



Otherness Within the Otherness: Discrimination of Muslim Female Prisoners in the Prison System of Habsburg Bosnia*

Ötekilik İçinde Ötekilik: Habsburg Bosna'sının Hapishane Sistemi'nde Müslüman Kadın Mahkûmlara Yönelik Ayrımcılık

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ABSTRACT

The issues of the prison system of the Habsburg Monarchy and the treatment of its prisoners in the late 19th century have not been investigated in historiography. Historians did not pay attention to the treatment of female prisoners in Habsburg's penal practices in the late 19th and early 20th centuries. Based on archival records, the article aims to fill this lacuna in the historiography of the Habsburg Monarchy in order to demonstrate how the Habsburg administration in Bosnia either failed to accomplish much-needed reforms within the prison system or at least failed to achieve them in full, even though Habsburg officials promised to implement the Irish progressive system, the golden standard of the time. The article illustrates that the modern approach to imprisonment and the treatment of prisoners in accordance with the latest belief that time spent in prison could rehabilitate the prisoner was not correctly applied to long-term female prisoners in Bosnia, especially Muslim ones.

Keywords: Habsburg Monarchy, Bosnia and Herzegovina, female prisoners, Muslims, prison reform

ÖZ

Habsburg Monarşisi'nin hapishane sistemi ve 19. yüzyılın sonlarında mahkûmlara yapılan muamelelere ilişkin meseleler mevcut literatürde henüz incelenmiş değildir. Tarihçiler, Habsburg'un 19. yüzyıl sonu ve 20. yüzyıl başındaki cezai uygulamalarında kadın mahkûmlara yönelik muameleler üzerinde durmamışlardır. Bu makale, arşiv kayıtlarına dayanarak, Habsburg Monarşisi tarih yazımındaki bu boşluğu doldurmayı ve Habsburg yetkililerinin dönemin altın standardı olan İrlanda ilerici sistemini uygulama sözü vermelerine rağmen, Bosna'daki Habsburg yönetiminin hapishane sisteminde çok ihtiyaç duyulan reformları gerçekleştirmediği ve başarısız olduklarını ya da en azından tam olarak gerçekleştirme girişiminin nasıl akamete uğradığını göstermeyi amaçlamaktadır. Bu makale, hapishanede geçirilen zamanın mahkûmu ıslah edeceğine dair son inanaşa uygun olarak hapsedmeye ve mahkûmlara muamele etmeye yönelik modern yaklaşımın, Bosna'daki uzun süreli kadın mahkûmlara, özellikle de Müslüman olanlara doğru yöntemle uygulanmadığını göstermektedir.

Anahtar Kelimeler: Habsburg Monarşisi, Bosna-Hersek, Kadın Mahkûmlar, Müslümanlar, Hapishane Reformu



Introduction

The prison system of the Habsburg Monarchy in the late 19th and early 20th centuries has not been the subject of thorough evaluation in historiography for a long time. Apart from a few articles related to prisons in the early modern period and¹ the rare overview of Habsburg penal practices from the start of the 20th century², there is little archival-based research related to this issue. Only recently have historians from Bosnia and Herzegovina and Croatia begun to examine the prison system and the treatment of prisoners within the Austro-Hungarian penal practices.³

The relative lack of studies on the penal history of the Habsburg Empire is surprising, considering that during the 19th century, imprisonment became a dominant form of punishment.⁴ As huge efforts had been made to enhance the conditions of prisons,⁵ these institutions were seen as indicators of the progress of society⁶ and hope for the individuals who had “strayed”. The Habsburg Empire began to follow trends in modernising prisons and penal strategies mid-century when it introduced a new Austrian Criminal Code (1852)⁷

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- 1 Jeremy Hugh Baron, “Folter Arzt: interrogation of prisons in Austria 1773”, *Journal of the Royal Society of Medicine*, C/6 (2007), p. 262-264; Stephan Steiner, *Combating the Hydra: Violence and Resistance in the Habsburg Empire, 1500–1900*, Purdue University Press, West Lafayette 2023. The section on Austria’s Penal Colonies (30–47) deals mostly with the early modern period or early 19th century and is related to the deportation question.
 - 2 Arthur G. F. Griffiths, *The History and Romance of Crime: German and Austrian Prisons, Prisons of Prussia, Bavaria, Saxony, and Austria-Hungary; the Fortresses of Magdeburg and Spielberg*, 2016 (first published in 1900), available at <https://www.gutenberg.org/files/51065/51065-h/51065-h.htm>. Maynard Shipley, “Homicide and the Death Penalty in Austria-Hungary”, *Publications of the American Statistical Association*, XI/77 (1907), p. 253-259.
 - 3 Igor Josipović, *Funkcioniranje zatvorskog sustava u drugoj polovici 19. stoljeća*, University of Zagreb Croatian Studies, Unpublished Doctoral Thesis, Zagreb 2018; available at <https://dr.nsk.hr/en/islandora/object/hrstud%3A1322>. Luka Pejić, *Kriminal i represivni sustav u Osijeku u okvirima modernizacijskih procesa (1868. - 1918.)*, University of Zagreb Faculty of Humanities and Social Sciences Department of History, Unpublished Doctoral Thesis, Zagreb 2019 (not available online); Luka Pejić, “Žene kao zločinke i zatvorenice na području Banske Hrvatske na prijelazu iz 19. u 20. stoljeće”, *Roblje. Rizici i resursi: rod i politika raspodjele*, ed. Ana Zbiljski, Zagreb 2023, p. 32-48; Amila Kasumović, “Promjena zatvorske paradigme: Tretman zatvorenica u Bosni i Hercegovini 1878–1914.”, *Radovi Filozofskog fakulteta u Sarajevu*, issue 23 (2020), p. 15-41. Amila Kasumović, *Zatočene: Žene u zatvorskom sustavu Bosne i Hercegovine 1878-1914.*, CeHIS, Sarajevo 2021.
 - 4 Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Vintage Books, New York 1995.
 - 5 See Sinan Tankut Gülhan, “1872 London Congress and the Nineteenth Century Prison Reform Movement: An Inquiry into the Discourse of Punishment”, *Gaziantep University Journal of Social Sciences*, XVI/4 (2016), p. 1148-1159.
 - 6 F. M. Dostoevsky believed that one could only see how civilised a certain society was by entering its prisons. Michael Cavadino-James Dignan, *The Penal System. An Introduction*, Sage, Los Angeles-London-New Delhi-Singapore-Washington D. C. 2007, p. 192.
 - 7 This code was also in force in Hungary until 1861. Kinga Beliznay, *Development of the Hungarian Criminal Law in the 19th Century*, Essays of Legal History, Publications of the Department for Hungarian State and Legal History, Budapest 1994, p. 2.

