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# GENDER-BASED DISCRIMINATION AND LABOUR IN KOSOVO

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# **GENDER-BASED DISCRIMINATION AND LABOUR IN KOSOVO**

By Iliriana Banjska, David JJ Ryan, Nicole Farnsworth, Lirika Demiri,  
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# ACRONYMS

CSOs	Civil Society Organisations
D4D	Democracy for Development
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
KWN	Kosovo Women's Network
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and differently identifying persons
LGE	Law on Gender Equality
LL	Law on Labour
LPD	Law on Protection from Discrimination
OI	Ombudsperson Institution
SMIL	System of Informative Management of Cases
UN	United Nations
WCOSOs	Women's rights civil society organizations

# EXECUTIVE SUMMARY

This report examines gender-based discrimination and labour, as part of a regional initiative to address such gender-based discrimination in six Western Balkan countries, supported by the European Union (EU). The research aimed to provide information about shortcomings in the relevant legal framework; the prevalence and nature of gender-based discrimination related to labour; the extent to which people have filed claims; and how institutions have treated such cases. The research sought to inform actions of the Kosovo Women's Network (KWN) and its partner organisations, among others. Conducted in 2018, the research involved mixed methods, including a desk review, online survey and interviews.

The legal and policy framework related to gender-based discrimination and labour in Kosovo seems rather comprehensive, particularly considering that much of the law is drafted in accordance with EU law. The Constitution contains broad protections, and several specific laws deal with gender-based discrimination in relation to labour. However, the inharmonious legal framework, with overlapping and differing definitions and sanctions, may contribute to significant confusion and legal uncertainty in courts. Potential for confusion also exists considering the various possible procedures for filing a claim. The Labour Law requires several amendments to harmonize it with EU directives and to further gender equality. The lack of relevant case law makes assessing implementation difficult, though justice institutions can draw on the functioning of the EU legal order to facilitate their understanding of Kosovo law.

Most women and men survey respondents seemed aware that gender-based discrimination is illegal. While several knew that such discrimination should be reported to employers or the Labour Inspectorate, few knew of other institutions dealing with such cases. Low awareness contributes to minimal reporting of gender-based discrimination to relevant institutions. Other factors include workers' concerns over anonymity, fear of job loss, bureaucratic procedures, difficulties documenting cases and, for some, distrust in institutions.

The institutions responsible for addressing gender-based discrimination at work lack data about its prevalence. However, evidence shows that gender-based discrimination exists, particularly in hiring, promotion, maternity leave and sexual harassment at work. Survey findings suggest that such discrimination particularly affects women in the private sector, those receiving lower salaries and persons ages 40 to 49. Minimal information exists about work-related gender-based discrimination among persons with different abilities, minority ethnic groups and persons with various gender identities and sexual orientations.

While police and prosecutors seemed generally knowledgeable about their responsibilities in addressing gender-based discrimination at work, few such criminal cases have been reported, so they lack practical experience. Courts also have little judicial practice, and few judges seemed knowledgeable regarding the relevant legal framework. While labour inspectors tended to know about the Labour Law, they had few such cases and did not seem to consider treating gender-based discrimination a priority; moreover, some reports existed of inspectors' inappropriate treatment of cases. While Ombudsperson Institution representatives seemed very knowledgeable about the relevant legal framework, they too had few cases. Labour unions seek to represent workers' rights, but some union representatives have limited knowledge about gender-based discrimination. This coupled with workers' minimal knowledge about unions or trust in them likely has limited their support of workers in addressing gender-based discrimination. Civil society representatives working in this field tended to know the relevant legal framework, but they have assisted few cases directly.

The report concludes with recommendations targeted to reach relevant actor.

# INTRODUCTION

This report examines gender-based discrimination, defined as discrimination that affects a person *because of her or his gender*. Gender-based discrimination can affect women and men. However, as evidence in this report suggests, it tends to affect women more than men. Therefore, the report tends to focus on gender-based discrimination against women. The terms 'discrimination against women' and 'discrimination against men' are used to make clear whom gender-based discrimination has affected.

Women's labour force participation in Kosovo is worryingly low with only 12.6% of women employed in the labour market, according to official statistics.<sup>1</sup> Several reasons for women's low labour force participation have been identified, including prevalent socialized gender roles according to which some people still believe women's role is in the home (see Box 1);<sup>2</sup> the absence of affordable, accessible childcare; occupational gender stereotypes; low property ownership (17% of all properties) that hinders access to capital; undocumented work in the informal economy; and the overall poor economic climate.<sup>3</sup> Some research has suggested that gender-based discrimination may affect women's labour force participation,<sup>4</sup> but no research had delved into this theme specifically. This research therefore aimed to contribute to knowledge on this hitherto under-researched topic.

Meanwhile, ensuring protection from gender-based discrimination in relation to labour holds significant social and political importance. Broadly, addressing discrimination is

## Box 1. Socialized Gender Roles and Discrimination

Gender-based discrimination as a social phenomenon is rooted in deeply seated socially and culturally constructed stereotypes and prejudices that relate to gender. The term 'stereotype' usually refers to 'beliefs about the traits, attributes and characteristics ascribed to various social groups', according to Colella and Kind. 'Prejudice', they continue, 'is usually marked by the emotion that is aroused when interacting with people of distinct social groups, it is a biased evaluation of a group based on actual or perceived characteristics'. Stereotypes and prejudices influence how society attributes certain gender-specific roles to women and men. Due to stereotypes and prejudices, men and women are not only perceived as biologically different, but society expects women and men to have different social roles in various aspects of life. In addition to affecting the roles that women and men tend to have within the household, stereotypes and prejudices also affect other aspects of life, such as the fields of study that women and men tend to choose in tertiary education, which often determine their occupations later in life.

<sup>1</sup> Kosovo Agency of Statistics, *Labour Force Survey Q3 2018*, p. 10, at: <http://ask.rks.gov.net/media/4551/labour-force-survey-q3-2018.pdf>.

<sup>2</sup> The box draws from: Colella, A.J. and Kind, E.B., *The Oxford Handbook of Workplace Discrimination*, New York: 2018, p. 8, at:

[https://books.google.com/books?id=p\\_pADwAAQBAJ&printsec=frontcover&dq=gender+discrimination+in+the+workplace&hl=en&sa=X&ved=0ahUKewiT8p2yuIDcAhUCISwKHdvZBEoQ6AEIPjAF#v=onepage&q&f=false](https://books.google.com/books?id=p_pADwAAQBAJ&printsec=frontcover&dq=gender+discrimination+in+the+workplace&hl=en&sa=X&ved=0ahUKewiT8p2yuIDcAhUCISwKHdvZBEoQ6AEIPjAF#v=onepage&q&f=false); and Anker, R., Melkas, H. and Korten, A., *Gender-Based Occupational Segregation in the 1990's*, Geneva: 2013, p. 2, at: [http://www.oit.org/wcmsp5/groups/public/---ed\\_norm/-/declaration/documents/publication/wcms\\_decl\\_wp\\_18\\_en.pdf](http://www.oit.org/wcmsp5/groups/public/---ed_norm/-/declaration/documents/publication/wcms_decl_wp_18_en.pdf).

<sup>3</sup> See KWN, *Kosovo Gender Analysis*, Pristina: KWN, 2018, at: <https://womensnetwork.org/wp-content/uploads/2018/10/womens-network.pdf>.

<sup>4</sup> See KWN, *Striking a Balance: Policy Options for Amending Kosovo's Law on Labour to Benefit Women, Men, Employers and the State*, Pristina: KWN, 2016, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160504154201373.pdf>; and Riinvest Institute, *Women in the Workplace: an Analysis of the Workforce Conditions for Women in Kosovo*, Pristina: 2017, p. 9, at: [https://riinvestinstitute.org/uploads/files/2017/November/10/Women\\_in\\_the\\_workforce1510308291.pdf](https://riinvestinstitute.org/uploads/files/2017/November/10/Women_in_the_workforce1510308291.pdf).

important for safeguarding fundamental rights, and Kosovo must ensure respect for fundamental rights in its efforts to become a member of the European Union (EU).<sup>5</sup> Towards aligning Kosovo law with the *Acquis Communautaire*,<sup>6</sup> the ongoing process of amending Kosovo's Law on Labour began in 2015. During this process, civil society representatives and governmental officials alike have discussed the implications that amending this Law may have for women's participation in the labour market. Prior research has suggested that current maternity leave provisions contribute to discrimination against women in hiring, as employers seek to circumvent costs affiliated with maternity leave.<sup>7</sup> However, minimal information seemed to exist as to the implementation of the relevant legal framework pertaining to gender-based discrimination, at the outset of this research.

In order to address this dearth of information and its potential political consequences, in 2018 the Kosovo Women's Network (KWN) began cooperating with women's rights civil society organizations (hereafter, 'WCSOs') from five other Western Balkan countries towards addressing gender-based discrimination in relation to labour. This research report is one of six country reports and an accompanying, comprehensive regional report that examine gender-based discrimination as it relates to labour. This research seeks to inform the WCSO partners', among others', future awareness-raising efforts and advocacy initiatives, towards decreasing the prevalence of gender-based discrimination in labour. The research aims to provide improved information about the prevalence and nature of gender-based discrimination related to labour; the extent to which people have filed gender-based discrimination claims; and how institutions have treated such cases. More specifically, this research aimed to answer the following research questions:

- I. To what extent is the legal and policy framework relating to gender-based discrimination complete?
- II. How many work-related gender-based discrimination cases have been reported to different types of institutions in 2008-2017?
- III. For what reasons have few discrimination cases been reported and/or filed?
- IV. How have relevant institutions treated discrimination cases to date?

## Methodology

In order to answer the aforementioned questions, KWN conducted research from March to December 2018. The research involved mixed research methods. First, a legal analysis examined and assessed current anti-discrimination legislation in place in Kosovo, including any shortcomings in aligning national legislation with the *Acquis Communautaire*, focusing on gender equality related legislation. It examined international laws, treaties and conventions, the Constitution of the Republic of Kosovo, Kosovo's relevant national laws and secondary legislation. The legal analysis also identified the relevant institutions, their roles and responsibilities. Second, existing literature on discrimination was reviewed.

