

## Blaming Muslim Women: Intersectionality and the Headscarf in the Army of Bosnia and Herzegovina

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### Abstract

Through the concept of intersectionality, this paper examines the marginalisation, exclusion and disciplining by dominant institutions and systems, of Muslim women in Bosnia and Herzegovina who wish to wear the headscarf in the country's public service. It contributes to the conceptualisation of a larger situational framework that captures the complex positions and lived experiences of Bosniak Muslim women, through the case of Emela Mujanović Kapidžija of the Armed Forces of Bosnia and Herzegovina. Mujanović Kapidžija's repeated requests to wear the headscarf while in uniform triggered reactions that revealed the underlying Islamophobic and sexist culture that has long dominated the country's social, political, legal and psychological spheres.

**Key words:** headscarf, intersectionality, Islamophobia, anti-Muslim racism, FoRB, ECHR

## Introduction

Intersectionality has predominantly been introduced to and envisaged in theoretical and practical discussions by a Black American feminist law professor Kimberle Crenshaw, in two articles that explained the problem, and the need for such a concept. The first, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” was published in 1989 in the *University of Chicago Legal Forum*,<sup>1</sup> and the second, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”,<sup>2</sup> in 1991 in the *Stanford Law Review*. Since then, intersectionality has been discussed, broadened, amended, applied and understood in various ways<sup>3</sup>. This paper will briefly present the concept as envisaged by Crenshaw, highlight its trends in relation to the conceptualisation of Islamophobia as anti-Muslim racism, and introduce the facts of the case that will be further analysed.

## Literature Review

### *Intersectionality*

Crenshaw’s point of departure was “a problematic consequence of the tendency to treat race and gender as mutually exclusive categories of experience and analysis”.<sup>4</sup> She then examined how this tendency “is perpetuated by a single-axis framework that is dominant in antidiscrimination law”,<sup>5</sup> and is reflected in feminist and antiracist theory and practice. Her intention was to centre the multidimensionality of Black women’s experiences, and show how their exclusion or erasure occurred in works on anti-discrimination, and in feminist and anti-racist theory and practice more broadly. Crenshaw suggests that the single-axis framework applied in discrimination erases Black women in the conceptualization, identification and

1 Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, *University of Chicago Legal Forum*, 1:8 (1989), pp. 139-167.

2 Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color”, *Stanford Law Review*, 43:6 (1991), pp. 1241-1299.

3 For more information, see Nina Lykke, *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing*, (New York/London: Routledge, 2012); and Helma Lutz et al. (eds.), *Framing Intersectionality: Debates on a Multi-Faceted Concept in Gender Studies* (Surrey: Ashgate Publishing, 2011).

4 Crenshaw, *Demarginalizing*, p. 139.

5 Crenshaw, *Demarginalizing*, p. 139.

remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group<sup>6</sup>.

Or:

in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.<sup>7</sup>

Crenshaw believes that such focus centres the most privileged and marginalises the multiply-burdened, thereby obscuring claims that cannot be understood to result from such discrete sources of discrimination. She further asserts that

this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.<sup>8</sup>

Her work examines the doctrinal manifestations of the single-axis framework, and how it contributes to the exclusion and marginalisation of Black women in feminist and antiracist theory and practice. The experience that occurs at the intersection of these systems of exclusion and oppression (i.e. racism and sexism) is “greater than the sum of racism and sexism” [and] “any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated”.<sup>9</sup> Crenshaw explains the harm racism and sexism can do to Black women through the image of a traffic intersection where in the analogy, the two streets, namely the racism street and sexism street intersect.

Lykke defines intersectionality as

a theoretical and methodological tool to analyze how historically specific kinds of power differentials and/or constraining normativities, based on discursively, institutionally and/or structurally constructed socio-cultural categorizations such as gender, ethnicity, race, class, sexuality, age/generation, dis/ability, nationality, mother tongue and so on, interact, and in so doing produce different kinds of societal inequalities and unjust social relations. As this is an umbrella definition, it is important to notice that the societal mechanisms at stake here are defined in different ways by different branches of feminist theorists. Depending on the theoretical framework, they can be theorized as dominance/subordination, in/exclusion, recognition/misrecognition,

6 Crenshaw, *Demarginalizing*, p. 140.

7 Crenshaw, *Demarginalizing*, p. 140.

8 Crenshaw, *Demarginalizing*, p. 140.

9 Crenshaw, *Demarginalizing*, p. 140.

power/disempowerment, possession/dispossession, privilege/lack of privilege, majoritizing/minoritizing and so on.<sup>10</sup>

This paper explores the extent to which intersectionality can be applied to interpretations of marginalisation and exclusion of Bosnian and or Bosniak Muslim women who wish to wear the headscarf in Bosnia and Herzegovina's public service. It does so through the case study of non-commissioned officer, Sergeant (*podoficir, vodnik*) Emela Mujanović Kapidžija, born in Sarajevo in 1985. Mujanović Kapidžija has served in the Armed Forces of Bosnia and Herzegovina (BiH) since 2008, and her repeated requests to wear the headscarf while in uniform have not been granted either by her employer or the Court of BiH. To discuss this case, the conceptualisation of Islamophobia as anti-Muslim racism must first be examined.

### *Islamophobia as anti-Muslim Racism*

Studies on Islamophobia have long explored the term itself, and its formations and manifestations. Such studies were mostly, although not exclusively, influenced by theoretical approaches to the phenomenon, from the perspective of race critical studies, prejudice studies or decolonial studies.<sup>11</sup> In their introduction to a special issue of *Critical Sociology* on "Islamophobia and the Racialization of Muslims", Garner and Selod offer an overview of the contributions, with a focus on the connection between racialisation, racism and Islamophobia. They rebut the oft-employed argument of "Islam not being a 'race', hence Islamophobia cannot be racism",<sup>12</sup> by offering a 5-point response that conceptually clarifies how 'Muslims' are racialised, and that Islamophobia is therefore a specific form of racism:<sup>13</sup>

(1) 'Race' has historically been derived from both physical and cultural characteristics: the long 19<sup>th</sup> century of body-fixated race theory is an anomaly in a longer history that evidences various combinations of culture and phenotype being combined to define racial characteristics.

10 Lykke, *Feminist Studies*, pp. 50-51.

11 Farid Hafez, "Schools of Thought in Islamophobia Studies: Prejudice, Racism, and Decoloniality", *Islamophobia Studies Journal*, 4:2 (2018), pp. 210-225.

12 See also: Nasar Meer and Tariq Modood, "Refutations of Racism in the 'Muslim Question'", *Patterns of Prejudice*, 43:3-4 (2009), pp. 335-354

13 According to Garner, the core of racism comprises three elements: "1) A set of ideas [ideology] in which the human race is divisible into distinct 'races', each with specific natural characteristics derived from culture, physical appearance or both. 2. A historical power relationship in which, over time, groups are racialized, that is, treated as if specific characteristics were natural and innate to each member of the group. 3) Forms of discrimination flowing from this [practices] ranging on spectrums from denial of access to material resources at one end to genocide at the other" (Garner in Steve Garner and Saher Selod, "The Racialization of Muslims: Empirical Studies of Islamophobia", *Critical Sociology*, 1:11 (2014), p. 3.).

(2) On the basis of these definitions, groups thus racialized (made into either *de jure* or *de facto* ‘races’) are assigned to a hierarchy with white Europeans (later ‘Caucasians’) at its summit, and other groups in their wake. The process of racialization entails ascribing sets of characteristics viewed as inherent to members of a group because of their physical or cultural traits. These are not limited to skin tone or pigmentation, but include a myriad of attributes including cultural traits such as language, clothing, and religious practices. The characteristics thus emerge as ‘racial’ as an outcome of the process. Racialization provides the language needed to discuss newer forms of racism that are not only based on skin colour, as well as older forms.