and the Irish system⁸ for prisons. After the occupation of Bosnia and Herzegovina (1878),⁹ Austro-Hungarian officials began to insist that the very poor conditions of prisons were a main characteristic of Ottoman penal practices in Bosnia,¹⁰ as well as the idea that Austria-Hungary would, guided by the concept of a “civilising mission”, accomplish the complete reorganisation of Bosnian penal structures. Introducing the Irish system into the Bosnian penal institutions was the main goal as it was not only the best “theoretical approach” but also the way through which the “gradual method of execution of sentence would give the best results according to the character of South Slavs”.¹¹

The idea of modernising Bosnian society, including the prisons, was very important in creating the public image of the Habsburg Monarchy in Europe. As the European powers gave the mandate to the Habsburg Monarchy, at the Congress of Berlin (1878), to occupy and administer Bosnia and Herzegovina, the Austro-Hungarian administration¹² was obliged to justify the trusted mandate. However, this article suggests that the promised reforms of the penal system in the occupied territory were implemented only for the male prisoners, while the treatment of female convicts was not thoroughly and continuously considered. Regarding the prisons as places and institutions built for males by males, the new officials had limited opportunity to reflect on the special needs of female prisoners. However, it is important to emphasise that while the female prisoners became the Other within the prison population, one group was especially discriminated against: Muslim female prisoners. This article aims to show how the Austro-Hungarian administration systematically neglected the religious beliefs and customs of Muslim female convicts as well as their right to avail of proper school and work programmes during imprisonment. The religious rights of such convicts were

8 The Irish system consisted of three phases: “a period of solitary confinement; a period of congregate work (...) and, finally, a period in intermediate prisons with minimal supervision, (...)” Release was conditional, and for some authors, this was the fourth stage of the execution of the sentence. <https://www.britannica.com/topic/Irish-system>. Walter Crofton, the chairman of the Directors of Convict Prisons in Ireland, was the “father” of the Irish system, which was established during the 1860s. Gerry McNally, “James P. Organ, the ‘Irish System’ and the Origins of Parole”, *Irish Probation Journal*, issue 16 (2019), p. 46.

9 The Ottoman sultan remained the sovereign of Bosnia, but Austria-Hungary managed to establish its administration there in full capacity. About the occupation of Bosnia and Herzegovina, see László Bençe, *The Occupation of Bosnia and Herzegovina in 1878*, Social Science Monographs/Atlantic Research and Publications, New York 2005; Karl Gabriel, *Bosnien-Herzegowina 1878: Der Aufbau Der Verwaltung Unter Fzm Herzog Wilhelm V. Wuerttemberg Und Dessen Biographie*, Peter Lang, Frankfurt am Main, 2003. Also, see *Die Occupation Bosniens und der Hercegovina durch k. k. Truppen im Jahre 1878*, Abteilung für Kriegsgeschichte des k. k. Kriegs-Archivs, Wien 1879.

10 There is not a single study on the Ottoman penal and prison system in late 19th-century Bosnia in Bosnian historiography. For the Ottoman prisons in general, one can see Kent Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity*, Edinburgh University Press, Edinburgh 2014. Also see Gültekin Yıldız, *Mapusane: Osmanlı Hapishanelerinin Kuruluş Serüveni (1839-1908)*, KİTABEVİ Yayınları, İstanbul 2012.

11 *Izveštaj o upravi Bosne i Hercegovine 1906*, Zajedničko ministarstvo financija, Zagreb 1906, p. 491.

12 The administration of Bosnia and Herzegovina was entrusted to the Joint Ministry of Finance in Vienna in 1879. Its power was executed through the Provincial Government in Sarajevo, constituted by the high-ranking officials from the different parts of the Monarchy. *Izveštaj o upravi Bosne i Hercegovine 1906*, p. 17.

particularly violated during their stay in the Female penitentiary in Zagreb,¹³ while their rights to undergo all phases of the Irish system were completely negated when the Provincial Government in Sarajevo decided to incarcerate them only in Kreis¹⁴ prisons in Bosnia, which did not have the appropriate facilities for longer-term imprisonment.

Creating the Other: General Characteristics of the Bosnian Prison System after 1878

In the Habsburg Empire, convicts with short sentences were sent to prisons located alongside Kreis and district courtrooms. And housing convicted criminals, Kreis and district prisons were used to house suspects who were under investigation. In contrast, long-term prisoners were sent to the penitentiary.¹⁵

After the occupation of Bosnia and Herzegovina (1878), Austro-Hungarian officials decided to clean, adapt, and use the old Ottoman prisons as well as the Kreis and district courtrooms.¹⁶ Up to the start of the 20th century, there were six Kreis for 54 districts in Bosnia. Adapting small district prisons was a relatively easy task for the Austro-Hungarian administration, as they comprised a single room. The real challenge for the new administrators was the reorganisation of the Kreis prisons, which were much larger than the district ones. During the late 1880s, Austro-Hungarian authorities began building new Kreis prisons in Tuzla, Travnik, Banja Luka and Mostar, excluding the prisons in Sarajevo and Bihać because of financial problems. However, there was no penitentiary in Bosnia¹⁷, and this was the main obstacle to introducing the Irish system, which could be applied only in specially built institutions where prisoners were placed in a different part of the penitentiary for every phase

13 It was built in 1877. L. Pejić, “Žene kao zločinke i zatvorenice na području Banske Hrvatske na prijelazu iz 19. u 20. stoljeće”, *Roblje. Rizici i resursi: rod i politika raspodjele*, ed. Ana Zbiljski, Zagreb 2023, p. 40. Also see Ana Jura, “Ženska kaznionica u Požezi za vrijeme Nezavisne Države Hrvatske (1941.–1944.)”, *Časopis za suvremenu povijest*, issue 3 (2013), p. 486-488.