Third, gender-disaggregated data related to discrimination cases was requested from several institutions that have a legal responsibility related to addressing gender-based discrimination. Fourth, representatives from these institutions, selected using variation sampling, were interviewed using a semi-structured interview guide to measure their knowledge, awareness and experience with gender-based discrimination related to labour.

Fifth, an anonymous online survey in three languages (Albanian, Serbian and English) was launched using Lime Survey to collect input from diverse women and men regarding their

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<sup>5</sup> Chapter 23.

<sup>6</sup> Pursuant to the Stabilisation and Association Agreement between the European Union and Kosovo (10728/1/15 REV), Kosovo has committed to approximate its legislation to that of the EU (Art. 74).

<sup>7</sup> KWN, *Striking a Balance*.

knowledge of discrimination legislation, attitudes, personal experiences with discrimination, whether such cases were reported and the reasons why they did not report discrimination. The survey was promoted broadly, also targeting under-represented groups, through media, email and Facebook boosting. Of 3,782 total respondents, 1,279 (34%) completed at least 90% of the questionnaire. Of them, 67% were women and 33% men. Considering that the number of respondents to each question differed, the precise number of respondents is presented in the findings ('n'). Considering the small sample size and the fact that it was not a random sample, few analyses were performed regarding the relationship between responses and ethnicity, age or rural/urban location, respectively. Any statements including the term 'significant' in relation to the survey findings suggest statistical testing with a confidence level  $\alpha = 0.05$ . However, given the limitations affiliated with convenience sampling, findings referred to as 'statistically significant' should be interpreted as suggestive, but not conclusive nor generalizable.

A research team of five persons carried out the quantitative and qualitative data analysis. The research therefore involved triangulation of researchers, methods and sources, towards enhancing validity. The main limitations of this research relate to the online survey, which was not statistically representative of the population. Hence, a short-coming of the methodology includes potential bias in general interpretations, given the overrepresentation of certain social groups. For example, from the survey there is an overrepresentation of: women (67% women and 33% men); respondents 39 years old and younger (59%); respondents with high levels of education, i.e. BA, MA and PhD (88%); respondents located in the capital city (50%), compared to only 2% in rural areas. At the same time, the research team believes that the survey provided useful qualitative data regarding people's interpretations of their experiences with gender-based discrimination, which otherwise may have been difficult to collect via random sampling, given the sensitivity of the topic and the need to access persons who believed they had suffered discrimination. For further information about the methodology, please see Annex 1.

## About This Report

This report first analyses the relevant legal framework, presenting the findings of the Legal Analysis. Then, it examines people's awareness, attitudes and reporting of gender-based discrimination, drawing from any existing research, survey findings and interviews. The report proceeds to discuss prevalence and different types of gender-based discrimination, including that affecting different groups of people. Then, the responses of various institutions to gender-based discrimination are examined. The report concludes with recommendations targeted to relevant institutions and actors. Annexes include the methodology, demographic information about survey respondents, the survey tool and an example interview guide.

# LEGAL ANALYSIS

This section examines the extent to which the legal and policy framework related to gender-based discrimination and work is complete in Kosovo. The format of this analysis follows the hierarchy of laws in Kosovo, beginning with international agreements and instruments, followed by the Constitution of the Republic of Kosovo. Then, it analyses relevant laws, focusing on the Law on Labour, Law on Protection from Discrimination and Law on Gender Equality. It discusses relevant secondary instruments, where applicable. Finally, this section discusses the roles of responsible institutions and procedures in place for filing discrimination cases, respectively.<sup>8</sup>

## International Agreements and Instruments

Eight international agreements and instruments are directly applicable in Kosovo. If conflict arises with other provisions of the law, these instruments shall take precedence:

1. Universal Declaration of Human Rights
2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
3. International Covenant on Civil and Political Rights and its Protocols
4. Council of Europe Framework Convention for the Protection of National Minorities
5. Convention on the Elimination of All Forms of Racial Discrimination
6. Convention on the Elimination of All Forms of Discrimination Against Women
7. Convention on the Rights of the Child
8. Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment<sup>9</sup>

Additionally, the Constitution provides that human rights and fundamental freedoms shall be interpreted consistent with the decisions of the European Court of Human Rights (hereinafter, ECtHR), established under the European Convention of Human Rights (hereinafter, ECHR).<sup>10</sup>

The means by which these instruments have been adopted is unique, as Kosovo does not yet have the international legal capacity required to ratify or participate fully in conventions of the United Nations or the Council of Europe.<sup>11</sup> This method of 'constitutionalisation without ratification' raises questions as to the logic of integration, rank, applicability, effect and

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<sup>8</sup> This analysis was prepared based on the English translation of the law. Where the law is unclear, the Albanian text was consulted. However, this did not always provide clarification.

<sup>9</sup> Constitution of the Republic of Kosovo, 2008, at:

<http://www.assemblykosova.org/common/docs/Constitution1%20of%20the%20Republic%20of%20Kosovo.pdf>, Art. 22. It does not currently specifically reference the International Covenant on Economic, Social and Cultural Rights, despite recommendations made by the Committee on Economic, Social and Cultural Rights since 2008.

<sup>10</sup> Ibid, Art. 53. Three major cases have come before the Constitutional Court concerning the use of ECtHR case law: *Ibrahimi and others v Supreme Court*, *Kastrati v Supreme Court* and *Bislimi v MI and others*. A common line of reasoning is identifiable in these cases, in that while the Court accepts its obligation to refer to ECtHR case law, it does not find itself bound by ECtHR rulings by virtue of Article 53. Thus, the term 'interpreted consistent with' may be read as 'not against' ECtHR case law.

<sup>11</sup> De Hert, P. and Korenica, F., "The New Kosovo Constitution and Its Relationship with the European Convention on Human Rights: Constitutionalization 'Without' Ratification in Post-Conflict Societies", *ZaöRV* 76(1), 2016, p. 165, at: [http://www.zaoerv.de/76\\_2016/76\\_2016\\_1\\_a\\_143\\_166.pdf](http://www.zaoerv.de/76_2016/76_2016_1_a_143_166.pdf).

function of these instruments domestically.<sup>12</sup> Similarly, without access to the monitoring and reporting processes under the various instruments, their practical impact within Kosovo is vague, with the exception of possible constitutional challenges.

In the Stabilisation and Association Agreement between the European Union and Kosovo, Kosovo has committed to approximate its legislation to that of the EU.<sup>13</sup> Several EU directives have relevance to gender-based discrimination at work, including the Employment Equality Directive, Gender Goods and Services Directive, Gender Social Security Directive, Parental Leave Directive, Part-time Work Directive, Pregnancy Directive, Racial Equality Directive, Recast Directive and Self-employment Directive.<sup>14</sup> Kosovo is still in the process of approximating its legislation to that of the EU. Specific areas of interest are discussed in relation to the national laws described later in this section.

## The Constitution

The Constitution of the Republic of Kosovo is the highest legal authority of Kosovo.<sup>15</sup> The constitutional order is stated to be based on the principle of non-discrimination.<sup>16</sup> Gender equality is ensured 'as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life',<sup>17</sup> as is the right to work and exercise profession.<sup>18</sup> The operative provision on equality before the law provides:

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.<sup>19</sup>

Thus, the Constitution allows for positive measures. Chapter II sets out fundamental rights and freedoms applicable to all. Chapter III further specifies rights for inhabitants belonging to the same national, ethnic, linguistic or religious group ('communities') in Kosovo.

Although the Constitution provides for a wide range of rights and liberties, Article 55 states that '[f]undamental rights and freedoms guaranteed by this Constitution may only be limited by law.' This provision has attracted some criticism, with some arguing it to be an

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<sup>12</sup> Ibid.

<sup>13</sup> 10728/1/15 REV, Art. 74.

<sup>14</sup> Directives 2000/43/EC, 2004/113/EC, 79/7/EEC, 2010/18/EU, 97/81/EC, 92/85/EEC, 2000/78/EC, 2006/54/EC and Directive 2010/41/EU, respectively.

<sup>15</sup> Constitution of the Republic of Kosovo, 2008, Art. 16.

<sup>16</sup> As well as principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy (Art. 7.1).

<sup>17</sup> Art. 7.2.

<sup>18</sup> Art. 49.

<sup>19</sup> Art. 24.

illogical inclusion.<sup>20</sup> However, such a limitation clause is relatively common in constitutional legal orders,<sup>21</sup> and the remainder of the provision contains standard safeguards such as a proportionality requirement and various considerations for courts to take into account. The principles set forth in the Constitution are effectuated by the various laws examined below.

## The Criminal Code of Kosovo

In Kosovo, criminal matters related to labour are dealt with according to the Criminal Code.<sup>22</sup> Related offences include:

- Violating rights in labour relations, including those related to employment or termination, salaries or other income, length of working hours, absence from work and the protection of women and persons with different abilities;
- Violating rights of employment or unemployment (denial or restriction of employment under equal conditions);
- Violation of the right to management;
- Violation of the right to strike;
- Violation of social insurance rights; and
- Misuse of social insurance rights.<sup>23</sup>

The penalties vary depending on the offence, but each carries the possibility of a fine or imprisonment.

In 2019, Kosovo adopted a new Criminal Code. In addition to maintaining the aforementioned offences, it includes a new article on Sexual Harassment, defined as: 'any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment'.<sup>24</sup> This definition is consistent with both the EU Recast Directive and the Istanbul Convention.<sup>25</sup> Perpetrators of sexual harassment, particularly against persons who are 'vulnerable due to age, illness, disability, addiction, pregnancy', can receive a fine or up to three years' imprisonment. Sexual harassment by a person in 'a position of authority over the person' carries a higher sentence from six months to three years.

