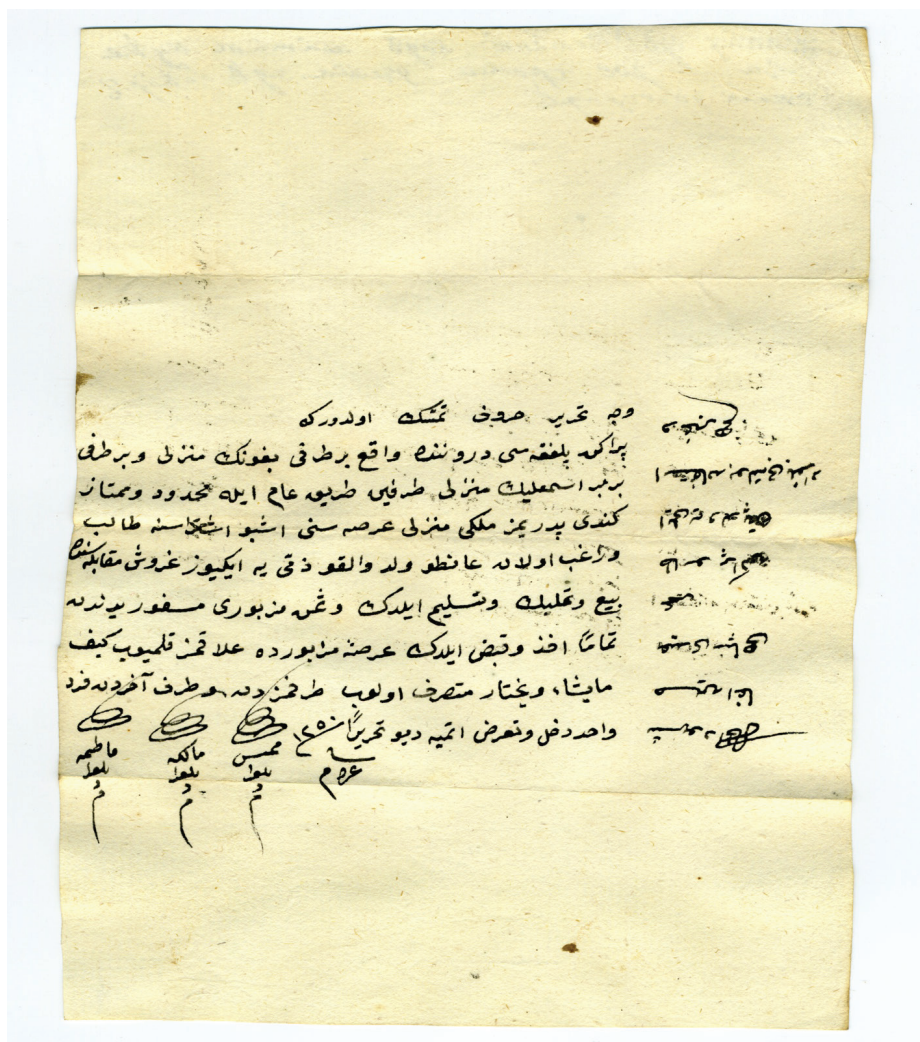
The provisions of the Civil Code from 1844 concerned, among other things, the institution of marriage. The rights and obligations of both spouses were regulated by Article 51 of the above-mentioned Law. However, the adoption of the Criminal Law of 1860 contributed to a advanced understanding of the marital rights, obligations and the violation thereof. The content of the Criminal Law included punishment for “*adultery, incest, miscarriage, child murder*“. The development of state regulations and its successive adoption conditioned the foundation of juridical authorities (Николић, 1991: 230-231). Juridical authority was exemplified through presence of the so-called “*courts of peace*“ in every municipality, a court of first instance in every county, and the Appellate Court in the capital city. Such structure was in accordance with articles of the Constitution of 1838 (Николић, 1991: 27).