14 “Generally, where the Ottoman administrative structure was considered workable it was kept in place and merely AustroHungarianized in name and personnel: the sandžaks were renamed ‘Kreise’ (regions), and their subdivisions, the kazas or kadiluks, ‘Bezirke’ (districts), (...)”. Noel Malcolm, *Bosnia: A Short History*, NYU Press, New York, 1994, p. 138.

15 Igor Josipović, *ibid.*, p. 152.

16 *Izveštaj o upravi BiH 1906*, p. 489.

17 The old building in Rača, with a capacity for more than 300 prisoners, was not evaluated as convenient due to the financial burden and bad position of the institution. Archives of Bosnia and Herzegovina (ABH), Joint Ministry of Finance/Zajedničko ministarstvo financija (ZMF), 1879, No. 6386. Benjamin von Kállay, joint minister of finance, consulted by Emil Tauffer, the head of the penitentiary for male prisoners in Lepoglava, believed that the Irish system could be effective only in institutions with capacity for 600-625 prisoners. ABH, Provincial Government/Zemaljska vlada (ZV), 1890, 110/38. At the same time, the Austrian part of the Monarchy had 14 male and 6 female penitentiaries. Franz Holtzendorf-Eugen Jagemann, *Handbuch des Gefängniswesens*, I, Verlag von J. F. Richter, Hamburg 1888, p. 251.

of their punishment.¹⁸

Although Habsburg officials were very critical of the existing prisons and while thorough reforms were assured, nothing specific happened in the first few years after the occupation. Having no penitentiary in an occupied country, the Provincial Government in Sarajevo, supported by the Joint Ministry of Finance in Vienna,¹⁹ began to negotiate with the Croatian authorities about the possibility of sending long-term Bosnian prisoners to Lepoglava or, in the case of female convicts sentenced to more than a year's imprisonment, to Zagreb.²⁰ These negotiations were completed by the spring of 1880, when the Provincial Government ordered long-term male and female prisoners to be sent to penal institutions in Croatia.²¹

Discrimination against Muslim female convicts began to emerge even at the very start of negotiations between the Provincial Government in Sarajevo and other authorities within the Habsburg Monarchy in 1879. For example, throughout the discussion regarding the terms for sending female prisoners to the penitentiary in Vigaun,²² the Austrian minister-president emphasised his concerns about the linguistic obstacles that might arise, as well as the fact that some female prisoners were Muslims and Orthodox. This meant that the Austrian authorities were not prepared to consider Bosnian female prisoners.²³ However, Hungarian officials were willing to accommodate Bosnian prisoners in Hungarian penitentiaries, but as these institutions were far from Bosnia, the Provincial Government in Sarajevo opted for Croatian ones.

This solution was compounded by the fact that female prisoners would have to leave their homeland and could not stay in touch with their families as most of them were illiterate.²⁴ In addition, the Bosnian and Croatian authorities ignored the specific religious customs of the Muslim female convicts: not a single thought about this important subject was highlighted during the negotiations between Sarajevo and Zagreb. The fact that the Female penitentiary in Zagreb was administered by nuns was ignored and never mentioned by any official. There

18 The Bosnian Penal Code (1879) distinguished criminal offenses and misdemeanours. Punishments for the criminal offense (murder, manslaughter, rape, etc.) were death or prison (from six months up to 20 years, dependent on type of crime). For misdemeanours were determined different punishments: detention, monetary penalty, deprivation of some rights, requisition of belongings, and deportation. Strafgesetz über Verbrechen und Vergehen, § 18 and 19, in: *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen 1878–1880*, II, Wien 1881, p. 85.

19 The Joint Ministry of Finance, as a supreme body in charge for the administration of Bosnia and Herzegovina, had the final word in all matters considering the Bosnian administration.

20 Negotiations occurred in the fall of 1879. ABH, ZMF, 1879, No. 5440. See Eduard Eichler, *Das Justizwesen Bosniens und der Hercegovina*, Landesregierung für Bosnien und die Hercegovina, Wien 1889, p. 168.

21 Circularerlass der Landesregierung in Sarajevo vom 6. April 1880, Nr. 6678, Just. 1517, betreffend die Abgabe von Sträflingen in croatische Strahäuser, in: *Sammlung der für Bosnien und die Hercegovina erlassenen Gesetze, Verordnungen und Normalweisungen 1878–1880*, II, Wien 1881, p. 174.

22 Today, Begunje on Gorenjskem in Slovenia.

23 ABH, ZMF, 1879, No. 5574 (Letter of Austrian Minister President, October 26, 1879).

24 The female population in the Zagreb penitentiary in 1899 was structured as follows: 55% peasants, 15% maidservants, 10% farmers, 4% day-laborers, etc. L. Pejić, "Žene kao zločinke", p. 41.

is no information in the archival records to show that the Bosnian Government instructed the Zagreb penitentiary management on the matter of Muslim female convicts: the need to provide contact between the prisoners and Islamic spiritual personnel (imams), a special space for the ordinances (five times per day), and a diet without pork and other products forbidden to Muslims. However, this question was raised in 1880 for male Muslim convicts sent to the Lepoglava penitentiary, when the Supreme Sharia Court for Bosnia and Herzegovina instructed the Bosnian Government regarding the omission of working duties for Muslim prisoners during Eid and Ramadan. In addition, it referred to the significance of prayer five times per day.²⁵

A further aspect of discrimination against Muslim female prisoners that needs to be highlighted is the fact that when these women were conveyed from Sarajevo to Zagreb, they were escorted by gendarmes – exclusively male officers.²⁶ In general, this practice was problematic as they could abuse their power once they were alone with the female convicts. Also, Muslim communities in Bosnia were very patriarchal, and Muslim women were not accustomed to the company of men from outside the family. The practice was introduced promptly after the negotiations with Zagreb were concluded and was confirmed again in 1883 in the document that specified the treatment of the convicts in the Kreis and district prisons.²⁷ The gendarmes were obliged to keep logbooks that had been sent to the Provincial Government after their return from Zagreb.²⁸

Apart from the financial obligations related to costs for food and accommodation for Bosnian prisoners, the Provincial Government in Sarajevo had nothing to do with the progress of the convicts and their *journey* through imprisonment. Apart from short financial reports sent from Zagreb to the Provincial Government in Sarajevo concerning the monthly cost of Bosnian prisoners, there is no record, overview or report investigating the mental and physical state of female convicts or their moral improvement. This relates to female prisoners only since the Bosnian Government, in 1884, began to make plans to build a Central Penitentiary for male prisoners in Zenica. This project was completed four years later, in line

25 ABH, Supreme Sharia Court for Bosnia and Herzegovina/Vrhovni šerijatski sud za BiH, 1880, A-3. No. 199. Ahmed-aga Čanović Nikšić was the first appointed imam for the Bosnian Muslim prisoners in Lepoglava. *Sarajevski list*, 14. 4. 1882, 1. I am not familiar with the similar instructions of the Supreme Sharia Court in Bosnia and Herzegovina for Muslim female prisoners. This can be explained by the fact that the Muslim female prisoners were a minority within the prison population, so their treatment was not the focus of any authority.