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<sup>20</sup> Doli, D. and Korenica, F., "Calling Kosovo's Constitution: A Legal Review", *The Denning Law Journal*, 2010, p. 82, at: <http://www.ubplj.org/index.php/dlj/article/view/354/383>.

<sup>21</sup> Dawood, A. and Bulmer, E. for the International Institute for Democracy and Electoral Assistance, 'Limitation Clauses: International IDEA Constitution-Building Primer 11', 2017, at: <https://www.idea.int/sites/default/files/publications/limitation-clauses-primer.pdf>, where examples of the Canadian Charter of Rights and Freedoms, the Constitution of South Africa and the European Convention of Human Rights are discussed.

<sup>22</sup> Criminal Code of the Republic of Kosovo, Code No. 06/L-074, Chapter XIX, at: [http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/Codeno06L-074\\_km3reese5V.pdf](http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/Codeno06L-074_km3reese5V.pdf); and LPD, Art. 17.

<sup>23</sup> Ibid, Arts. 218-224.

<sup>24</sup> Art. 183.

<sup>25</sup> Recast Directive Art. 2.1(d); Council of Europe, 'Convention on preventing and combating violence against women and domestic violence' (the 'Istanbul Convention'), 2011, Art. 40, at: <https://rm.coe.int/168008482e>. Given its political status, Kosovo cannot become party to the Istanbul Convention, though it may be incorporated as a directly applicable in the Constitution of Kosovo, under Article 22.

## The Law on Labour

The Law on Labour (LL) No. 03/L-212 aims at regulating the rights and obligations deriving from employment relationships<sup>26</sup> and is applicable to natural or legal persons in both the public and private sector.<sup>27</sup>

The LL sets out the formal requirements of **employment contracts** and regulates time periods for contracts.<sup>28</sup> A 2017 KWN Policy Paper observed that the current Law's provision for a fixed period of 10 years to become a permanent employee is far too long and lacks adequate protection for parents.<sup>29</sup> Moreover, experience suggests that employers use temporary contracts to avoid repercussions for breaching LL provisions, particularly those relevant to maternity leave.<sup>30</sup> KWN has recommended reducing the period to three years and introducing an explicit statement that certain cases will not interrupt the calculation of the duration of the contract: namely, temporary incapacity, risk during pregnancy, maternity, adoption, custody for adoption, foster care, risk during breastfeeding and paternity.<sup>31</sup> Moreover, the termination of a probationary period linked to pregnancy should be amended to be treated as direct discrimination.<sup>32</sup> While Article 12 provides that maternity leave will not interrupt the employment relationship, the Policy Paper suggests that the term 'maternity leave' should be extended to include paternity leave and parental leave.

Chapter VI regulates occupational protection and safety. Women, as well as employees under 18 years of age and employees with different abilities, are said to enjoy '**special protection**' under the law. This includes a prohibition on pregnant and breastfeeding women working in labour that is classified as harmful for the health of the mother or the child.<sup>33</sup> The 2017 KWN Policy Paper suggests that to prevent the exclusion of women who are subjects of these 'protections' from work, the provision should be amended to ensure that the employer gives the employee another task.<sup>34</sup> The provision also would be improved by introducing an assessment and information provision similar to Articles 4-5 of the Pregnancy Directive,<sup>35</sup> to ensure that sufficient consideration is given to the nature, degree and exposure of the risk before exclusionary action is taken.<sup>36</sup>

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<sup>26</sup> Republic of Kosovo, Assembly, Law on Labour No. 03-L-212, 2010, Art. 1, at: <http://www.assembly-kosova.org/common/docs/liqjet/2010-212-eng.pdf>.

<sup>27</sup> LL, Art. 2.1.

<sup>28</sup> LL, Arts. 10-11.

<sup>29</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", Pristina: KWN, 2017, p. 19, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20171108105226438.pdf>. Some labour inspectors reaffirmed this, suggesting that long-term contracts would serve as a useful mechanism for preventing employers from avoiding implementation of maternity leave provisions (KWN interviews, 2018).

<sup>30</sup> This was a recurring theme among labour inspectors interviewed by KWN (2018).

<sup>31</sup> Ibid, p. 19.

<sup>32</sup> Ibid, p. 20.

<sup>33</sup> LL, Art. 46. This includes prohibition from physically difficult labour, including exposure to biological, chemical or physical factors that may 'risk the reproductive health'. Administrative Instruction No. 11/2011 for the classification of hard and dangerous forms of labour that may damage the health of pregnancy and breastfeeding women [sic] lists specific areas where pregnant and breastfeeding women are prohibited from working (Arts. 4-5). The LL provides that any prohibition of underground labour 'shall not be applicable to women who are not pregnant in leading posts, for health employees and student interns' (Art. 46.4). It is unclear what purpose this provision serves.

<sup>34</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", p. 23.

<sup>35</sup> Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>.

<sup>36</sup> A risk assessment provision is included in the Law on Safety and Health at Work No. 04/L-161, Art. 16, at: <https://www.kuvendikosoves.org/common/docs/liqjet/Law%20on%20Safety%20and%20Health%20at%20Work.pdf>. However, it is broadly phrased and non-specific to pregnant and breastfeeding workers. Pregnant and breastfeeding workers are specifically mentioned only in the notification requirements (Art. 18).

The LL also states that pregnant women, mothers of children under three years, and single parents with a child under the age of 3, and/or a child with a serious disability are not obliged to work more than full-time working hours (40 hours per week) or night shifts. These rights extend to guardians, where both parents have died or abandoned the child.<sup>37</sup> Breastfeeding mothers also have additional rights under the Law on the Protection of Breastfeeding.<sup>38</sup>

Women are entitled to 12 months' **maternity leave**, which can commence up to 45 days prior to the expected date of birth.<sup>39</sup> In the preceding 28 days before the expected date of birth, the employer may seek the woman's consent to request her to begin maternity leave, if the employer finds that the woman is unable to perform her functions. For the first six months of maternity leave, the employer must pay 70% of the employee's basic salary. In the following three months, should the mother choose to extend her maternity leave, the government pays the employee's compensation at the rate of 50% of the average salary in Kosovo.<sup>40</sup> The following three months, should the mother choose to extend her maternity leave again, are without compensation. If the mother does not wish to seek either of the three-month extensions, she must notify the employer at latest 15 days before the end of the initial six month leave. There appears to be no notification requirement if a woman chooses not to take the first six months of maternity leave. A special provision is made for maternity leave if a child is stillborn, or if the child dies before the end of the maternity leave period.<sup>41</sup> The father of the child may assume the above rights to leave, if the mother 'dies or abandons the child before the end of the maternity leave'.<sup>42</sup> The extension periods also may be conveyed to the father of the child if the mother agrees.<sup>43</sup>

Regarding **paternity leave**, apparently the Law has an error because one article states that fathers may take two days' paid leave at the birth or adoption of a child, whereas another article foresees three days for all employees following the birth of their child.<sup>44</sup> The father also is entitled to two weeks' unpaid leave after the birth or adoption of a child before the child reaches the age of three.<sup>45</sup>

After maternity leave, a special provision is made for either parent for part-time work if a child requires special care due to poor health conditions or permanent disability.<sup>46</sup> The Law prohibits the termination of an employment contract and/or transfer to another post during pregnancy, maternity leave and/or absence from work to care for a child requiring special care.<sup>47</sup>

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<sup>37</sup> LL, Art. 48.

<sup>38</sup> No. 05/L-023. If a breastfeeding mother does not extend her maternity leave following the first six-month period, then from the six-month period up to one year, she is entitled to two hours paid break per day during working hours in addition to her regular break to breastfeed. This entitlement is reduced to one hour for the following year. The Law does not provide protection for women to breastfeed during the first six months following the birth of the child. By not providing such a protection, the law is premised on a presumption that women will not work for these months, while paradoxically constituting a barrier for women to do so.

<sup>39</sup> LL, Art. 49.

<sup>40</sup> Elaborated in No. 01/2018 on administrative procedures the regulation of for the compensation of maternity leave paid by the government. (Republic of Kosovo, National Audit Office Regulation No. 01/2018 on Employment Relationship, at: <http://www.zka-rks.org/wp-content/uploads/2018/03/Regulation-NAO-No-012018-on-employment-relationship.pdf>).

<sup>41</sup> LL, Art. 51.

<sup>42</sup> LL, Art. 49.7. Art. 50 repeats Art. 49.7, but including cases in which the mother becomes sick.

<sup>43</sup> LL, Art. 49.8.

<sup>44</sup> LL, Art. 50.2 and Art. 39, respectively.

<sup>45</sup> LL, Art. 50.2. Article 50 rights extend to guardians if both parents have died or abandoned the child (Art. 50.3).

<sup>46</sup> LL, Art. 52.

<sup>47</sup> LL, Art. 53. The only exception is cases of termination according to Art. 76 on collective dismissals.

Violations of the rights outlined in the LL attract fines ranging from €100 to €10,000.<sup>48</sup>

The Law evidently is premised on an unequal distribution of parental responsibility between mothers and fathers which reinforces traditional divisions of responsibility. For, the mother is assumed the primary carer; by seeking to protect the special relationship between mother and child, the Law denies the father the opportunity to develop such a relationship with his child in the period immediately after birth.<sup>49</sup> Perhaps this may be interpreted as a form of legal, gender-based discrimination. In practice, significant evidence suggests that these legal provisions have resulted in employers avoiding hiring women who may become pregnant, thereby contributing indirectly to gender-based discrimination in hiring.<sup>50</sup> In the 2018 country report on Kosovo, the European Commission confirmed that reform of the system of maternity and parental leave is needed, as it currently represents an obstacle to the hiring of women, particularly in the private sector.<sup>51</sup>

Kosovo has not yet transposed the EU Directive on **parental leave**, which foresees that 'all workers, men and women, irrespective of their type of employment contract' are 'entitled to parental leave on the birth or adoption of a child'.<sup>52</sup> In accordance with this Directive, the KWN 2017 Policy Paper highlighted that in principle workers should be allowed to take all of their leave, and it therefore should not be transferable.<sup>53</sup> However, such transfers may be authorised under the condition that each parent retains at least one of the four months of leave required by the Parental Leave Directive, with a view to encouraging equal uptake of parental leave by both parents.