(3) Muslims have historically been one of these groups that experience racism, as have other faith-based groups, most obviously Jews. Their racialization is accomplished not only by reference to religion but other aspects of culture such as physical appearance (including but not limited to dress).

(4) Muslims can be racialized, and the ways (plural) in which this occurs can be understood as constituting Islamophobia.

(5) Islamophobia is therefore a specific form of racism targeting Muslims, and racialization is a concept that helps capture and understand how this works, in different ways at different times, and in different places.<sup>14</sup>

The European Islamophobia Report uses a working definition of Islamophobia that theorises it as anti-Muslim racism:

When talking about islamophobia, we mean anti-Muslim racism. [...] Islamophobia is about a dominant group of people aiming at seizing, stabilizing and widening their power by means of defining a scapegoat – real or invented – and excluding this scapegoat from the resources/rights/definition of a constructed ‘we’. Islamophobia operates by constructing a static ‘Muslim’ identity, which is attributed in negative terms and generalized for all Muslims. At the same time, Islamophobic images are fluid and vary in different contexts, because islamophobia tells us more about the Islamophobe than it tells us about the Muslims/Islam.<sup>15</sup>

Similarly, Carr sees anti-Muslim racism as a tool that racialises Muslims and Muslim communities as the ‘Other’. Consequently,

Muslim individuals and communities are subjected to exclusionary practices resulting from specifically anti-Muslim racism, manifesting itself as discriminatory practices in accessing goods, employment and services, and/or acts of hostility be they verbal, physical and/or emotional.<sup>16</sup>

14 Garner and Selod, “The Racialization of Muslims: Empirical Studies of Islamophobia”, p. 4.

15 Enes Bayrakli and Farid Hafez, “Introduction”, in *European Islamophobia Report 2015*, Enes Bayrakli and Farid Hafez (eds.) (Istanbul: SETA Foundation, 2016), pp. 5-8.

16 James Carr: *Experiences of Islamophobia: Living with Racism in the Neoliberal Era* (Oxon/New York: Routledge, 2015), p. 53.

## The process of racialisation

draws a line around all the members of the group, instigates ‘group-ness’, and ascribes characteristics [...] This is not due to them all looking vaguely the same, but is because of the unity of the ‘gaze’ itself. In other words those who produce, absorb and reproduce representations of [...] Muslims, can transform [...] dissimilar individuals [...] into a homogeneous bloc: this is the basis of the racialization of Muslims (the process), and of Islamophobia (the snapshot of outcomes of this process).<sup>17</sup>

Sayyid and Vakil identify ‘Muslimness’, rather than the Muslim identity itself, as the crucial element of racism in the scope of Islamophobia. ‘Muslimness’ describes a cluster of features (from the names people use to the clothes they wear; the food they do or do not eat; the places they live; and their mannerisms and habits) by which in a given situation a person is perceived to be Muslim.

It matters little whether the features on which such identifications are made are real or imagined; nor are such features fixed, but rather historically and contextually different, and often highly contradictory. As with all stereotypes, it is not their truth that is at stake but their currency as a way people make sense of the world.<sup>18</sup>

In essence, one does not have to be Muslim to be the target of Islamophobia; one only needs to be imagined or perceived as a Muslim, or “mistakenly perceived to be Muslim such as turbaned Sikh men, for example.”<sup>19</sup> Bayrakli and Hafez have a point when they state that “Islamophobia tells us more about the Islamophobe than it tells us about the Muslims/Islam”.<sup>20</sup> Garner and Selod, referencing Gilroy, found that one striking element of the literature on Islamophobia was the degree to which “theoretical nationalism”<sup>21</sup> imposed itself. Discourses that examine the ideas of ‘normativity’, ‘belonging to the nation’, ‘loyalty’ and ‘citizenship’ emerge as an underlying thread in the analysis, and this allows us to understand and conceptualise Islamophobia as anti-Muslim racism better in Bosnia and Herzegovina, and the region. Discussions of racism in this region have not traditionally sought a broader understanding of racism, or of the underlying process of racialisation. As Catherine Baker explains in *Race and the Yugoslav Region*:

17 Garner and Selod, “The Racialization of Muslims”, p. 6.

18 Salman Sayyid and AbdoolKarim Vakil, “Foreword”, in *Defining Islamophobia: A Contemporary Understanding of How Expressions of Muslimness are Targeted* (Tabetha Bhatti, ed.) (London: The Muslim Council of Britain, 2021), p. 10

19 Tabetha Bhatti (ed.), *Defining Islamophobia: A Contemporary Understanding of How Expressions of Muslimness are Targeted*, (London: The Muslim Council of Britain, 2021) p. 12.

20 Bayrakli and Hafez, “Introduction”, in *European Islamophobia Report 2015*, pp. 5-8.

21 Garner and Selod, “The Racialization of Muslims”, p. 6.

The Yugoslav region [...] apparently has nothing to do with race, and race apparently has nothing to do with the Yugoslav region. The region has ethnicity, and has religion; [...] Like south-east Europe and Europe's ex-state socialist societies in general, the Yugoslav region has legacies of nation formation, forced migration and genocide that invite seeing its past and present through the lens of ethnopolitical and religious conflict.<sup>22</sup>

She quotes feminist media scholar Aniko Imre:

Race and racism continue to be considered concepts that belong exclusively to discourses of coloniality and imperialism, from which Eastern Europe [...] continues to be excluded, and from which East European nationalisms are eager to exclude themselves.<sup>23</sup>

During her research on antigypsyism (the marginalisation of Roma) as racism, Imre's interlocutors insisted that racial politics in the US and ethnic minority issues in Eastern Europe stem from separate, incomparable historical conditions.

According to Baker:

Some writers on European racisms had also used the region's inter-ethnic relations in arguments that late-twentieth-century racisms were becoming reoriented around constructed cultural difference not skin colour, with John Solomos (2003: 251) perceiving "new types of cultural racism based on the construction of fixed religious and cultural boundaries" in the break-up of Yugoslavia. Even the fixing of ethnicised boundaries between South Slavs acquired racialised dimensions during the violence, when ethnicised myths of certain nations standing at the 'bulwark of Christianity' (antemurale Christianitatis) during European wars against the Ottoman Empire cast Muslim or 'Balkan' Others as the new threat from the East (Žanić 2005).<sup>24</sup>

Baker further asserts that the post-9/11 Bosniak ethnicity stood at a specific intersection of identity and marginalisation:

While Bosniaks' skin colour would racialise them as white-but-'ethnic' in the US, and white-but-linguistically-visible-as Eastern-European in Europe, their religious heritage positioned them in the racialised, stigmatised and securitised category of 'Muslim'.<sup>25</sup>

22 Catherine Baker, *Race and the Yugoslav Region: Postsocialist, Post-conflict, Postcolonial?* (Manchester: Manchester University Press, 2018), p. 1.

23 Baker, *Race and the Yugoslav Region*, p. 11.

24 Baker, *Race and the Yugoslav Region*, p. 20.

25 Baker, *Race and the Yugoslav Region*, p. 85.

According to Al-Ali, “many urban Bosniaks’ grand narratives of state socialism, modernity and the urban/rural divide associated religious practice with unmodernity”, while “many more rural Bosniaks practiced religious tradition”, and “some of this thinking [has remained] true until today”.<sup>26</sup> It is, however, important to remember that racial ideas and practices, and related phenomena, change both temporally and spatially. In the long historical evolution of Islamophobia

it may be more apt to speak of ‘Islamophobias’ rather than of a single phenomenon. Each version of Islamophobia has its own features as well as similarities with, and borrowings from, other versions.<sup>27</sup>

The theorisation of Islamophobia as racism in the Balkans is becoming increasingly coherent, and is opening new avenues of discussion, understanding and analysis. These trends in the conceptualisation of Islamophobia as racism are key to understanding the facts of the case study, which will be discussed in the next section.