26 See Kristian Jerić, “Žandarmerija u Ugarskoj do Prvog svetskog rata: teritorijalna organizacija, lični sastav i oficirski kor”, *Diplomatija i bezbednost*, issue 2 (2021), p. 95-114.

27 Naputak glede službenih dužnosti u okružnim i kotarskim uzama i glede postupanja sa uznicima (uhapšenecima). Document available at <https://alex.onb.ac.at/cgi-content/alex?aid=lbh&datum=18839004&seite=00000478>.

28 For example, officer Babić escorted Pemba Huselić (a Muslim) and Anica Barać (a Catholic) to Zagreb in 1889. ABH, ZV, 1889, 110-7/14. Regarding the route from Mostar to Zagreb, they usually went via Metković, Split, and Rijeka. ABH, ZV, 1889, 110-7/19.

with the standards of the time, so the Irish system could be fully implemented.²⁹ The head of this institution was Emil Tauffer.³⁰ A similar institution for female convicts was not part of the plan, with no mention of female prisoners in the detailed study on Bosnian prisons in 1890.³¹

However, as the Habsburg authorities in Bosnia never built a penitentiary for female convicts, we can conclude that the welfare of long-term female prisoners was not envisaged by the officials in Sarajevo and Vienna when carrying out reforms to the Bosnian prison system. Female Bosnian convicts were under the care of the Female penitentiary in Zagreb, and the Provincial Government in Sarajevo simply administered the financial aspects of their stay in Zagreb. However, the actual mental and physical states of these women were not discussed.

Glimpses of the Muslim Female Prisoners' Status in the Female Penitentiary in Zagreb

Almost nine years after the transfer of the first group of Bosnian female convicts to the Zagreb penitentiary, the Provincial Government in Sarajevo received disturbing news shedding light on possible discrimination against Muslim female prisoners in the Habsburg prison system. Namely, the Provincial Government in Sarajevo was informed that Muslim prisoner Đula Garić, sentenced for infanticide,³² had died in the Zagreb penitentiary on 2 December 1888.³³ The fact that her new name appeared in the obituary as Anna was unexpected for the Bosnian authorities and therefore a huge shock as there had been no intimation that Đula had changed her religion. The Provincial Government in Zagreb issued the obituary from which the religious conversion had occurred.³⁴

The Provincial Government in Sarajevo reported this case in January 1889 to the Joint Ministry of Finance on the grounds that the circumstances of the religious conversion of Đula Garić were not known to Bosnian authorities, especially as there was no evidence regarding the background to the conversion: was this act voluntary or not? The Provincial Government in Sarajevo was concerned for two issues: (1) four other Muslim female prisoners were also imprisoned in the Zagreb penitentiary and;³⁵ and (2) these convicts, once released, might talk

29 *Izveštaj o upravi BiH 1906*, p. 491-503.

30 F. Holtzendorf-E. Jagemann, *ibid.*, p. 264.

31 ABH, ZV, 1890, 110/38.

32 This was generally the most common crime among the female prison population from Bosnia, regardless of their religious affiliation. Just a few of them committed other crimes like murder, defamation, endangering public order, etc.

33 The Provincial Government received information about her death a month later. ABH, ZV, 1889, 110-7/5.

34 ABH, ZMF/Pr., 1889, No. 74.

35 In 1889, beside Đula Garić, Džefsa Sadiković, Nefa Prdovac, Hopa Zorkić, and Almara Alispahić were also imprisoned in the Zagreb penitentiary (there is the possibility that some names were not correctly noted). ABH, ZMF, 1889, No. 2955.

about the case of Đula Garić on return to their homeland. The latter issue was potentially very dangerous for the Austro-Hungarian administration in Bosnia as there was a certain antagonism against it, especially among the Muslim and Orthodox communities. Therefore, the Bosnian authorities wanted Kállay to react and contact the Provincial Government in Zagreb.³⁶ We can conclude from this small glimpse of information that the Bosnian authorities knew nothing about the everyday lives of Muslim female convicts in Zagreb. The fact that important questions such as the religious conversion were not noted by the Habsburg administration in Sarajevo indicates its indifference toward these female prisoners.

However, the Joint Ministry of Finance shared the concern of the Bosnian authorities in Garić's case. The Ministry informed the Croatian *banus* Khuen-Héderváry³⁷ about this urgent matter, pointing out the danger of confessional conflicts in Bosnia – the land that was hardly pacified after 1878—if the details of Garić's conversion to the Catholic faith were to become public knowledge. Therefore, the Ministry requested an inquiry into the case and an undertaking of measures that would prevent similar *accidents* in the future.³⁸

From the letter of the Joint Ministry of Finance, it is evident that the issue was potentially very problematic in terms of the trust violation between the Habsburg authorities and different confessional communities in Bosnia. Khuen-Héderváry had the same view as he undertook the investigation even before receiving the letter from the Ministry. He demanded a statement from the management of the Female penitentiary in Zagreb about the case of Đula / Anna Garić. While the penitentiary management showed evidence that Đula voluntarily accepted the Catholic faith, the *banus* made a point, highlighting article 172 of the Order from 18 February 1878 (No. 1609) that forbade religious conversion during imprisonment.³⁹

The Joint Ministry of Finance was not completely satisfied with the measures carried out by the *banus* and ordered the Provincial Government in Sarajevo to investigate the state of the Kreis prisons in Bosnia. The intention of the investigation is not clear from the official correspondence between Vienna and Sarajevo, but we can assume that the Ministry had considered the possibility of removing Muslim female convicts from Zagreb and placing them in one of the Kreis prisons in Bosnia.⁴⁰

The Provincial Government in Sarajevo fulfilled the request of the Ministry and instructed the administration of the Kreis courts that the Kreis prisons could be used for long-term

36 ABH, ZMF/Pr., 1889, No. 74.

37 See Ladislav Heka, "Grof Karlo (Károly) Khuen-Héderváry i Hrvati", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, XXXVII/3 (2016), p. 1065-110.