The LL obliges employers to pay women and men **equal remuneration for work of equal value**, covering base salary and any other allowances.<sup>54</sup> 'Salary' is defined as 'the remuneration or earning of any calculated level in the form of money for the employee'.<sup>55</sup> 'Allowances' is described as additional pay, which the employee is entitled to for working extended hours, during national holidays or night shifts.<sup>56</sup> It is unclear if 'other allowances' refers exclusively to this additional pay, or if the term includes further supplements. The concept appears to be adopted from EU law.<sup>57</sup> For example, the European Court of Justice (ECJ) has considered that travel benefits for workers or family members; maternity benefits; Christmas bonuses; and termination payments all fall within the definition (albeit not social

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<sup>48</sup> Each violation of Articles 46 (protection of women employees), 48 (protection of motherhood), 49 (maternity leave) or 53 (prohibition of contract termination) attracts a fine between €100 and €10,000 (Arts. 5.9, 5.11, 5.12 and 5.13). Each violation of Articles 50 (rights of the child's father), 51 (maternity leave for the loss of a child) or 52 (absence from work due to special care for the child) attracts a fine of between 100€ and 9,000€ (Arts. 4.5, 4.6 and 4.7). (Administrative Instruction No. 07/2012 on the determination of fines and specific amounts for violation of the provisions of labour law, at: <https://ak.rks.gov.net/assets/cms/uploads/files/7.%20U.A.%20NR.%2007-2012%20MBI%20KRITERET%20P%C3%8BR%20LIRIMIN%20OSE%20ULJEN%20E%20MAS%C3%8BS%20ADM INISTRATIVE.pdf>).

<sup>49</sup> Craig, P. and Gráinne de Búrca, *EU Law: Text, Cases and Materials* (5<sup>th</sup>), 2011, p. 877, making the same observation on the ECJ Case 184/83 *Hofmann* at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61983CJ0184>.

<sup>50</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", reaffirmed by interview respondents from diverse institutions (KWN interviews, 2018).

<sup>51</sup> European Commission, *Kosovo 2018 Report*, 156 final, Strasbourg: 2018, p. 60, at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

<sup>52</sup> Council Directive 2010/18/EU.

<sup>53</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", p. 24.

<sup>54</sup> LL, Art. 55.3.

<sup>55</sup> LL, Art. 3.1.13.

<sup>56</sup> LL, Art. 56.

<sup>57</sup> Art. 157 of the Treaty on the Functioning of the European Union and Art. 2.1(e) of the Recast Directive provide that 'pay' means 'the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment, from his/her employer'.

security benefits).<sup>58</sup> Kosovo courts potentially could interpret 'other allowances' just as broadly. Each violation of the equal pay provision attracts a fine between €100 and €7,000.<sup>59</sup>

EU law works based on 'comparators'; the claimant must bring a case in comparison to someone in a similar situation. Thus, in assessing equal pay for work of 'equal value', only workers in the same or a similar position could be compared; comparisons could not be made with workers in other jobs.<sup>60</sup> While the concept of comparator is used in reference to direct discrimination within the Law on Protection from Discrimination,<sup>61</sup> the LL does not reference comparators explicitly.

The LL **prohibits discrimination** in employment. This relates to recruitment, training, promotion, terms and conditions of employment, disciplinary measures, cancellation of the employment contract or other matters arising out of the employment relationship.<sup>62</sup> 'Discrimination' is defined as:

any discrimination including exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, language or trade-union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation capacity building...<sup>63</sup>

A specific provision is included on prohibiting direct or indirect discrimination of persons with different abilities during employment, promotion and capacity-building.<sup>64</sup> The Law makes an exception if a job is not performed 'adequately' by a person with a disability, which raises the question of what level of evidence would be required to show that individuals do not have the required capacity, as well as a risk of stereotyped assumptions about the capabilities of people with different abilities being used in a negative fashion to limit opportunities.<sup>65</sup>

No other specific provisions for other grounds of discrimination are included. However, in the hiring process, employers are 'obliged to create equal opportunities and criteria to both male and female applicants'.<sup>66</sup> The Law fails to mention other forms of discrimination, such as harassment, sexual harassment and instruction to discriminate. The distinction between direct and indirect discrimination is neither defined nor applied to the listed grounds for discrimination, aside with regard to disability.

The Law contains a general 'genuine and determining occupational requirement' exception.<sup>67</sup> This exception is derived from the EU anti-discrimination directives, under which direct discrimination may be justified where the nature of a specific role makes it unsuitable for a person with particular characteristics, provided that the objective pursued is legitimate and the requirement is proportionate.

The discrimination provisions of the LL can be described as minimalistic. These deficiencies are somewhat alleviated by Article 5.5, which provides that the Law Against Discrimination No. 2004/3 (now replaced by the Law on Protection from Discrimination No.

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<sup>58</sup> Craig, P. and de Búrca, G., *EU Law: Text, Cases and Materials*, 2011, pp. 860-861.

<sup>59</sup> Administrative Instruction No. 07/2012, on the determination of fines and specific amounts for violation of the provisions of labour law, Art. 2.24, at: [http://kryeministri-ks.net/repository/docs/RREGULLORE\\_QRK\\_-\\_NR\\_03\\_2017\\_P%C3%8BR\\_MEKANIZMAT\\_INSTITUCIONAL\\_P%C3%8BR\\_MBROJTJE\\_N....pdf](http://kryeministri-ks.net/repository/docs/RREGULLORE_QRK_-_NR_03_2017_P%C3%8BR_MEKANIZMAT_INSTITUCIONAL_P%C3%8BR_MBROJTJE_N....pdf).

<sup>60</sup> Recast Directive, recitals 9-10.

<sup>61</sup> LPD, Art. 4.

<sup>62</sup> LL, Art. 5.

<sup>63</sup> LL, Art. 3.1.17.

<sup>64</sup> LL, Art. 5.2.

<sup>65</sup> Pitt, G., 'Genuine Occupational Requirements', *Academy of European Law*, Trier, 2009, p. 7, at: [http://www.era-comm.eu/oldoku/Adiskri/05\\_Occupational\\_requirements/2009\\_Pitt\\_EN.pdf](http://www.era-comm.eu/oldoku/Adiskri/05_Occupational_requirements/2009_Pitt_EN.pdf)). This exception should be read with Art. 19 of the Law on Protection from Discrimination, which obliges reasonable accommodation in employment for persons with different abilities.

<sup>66</sup> LL, Art. 5.4.

<sup>67</sup> LL, Art. 5.3.

05/L-021) is directly applicable within employment relationships (dealt with separately below). However, a more developed and detailed protection from discrimination specifically set out in the LL for the employment context would be preferable to this cross reference.

Each violation of the prohibition of discrimination attracts a fine of between €100 and €10,000.<sup>68</sup> However, the Law later states, '[w]hen the employer or responsible person discriminates against persons seeking employment or employees shall be fined in the treble amount of the specified provisions of this Administrative Instruction [sic]'.<sup>69</sup> It is unclear what exactly attracts this penalty increase. As the LL covers discrimination in various aspects of employment, it is unclear how 'where the employer or responsible person discriminates against persons seeking employment or employees' differs from what is already contained in the LL.

## Law on Protection from Discrimination

The purpose of the Law on Protection from Discrimination No. 05/L-021 (hereafter 'LPD') is stated to be:

to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.<sup>70</sup>

Hereinafter, this report refers to these as 'the protected grounds': the grounds according to which a person is protected by the LPD. The protected grounds in the LPD are significantly broader than those in the Constitution. Moreover, the LPD foresees potential additional 'other grounds' without explicitly stating them.

Like the LL, the LPD is applicable to natural or legal persons in both the public and private sector. The LPD states that its scope in relation to employment is as follows:

- conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the professional hierarchy, including promotions;
- access to all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience;
- conditions of employment and working conditions, including discharge or termination of the contract and salary;
- membership and involvement in organizations of workers or employers or any organization whose members exercise a particular profession, including the benefits provided for by such organizations; and

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<sup>68</sup> Administrative Instruction No. 07/2012 on the determination of fines and specific amounts for violation of the provisions of labour law, Art. 5.2.

<sup>69</sup> Original text in Albanian: '*Kur punëdhënësi apo personi përgjegjës bënë diskriminim ndaj personave të cilët kërkojnë punë apo punonjësëve do të gjobiten në lartësinë e shumë së trefishtë të përcaktuar me dispozitat e këtij Udhëzimit Administrativ*'.

<sup>70</sup> Law on Protection from Discrimination No. 05/-L-021, at: <https://www.kuvendikosoves.org/common/docs/liqjet/05-L-021%20a.pdf>, Art. 1.

- social protection, including social assistance schemes, social security and health protection.<sup>71</sup>

The LPD establishes that the principle of equal treatment requires there to be no **direct or indirect discrimination** in relation to any of the protected grounds.<sup>72</sup> 'Discrimination' is defined as 'any distinction, exclusion, restriction or preference based on the protected grounds which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislation of the Republic of Kosovo'.<sup>73</sup> The inclusion of 'impact' reflects the rule in EU discrimination law that it is not necessary to prove motivation for prejudice (for example, that the respondent has 'sexist' views) or that a rule or practice was intended to result in differential treatment, if it can be shown that the rule or practice had the *effect* of disadvantaging a protected group.<sup>74</sup> This is an attempt to relieve issues related to securing evidence in discrimination cases, considering that discrimination by its very nature tends not to be manifested in an easily identifiable and open manner;<sup>75</sup> and that law cannot regulate attitudes, but only actions through which such attitudes manifest.<sup>76</sup> Thus, certain ancillary facts surrounding situations of discrimination do not need to be proven for a successful claim to be established.