## The Case Study

### *Background*

Non-commissioned officer, Sergeant (*podoficir, vodnik*) Emela Mujanović Kapidžija, a Bosniak Muslim woman, born in Sarajevo in 1985, has served in the Armed Forces of BiH since 2008.<sup>28</sup> A promising young soldier, her employers sent her to attend a military academy in Greece for three years. While there, she was housed with other students, mostly young men, many of whom were from Serbia and Montenegro. Mujanović Kapidžija claims that they would occasionally insult her with Islamophobic and sexist slurs, and would have heated exchanges with her, which included genocide denial, about Bosniaks and the nature of the war in Bosnia and Herzegovina. These incidents prompted her to learn more about the 1992-1995 war against BiH, including the systematic rape of women, and the denigration of Muslims and Islam. Until that point, Mujanović Kapidžija had not been a pious or practicing Muslim, but she soon started to pray regularly, and observe Islamic rituals and practices, including in her outward appearance. When

26 Baker, *Race and the Yugoslav Region*, p. 85.

27 Garner and Selod, “The Racialization of Muslims”, p. 3.

28 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

she returned from Greece in 2011, she went to work wearing a headscarf with her uniform. Since then, her employer has not allowed her to wear the headscarf, citing internal rules that prohibit the combination of civilian and military clothing, as the headscarf is not an approved part of the official uniform of the Armed Forces of BiH.<sup>29</sup> Mujanović Kapidžija claimed that the Army's *Rulebook*<sup>30</sup> did not explicitly prohibit the wearing of the headscarf, and, further, guaranteed the right to freedom of religion or belief to all its employees,<sup>31</sup> as evidenced by the existence of the Offices of Military Chaplaincy. She followed official internal channels, and petitioned to be allowed to wear a headscarf in a suitable form and colour; to wear a winter under cap (which is in the official uniform) outside of winter; and for the design of a summer under cap (that would cover the same part of the head as her headscarf). These petitions called for specific amendments to the *Rulebook*, as outlined by the book's own procedure, to accommodate her needs.<sup>32</sup> Mujanović Kapidžija approached the Institution of the Ombudsman of BiH, which in 2012 issued a recommendation asking the Armed Forces of BiH to remove the "discriminating practice, especially multiple discrimination based on religion and sex so that everyone can have even-handed position".<sup>33</sup> Understanding the gravity of the situation, the Armed Forces of BiH's Islamic Community Office of the Military Chaplaincy (*Vojno muftijstvo*)<sup>34</sup> gave its opinion on the wearing of the headscarf for Muslim women, and suggested to the Ministry of Defence how it could be integrated into the uniform.<sup>35</sup> These efforts have, however, so far been in vain. In the meantime in November 2011 Mujanović Kapidžija was sanctioned for a "breach of military discipline",<sup>36</sup> for insisting on wearing her headscarf with her uniform. She was consequently prohibited to advance through the ranks, and could not be promoted for a duration of three years.<sup>37</sup> In 2015, she was officially transferred from her barracks in Sarajevo to the Ustikolina Military Campus,

29 Ministry of Defence of BiH, Decision No. 16-15-14-03-34-5-375-6/10, 26 September 2011.

30 Rulebook on the Service in the Armed Forces of Bosnia and Herzegovina, No. 06-02-3-4958/12

31 Emela Mujanović, "Appeal Due to Problems and Discrimination in Relation to Manifestation of Religion at Work", 1 September 2011.

32 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

33 Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, "Recommendation in Connection to the Appeal submitted by Mujanović Emela, No. Ž-SA-06-1212/11", 28 June, 2012.

34 The post-war formation of the Armed Forces of BiH in 2005 integrated two armies: the Army of the Federation of Bosnia and Herzegovina, and the Army of Republika Srpska. It included the establishment of Military Chaplaincies for the three dominant religious communities – Roman Catholic, Serbian Orthodox and Islamic and involved the appointment of military chaplains (priests and imams), the creation of prayer spaces, and the observation of communal prayers and celebrations.

35 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Nesib Hadžić), 27 January 2021.

36 Ministry of Defence of BiH, "Decision on the Promulgation of the Disciplinary Sanction, No. 16-15-14-03-34-5-383-21/11", 15 November 2011.

37 Ministry of Defence of BiH, "Decision on the Promulgation of the Disciplinary Sanction, No. 16-15-14-03-34-5-383-21/11", 15 November 2011.

90 km from her place of residence, despite the fact that she was now a mother of three girls, one of whom had a disability. She filed an appeal with the Court of BiH, claiming that her right to freedom of religion had been violated and that she had been discriminated against as a Muslim and a woman, and requested a review of the *Rulebook*. The Court of BiH<sup>38</sup> dismissed her claims in 2021, and accepted the justification her employer offered during the hearing, which was that this limitation had a legitimate aim (as per Article 9.2. of the European Convention on Human Rights),<sup>39</sup> i.e., that:

the wearing of the headscarf could lead to the deterioration of social relations, and represents a danger to the functioning of the Armed Forces of BiH as well as public order in Bosnia and Herzegovina. ”<sup>40</sup>

She then took her case to the Constitutional Court of BiH in 2021 to request a constitutional review, for which she was awaiting a final judgement at the time of writing.<sup>41</sup> In 2021, Bakir Izetbegović, Deputy Speaker of the House of Peoples of the Parliamentary Assembly of BiH,<sup>42</sup> submitted a parallel case to the Constitutional Court, requesting a constitutional review of the same *Rulebook* that would lift its restriction on men growing beards. A group of Bosniak Muslim men from the Armed Forces of BiH approached Izetbegović and requested he officially initiate the constitutional review, since his position authorised him to do so.<sup>43</sup> Izetbegović did not mention the headscarf at any point in the proceedings, even though Sergeant Mujanović Kapidžija had been fighting her case for more than 10 years, and it had been widely publicised in the media. In Izetbegović’s case, the Constitutional Court ruled that

the absolute prohibition of the growing of the beard for soldiers in the Armed Forces of BiH while in service and uniform violates their right to private life and the right to freedom of religion or belief guaranteed by Article II/3.f) and

38 The judge in this case, Dragica Miletić, was sanctioned in September 2022 by the High Judicial and Prosecutorial Council of BiH, for her actions in a case before the Court of BiH in March 2020, in which, after plaintiff Mehdi Jakubović stated that he survived “a genocide”, she insisted the term be changed to “a crime” (Disciplinary Council Decision: 11-07-6-541-12/2022), <https://detektor.ba/2022/10/14/drzavna-sutkinja-zbog-mijenjanja-termina-genocid-kaznjena-smanjenjem-plate/>.

39 According to the Constitution of BiH, the European Convention of Human Rights is directly applicable in BiH. Its Article 9.2 states: “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.

40 Court of BiH, “No. S1 3 P 035228 20 P, Judgement”, 23 February 2021.

41 In May 2023

42 At the time of writing, Izetbegović was a former member of the Presidency of Bosnia and Herzegovina, current president of leading Bosniak political party the Party of Democratic Action (SDA). He is also the son of Alija Izetbegović, the first president of Bosnia and Herzegovina and of the SDA. The SDA is the biggest political party in the country, and claims to represent the interests of Bosniak Muslims.