38 ABH, ZMF/Pr., 1889, No. 114.

39 ABH, ZMF/Pr., 1889, No. 114.

40 ABH, ZMF, 1889, No. 2955.

female prisoners in the future, although it did not specifically refer to Muslim convicts.⁴¹ The Bosnian authorities also provided very detailed statistics about (a) Bosnian female prisoners in Zagreb, (b) female prisoners in the Kreis prisons, (c) those who were under investigation, (d) the total number of female convicts in the previous years, and (e) the total number of females under investigation over the previous ten years. While the Kreis prisons were deemed not to be overcrowded, the Provincial Government suggested the building of a special department in the Sarajevo Kreis prison with a capacity for 50 female convicts.⁴²

Notwithstanding these efforts, nothing changed in the short term and, as can be seen from the archival records, Muslim female prisoners were still sent to Zagreb. Three such convicts were sent to Zagreb during the second half of 1889, which is confusing as both the highest administrative bodies for Bosnia – the Provincial Government in Sarajevo and the Joint Ministry – had expressed their concern about the possible consequences of Garić's case.⁴³

Five years later, another problem occurred. Though the religious conversion of Đula Garić aroused disturbances and caused debates on the status of Muslim female convicts in Habsburg penal structures, there was no proof in the archival records that the Provincial Government tried to inform themselves about these women after the 1889 incident. However, in 1894, the Provincial Government requested imam Salih Dizdarević, an employee of the Central Penal Institution in Zenica, to visit the Muslim female convicts in Zagreb while in Croatia.⁴⁴

Dizdarević did this during the Ramadan of 1895, and his report about the visit was even more disturbing. He pointed out a few issues and practices to which female convicts from Bosnia were exposed and that were incompatible with Islamic views: Muslim prisoners attended a Catholic Mass; they kissed the hand of the Catholic priest; and they had to eat food prepared with lard. He immediately reacted to the first two problems and while he was assured that the Muslim convicts would not attend Mass again, the lard issue remained unsettled as the Provincial Government in Sarajevo allegedly had a deal with the Zagreb authorities regarding this question.⁴⁵ We can conclude from this that the Bosnian authorities were aware that food prepared with lard was given to the Muslims. Therefore, the question can be raised: did the Government approve this practice on the grounds that it lacked knowledge about Islam? Or was this considered a more practical (and cheaper) solution?

41 ABH, ZMF, 1889, No. 5940.

42 ABH, ZMF, 1889, No. 2955.

43 ABH, ZV, 1889, 110-7/26.

44 ABH, ZMF, 1894, 7560. Allegedly, from the end of 1893, the Provincial Government insisted on regular visits (once a year) of Muslim female convicts by imam Dizdarević.

45 ABH, ZMF, 1895, 11.017.

When Dizdarević's report was completed, the Provincial Government in Sarajevo understood the implications of this case and immediately requested the Provincial Government in Zagreb to solve all the issues mentioned in the imam's report. Although the response of the Croatian authorities was very positive, the Bosnian Government was afraid that the Muslim community in Bosnia would find out about these issues and express discontent. Furthermore, this Government had believed that the new problem would occur in the future as the management of the Female penitentiary in Zagreb was not secular. It was decided not to send Muslim female prisoners to Zagreb because they could be placed in the Kreis prisons in Mostar, Banja Luka, and Donja Tuzla. This decision was endorsed by the Joint Ministry, and after 1895, Muslim female offenders were no longer required to serve custodial sentences outside Bosnia.⁴⁶

It took 15 years for the Bosnian Government to understand the scope of discrimination against the Muslim female convicts in Zagreb. Once they finally realised this, the Bosnian authorities were not concerned not so much about the violated rights of these women, but about how Dizdarević's report might be interpreted by the Muslim political elite in Bosnia. The decision to place Muslim female prisoners in the Kreis prisons had minimal success, as new aspects of discrimination against this specific group emerged: the impossibility of parole and the lack of education and vocational training (programmes) in the Kreis prisons in Bosnia.

Release on License: Why Didn't It Apply to Muslim Female Convicts?

The release on license, or parole, was the last phase of the Irish system.⁴⁷ If the prisoner successfully passed the intermediate prison phase, he or she could apply for the last stage of imprisonment, whereby he or she could be conditionally released and supervised outside the jail. However, for the first nine years after the Austro-Hungarian occupation, the issue of parole was not properly determined for Bosnian prisoners in Croatian penal institutions in general.⁴⁸ After the Central Penal Penitentiary in Zenica had been built, this was no longer a problem for male prisoners, as special provisions were published dealing with the phases of imprisonment in the Zenica institution.⁴⁹

46 *Izveštaj o upravi 1906*, p. 490. Also see ABH, ZMF, 1895, 11.017. At the same time, Muslim male prisoners did not have this kind of problem since the Central Penal Penitentiary in Zenica was established in 1888. About the history of this institution, see Salih Jalimam et al., *Kazniona. Knjiga o zeničkom zatvoru*, Vrijeme – NAM, Zenica – Tuzla 2011.

47 For the early release in the 19th century, see Frieder Dünkel, "Early Release from Prison", *Encyclopedia of Criminology and Criminal Justice*, ed. Gerben Bruinsma-David Weisburd, 2014, 1256-1271. Also see Snježana Maloić-Neven Ricijaš-Saša Rajić, "Povijesni razvoj i modeli ranijeg otpusta zatvorenika: značaj za aktualnu Hrvatsku kaznenopravnu praksu", *Kriminologija i socijalna integracija*, issue 2 (2012), p. 31-32.

48 The Provincial Government in Zagreb stated in December 1879 that the conditional release could not have been applied to the Bosnian prisoner (male or female), as the Penal Code for Bosnia did not have an article defining this question. ABH, ZV, 1890, 110-38.