The LPD defines various forms of **unequal treatment**.<sup>77</sup> 'Direct discrimination' is defined as an instance in which one person is treated less favourably than another is, has been or would be treated in a *comparable* situation, based on one or more of the protected grounds. Thus, an accusation of direct discrimination can be rebutted by establishing that the claimant is not actually in a similar or comparative situation to their 'comparator';<sup>78</sup> or that the differential treatment was not based on a protected ground, but rather on objective differences.

'Indirect discrimination' is defined as situations when a provision, criterion or practice appears impartial, but has put or will put a person in an unequal position compared to others, according to one or more of the protected grounds. Exceptionally, if the provision, criterion or practice can be objectively justified by a legitimate purpose, and the means of achieving that purpose are appropriate and necessary, then the accusation can be refuted. The 'objective justification' exception provided for under the definition of indirect discrimination has its basis in EU law. EU law involves an open system and exactly what can constitute an objective justification is not defined, but rather often left to the national court to decide. However, the ECJ has given some guidance by declaring that certain justifications are too general and

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<sup>71</sup> LPD, Art. 2.1.

<sup>72</sup> LPD, Art. 3.2.

<sup>73</sup> Ibid.

<sup>74</sup> European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, "Handbook on European Non-Discrimination Law", 2018, p. 240.

<sup>75</sup> Ibid, p. 239.

<sup>76</sup> Ibid.

<sup>77</sup> LPD, Art. 4.

<sup>78</sup> Direct discrimination in EU law is based on differential treatment from a similarly situated hypothetical comparator (save in exceptional circumstances where no comparator exists: C-177/88 *Dekker* at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0177>). See the ECJ's guidance in C-381/99 *Brunnhöfer*, at:

<http://curia.europa.eu/juris/document/document.jsf?docid=45902&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=1&cid=10952744> and C-54/07 *Feryn* at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=70156&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10842030>.

indicating that others may be sufficient. In *Bilka* the ECJ formed a test for objective justification of an indirectly discriminatory measure,<sup>79</sup> which is similar to the Kosovo LPD:

- (i) the measure must answer a 'real need' of the employer
- (ii) the measure must be appropriate to achieve the objectives it pursues and
- (iii) must be necessary to achieve those objectives.

Regarding sex discrimination, economic cost or customer preference usually will not justify indirect discrimination, as the standard of justification is high. For example, the ECJ has not given weight to arguments regarding the higher cost of ensuring equal pay between men and women for governments, national economies or private enterprises.<sup>80</sup> However, ECJ guidance does not necessarily determine how Kosovo courts will interpret this exception.

The LPD considers 'harassment' discrimination when it involves unwanted conduct, which has the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment based on the protected grounds. This includes but is not limited to unwanted conduct of a sexual and/or psychological nature. The LPD's definition is similar to the corresponding provision in the EU Recast Directive. However, rather than following the Recast Directive in having a separate definition of sexual harassment, the LPD seems to combine the two.

The LPD defines 'victimisation' as discrimination when 'a person suffers adverse or negative consequences in response to a complaint or non-complaint (started procedures) or actions in order to apply the principle of equal treatment or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination'. This principle is reflected in most of the EU equal treatment directives.<sup>81</sup> An example of this principle would be if an employer refused to provide a reference for a previous employee, if the refusal constituted retaliation for legal proceedings brought by the employee.<sup>82</sup>

'Segregation'; 'incitement to discrimination', which amounts to promoting hatred; 'discrimination based on association'; and 'discrimination based on perception' also are included in the LPD.

'Multiple discrimination', as the final form of unequal treatment listed, is when discrimination occurs based on more than one of the protected grounds. The LPD explains that multiple discrimination, among other forms of discriminatory behaviour, is considered severe. Others are: discrimination committed more than once, or which lasts for a long period of time or which 'had harmful consequences especially for the victim'.<sup>83</sup> Presumably, the court determines what satisfies the final example.

Strangely, 'severe' discrimination is not punished with a distinctively higher fine than 'ordinary' discrimination. Seemingly the only effect of a finding of 'severe' discrimination is that a judge may choose the higher end of the penalty scale. For example, the LPD provides that a natural person who performs an act of discrimination may be fined between €400 and €600.<sup>84</sup> If this act of discrimination is found to be severe, the person presumably would be fined an amount closer to €600. In calculating compensation for a victim, however, the LPD

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<sup>79</sup> C-170/84 *Bilka-Kaufhaus GmbH v Weber von Hartz*, 1986, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61984CJ0170&from=EN>.

<sup>80</sup> Case C-43/75 *Defrenne*, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61975CJ0043&from=NL>.

<sup>81</sup> Recast Directive, Art. 34; Racial Equality Directive, Art. 9; Employment Equality Directive, Art. 11.

<sup>82</sup> Case C-185/97 *Belinda Jane Coote v Granada Hospitality Ltd*, 1998, ECR I-05199, at: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=44105&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10842670>.

<sup>83</sup> LPD, Art. 5.

<sup>84</sup> LPD, Art. 23.1.

provides that a court 'should consider if the case involved serious forms of discrimination'.<sup>85</sup> Therefore, it is within a judge's discretion consider multiple discrimination in this context.

The **offences** and associated fines are as follows:<sup>86</sup>

- €400-600 for a natural person who performs, calls for, instigates or assists in discriminatory activities based on the protected grounds;
- €1050-1350 for a legal entity that in performing its activities, performs, calls for, instigates or assists in discriminatory activities based on the protected grounds;
- €750-1050 for a natural person who is acting in a position of responsibility within a legal entity, state, legal institution or body with public authorisation, or to an individual who has a registered profession (or their delegates), for performing, calling for, instigating or assisting in discriminatory activities. The provision is imprecise;
- €450-750 for concealing facts or information required by the Administrative body or competent court related to a discrimination claim;
- €1050-1350 for failure to implement a decision of the court;
- €450-750 'to every person for offenses, who violates the dignity of certain person or for the creation, access or application of intimidating, hostile, humiliating or frightening environment'. This appears to be a specific fine for harassment, but with a slightly different definition;<sup>87</sup>
- €450-750 'to every person for offenses, who would bring in unfavourable condition the person who filed a complaint on discrimination or in any other form participated in the action for discrimination'. This appears to be a specific fine for victimisation, but with a slightly different definition;<sup>88</sup>
- €450-750 'to every person for offenses, who purposely would bring in unfavourable condition a person who was a witness in the action for discrimination or has rejected the order for discriminatory behaviour'. The meaning of this offence is unclear.<sup>89</sup>

The first three offences appear to be intended as blanket offences covering all forms of unequal treatment in the LPD, separated by the relevant perpetrator (natural person, legal entity or a person in a position of responsibility). However, it is unclear why harassment and victimisation are given specific offences while the other forms of unequal treatment are not. Moreover, rather than linking these two offences to definitions established in Article 4, the Law establishes slightly different definitions for the offence provisions.

Employers are vicariously liable for all discriminatory actions of their employees, regardless of whether employees committed such actions with or without the knowledge or approval of the employer.<sup>90</sup> The employer can defend themselves from such liability if they can prove that they took reasonable and practical steps to prevent an employee from performing discriminatory actions.

While Article 15 establishes that any action carried out by a person during employment is treated as if committed by the employer, Article 24 establishes that any person is responsible for their own acts or omissions and that their individual responsibility does not exclude the responsibility of state institutions or private legal persons. These provisions appear to be in

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<sup>85</sup> LPD, Art. 16.7.

<sup>86</sup> LPD, Art. 23.

<sup>87</sup> The definition differs from that in Art. 4.

<sup>88</sup> Similarly, it differs from the definition in Art. 4.

<sup>89</sup> Original text in Albanian: 'Gjobë në shumë prej katërqind e pesëdhjetë (450) deri në shtatëqind e pesëdhjetë (750) euro, i shqiptohet për kundërvajtje secilit që me qëllim e sjell në gjendje të pavolitshme personin, që ka qenë dëshmitar në veprimin për diskriminim, ose e ka refuzuar zbatimin e vendimit për sjellje diskriminuese'.

<sup>90</sup> LPD, Art. 15.

conflict. A possible interpretation is that for a discriminatory action committed by an employee, the perpetrator and their employer could both be charged; and if an employer defends themselves in accordance with Article 15, the natural person who committed the discriminatory action could still be charged based on their individual responsibility under Article 24.

Apart from the aforementioned potential justifications specific to direct and indirect discrimination, a general **justification for unequal treatment** also is included.<sup>91</sup> Similar to the LL, this justification reflects the 'genuine and determining occupational requirement' exception under EU equal treatment directives, by which direct discrimination may be justified in certain circumstances. It appears that the justification here applies to *all* forms of unequal treatment under the Law.

Another exception is affirmative action, which may be taken to prevent discrimination of, or to compensate, persons within any of the protected grounds. Such action is deemed not to be discrimination until the purpose for which the measures are set is achieved.<sup>92</sup> The LPD provides a non-exhaustive example of when affirmative action may apply:

- where the targeted group is underrepresented in a position,
- has the same qualifications as a counter candidate in terms of eligibility, ability and professional performance,
- an objective assessment of each candidate's application is undertaken which must take account of all criteria that are 'typical to each individual candidate', and
- priority given to the underrepresented group candidate cannot be automatic and unconditional but, 'can be ignored if the specific reasons for an individual candidate may be in his/her favour'.<sup>93</sup>

## Law on Gender Equality

The purpose of the Law on Gender Equality (LGE) is to 'guarantee, protect and promote equality between genders as a basic value of democratic development of society'.<sup>94</sup> The scope of the Law is broad. It applies to:

men, women and persons who have a protected characteristic of gender identity or sex determination, and guarantees equal opportunity and treatment in public and private areas of social life, including political and public life, employment, education, health, economy, social benefits, sport and culture and other areas set out by the present or other law.