43 *Review of Constitutionality of Laws*, [https://www.ustavnisud.ba/en/review-of-constitutionality-of-laws?force\\_locale=true](https://www.ustavnisud.ba/en/review-of-constitutionality-of-laws?force_locale=true), accessed on 11 May 2022.

g) of the Constitution of Bosnia and Herzegovina and Articles 8 and 9 of the European Convention, since the current measure is not aligned to the general aims prescribed in Item 2 of Articles 8 and 9 of the European Convention.<sup>44</sup>

The Court thereby ordered the Ministry to amend the *Rulebook* regarding the beard (which it did), but not the headscarf.

The issues discussed in the preceding sections, i.e., intersectionality as envisaged by Crenshaw, the concept of Islamophobia as racism, and the inherent characteristics of the case, provide a solid foundation on which the second part of this paper, which contains a more detailed discussion and analysis of the case, is built.

## Discussion

The point of this paper is not to argue a clear case of indirect discrimination on the grounds of sex and religion; this is well stated in the opinion issued by the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, which indicates that the restriction predominantly and disproportionately harms Muslim women. The Ombudsman argues that this barrier could be removed with minor corrections to the *Rulebook*, which would allow Muslim women to wear the headscarf when they work, earn and serve<sup>45</sup>. Rather, the paper argues that underlying and intersecting individual and institutional Islamophobic/racist and sexist beliefs, tendencies and actions have allowed for the unequal treatment of Muslim women to go unchecked. This has resulted in their institutional and systemic exclusion, neglect, marginalisation and discrimination, which is manifested in “indirect discrimination involving both grounds of sex and religion”.<sup>46</sup> To make this point, it will first discuss institutional Islamophobia/racism and sexism, then follow with an examination of the broader culture of systemic Islamophobia in Bosnia and Herzegovina.

44 Constitutional Court of BiH, Case No. U-9/21, “Decision on Admissibility and Merits”, 2 December 2021.

45 Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, “Recommendation in Connection to the Appeal submitted by Mujanović Emela, No. Ž-SA-06-1212/11”, 28 June 2012.

46 Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, “Recommendation in Connection to the Appeal submitted by Mujanović Emela, No. Ž-SA-06-1212/11”, 28 June 2012.

*Institutional Islamophobia and epistemic racism*

Despite Sergeant Mujanović Kapidžija's claims, and those of the Islamic Community of BiH through the Islamic Community Office of the Military Chaplaincy, and witnesses in the hearings (including Director of the Nahla Center for Education and Research Sehija Dedović),<sup>47</sup> both the Ministry of Defence and Court of BiH failed to acknowledge the nature of the headscarf, and the meaning it has in the lives and beliefs of some Muslim women. Both the Ministry and the Court accepted the prejudices expressed by some members of the other two ethnic groups<sup>48</sup> ( i.e. Serbs and Croats) as more authentic, factual and relevant. According to the testimony of Adil Pašić (senior staff member, advisor to the Minister and legal expert) when the *Rulebook* was drafted, some members of these groups did not consent to the headscarf being part of the uniform, saying that "they are bothered and insulted by the wearing of the headscarf"<sup>49</sup>. Pašić stated during the hearing, on behalf of the Ministry, that this is the reason it (the wearing of the headscarf) would therefore "damage the unity of the Armed Forces" and "public order and existing interpersonal relations",<sup>50</sup> and was consequently not permitted. At no point did the Ministry offer evidence to substantiate such claims, and there are no studies or findings that indicate such a potential outcome. The material presented indicates that the Ministry recognised these attitudes, and accepted them as valid. This is despite the fact that at the beginning of this case in 2011, in the Ministry's own pronouncement of disciplinary action against Sergeant Mujanović Kapidžija, it accepted as a mitigating factor that

the wearing of civilian clothing did not stop her from fulfilling her regular duties in her unit, that this breach of discipline did not cause harm or damage to her unit, that by committing this mistake or transgression she did not deprive nor minimize other rights of the members of the Army.<sup>51</sup>

This is similar to Crenshaw's argument about the Black rapist: the dominant population exploit the alleged danger, even if (as in most cases) a rape is not even alleged, and use it to legitimise the practice of lynching; the mere claim of fear is enough.<sup>52</sup> Pašić, on behalf of the Ministry, asserted that some of those who opposed the idea during these discussions countered it by stating that if the

47 A CSO that caters to the diverse needs of women, with programs that focus on Muslim women.

48 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Adil Pašić), 27 January 2021.

49 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Adil Pašić), 27 January 2021.

50 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Adil Pašić), 27 January 2021.

51 Ministry of Defence of BiH, "Decision on the Promulgation of the Disciplinary Sanction, No. 16-15-14-03-34-5-383-21/11", 15 November 2011.

52 Crenshaw, "Mapping the Margins", p. 1272.

headscarf were allowed, they would come to work in *šajkača*.<sup>53</sup> When asked by Sergeant Mujanović Kapidžija's lawyer whether he was equating the wearing of the headscarf and with that of the *šajkača*, Pašić responded that it was not up to him to decide issues of the Serbian Orthodox or Roman Catholic faiths.<sup>54</sup> In doing so, he confirmed that a religious community should have the right to define the elements of its faith, an option consistently denied the Islamic Community of BiH and the Islamic Community Office of the Military Chaplaincy, as their suggestions and opinions about the headscarf were not taken seriously.<sup>55</sup> Pašić insisted on the need for consensus among the three ethnic communities on all issues. In doing so, however, he omitted the frequently repeated fact that the Islamic Community does not consent to the content of the *Rulebook* in this regard. Further, he did not present any evidence in which either the Serbian Orthodox or Roman Catholic Church, or any individual soldier, officially petitioned the Ministry for a *šajkača* to be an official part of the uniform. The Interreligious Council of Bosnia and Herzegovina backed Sergeant Mujanović Kapidžija on their Facebook page, stating that her stance was in line with many of their projects, and that they extended their "full support to Mrs. Emela Mujanović-Kapidžija in her fight for the right to freedom of religion or belief".<sup>56</sup>

Nesib Hadžić, Chief Imam of the Islamic Community Office of the Military Chaplaincy, testified during the hearing that he had worked on the drafting of the *Rulebook* in 2012, and that he was aware it violated Muslim women's right to wear the headscarf. He stated that he and other members of the Islamic Community Office spoke up on the issue on several occasions, and suggested solutions "similar to those in Western countries",<sup>57</sup> which used fabric and colours appropriate to the military. They even submitted photographs. Hadžić explained that after the *Rulebook* was adopted, some Muslim women and many Muslim men had complained to the Islamic Community Office about violations of their rights (at this point the *Rulebook* prohibited growing a beard, which had previously been allowed). He further stated that he had written to the Chief of Staff asking that the *Rulebook* be aligned with existing legislation allowing for the freedom of religion or belief, but did not receive a reply. Hadžić said he was

53 *šajkača*: a Serb national (predominantly) military cap.

54 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Adil Pašić), 27 January 2021.

55 The Court rejected all Mujanović Kapidžija's claims, and repeated that the headscarf was part of civilian clothing, not part of the uniform. It asserted that her rights were being respected, and that no one intended to discriminate against her. To Mujanović Kapidžija's request that the Court involve the Islamic Community and the *Vojno muftijstvo*, they replied: "they have been informed about the case" (Ministry of Defence of BiH, "Decision No. 16-15-14-03-34-5-375-6/10", 26 September 2011).

56 Facebook page of the Interreligious Council of BiH, <https://www.facebook.com/mrvbih/posts/1737660233111629/>, accessed on 15 May 2022.