49 Naredba zemaljske vlade za Bosnu i Hercegovinu od 5. novembra 1887, br. 63.777/III, u kojoj se sadržavaju načelne odredbe o upravi centralne kaznionice u Zenici i o vršenju kazne u istoj, *Glasnik zakona i naredaba za Bosnu i Hercegovinu*, Sarajevo 1887, p. 319.

However, nothing was determined for female convicts in Zagreb. The first problem relating to the issue of parole for female prisoners in Zagreb occurred in 1889, when ten prisoners submitted a request for conditional release. The Provincial Government in Zagreb changed its view on this question after 1887 and was willing to apply the provisions on serving a prison sentence in the Zenica penitentiary to Bosnian female prisoners in Zagreb. The Provincial Government in Sarajevo shared this point of view and advocated the implementation of the same rules for female convicts in Zagreb.⁵⁰ At first, the Joint Ministry of Finance accepted this kind of argumentation but only in one out of ten requests (convicts who served three-quarters of their sentence). The real problem emerged when the decision was made to stop sending Muslim female prisoners to Zagreb. The question was raised as to what would happen with the parole of these women (long-term prisoners placed in the Kreis prisons) and whether they would have the right to be released before serving a complete sentence.⁵¹

The Bosnian Government advocated the principle of equality: if parole was possible for female convicts in Zagreb, then it should be feasible for Muslim female prisoners in the Kreis prisons. This was particularly important for convicts who spent some time in the Female penitentiary in Zagreb and had to be transferred to Sarajevo after Dizdarević's alarming report on the treatment of Muslim female prisoners in Zagreb. These convicts were aware of their right to submit a request for parole in Zagreb and would not be content to lose this right from being transferred to Sarajevo. Also, the Provincial Government in Sarajevo pointed out in his letter to the Joint Ministry that Muslim female prisoners being treated differently from others would stir up serious trouble in Bosnian society, and this Government always counted on Muslim elites when Bosnia's political situation was in question.⁵²

The Provincial Government in Sarajevo insisted that the right to parole upheld with male prisoners in Zenica, and then applied to female convicts in Zagreb, should also be applied to Muslim female prisoners in the Kreis prisons. This was a very simple and manageable solution and indicated that, at least this time, the Bosnian Government had reconsidered the marginalised position of Muslim women in the Habsburg prison system. Nevertheless, the answer of the Joint Ministry of Finance was negative: the fourth phase of the Irish system was impossible to implement in Kreis prisons,⁵³ as these institutions had no compulsory conditions for conditional

50 ABH, ZMF, 1889, No. 7212. The conditional release of female prisoners was possible after three-quarters of the sentence had been served. Ten female prisoners from Bosnia who submitted a request for conditional release were not all Muslims.

51 ABH, ZMF, 1889, No. 7212.

52 ABH, ZMF, 1895, No. 11.017.

53 The president of the Kreis Court in Mostar wanted to buy land where the female prisoners could do fieldwork (this could be seen as an intermediate prison and the basis for parole), but the lack of financial support and the patriarchal character of the surroundings prevailed, and the plan was aborted. *Stenogramski izvještaji o sjednicama b-h Sabora* 1912/1913, III, Sarajevo 1913, p. 142.

release: the space structure in these types of prison, which had just several rooms, was adequate only for the first two stages of the Irish system: a period of solitary confinement and a period of group incarceration. The lack of an intermediate prison prevented the introduction of parole in the Bosnian prison system.⁵⁴ The Joint Ministry had a point, but it is surprising that the Ministry failed to offer a solution in terms of parole for Muslim female prisoners or to show concern for the possible implications if this issue remained unresolved.

The debate continued the following year. The Provincial Government in Sarajevo tried to explain to the Joint Ministry that the Female penitentiary in Zagreb did not have a classical, intermediate prison, but it had more substitution for it: nuns were taking the prisoners out of the building for fieldwork, and still the Joint Ministry was willing to accept and implement the same rules that had been introduced to the Central Penitentiary in Zenica as those applied to Bosnian convicts in Zagreb. The Bosnian Government also stated that the connection between intermediate prison and parole should not be considered necessary: for example, in Croatia, parole was introduced before the Irish system.⁵⁵ Also, England and Switzerland had a three-stage penal system at the time, without intermediate prison, and in Ireland the third phase of imprisonment was sometimes omitted. Thus, from this it is clear that the Bosnian Government did some research, was well prepared for the debate, and still supported the opinion that parole could and should be implemented in the Kreis prisons for long-term Muslim female convicts, especially considering the fact, as the Government stated, that the female prisoners were better⁵⁶ than male convicts. The Government insisted that the inequality for treating male and female convicts in Bosnia was not acceptable.⁵⁷ From the Government's letter, it is evident that the problem could have been solved: (1) by the implementation of the same provisions for the imprisonment of male convicts in Zenica in the Kreis prisons or (2) by building a new penitentiary for female Bosnian prisoners. For the Joint Ministry, none of these solutions were acceptable, and it is difficult to understand what the reason was for this kind of attitude. One can assume that the new penitentiary was not plausible on financial grounds, but the first solution was, as already highlighted in the paper, very simple and practical.⁵⁸

The authorities of the Kreis courts in Donja Tuzla, Mostar, and Banja Luka, where Muslim female convicts had been placed since 1895, also expressed some hesitation regarding parole for these women and emphasised the need for additional work in Kreis prison buildings, as

54 ABH, ZMF, 1895, No. 11.017.

55 The first was introduced in 1875, and the Irish system in 1877 (but fully adapted only in 1879). According to the law from 1875, parole was also possible for the Kreis prisons. ABH, ZMF, 1896, No. 9122.