The Muslim population did not participate neither in the establishment of these institutions, nor in their development. Inspecting the protocol books of the First Instan-

ce Court in Belgrade (1841-1867), we found that Muslims addressed the judicial authorities of the Principality of Serbia in order to resolve disputes related to property, theft and debt. These protocols contain no records of any marital dispute among the Muslim population concerning marital law. Although there vast a vast Muslim population in Belgrade and Užice, the cases of appeals to the judicial bodies of the Principality concerned only the disputes they had with the Christian population, but not among themselves. This once again confirms that Muslims addressed the governor of Belgrade or an Ottoman judge in resolving disputes. Muslims solved their problems in accordance with Sharia Law. Those who moved to Ottoman Empire solved marital issues in accordance with *Mecelle-i Ahkam-ı Adliyye* (Khadduri, D., 2007: 173; Kolaj P., 2020: 214-215). In a complex system of implementation of Sharia Law, a woman had its own place as a legal subject. Depending on her background, education, social status, and other denominators which are considered as cultural identity, the Muslim woman had different opportunities in front of juridical authorities. An individual in Islam enjoys rights and freedoms in accordance with the *aqida*. Those rights are distinguished by specific elements and it is believed that *"the rights are the gift of God, universal and refer to all citizens of the Muslim state; that are perfect, and unchangeable, not absolute and not limited"* (Topoljak, 29; Kolaj P., 2020: 208). Although marriage is an intimate relationship between the couple, still it is undisputable that every aspect of marriage should be regulated by law. The Orthodox community in the Principality of Serbia in the 19th century recorded the highest rate of marriages, but this was not the case for the Muslim community. The reason for this imbalance was the (re)settlement of Muslim population. Muslim marriages in the 19th century were not made public in accordance with the preservation of privacy in Islam, but the Serbian society was susceptible to the subordination of individual interests to the collective ones. Therefore, we can conclude that marriage represented *"an issue of public interest"* in both communities, Muslim and Christian alike. Many of the marital rights and duties determined by Sharia Law, Ecclestial Qanuns or state regulations correspond with our conclusion. In this atmosphere women were born, educated, married and buried. The daily life of woman was in accordance with the epoch she lived in. The lives of married women still continued in the beauty of marriage and the anxiety of social approval and judgment. We can ponder over the status of women considering the words of Branislav Nušić: *"A woman is a woman, so being beautiful or ugly; from prosperous home or not; you don't care!*

Is there any difference which cat will scratch you: a black or white one?" (Nušić, 2011: 112). These words could be analyzed from different perspectives. We decided to understand them as an attempt to diminish the differences between women, and therefore conclude with another of his quotes: „A women never sleeps, she thinks at night the same as during the day. Man can think over ten years, but he would never think of something which a woman will in ten minutes“. (Nušić, 2011: 111)

Прилог 1:



Izvori

- Türkiye Cumhuriyeti Cumhurbaşkanlığı Devlet Arşivleri Başkanlığı Osmanlı Arşivi (BOA), Bâb-ı Asâfi (Sadaret) Mektubi Kalemi (A. MKT)
- BOA, Dahiliye Nezareti Belgeleri, Dahiliye Nezareti Mektubi Kalemi (DH. MKT)
- BOA, Hariciye Nezareti Belgeleri, Hukuk Kısmı Belgeleri (HR. H)
- BOA, Yabancı Arşiv Makedonya (Y. 021)
- Државни архив Србије (ДАС), Збирка Мите Петровића (ЗМП)
- ДАС, Књажева канцеларија (1815-1839) (КК)
- ДАС, Министарство унутрашњих дела (МУД), Одељење полицајно (П)
- Историјски архив Београда (ИАБ), Управа града Београда (1839-1944) (УГБ)
- ИАБ, Лични фонд Војислава Вельковића
- ИАБ, Првостепени суд за град Београд (1841-1944)
- Историјски архив „Рас“ Нови Пазар, Оријентална збирка

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