57 Court of BiH, "Minutes from the Continuation of the Main Hearing" (testimony of Nesib Hadžić), 27 January 2021.

orally informed that “the headscarf would endanger interpersonal relations in the Army”.<sup>58</sup> He added:

During the drafting of the *Rulebook*, there were people involved in the drafting process who claimed that the headscarf was a religious symbol, which was in direct opposition to what we were telling them, namely that that this was a legal Islamic norm, and not a crescent moon and a star on a necklace.<sup>59</sup>

He also confirmed that the existing under cap, with slight alterations and a lighter fabric for summer, would be acceptable from the Islamic perspective, according to him.<sup>60</sup> When Sergeant Mujanović Kapidžija first returned to the Armed Forces of BiH from Greece, Standard Operating Procedures (SOPs) were in force, and a new *Rulebook* was to be drafted imminently. In her exchanges with the Ministry at that time, Mujanović Kapidžija argued that the SOPs allowed men to grow beards, but not women to wear headscarves.<sup>61</sup> When the new *Rulebook* was adopted in 2012, it retained the prohibition of combining civilian clothing with the uniform, did not include the headscarf as an official part of the uniform, and no longer allowed men to grow beards. It made an exception for the clergy, as it is required by the Serbian Orthodox Church that members of its clergy grow beards. The Chief Imam expressed his approval of this exception as it also allowed the Muslim clergy to grow beards, although this is not a strict Islamic requirement, but was disappointed that a similar accommodating principle was not granted to the Islamic Community of BiH in relation to the headscarf.<sup>62</sup>

At the time this issue first arose, when Sergeant Mujanović Kapidžija was responding to her first disciplinary sanction, she stated that she should have the right to work, and that she felt discriminated against; she should have the same right as other women to wear what she chose, and that she was capable and smart,

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58 Court of BiH, “Minutes from the Continuation of the Main Hearing” (testimony of Nesib Hadžić), 27 January 2021.

59 Court of BiH, “Minutes from the Continuation of the Main Hearing” (testimony of Nesib Hadžić), 27 January 2021.

60 Court of BiH, “Minutes from the Continuation of the Main Hearing” (testimony of Nesib Hadžić), 27 January 2021.

61 Mujanović Kapidžija complained to the General of the Armed Forces of BiH that many of her colleagues violated the *Rulebook* (e.g., by wearing makeup, or not being clean shaven), but there had been no disciplinary procedures against them (Emela Mujanović, “Appeal Due to Problems and Discrimination in Relation to Manifestation of Religion at Work”, 1 September 2011). In her statement, addressing her violations of the SOPs, she asserted that they did not ensure her rights according to existing legislation and the constitution. The women’s uniform did not envisage headscarves, so women who did not wear the headscarf were not impacted. She further stated that the fact that men, including Muslim men, were allowed to grow a beard represented a double standard (Ministry of Defence of BiH, “No. 16-15-14-18-04-34-5-183-3/11, Minutes of the Statement Given in Relation to Establishment of Disciplinary Responsibility (Sergeant Emela [Fadil] Mujanović)”, 3 October 2011).

62 Court of BiH, “Minutes from the Continuation of the Main Hearing” (testimony of Nesib Hadžić), 27 January 2021,.

and did her job well.<sup>63</sup> The Ministry of Defence replied that “her claims that she felt discriminated against were neither confirmed nor proven with any evidence or established facts during the course of the hearing”.<sup>64</sup>

The failure to acknowledge and validate the experience, beliefs and knowledge of Muslims as Muslims (women or men, e.g., Sehija Dedović, Emela Mujanović Kapidžija, and Nesib Hadžić), speaking either in their personal capacities or on behalf of an institution (e.g., the Islamic Community of BiH, or CER Nahla) by undervaluing a Muslim way of life (in this case, manifested in the wearing of the headscarf and the meaning it has for some Muslims), and meeting them with unwarranted disbelief are indicative of (systemic and epistemic) anti-Muslim racism and injustice.<sup>65</sup> This amounts to a marginalisation of Islamic ways of knowing, believing and living, and deems the needs of Muslims (as Muslims) insufficiently important for the Court or Armed Forces to accommodate.

Sergeant Mujanović Kapidžija’s individual human rights (of a Bosniak Muslim woman) to freedom of religion or belief and private life were barely considered. She was seen primarily as a member of a collective, whose beliefs and ways of life (epitomised in the statements and opinions of the Islamic Community Office of the Military Chaplaincy, and complaints presented by other Muslims), were not respected or accepted.

### *Sexism and Gendered Islamophobia*

When sex-based discrimination was discussed throughout the case, the Court stated that Mujanović Kapidžija was not treated differently to other women and men in the Armed Forces of BiH in the same or similar situations. The Court did not at any point acknowledge that her situation was not comparable to anyone else’s, nor did it problematise the fact that her 2015 transfer to Ustikolina was, according to the testimony of Major Jasmina Omerbegović, “very badly received by other women in the Armed Forces of BiH, since a woman with three children cannot be moved from her current place of residence.”<sup>66</sup> Major Omerbegović stated that she understood the transfer occurred as a result of the headscarf issue,

63 Ministry of Defence of BiH, “Decision on the Promulgation of the Disciplinary Sanction, No. 16-15-14-03-34-5-383-21/11”, 15 November 2011.

64 Ministry of Defence of BiH, “Decision on the Promulgation of the Disciplinary Sanction, No. 16-15-14-03-34-5-383-21/11”, 15 November 2011.

65 Ramón Grosfoguel and Eric Mielants, “The Long-Duree Entanglement Between Islamophobia and Racism in the Modern/Colonial Capitalist/Patriarchal World-System: An Introduction”, *Human Architecture: Journal of the Sociology of Self-Knowledge* 5(1):1-12 (2006), p. 8.; and Ramon Grosfoguel et al., “‘Racism’, Intersectionality and Migration Studies: Framing Some Theoretical Reflections”, *Identities*, 22:6 (2014), p. 646.

66 Court of BiH, “Minutes from the Main Hearing” (testimony of Jasmina Omerbegović), 7 October 2020.

and that Ustikolina was chosen because it is “a mono-ethnic (i.e. Bosniak) unit with Muslims only”.<sup>67</sup>

The issue of indirect discrimination was not mentioned at any point, although this is a clear case in which a general prohibition disproportionately targets a particular group, i.e., (headscarf-wearing) Muslim women, and does not affect men or non-headscarf wearing women (similar to Crenshaw’s argument in relation to Black men or White women previously discussed<sup>68</sup>). The Court stated

allowing for different treatment of anyone would damage the unified system, and then different requests from different people would lead the Armed Forces to become unrecognisable, where “one has a beard, one a headscarf, one another kind of cap”.<sup>69</sup>

In doing so, the Court presented this potential situation as one of chaos or anarchy, as if no Armed Forces in the world allow for such religious accommodations, or have clear rules on the subject.<sup>70</sup> This claim for the necessity of a unified system, uniformity among individuals, and strict universal standards falsely universalises a particular type of person as the norm, while excluding others, in this case Muslims. This is similar to the neutrality debate in some Western European countries, where

in practice, such dress codes disproportionately affect Muslim women and discriminate against them. Neutrality dress codes are not neutral but [...] rely on Islamophobic discourses that portray Islamic dress as incompatible with neutrality. While neutrality, in its conception, aims to achieve equality and preserve freedom, the way it is understood and implemented today inherently discriminates against certain groups by determining the boundaries of what one should look like to be considered “neutral”. While some groups are assumed to be neutral, other groups are cast as different, suspect, and face the task of constantly having to prove their “neutrality.” The vagueness and flexibility of the concept of neutrality raise questions about the legitimacy of neutrality dress codes. If both the state and private businesses can justify such dress codes by simply invoking “neutrality,” against the backdrop of widespread Islamophobia, the risk that neutrality is abused to justify the exclusion of “visible” Muslim women, or other groups for that matter, is real.<sup>71</sup>

The Court here does not acknowledge the reasonable need expressed by a Muslim woman who (as a woman) requires a headscarf as a part of her uniform, not only

67 Court of BiH, “Minutes from the Main Hearing” (testimony of Jasmina Omerbegović), 7 October 2020.

68 Crenshaw, “Demarginalizing the Intersection of Race and Sex”, p. 150.

69 Court of BiH, “No. S1 3 P 035228 20 P; Judgement”, 23 February 2021.

70 For example: “Guide on Religion and Belief in the Armed Forces of the United Kingdom”: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281271/guide\\_religion\\_belief.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/281271/guide_religion_belief.pdf), accessed 5 May 2022.