56 This means that they were well behaved.

57 ABH, ZMF, 1896, No. 9122.

58 Obviously, the Joint Ministry needed some time and insisted on the competent opinion of the board of the Kreis courts in Mostar, Donja Tuzla, and Banja Luka, where long-term Muslim female prisoners were transferred from Zagreb. ABH, ZMF, 1896, No. 9122.

well as the fact that the intermediate prison implies outdoor activities, which could be seen as problematic within the Muslim community in Bosnia: Muslim women were more connected to the private (domestic) space.⁵⁹ The Bosnian Government proposed three possible ways of dealing with the issue in the future: (1) Kreis court authorities should keep looking for a solution for the right of parole applicable to Muslim female convicts; (2) Bosnian prison reform should be considered; and (3) the Kreis prison in Donja Tuzla could be converted, at no additional expense, to a prison exclusive to Muslim female prisoners, so that all phases of the Irish system could be introduced.⁶⁰

Although it is not clear why, after 1897, the debate about parole for long-term Muslim female convicts ended and was not revived until 1905. As the arguments for both sides, the Bosnian Government and the Joint Ministry of Finance, were the same as before,⁶¹ nothing changed, and the parole issue was still open. At the same time, Bosnian female prisoners in Zagreb benefitted from the right of parole and were conditionally released from the Zagreb penitentiary.⁶² What happened to long-term Muslim prisoners and their rights to equal treatment is difficult to say, due to a lack of archival records. Only one case of a long-term Muslim female convict attracted the attention of the Habsburg authorities, namely that of Džefsa Sadiković, who murdered her husband in 1883 and was sentenced to death. However, she was subsequently pardoned and sentenced to 18 years imprisonment in the Zagreb penitentiary, until 1895, when she was transferred to the Kreis prison in Donja Tuzla.⁶³ Sadiković submitted a request for a pardon for the rest of her sentence in 1895, while still in Zagreb, but this was declined by the Supreme Court in Sarajevo as groundless. It can be assumed that the rejection of her request was because she had not completed three-quarters of her sentence in prison. Her second petition (1897), when she had spent enough time in prison, was different: this was for a pardon or parole, and highlighted her age and health condition. The Supreme Court once again declined her petition, as parole was not possible for long-term female convicts in Kreis prisons.⁶⁴ Although the Joint Ministry shared the same view as the Supreme Court, it was clear that the case of Džefsa Sadiković finally produced some empathy and the Joint Ministry was ready to advocate a pardon for the remainder of her sentence.⁶⁵ Her case was closed with the Emperor's pardon in November 1897.⁶⁶

59 ABH, ZMF, 1987, No. 8640.

60 ABH, ZMF, 1987, No. 8640.

61 ABH, ZMF, 1905, No. 3697.

62 ABH, ZMF, 1896, No. 5757 (The case of Anđa Elpez). ABH, ZMF, 1896, No. 1578 (The case of Anna Kolaček). ABH, ZMF, 1905, No. 880 and 4730 (The case of Ivka Barač. At first, the Joint Ministry declined her request for parole, but was informed by the Bosnian Government that the prisoner was seriously ill. After a while, the Ministry was ready to approve the parole, but not before a thorough investigation of her health condition was carried out).

63 ABH, ZMF, 1884, No. 732 and 1001. Also see ABH, ZMF, 1897, No. 7676.

64 ABH, ZMF, 1897, No. 7676.

65 ABH, ZMF, 1897, No. 8640.

66 ABH, ZMF, 1897, No. 12.185.

We can therefore conclude that the Bosnian Government and the Joint Ministry of Finance had different strategies toward the treatment of long-term Muslim female convicts. The Bosnian Government was constantly seeking the best solution for applying parole to Bosnian female prisoners. While this was easier to accomplish regarding Bosnian female convicts in Zagreb, Muslim female convicts in the Kreis prisons in Bosnia were lost without this right, as these prisons were unable to support intermediate prison and then parole. The Joint Ministry failed to endorse the suggestions of the Provincial Government in Sarajevo concerning the question of conditional release for long-term Muslim female prisoners in Bosnia. Nor did it do anything to resolve it. Although the authorities in Sarajevo repeatedly pointed out that the Muslim female prisoners were discriminated against, the Ministry paid inadequate attention to this issue and offered no explanation for its demeanour. For some Muslim female prisoners, the only solution was a pardon of the rest of their sentence, but the general provisions regarding parole for these convicts were not adopted until the end of Habsburg rule in Bosnia (1918).

No School and Working Programmes: How to Rehabilitate *Fallen Angels*?

Towards the end of the 19th century, European societies developed the belief that the penal institutions could *fix* and rehabilitate offenders and criminals. However, it is important to highlight the prevailing view that the main tools for a person's rehabilitation were school and working programmes.⁶⁷ Apart from the fact that such training was very helpful in terms of adapting to prison conditions, learning new skills and acquiring knowledge also prepared convicts for a new chapter in their lives after imprisonment, as well as reducing the possibility of recidivism and providing discipline within the prison population.⁶⁸

The long-term Bosnian female prisoners who were sent to the Zagreb penitentiary participated in the school and working programmes. When the Bosnian Government suggested the transfer of Muslim female convicts from Zagreb to the Kreis prisons in Mostar, Donja Tuzla, and Banja Luka, it became clear that these prisons did not run such programmes. The Government emphasised this to the Joint Ministry, stating that the penal goal was illusive in the Kreis prisons, with no educational training, spiritual experiences or proper labour.⁶⁹ The penal institutions for female offenders and criminals in the Habsburg Empire had different

67 Mary Gibson-Ilaria Poerio, "Modern Europe, 1750–1950", *A Global History of Convicts and Penal Colonies*, ed. Clare Anderson, Bloomsbury Academic, London 2018, p. 337.

68 See *Prisons: Today and Tomorrow*, eds. Ashley G. Blackburn-Shannon K. Fowler-Joycelyn M. Pollock, Jones & Bartlett Learning, Burlington 2006. Also see Joanna Felczak, "Employment as a Part of Rehabilitation: A Review of Similarities and Differences between Female and Male Criminals", *Studia Iuridica Lublinensia*, XXXII/5 (2023), p. 77-104.

69 ABH, ZMF, 1905, 8032. The same conclusion was made back in 1879, but nothing changed after that. ABH, ZMF, 1879, No. 5163.

working activities for their inmates, but Muslim female convicts in Bosnia had only two options: doing laundry and knitting socks. As the female prisoners were familiar with these activities in everyday life before prison, they were of no particular benefit to them.⁷⁰ The only solution that the Bosnian Government could offer was to build a penitentiary for female prisoners. However, as the Joint Ministry of Finance had no other solution, Muslim female prisoners were once again left without the potential to use their right to work and acquire new skills during imprisonment.

