



Women in Poverty: Breaking the Cycle

Session 1: Perspectives of Poverty and Gender Inequalities

Nahed Samour, [Aktionsbündnis Muslimischer Frauen, Germany](#)

Thank you so much for inviting me. Today, as member of the Action Association of Muslim Women in Germany, I would like to focus on how the laws of inequality are connected to poverty of women, and to Muslim women wearing headscarf in particular, as they are highly visible and easily identifiable as Muslim, making them even more vulnerable and visible as the religious other in Europe. So while poverty can stem from many factors, the law is both part of the problem and part of the solution. It can entrench and deepen inequalities and discrimination or push for equality and equal treatment.

At this point we are witnessing that despite the fact that there are laws in all of Europe pushing for gender equality, state legislators are not paying enough attention to the intersection of gender, religion and race. We can already attest that there is an impact of religious dress restrictions on Muslim women's access to and choice about employment, education, housing, public and private services and public spaces. In particular, any debate about so-called state neutrality and public employment also has an effect on private employment. There are spill-over effects from what the state considers neutrality (which is almost always at the expense of Muslim women) to private employers using the same arguments to reject Muslim applicants or employees- although, in German law at least, private employers are not bound in any way by so called "state neutrality".

It is striking then that despite growing public awareness for gender equality in public and private employment, Muslim women wearing the headscarf are not benefitting from this. This is in part because discrimination against Muslim women is not considered discrimination but rather done in the name of entrepreneurial freedom to suit the customer.



Such is the case of Achbita, decided by the European Court of Justice in March 2017. The case concerned a Muslim woman whose employer insisted in the name of a neutrality policy of the Company that she may not wear the hijab (a head scarf) to work, and thus she lost her job. The European Court of Justice sent back the case to the referring Belgian Court asking it to check if the company, could not find a place for Achbita in a back office which would not bring her into contact with the public. And so the Court had no major problems with the company's policy that Muslim women may not 'manifest' their faith visibly during working hours when in touch with customers.

So on the level of EU law, the question is How do we stack up the protected right of the company to project a policy of neutrality (Article 16 of the EU Charter) as against the protected right of employees to manifest (or practise) their religion (Article 10 of the Charter)?

I brought up this case as it shows how Muslim women wearing the headscarf are up against structural discrimination all the way up to the European Court of Justice, having to deal with both institutional **discrimination** based upon norms, rules, regulations, procedures and defined positions that determine access to resources, and also a broader cultural **discrimination** based upon widely shared social paradigms that both constructs and devalues the 'other'.

Many studies show that the headscarf is not desired in society and in companies¹. There is generally a far less appreciative evaluation of the category religion compared to other diversity categories such as age, disability or gender- although in all European constitutions and anti-discrimination regulations religion is as protected just as much as the other categories.

¹ http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Dokumentationen/Fachgesprach-Kopftuch-Arbeitsmarkt.pdf?__blob=publicationFile&v=1



This is why Muslim women wearing the headscarf, are particularly prone to structural harm and are particularly vulnerable. The law does not sufficiently protect them. This is why I would like us to think deeper about the concept of substantive equality that addresses these vulnerabilities more so than formal equality approaches.

Substantive equality addresses four principles: “1. to redress disadvantage; 2. to address stigma, stereotyping, prejudice and violence; 3. to enhance voice and participation; and 4. to accommodate difference and achieve structural change”². The right to equality should be “responsive to those disadvantaged, demeaned, excluded, or ignored”³. Substantive Equality puts particular stress on vulnerability. The European Court of Human Rights has recently come forward recognizing that some groups are considered particularly vulnerable, in the sense that members of certain groups are more likely to suffer harm or experience it to a greater degree. These harms range from misrecognition, to physical injuries and material deprivation. The first group that was recognized as vulnerable by the Strasbourg Court was the Roma minority who, “as a result of their history” – the Court held – “has become a specific type of disadvantaged and vulnerable minority” in need of special protection. The next group was comprised of persons with mental disabilities. They have been regarded by the Court as a “particularly vulnerable group in society, who has suffered considerable discrimination in the past”. The Court has expanded the list of vulnerable groups to asylum seekers and people living with HIV.

So while I propose to consider Muslim women wearing the headscarf as particularly prone to discrimination, I also suggest to consider them vulnerable so that better legal solutions can be found that do not entrench inequality and poverty.

² Sandra Fredman, “Substantive Equality Revisited”, *ICON*, 2016, Vol. 14 No. 3, pp. 712–738, p. 713.

³ *Ibid*