71 Willem Hutten and Nawal Mustafa, *Contesting Neutrality Dress Codes in Europe* (New York: Open Society Foundations, 2022), pp. 2-3.

in everyday activities, but also as a prerequisite for performing Islamic rituals organised by the Islamic Community Office of the Military Chaplaincy. Nor does the Court consider a situation in which the Islamic Community Office of the Military Chaplaincy itself would employ a headscarf-wearing woman as a chaplain, which this limitation renders impossible. The Court dismissed the idea that “Muslim women who wear the headscarf or would potentially opt for practicing their faith in this way” represented a special category or a group that has received different treatment, although clergymen can grow beards, Muslim men can practice their rituals, and women who do not wish to wear a headscarf (for religious rituals or in public life) are unrestricted. The Court fails to recognise institutional discrimination and exclusion and the barriers that prohibit Muslim women from joining the Army, and thereby perpetuates a narrow normative image of a desired and acceptable woman, into which a Muslim woman wearing a headscarf does not fit. This is seen in its claim that “the plaintiff has not been treated differently to other male or female members of the Armed Forces”, as the Armed Forces of BiH has a uniform for women.<sup>72</sup> That this uniform does not include a headscarf is not considered.

Responses from (mostly Bosniak) Muslims in Bosnia and Herzegovina themselves have been varied. The most dominant message comes from the patriarchal perspective, in which men, and consequently women, do not seem to see this issue as a priority for Muslims, Bosniaks and/or Bosnians. For most, this is not seen as an important issue for them, related to the institutional inclusion of Muslim women in the Armed Forces of BiH (and their presence in public institutions more broadly), but rather as an individual and ‘women’s’ issue: an afterthought undeserving of more serious social or political effort than occasional quite performative solidarity. No serious political or social initiative in this vein has been undertaken by any political party or organisation that claims to represent the rights of its (Bosniak Muslim or Muslim) citizens. Many, including on social media, blamed Sergeant Mujanović Kapidžija for wanting to be a soldier or a working mother, or were interested in her husband’s thoughts on the issue. Some, including some officials from the Islamic Community, questioned her motives.<sup>73</sup> As previously mentioned, Bakir Izetbegović’s parallel initiation of a constitutional review (submitted to the Constitutional Court of BiH in 2021) in relation to the growing of beards in the Armed Forces of BiH did not mention the headscarf, or Mujanović Kapidžija. This is despite the fact that she had fought her case (which has been widely publicised), for more than 10 years, and that the prohibition of beards in the current *Rulebook* was a direct consequence of

72 Court of BiH, “No. S1 3 P 035228 20 P, Judgement”, 23 February 2021.

73 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

her contestation of the rules. This was indirectly confirmed in the subsequent judgement of the Constitutional Court of BiH, which ordered the Armed Forces of BiH to remove absolute prohibition, because “the motive behind the adoption of such a restrictive action remains unclear, due to the fact that the beard was previously allowed in the Armed Forces of BiH”.<sup>74</sup>

Mujanović Kapidžija was not contacted or involved, either by Izetbegović, or the men who approached him. In this case, the Constitutional Court ruled that the absolute prohibition of beards among soldiers in the Armed Forces of BiH violated their rights to a private life and to freedom of religion or belief, and the Ministry consequently amended the *Rulebook*. Sergeant Mujanović Kapidžija’s case, however, has still not been addressed, although it was submitted earlier. This disregard for Muslim women’s needs, avoidance of proximity or association to the ‘unmodern’ headscarf issue, and prioritisation of (Bosniak) Muslim men’s needs is in accordance with a perspective that views the articulation of Muslim women’s interests as dangerously divisive. This is comparable to Crenshaw’s claim that “Black women’s particular interests are [...] relegated to the periphery in public policy discussions about the presumed needs of the Black community”<sup>75</sup> and that the focus is narrowly on “sex- and class- privileged Blacks”,<sup>76</sup> which in this case translates to sex- and class- privileged Bosniak Muslim men. This is not to say that Bosnian and/or Bosniak Muslim men are not subjected to Islamophobia and Islamophobic secessionist nationalism in BiH, and that balancing the groups’ priorities is easy. The struggle against Islamophobic secessionist nationalism remains an immense challenge, and has been the primary oppositional force in the lives of Bosnian and/or Bosniak Muslims (as racism in Crenshaw’s analysis is still seen by many as the primary oppositional force in Black lives.)<sup>77</sup>

Muslim women, like Crenshaw’s Black women, can find themselves in two opposing groups, with a need to split their political energies<sup>78</sup> between fighting Islamophobia and fighting sexism. It is not much help to them that diverse feminist and women’s organizations and collectives, as well as official institutional gender mechanisms in BiH, international organisations, and embassies have generally remained “strategically silent”<sup>79</sup> on this issue. Despite claims and slogans that evoke solidarity, and the funds poured into the implementation of, for example, UN Security Council Resolution 1325 on Women in the Armed Forces, almost no representatives from these organisations (except the rare ones like CEI Nahla),

74 Constitutional Court of BiH, Case No. U-9/21, “Decision on Admissibility and Merits”, 2 December 2021.

75 Crenshaw, *Demarginalizing*, p. 139.

76 Crenshaw, *Demarginalizing*, p. 140.

77 Crenshaw, *Demarginalizing*, p. 140.

78 Crenshaw, “Mapping the Margins”, p. 1252.

79 Crenshaw, “Mapping the Margins”, p. 1253.

official institutional gender mechanisms, or embassies have reached out to Sergeant Mujanović Kapidžija<sup>80</sup>. It is beyond the scope of this paper to engage in a deeper analysis of these positions, which could reveal more of the reasons why Black feminists (and others) felt the need to critique secular and liberal theories, the limitations of liberal feminism, and responses to its exclusionary nature of for example Black or Muslim women. Projecting an idea of universal womanhood that erases power relations among women and universalises a particular experience at the expense of minoritized experiences is little more than an exercise in power and privilege.

Subsequent to the discussion of institutional Islamophobia/racism and sexism in this section, a broader picture emerges in which the systemic elements of Islamophobia/anti-Muslim racism in Bosnia and Herzegovina become apparent. These will be discussed in the next subsection.