According to the archival records used in this research, Muslim female prisoners did not undertake educational training in the Kreis prisons either, at least not from 1895, when they were initially placed in the Kreis prisons, until 1906, when the first plan regarding their schooling began to be considered. In 1906, the Provincial Government in Sarajevo consulted the Directorate of the Central Penitentiary in Zenica about educational programmes for the long-term prisoners in the Kreis prisons.⁷¹ The Directorate elaborated on this issue, pointing out the need for education in the prison environment for the sake of humanity and because it was enforced in modern penology. It also emphasised the moral enhancement of the convicts and their ability to use new skills after imprisonment.

The elaboration abounded with various stereotypes, including a statement about the beliefs of Muslim people, regarded as something between superstition and faith. Thus, the conclusion was that in terms of Muslim prisoners, religious education was to take priority, and that they should be taught by a religious teacher.⁷² Secular education could be conducted, as suggested by the Directorate of the Central Penitentiary in Zenica, in three phases: (a) learning to read and write; calculating numbers up to 100; (b) *logical reading*, calculating numbers up to 1,000 and basic knowledge regarding geometry, geography, history and hygiene; and (c) repeating acquired information and deepening their knowledge. For this task, the best solution was a female teacher who could be seen as an authority and a role model for female prisoners. It was highlighted that a Muslim female teacher would be ideal for such a position, but it was also pointed out that this could be a problem, as the administration of the Kreis prisons was mostly (sometimes exclusively) constituted by male officials, and the interaction of a young, female Muslim teacher with so many male clerks could be problematic for the Muslim community in Bosnia.⁷³ Apart from this, the teacher had to be educated in basics regarding imprisonment, penal goals, and carrying out a sentence.

Unfortunately, due to the lack of archival records, we do not know what became of the report that was made by the Directorate of Central Penitentiary in Zenica; there is no evidence

70 ABH, ZMF, 1905, 8032.

71 ABH, ZV, 1906, 323-45.

72 ABH, ZV, 1906, 323-45.

73 ABH, ZV, 1906, 323-45.

that educational training became part of the daily routine for Muslim female convicts in Bosnian prisons. Nor do we know the opinion of the Joint Ministry regarding the issue of the convict's education.

A new penitentiary for female prisoners in Bosnia?

There was one solution for all types of discrimination against Muslim female prisoners on which the Bosnian Government insisted: building a special prison near the Sarajevo Kreis Court, or a special department for female convicts within the Central Penitentiary in Zenica, or a completely separate penal institution for female convicts.⁷⁴ Several times, the Government suggested to the Joint Ministry of Finance the possibility of building a penitentiary for female offenders and criminals, and these suggestions were based on the idea that true prison reform and equal treatment of male and female convicts could only be achieved in this way. This matter was mentioned in correspondence from 1889, 1896, and 1897, but the Ministry's answer was always the same: the project of building such an institution was not financially justified.⁷⁵

The matter of this project was raised again by the Bosnian Government in 1906 after the administrators of the Female Penitentiary in Zagreb informed this Government that the Bosnian female convicts could no longer be accepted as that penal institution was overcrowded.⁷⁶ Alternative institutions in Vigaun and Maria Nosztra were just part of the solution, and the idea of a Bosnian female penitentiary was offered again.⁷⁷ Without waiting for the approval of the Joint Ministry, the Bosnian Government formed a commission in 1907 with the task of finding a plot of land to build a penitentiary for female prisoners.⁷⁸ Though the Joint Ministry did not consider the project as an emergent one, the plan was not aborted either.⁷⁹ However, it was projected on account of the need for thorough preparation and investigation. Finally, in 1913, the Law on Building the Penitentiary for Female Prisoners was published.⁸⁰ As the First World War broke out in 1914, this project was never accomplished; therefore, the discrimination against Muslim female convicts was never eradicated.

74 ABH, ZMF, 1889, No. 2955 and No. 5490.

75 ABH, ZMF, 1905, No. 8032.

76 ABH, ZMF, 1906, No. 822.

77 ABH, ZMF, 1906, No. 9117.

78 ABH, ZMF, 1907, No. 1762.

79 ABH, ZMF, 1907, No. 8174. The first draft of the report on the penitentiary for female convicts was declined in 1909, as the plan considered building this institution close to the male penitentiary in Zenica. ABH, ZMF, ABH, ZMF, 1909, No. 11.763.

80 *Glasnik zakona i naredaba za Bosnu i Hercegovinu 1913*, Sarajevo 1913, p. 47. See also *Bericht über Verwaltung Bosnien und der Hercegovina 1913*, Wien 1914, p. 33.

Conclusion

The discrimination of Bosnian long-term female prisoners in general, and Muslim female convicts in particular, was evident in Bosnian society during the 40 years of Habsburg rule. This was manifest through the systematic neglect of female prisoners' rights and needs. First, Muslim female convicts were sent to the penitentiary in Zagreb, which was run by the Catholic nuns and was far away from their home. They were isolated in this institution, felt depressed, and were alone. Their Islamic beliefs and customs were not respected: food made with lard was served to them; they attended Catholic Mass and communicated with Catholic priests. This was not discovered until 1895, even if the case of Đula Garić (in 1889), who converted to Catholicism, alarmed the Bosnian Government. After the dramatic report of imam Salih Dizdarević was submitted in 1895, the Provincial Government in Sarajevo decided to hold long-term Muslim female prisoners in the Kreis prisons in Mostar, Donja Tuzla, and Banja Luka. Though this solution was better than sending them to Zagreb, new types of discrimination against these convicts emerged: as the Kreis prisons had not been adapted to the Irish system, Muslim female prisoners could not apply for parole and had to serve a full sentence. Furthermore, they did not attend any kind of educational or working training, which was crucial for their rehabilitation, as work and learning were deemed to be good for a convict's moral elevation, discipline, adaptation to the prison conditions, and socialisation after imprisonment. All the abovementioned problems could have been solved by building a special penitentiary for female convicts in Bosnia. This was the proposal of the Bosnian Government, but the Joint Ministry of Finance did not see this as an urgent issue and was unwilling to spend some money on the project (even though the Bosnian administration was self-financing). The Bosnian Government managed to obtain a plan for a new penitentiary for female prisoners in 1913, but the First World War broke out the following year and all the plans were forgotten, as were the rights and needs of Muslim female convicts.

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