The LGE explicitly defines gender as the 'socially-constructed roles assigned to women and men, which is an acquired identity that is learned, changed over time, and varies widely within and across cultures'. It distinguishes gender from sex: 'the biological and physiological characteristics that define men and women'.<sup>95</sup> The Law also adopts definitions of 'woman' and 'man' progressively based on self-identification: 'who considers themselves as such'.<sup>96</sup> This is

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<sup>91</sup> LPD, Art. 6.

<sup>92</sup> LPD, Art. 7.

<sup>93</sup> Original text in Albanian: '*mund të shpërfilllet nëse arsyet specike për një kandidat individual mund të shkojnë në favor të tij*'.

<sup>94</sup> Law on Gender Equality No. 05/L-020, Art. 1.1., at: <http://www.assembly-kosova.org/common/docs/liqjet/05-L-020%20a.pdf>.

<sup>95</sup> LGE, Arts. 3.1.7 and 3.1.8.

<sup>96</sup> LGE, Arts. 3.1.2 and 3.1.3.

reinforced by the definition of 'gender-identity', which explicitly does not require medical intervention. Gender identity has a dedicated paragraph in the scope of the Law.<sup>97</sup>

The LGE generally prohibits discrimination, while having specific chapters on Employment Relationships and Education. The Law specifies various general<sup>98</sup> and special<sup>99</sup> measures for public institutions to prevent gender discrimination and ensure gender equality. Unfortunately, the LGE is littered with mistakes and inconsistencies.

The LGE **prohibits direct or indirect gender discrimination generally**, including less favourable treatment of women for reasons of pregnancy and maternity, marital status, nationality, race, disability, sexual orientation, social status, religion and belief, age or any other basis defined by law or agreement and international instruments in force.<sup>100</sup> The Law adopts the same definitions of direct and indirect discrimination as the LPD. Thus, the same exceptions exist.

The LGE recognises gender-based violence as a form of discrimination, and prohibits instruction to discriminate directly or indirectly, harassment<sup>101</sup> and sexual harassment. The definition of sexual harassment replicates the common definition used by the EU and Council of Europe:

Sexual harassment – shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

Formulating the definition with a focus on the victim is said to be in recognition of the classical tension between men's perception of behaviours and women's experiences of it, particularly for crimes such as stalking, sexual harassment and rape.<sup>102</sup> The LGE states that no one may be victimised in the filing or processing of complaints of discrimination, harassment or sexual harassment.<sup>103</sup> The LGE has the same definition of victimisation as the LPD.

Regarding **specific areas**, Chapter III prohibits gender discrimination in employment relationships, social security schemes at work and access to and supply of goods and services. Specifically, it includes direct and indirect discrimination on the grounds of sex, marital or family status, pregnancy, birth, parenting and each custody form in the public or private sectors in the same areas as the LPD.<sup>104</sup> As with the LPD, the 'genuine and determining occupational requirement' exception is included.

The LGE sets out a list of actions that are deemed contrary to the principle of equal treatment in social security schemes at work.<sup>105</sup> The LGE is the only Law that defines occupational social security schemes:

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<sup>97</sup> LGE, Art. 2.2.

<sup>98</sup> Consisting of analysis, strategies, gender mainstreaming, equal representation, gender responsive budgeting, adequate allocation of financial resources, gender-disaggregated data and gender equality in naming institutions, schools and streets (LGE, Art. 5).

<sup>99</sup> Temporary measures consisting of quotas, support programmes, economic empowerment, positive action and increasing gender representation to a minimum of 50% (LGE, Art. 6).

<sup>100</sup> LGE, Art. 4.

<sup>101</sup> The definition is similar to that under the LPD.

<sup>102</sup> Nousiainen, Kevät and Chinkin, Christine, "Legal Implications of EU Accession to the Istanbul Convention", European Commission, 2015, p. 44, at:

[https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Europska%20unija/Publication\\_Legal%20implications%20of%20EU%20accession%20to%20the%20Istanbul%20Convention.pdf](https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Europska%20unija/Publication_Legal%20implications%20of%20EU%20accession%20to%20the%20Istanbul%20Convention.pdf).

<sup>103</sup> LGE, Art. 4.6.

<sup>104</sup> LGE, Art. 15.

<sup>105</sup> LGE, Art. 16.

...on the progressive implementation of the principle of equal treatment for men and women in matters of social security whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group undertakings, area of economic activity, occupational sector or group of sectors with benefits intended to supplement the benefits provided by statutory social security schemes or to replace them, whether membership of such schemes is compulsory or optional. [sic]

Prohibiting gender discrimination in occupational social security schemes does not protect against the risk of unemployment, and does not explicitly prohibit discrimination in public social security schemes related to work. The 2017 KWN Policy Paper strongly recommends for this provision to be extended accordingly.<sup>106</sup>

The LGE establishes various obligations for employers in employment relationships. These relate primarily to hiring practices, training and education opportunities, performance evaluation, equal pay, working environment and disciplinary measures.<sup>107</sup> Employers are obliged to take all necessary measures to enable women and men to 'correspond to both their professional and family obligations'.

Article 17.2 reflects Article 15 of the EU Recast Directive and Clause 5.1 of the Parental Leave Directive on return after maternity or parental leave, respectively. The provisions in EU law mandate that on return from maternity or parental leave, an employee is entitled to return to the same or equivalent job on terms that are no less favourable to them and to benefit from any improvement in working conditions to which they would have been entitled during their absence. However, the provision in the LGE is translated poorly:

Every person after parental leave shall be entitled, according to conditions which are no less favourable to her and to benefit from good working conditions to which she is entitled during her absence including possibilities of advancement.

The Albanian version of the Law provides some clarification, in that it is closer to the EU provisions.<sup>108</sup> However, both the Albanian and English versions mix gender neutral and gender specific language. For example, the English version uses: 'every person' and 'parental leave', but also 'her' and 'she'.<sup>109</sup> Part of the confusion may derive from the fact that the Recast Directive is gender specific to maternity leave, while the Parental Leave Directive is gender neutral and applies to both parents. The use of *tij/saj* (his/her) in the Albanian version facilitates the interpretation that the LGE is intended to comply with the Parental Leave Directive and thus the protection should apply to both parents.

The Law considers unpaid work of women and men to be a contribution to the development of the family and society, including care for family welfare, children, a member of the family or dealing with agriculture and the family economy.<sup>110</sup> People engaged in such work 'shall benefit from community services, labour policies and employment and vocational training', according to the Law.

The prohibition of gender discrimination in access to and supply of goods and services under the LGE includes an exception for objective justification.<sup>111</sup> This exception is adopted

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<sup>106</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", pp. 16 and 26.

<sup>107</sup> LGE, Art. 17.

<sup>108</sup> Original text in Albanian: '*Çdo person pas pushimit prindor, ka të drejtë, të kthehet në punën e tij/saj sipas kushteve të cilat janë jo më pak të favorshme për të dhe të përfitojë nga kushtet e mira të punës në të cilën ajo ka të drejtë gjatë mungesës së saj përfshirë mundësitë e avancimit.*

<sup>109</sup> In the same context, the Albanian version uses '*çdo person, pushimit prindor, tij/saj*' and '*për të*', but also '*ajo*' and '*saj*'.

<sup>110</sup> LGE, Art. 18.

<sup>111</sup> LGE, Art. 19.4.

from the EU Goods and Services Directive.<sup>112</sup> The Directive gives some examples of what may fall under this exception, such as single-sex shelters (justified for the protection of victims of violence) and single-sex private clubs (justified due to freedom of association).<sup>113</sup>

The LGE provides that persons who consider that their right to equal treatment has been violated may initiate procedures with an administrative authority or with a competent court in accordance with the provisions of the LPD.<sup>114</sup> This provision is within Chapter IV on Education. However, presumably it was intended to apply to the entire Law, as the provision is phrased generally and includes nothing specific to education.

Regarding **sanctions**, the clause on punitive provisions is unusual in a few respects.<sup>115</sup> First, it provides that for violations of Articles 2 (scope), 3 (definitions) and 5 (general measures to prevent gender discrimination and ensure gender equality), 'the competent court shall develop a violation procedure and shall impose sanctions'. It is unclear why the LGE could not set out such a procedure; when the court should develop such a procedure; which court should do so; what sanctions should be introduced; and how an individual can violate the scope or definitions of a law. Then, the LGE establishes the following penalties:<sup>116</sup>

- €300-500 for offences in the public or private sector 'in the field of offence' under Article 2.1 (scope);
- €500-700 for 'offences to person responsible or other person legal person, public authority or individual who according to registered profession performs certain activities, which based on gender would violate the certain person's dignity or creates certain environment, threatening, approach or practice, hostile, offensive or disturbing, Article 3, subparagraphs 1.1, 1.11, 1.12' (definitions of gender equality, harassment and sexual harassment respectively);
- €700-900 for legal entities who violate Article 3.1.4 (definition of equal treatment); and
- €300-500 for failure to collect gender-disaggregated data under Article 5.1.8.

The LGE does not contain any specific sanctions for violating any of the discrimination prohibitions within the Law, including the general prohibition on discrimination, discrimination in employment relationships or discrimination in education.<sup>117</sup> The only possible interpretation is that the fine for violating the 'scope' (Article 2.1) is intended to cover all of these provisions for a natural person, and the fine for violating the definition of 'equal treatment' (Article 3.1.4) is intended to cover all of these provisions for legal entities. However, drafting the LGE in such an imprecise manner lacks foresight, at best.

As with the LPD, it is unclear why harassment and sexual harassment are specifically singled out, while other forms of unequal treatment are not. Although the provision is linked to definitions in Article 3.1.11 and 3.1.12, a slightly different definition is established in the punitive provision. This provision is drafted in a particularly unclear manner, which significantly weakens the clarity of the Law. Meanwhile, the sanctions are arguably insufficient for preventing individuals or companies from engaging in gender-based discrimination.<sup>118</sup>

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<sup>112</sup> Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, 2004, Art. 4.5, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>.