### *Systemic Islamophobia*

Islamophobia or anti-Muslim racism is, like many other kinds of racism, not reflected only in individual attitudes, but is systemic in nature. This means it is maintained at the micro (e.g., individual interactions) and macro (e.g., policy) levels.<sup>81</sup> As previously stated, the process of racialisation draws a line around all the members of a group and ascribes them characteristics, not because they are all the same, but because the ‘gaze’ is unifying: those who produce, absorb and reproduce representations of ‘Muslims’ transform dissimilar individuals into a homogeneous group.<sup>82</sup> Racialisation is therefore a “key analytical concept [that] allows us to make sense of the fact that regardless of physical appearance, country of origin and economic situation” individuals<sup>83</sup> are homogenised and degraded by Islamophobic discourse; their everyday practices are essentialised; and their bodies transformed into racialised Others.<sup>84</sup> The process of racialisation entails

ascribing sets of characteristics viewed as inherent to members of a group because of their physical or cultural traits. These are not limited to skin tone or pigmentation, but include a myriad of attributes including cultural traits such as language, clothing, and religious practices. The characteristics thus emerge as ‘racial’ as an outcome of the process.<sup>85</sup>

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80 U.S. Department of State in their Annual Report on International Religious Freedom, in Reports for 2021 and 2022 for Bosnia and Herzegovina included a brief description of the case, wrongly attributing the appeal submitted to the Constitutional Court of BiH to the Islamic Community of Bosnia and Herzegovina, <https://ba.usembassy.gov/our-relationship/official-reports/>

81 Garner and Selod, “The Racialization of Muslims”, p. 7.

82 Garner and Selod, “The Racialization of Muslims”, p. 6.

83 Garner and Selod, “The Racialization of Muslims”, p. 9.

84 Garner and Selod, “The Racialization of Muslims”, p. 9.

85 Garner and Selod, “The Racialization of Muslims”, p. 4.

Critically, this process is not without an end: it serves a political, social or economic purpose of a group that aims to widen its power by means of defining a scapegoat (real or invented), and excluding this scapegoat from resources and the constructed ‘we’.<sup>86</sup> As mentioned, this case began when soldier Mujanović Kapidžija returned from Greece, and started wearing the headscarf to work. During this time she was ridiculed by some of her colleagues, who she said took photos of her and sent them to the press.<sup>87</sup> Sensationalist reporting in the media at that time included headlines such as “The Army is under the hijab”, and statements like

Young soldier who continuously ignores orders and does not want to stop wearing prohibited clothing is breaking the rules and making a caricature of the Army, which seems to be preparing itself to enter NATO in a hijab.<sup>88</sup>

Some even called her “a supporter of Ghadaffi”.<sup>89</sup> In her early exchanges with the Ministry, Mujanović Kapidžija urged her General to acknowledge the discrimination against her, which jeopardised her privacy and safety.<sup>90</sup> Privately, in the Army people compared her wearing of the headscarf with the ‘U symbol’ (which stands for *Ustaša*)<sup>91</sup> or the *Četnik*<sup>92</sup> cockade,<sup>93</sup> worn on the *šajkača*<sup>94</sup>.

Unsurprisingly, once the news about the 2021 filing of appeals before the Constitutional Court of BiH regarding the beard and the headscarf was out, sensational statements from leading Republika Srpska politicians quickly followed. These statements weaponised the situation, and racialised the beard and headscarf as deviant and unacceptable, and a dangerous security threat. This is a continuation of Islamophobic narratives that essentialise, produce and reproduce ‘the Muslims’ as ‘the racial Other’, with whom it is consequently not possible to live or cooperate. Accordingly, Republika Srpska is not inclined to share joint institutions with the Federation of BiH, but prefers to be independent from it.

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86 Bayraklı and Hafez, “Introduction”, in *European Islamophobia Report 2015*, pp. 5-8.

87 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

88 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

89 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

90 Emela Mujanović, “Appeal Due to Problems and Discrimination in Relation to Manifestation of Religion at Work”, 1 September 2011.

91 A predominantly Croat ultranationalist movement from the Second World War, with contemporary influence.

92 A predominantly Serb ultranationalist movement from the Second World War, with contemporary influence.

93 A cockade is generally a badge worn on a cap to show political, national or other allegiance, but in the Balkans it is specifically associated with Serbian nationalist allegiance.

94 Notes from a series of conversations between the author and Emela Mujanović Kapidžija in 2021 and 2022.

This is mirrored in Milorad Dodik's statement:

We do not want a Muslim army, and all of this is leading us there. The Court in Sarajevo recently adopted a judgement that allows Muslims to grow beards and women to cover themselves in the Armed Forces of BiH, while some countries in Europe prohibit such things in public spaces.<sup>95</sup>

He goes on to repeat his claim that Republika Srpska has a constitutional right to its own army, stating that such an army existed until 2005, when the “foreigners lied to us that it would be better for BiH to have a joint army, and now it is completely clear that that was wrong”.<sup>96</sup> In an *Informer* article, Dodik explains: “I can understand that a person grows a beard as a personal choice, but not as a religious choice. If it is a religious choice then that is in accordance with Wahhabi standards”.<sup>97</sup> He argues that this confirms his requested redefinition of the Armed Forces of BiH is justified:

As far as I understand there is also an appeal to allow women to cover their faces in line with their religious beliefs [...] That is not good, and I think that the Constitutional Court lost its right to judge a long time ago [...] The Constitutional Court favours Muslims. That is why we will soon dismiss that Court and its decisions<sup>98</sup>.

Similarly, Dušanka Majkić asserts:

Izetbegović is asking that like in every Islamic country the soldiers in the Armed Forces should be able to grow beards or wear headscarves<sup>99</sup>. This is beyond reason in a country in which there are three constituent peoples living together [...] It is impossible to imagine that in the future on our military campuses we might see soldiers with beards and hijabs [...] Chaos is being introduced into the Armed Forces of BiH, and the two other ethnic groups will find it very difficult to accept this manner of functioning. Instead of decently clean-shaven soldiers, we would have those who remind us of the civil war in BiH, or those who participated in the terrorist attack against the USA in 2001 [...] Everything that is not done to us by the High Representative is done by

95 “We do not want a Muslim Army in which Muslim women can cover themselves”, <https://ba.n1info.com/vijesti/dodik-necemo-muslimansku-vojsku-u-bih-cije-se-pripadnice-mogu-prekriti/>, accessed 15 May 2022.

96 “We do not want a Muslim Army in which Muslim women can cover themselves”, <https://ba.n1info.com/vijesti/dodik-necemo-muslimansku-vojsku-u-bih-cije-se-pripadnice-mogu-prekriti/>, accessed 15 May 2022.

97 “Bakir gets his own way, Wahhabis have their grand entry to the Army of BiH! Dodik is bitter: This will only cause intolerance!”, <https://informer.rs/planeta/balkan/657173/dodik-vehabije-brade-vojska-bih>, accessed 15 May 2022.

98 “Bakir gets his own way, Wahhabis have their grand entry to the Army of BiH! Dodik is bitter: This will only cause intolerance!”, <https://informer.rs/planeta/balkan/657173/dodik-vehabije-brade-vojska-bih>, Accessed 15 May 2022.

99 despite the fact that the headscarf was not included in the process initiated by Izetbegović.

the Constitutional Court of BiH. Republika Srpska cannot and shall not put up with this anymore, and will search for its own way.<sup>100</sup>

In a statement in *Blic*, Dragan Mektić states: “Soldiers in the Armed Forces of BiH could look like the Taliban in Afghanistan”.<sup>101</sup> An article in Serbian daily *Politika* entitled “The Armed Forces of BiH should not become the Army of the Mujaheddins”<sup>102</sup> explains that certain political officials from Republika Srpska saw Izetbegović’s constitutional review as the an evidence for the argument that RS should re-establish its own Armed Forces. These officials quote self-professed counter-terrorism expert Dževad Galijašević who explains that Izetbegović’s actions indicate his desire for a Muslim army, which in turn means he supports the dissolution of the Armed Forces of BiH.

Everyone understands that in such an Islamic army there is no place for Serbs and Croats, [and that] [...] Such appeals confirm that Sarajevo today represents the biggest and the most radical Islamic metropolis in Europe, where there are more Arabs than Serbs and Croats together [...] neither NATO nor the EU need such an Army, nor such a BiH.<sup>103</sup>

The inclusion of these statements is intended solely to express how secessionist nationalism racialises a group of people – that of homogenous ‘Muslims’, with a fixed and inherently dangerous identity – for its own political purposes. It does not matter that these people are not only Muslims, or not all of them are Muslims, or practicing or pious Muslims, nor that there is no sign of terrorism or illegal activity in this case, and not even that many of these allegations are untrue. It is enough to produce and reproduce a necessary image in the discourse, and project it onto whomever is envisaged as a scapegoat, thereby recasting oneself as standing at the ‘bulwark of Christianity’ (*antemurale Christianitatis*), defending “the West” from the “Islamic threat”.<sup>104</sup> This amounts to an intentional exploitation of European Islamophobic sentiment, while promoting one’s own political aims.

100 “Open Threats by Dušanka Majkić: RS Will Not Put Up With This Anymore, RS Will Go Its Own Way”, <https://www.oslobodjenje.ba/vijesti/bih/dusanka-majkic-otvoreno-prijeti-rs-ovo-vise-nece-trpiti-trazit-ce-svoj-put-713020>, accessed 15 May 2022

101 “Our Soldiers would Look Like the Taliban: The Hijab and Beard before the Constitutional Court of BiH”, <https://www.blic.rs/vesti/republika-srpska/vojnici-bi-nam-izgledali-kao-talibani-pred-ustavnim-sudom-bih-hidzab-i-brada/m2tcbp7>, accessed 15 May 2022.

102 “The Armed Forces of BiH should not become the Army of the Mujaheddins”, <https://www.politika.rs/sr/clanak/493617/Oruzane-snage-BiH-ne-smeju-postati-vojska-mudzahedina>, accessed 15 May 2022.

103 “The Armed Forces of BiH should not become the Army of the Mujaheddins”, <https://www.politika.rs/sr/clanak/493617/Oruzane-snage-BiH-ne-smeju-postati-vojska-mudzahedina>, accessed 15 May 2022.

104 Baker, *Race and the Yugoslav region*, p. 20.

## Conclusion

This paper explored the extent to which the concept of intersectionality proposed by Kimberle Crenshaw could be used to gain a better understanding of the treatment of Muslim women who want to wear the headscarf in the public service of Bosnia and Herzegovina. It illustrated its point through the case study of Sergeant Emela Mujanović Kapidžija, and her long struggle for the right to wear the headscarf in the Armed Forces of BiH. To do so, it first introduced the details of the case and its main stakeholders, and explained its components, which included (anti-Muslim) racism, intersectionality, Islamophobia, and the process of racialisation. The application of intersectionality allowed a unique dissection of the multitude of oppressions and exclusions that overlap in this particular case, at individual, institutional and systemic levels. The different layers and forces at play were exposed, revealing how they feed into each other to stigmatise and marginalise Muslim women, and encourage unchecked Islamophobic and sexist actions. One of the many specificities of this case is the fact that Sergeant Emela Mujanović Kapidžija started wearing her headscarf while already employed, which allowed the tracing of reactions that would otherwise have been precluded. In the entire case, it was only the Institution of the Ombudsman that offered a balanced and reasonable response, grounded in the principles of non-discrimination and human rights, and the context of the case. The Ombudsman recognised the headscarf as part of the clothing worn by Muslim women, and saw the case as one of multiple discrimination, stating that the SOPs left room for arbitrariness and manipulation. It invoked the principle of equal opportunities, which should be granted to all, and pronounced that Mujanović Kapidžija had been placed in a position unequal to others. It further stated that the Armed Forces of BiH failed to ensure the comprehensive and systematic regulation and enjoyment of the right to freedom of religion. Additionally, because other soldiers photographed her and sent the images to print and electronic media, where they were subsequently published, her right to privacy was violated. The Ombudsman looked favourably upon the fact that Mujanović Kapidžija was willing to fully align her headscarf with the colour, fabric and form determined by the Armed Forces of BiH. It stated that despite this, her superiors ignored her, and she was additionally exposed to victimisation as a result of her religion. During the court hearing, Adil Pašić, acting on behalf of the Ministry, stated that he was not familiar with the Ombudsman's pronouncement, nor did the Court itself find this opinion relevant in its judgement. Both the Ministry and the Court of BiH succumbed to Islamophobic, sexist and ethnicised images, and consequently not only deprived Mujanović Kapidžija of her rights, but also perpetuated the idea

that people of different backgrounds, religions or beliefs cannot live and work together, nor negotiate conditions of acceptance and inclusion for all.

These outcomes illustrate how patterns of subordination intersect in particular women's experiences. They also highlight why the adoption of such a concept and methodological tool as intersectionality is beneficial, and is applicable to the BiH context. The paper focused not on intersectionality as the intersection of identity traits, but the intersection of inequality structures or systems. As a result, any researcher genuinely interested in theoretical and practical intervention strategies in diversity, equity, inclusion and non-discrimination should consider mainstreaming such contextualised analysis in their work. Unfortunately, this analysis also showed that Sergeant Mujanović Kapidžija has been neglected, excluded and denied her rights for more than 10 years, without any institutional, organisational or systemic support for her financial, legal, mental, spiritual or family situation. This neglect has allowed the weaponization and racialisation of her claims, by forces that aim to destabilise Bosnia and Herzegovina.

## Conflict of interest, ethical approval and informed consent

I have followed this case since its very beginning in 2011, first as Head of the Commission for Freedom of Religion of the Islamic Community of BiH, and then as an activist and researcher. I have attended, and taken notes at, the hearings before the Court of BiH as a public representative, and had numerous conversations with Sergeant Emela Mujanović Kapidžija (and took notes of them), who was fully informed about this paper. She shared with me the documentation quoted in the paper, and gave her consent for its use. I thank her for her courage, perseverance, and readiness to share her story with me. All translations in the paper are my own.

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# Prebacivanje krivice na muslimanke: Intersekcionalnost i marama u Oružanim snagama Bosne i Hercegovine

## Sažetak

Ovaj rad propituje u kojoj mjeri je koncept intersekcionalnosti primjenjiv na tumačenje marginalizacije, isključivanja i discipliniranja muslimanki zainteresiranih za nošenje marame u javnoj službi u Bosni i Hercegovini – od dominantnih, često preklapajućih institucija i sistema. Rad predstavlja jedan segment u širem pokušaju koncipiranja okvira za situacionu analizu koji ima za cilj obuhvatiti kompleksnost pozicija i iskustava Bošnjakinja muslimanki od Drugog svjetskog rata do danas. Rad se fokusira na slučaj jedne Bošnjakinje muslimanke zaposlene u Oružanim snagama BiH čiji su opetovani zahtjevi za prilagođavanjem uniforme kako bi joj se omogućilo da nosi maramu dok je u uniformi, aktivirali lančanu reakciju koja je objelodanila prethodno postojeću, podrazumijevajuću islamofobnu i seksističku kulturu koja već dugo dominira društvenim, političkim, pravnim i psihološkim sferama u Bosni i Hercegovini.

**Ključne riječi:** marama, intersekcionalnost, islamofobija, anti-muslimanski rasizam, pravo na slobodu vjere ili uvjerenja, Evropska konvencija o ljudskim pravima