<sup>113</sup> Ibid, Recital 16.

<sup>114</sup> LGE, Art. 22.

<sup>115</sup> LGE, Art. 23.

<sup>116</sup> LGE, Arts. 23.2-23.5.

<sup>117</sup> Art. 4, Chapter III and Chapter IV, respectively.

<sup>118</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis" 2017, p. 40.

## Other Relevant Laws

The conditions for employment of **foreigners** is dealt with under the Law on Foreigners.<sup>119</sup> The Law establishes a right to equal treatment for foreigners working in Kosovo and provides that state institutions and organisations shall provide foreigners with protection from any form of discrimination.<sup>120</sup>

The Law for Organizing Trade Union in Kosovo regulates **trade union** rights.<sup>121</sup> Under the Law, employees are protected from discrimination on the grounds of membership, non-membership or activity in a trade union. The Law on Strikes contains a similar provision that employees are protected from discrimination based on organisation or participation in a **strike**.<sup>122</sup>

The employment of **civil servants** is governed by separate laws and regulations, though much of the law is the same as the LL.<sup>123</sup> Of particular importance is Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, which confirms the concept of non-discrimination on the grounds of gender for civil servants and provides for the right to equal treatment and career development opportunities, regardless of sex.<sup>124</sup> Civil servants have the right to make a complaint, including the right to appeal against administrative decisions, any violation or any omission of the general administrative rules or procedures related to their working relationship.<sup>125</sup> Regulation No. 05/2011 On Procedures for Resolving Disputes and Complaints elaborates on the complaint process. The procedure begins with written submissions to an internal commission within 30 days of the complaint arising. An appeal of the commission's decision may be taken to the Independent Oversight Body.<sup>126</sup>

Kosovo law does not protect adequately **self-employed persons**. The 2017 KWN Policy Paper found that the concept of self-employed capacity in EU law is not transposed correctly into Kosovo law.<sup>127</sup> The Policy Paper recommends that the status of self-employed parents regarding maternity and parental rights should be equal to that of parents who are employees, and that self-employed women should be registered officially as such. If they work for their husbands or other family members, they should be able to access social protection and maternity benefits based exclusively on this familial relationship.<sup>128</sup>

## Interpreting the Legal Framework

Generally, representatives of diverse, relevant institutions tend to believe that Kosovo's legal and policy framework pertaining to gender-based discrimination and work is complete, for the most part.<sup>129</sup> However, as illustrated in this section, the legal framework has not been drafted harmoniously. By taking a minimal approach at regulating discrimination and merely

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<sup>119</sup> No. 04/L-219. Particularly Art. 67. Art. 68 deals with an annual employment quota for foreigners, which is not public. Working within or outside the quota is elaborated in Arts. 69-73.

<sup>120</sup> See Arts. 83 and 127 respectively.

<sup>121</sup> No. 04/L-011.

<sup>122</sup> No. 03/L-200.

<sup>123</sup> For example, Regulation No 06/2011 on the Civil Servants Leave provides the same rights to maternity leave, breastfeeding protection and paternity leave the LL.

<sup>124</sup> Arts. 5.1 and 43 respectively.

<sup>125</sup> Art. 50.

<sup>126</sup> Governed by Law No 03/L –192 on Independent Oversight Board for Civil Service of Kosovo, at: <http://www.kuvendikosoves.org/common/docs/liqjet/2010-192-eng.pdf>.

<sup>127</sup> KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", p. 27.

<sup>128</sup> Ibid, p. 4.

<sup>129</sup> KWN interviews with diverse, relevant institutions, 2018.

referencing the LPD, the LL blurs the legal framework significantly. The LPD and LGE further obscure the lines between laws by addressing employment-related matters. Each Law has significant overlap, but also significant differences. Moreover, they have separate offences with varying fines, making the framework tangled and unclear. The blurring of the respective scopes of the laws in the employment context, and the dispersion and overlap of offences and fines among the various laws, may be a source of significant confusion and legal uncertainty in courts.

In other areas, positive efforts have been made at harmonising sanctions when new law was introduced. For example, the Law on Minor Offences contains an explicit provision that sanctions in other laws that conflict with the new law must be brought into compliance within one year.<sup>130</sup> Unfortunately, such harmonisation measures were not undertaken related to discrimination and gender equality in the employment context.

Notably, funds collected from imposed fines under the LL, LPD and LGE are transferred to the budget of the Republic of Kosovo.<sup>131</sup> Thus, remedies for victims of discrimination do not derive from these sanctions, but rather from procedures outlined below.<sup>132</sup>

## Responsible Institutions

Several institutions have responsibilities for implementing the legal framework pertaining to gender-based discrimination, as further detailed in the section on **Institutional Response**. **Police** should investigate instances in which discrimination may have involved a criminal offence. **Prosecutors** should initiate criminal proceedings if a crime may have been committed. **Judges** in courts should decide on cases.

The **Labour Inspectorate** oversees the implementation of the LL, addressing requests from employees regarding violations of their labour rights, and initiating disciplinary measures affecting the employer after identifying any labour rights violation.

The LPD details the competences of the **Ombudsperson Institution (OI)**, which handles discrimination cases on behalf of the State.<sup>133</sup> These include investigating claims; giving opinions and recommendations in cases of discrimination; assisting victims in preparing complaints; and providing information on rights, obligations and protective tools. The LGE also states that the OI is an equality institution that handles cases related to gender discrimination, in accordance with procedures established by the Law on Ombudsperson.<sup>134</sup> The competences, responsibilities and complaint procedures of the OI are elaborated in the Law on Ombudsperson.

The LPD explains the duties of the **Office of Good Governance**, located in the Office of the Prime Minister.<sup>135</sup> These include assisting the government in promoting equality and protecting from discrimination, as well as monitoring implementation of OI recommendations.<sup>136</sup>

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<sup>130</sup> Law on Minor Offences No. 05/L-087, at: <https://md.rks-qov.net/desk/inc/media/2ED17925-7275-4FFA-A191-FBBC5FBCB5A0.pdf>, Art. 167.

<sup>131</sup> LL, Art. 93; LPD, Art. 23.9; and LGE, Art. 23.6.

<sup>132</sup> See section XX.

<sup>133</sup> LPD, Art. 9.

<sup>134</sup> LGE, Art. 13. Law on Ombudsperson No. 03/L-195, at: <http://www.kuvendikosoves.org/common/docs/liqjet/2010-195-eng.pdf>.

<sup>135</sup> LPD, Art. 10.

<sup>136</sup> Elaborated in Regulation No. 03/2017 on institutional mechanisms on protection against discrimination in government and municipalities, at: [http://kryeministri-ks.net/repository/docs/RREGULLORE\\_QRK\\_-\\_NR\\_03\\_2017\\_P%C3%8BR\\_MEKANIZMAT\\_INSTITUCIONAL\\_P%C3%8BR\\_MBROJTJE\\_N....pdf](http://kryeministri-ks.net/repository/docs/RREGULLORE_QRK_-_NR_03_2017_P%C3%8BR_MEKANIZMAT_INSTITUCIONAL_P%C3%8BR_MBROJTJE_N....pdf).

The LPD states that **all ministries and municipalities** are obliged to assign an appropriate unit or official to coordinate and report on the Law's implementation.<sup>137</sup> The LGE contains a similar obligation for the appointment of relevant officials for gender equality to coordinate the Law's implementation.<sup>138</sup> The LGE further details the role of these officials, which includes gender mainstreaming, gender budgeting and preparation of annual reports on the implementation of the Kosovo Program for Gender Equality. The LGE reiterates that political parties must implement measures to promote equal participation of women and men.<sup>139</sup>

## Procedures and Remedies

The procedures for filing a claim related to gender-based discrimination and work differ depending on the law relevant to the specific claim.

### The Law on Labour

The first step in any claim under the LL is an **internal procedure**, whereby an employee who considers that the employer has violated her/his labour rights may submit a request to the employer, or to the relevant bodies of the employer, for the rights to be exercised (see Figure 1).<sup>140</sup> Following the internal procedure, the employee has three options:

1. If the employee is dissatisfied with the response to the request, or if the employee has received no response, she/he is entitled to initiate a work dispute in the competent **court**.<sup>141</sup> The applicable procedural protections are outlined in a later section. The LL provides specific remedies only for **unlawful termination**.<sup>142</sup> The court may either oblige the payment of compensation (no less than twice the value of any severance payment that the employee was entitled to at the time of dismissal); or, if deemed unlawful due to discrimination, the employee may be reinstated in her/his previous position with all lost salary and benefits compensated.
2. Alternatively, disputes may be resolved through **mediation**.<sup>143</sup> This procedure is governed by the newly adopted Law on Mediation.<sup>144</sup> Note that the LPD states that mediation or reconciliation may only be used on the request of the applicant.<sup>145</sup> Thus, mandatory mediation is prohibited. The Law on Mediation provides that where one party requests the other to engage in mediation proceedings, and does not receive a response within 15 days, it is considered refusal to begin the mediation procedure.<sup>146</sup>

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<sup>137</sup> Ibid. LPD, Art. 11.

<sup>138</sup> LGE, Art. 12.

<sup>139</sup> LGE, Art. 14.

<sup>140</sup> LL, Art. 78. The procedure is laid out in Chapter IX.

<sup>141</sup> Paragraph 2 of Article 78 states that the employer has 15 days to decide on the employee's submitted request. However, paragraph 3 states that the decision from paragraph 2 must be delivered in written form to the employee within eight days. Therefore, the provision is unclear, particularly because under Article 79, an employee who does not receive an answer within the timeframe of paragraph 2 (15 days), or who is dissatisfied with the response, may initiate a work dispute in the competent court within 30 days. The provision seems to suggest that an employee may initiate proceedings before they receive a written response. As the time limit to initiate proceedings is short, this uncertainty is significant.

<sup>142</sup> LL, Art. 80.

<sup>143</sup> LL, Art. 81

<sup>144</sup> Law on Mediation No. 06/L-009, at: <https://md.rks-gov.net/desk/inc/media/078A2A69-F572-4826-AC20-61937AADD2FA.pdf>.

<sup>145</sup> LPD, Art. 21.

<sup>146</sup> Law on Mediation, Art. 9.3.

3. At any time after a request has been submitted, an appeal may be submitted to the **Labour Inspectorate** for issues within the Inspectorate's competence.<sup>147</sup> These competences include ensuring implementation of the LL.<sup>148</sup> Therefore, issues such as failure to implement equal pay or maternity leave provisions would be grounds for appeal. A decision on the appeal must be issued within 30 days. The LL states that the Labour Inspectorate issues disciplinary measures arising from LL violations, according to the Law on Labour Inspectorate.<sup>149</sup> These disciplinary measures presumably refer to the fines outlined in the LL. However, far more relevant to victims is the Inspectorate's additional power to issue written notice about irregularities found and to set a time limit within which they must be eliminated.<sup>150</sup> Notably, the Inspectorate has wide powers of investigation.<sup>151</sup>

Figure 1. Process of Filing a Claim under the LL



## Law on the Protection from Discrimination and Law on Gender Equality

Under the LPD or the LGE, an applicant may submit a claim to either the **OI** or **courts**. It is important to note that submitting a complaint to the OI is not a condition for bringing a claim to court.<sup>152</sup>

An individual or a group of persons may make a complaint to the **OI**.<sup>153</sup> However, in order to make a complaint, 'regular' remedies must be exhausted.<sup>154</sup> In the employment context, this suggests that the LL request procedure, or any other internal procedure provided by the employer, must have been attempted first (see Figure 2). There is an exception if the OI 'estimates that the persons have endured severe damage or in a meantime the persons may suffer huge damage which might not be repairable'.<sup>155</sup> The services of the OI are free.<sup>156</sup>

<sup>147</sup> LL, Art. 82.

<sup>148</sup> Law on Labour Inspectorate No. 2002/9, Art. 2(a), at:

[http://www.unmikonline.org/regulations/2003/RE2003\\_04%20.pdf](http://www.unmikonline.org/regulations/2003/RE2003_04%20.pdf). The Labour Inspectorate also is charged with providing technical information and advice to employers and employees on the most effective means of observing the legal provisions; notifying the Minister of Labour and Social Welfare or other competent authorities on any deficiencies in the applicable law; and advising on issues relating to the LL and the protection of employees in case of reorganization or restructuring of an enterprise.

<sup>149</sup> LL, Art. 83.

<sup>150</sup> Law on Labour Inspectorate, Art. 5.5(b).

<sup>151</sup> These include freely entering any workplace without prior notification, as well as inspecting and taking extracts of books and documents that must be kept by the employer as prescribed by the LL (Ibid, 5.2[c]).

<sup>152</sup> LPD, Art. 12.3.

<sup>153</sup> LPD Art. 12; LGE Art. 13.

<sup>154</sup> Law on Ombudsperson, Art. 22.1.4.

<sup>155</sup> Ibid, Art. 22.1.4.

<sup>156</sup> Ibid, Art. 16.12.

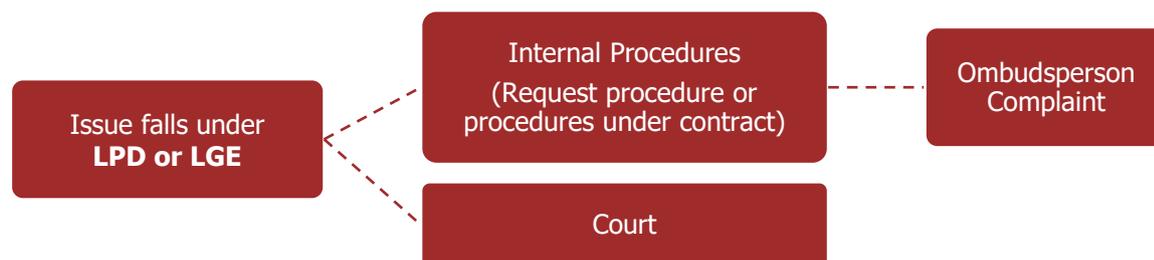
The formal requirements of the application and the relevant procedures are detailed in the Law on Ombudsperson and the Regulation on Rules of Procedure of the OI.<sup>157</sup>

Under the LPD, a person or group of persons may bring complaints to **courts**.<sup>158</sup> There is a five-year limitation period for a claim to be brought to court, starting from the day when the complainant became aware of the violation.<sup>159</sup> The applicable procedural protections are outlined in the next section. The LGE provides that proceedings can be initiated in the competent court in accordance with LPD provisions.<sup>160</sup> Thus, the same time limit and protections apply.

This procedure creates an anomaly in the law; if the issue falls within either the LPD or the LGE, claimants are entitled to 'leapfrog' internal procedures, going straight to court; however, if the issue falls *solely* under the LL, claimants first must follow an internal request procedure before accessing courts. While the laws overlap in relation to employment, they also have significant differences,<sup>161</sup> which may affect the legal basis for a claim and thus access to courts.

The LPD provides that cases of discrimination should be dealt with urgently,<sup>162</sup> and employment cases are similarly prioritised in law. However, in practice, not every work-related case receives priority, and court delays are well-documented.<sup>163</sup> Thus, it may be more time and cost effective to resolve issues through non-judicial means, such as the Labour Inspectorate, mediation or the OI. All of these would require internal procedures to be undertaken first.

Figure 2. Process of Filing a Claim under the LPD or LGE



## Procedural Protections and Remedies

Procedural protections under the LPD apply equally to claims brought to courts under the LGE or the LL.<sup>164</sup> These protections represent valuable tools, which support and facilitate complaints for persons who have suffered gender-based discrimination.

<sup>157</sup> Regulation on Rules of Procedure of the Ombudsperson, No. 02/2016, articles 33-66, at: <https://oik-rks.org/en/2018/08/20/regulation-no-02-2016-on-rules-of-procedure-of-the-ombudsperson-institution/>.

<sup>158</sup> LPD, Art. 13.

<sup>159</sup> LPD, Art. 14.3.

<sup>160</sup> LGE, Art. 22.1.

<sup>161</sup> For example, as noted, the LL is far more specialised on maternity leave and equal pay rights, while sexual harassment is only dealt with under the LGE and (to some extent) under the LPD.

<sup>162</sup> Art. 16.9.

<sup>163</sup> 'Cases [...] are numerous where employees have to wait for years for a final decision. Expenditures incurred to employees, as well as expenditures incurred to public institutions or private companies due to delays of the Court are often ignored from the latter' (Kosovo Democratic Institute, *Employees who have (no) Rights*, Pristina: 2017, p. 27, at: <http://kdi-kosova.org/wp-content/uploads/2017/11/Punetoret-qe-s-kane-te-drejta-ENG-FINAL.pdf>).

<sup>164</sup> LL Art. 5.5 provides that the Law Against Discrimination No. 2004/3 (replaced by the LPD) is directly applicable within employment relationships. As noted, LGE Art. 22.1 provides that proceedings can be instituted to the competent court in accordance with the provisions of the LPD.

First, the LPD provides for the reversal of the burden of proof in discrimination cases.<sup>165</sup> This rule has its basis in EU law.<sup>166</sup> This entails the claimant establishing sufficient evidence to suggest that discriminatory treatment may have occurred, which raises a presumption of discrimination that the respondent must rebut. The rule is based on recognition of the fact that it can be particularly difficult for claimants to prove differential treatment based on a particular protected characteristic. The rationale for the rule is that the respondent is in possession of the necessary information to (dis)prove the claim.<sup>167</sup> An important limitation to the rule in EU law is that the reversal of the burden of proof is not mandated in the criminal law context,<sup>168</sup> due to the higher standard of proof needed to establish criminal liability, unless otherwise provided by the Member States. Member States are permitted to introduce more favourable rules for plaintiffs.

The LPD offers various remedial options for a court if discrimination is established. The court may:

- Prohibit the performance of activities which violate the right of the applicant, or compel the elimination of all discriminatory actions;
- Compensate material or non-material damage;
- Order temporary measures in accordance with the Law on Contested Procedure (if deemed necessary to eliminate the risk of irreparable damages, especially for severe violations of the right on equal treatment, or with the aim of preventing violence);
- Order a shorter deadline of execution than defined in the Law on Enforcement Procedure; or
- Publish the decision in the media.<sup>169</sup>

'Compensation' includes correcting legal violations and their consequences, through a return to the previous situation, appropriate compensation for material and immaterial damages or other appropriate measures.<sup>170</sup> Deliberation on damages should consider if the case involved serious forms of discrimination. Appeals may be made to the Court of Appeal within seven days of a first instance judgment, in accordance with the Law on Contested Procedure.<sup>171</sup>

## **Legal Standing of Associations Applicable to Court Proceedings**

Associations, organisations and other legal entities may support complaints on behalf of applicants in either court proceedings or in bringing a complaint to the OI, but only with the applicant's consent.<sup>172</sup> Where discrimination is affecting a group of people, a different procedure exists for a group action, which a non-governmental organisation or the OI may take on the group's behalf.<sup>173</sup> Interestingly, the consent of the members of the group is not necessary for this procedure.

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<sup>165</sup> LPD, Art. 20.

<sup>166</sup> Racial Equality Directive (Art. 8), Employment Equality Directive (Art. 10), Gender Equality Directive (Recast) (Art. 19), Gender Goods and Services Directive (Art. 9). This principle is equally well entrenched in the case law of the ECtHR, which has invoked the principle more generally in proving human rights violations.

<sup>167</sup> European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, "Handbook on European Non-Discrimination Law", 2018, p. 232.

<sup>168</sup> Ibid, p. 236.

<sup>169</sup> LPD, Art. 16.

<sup>170</sup> LPD, Art. 16.6.

<sup>171</sup> LPD, Art. 16.3.

<sup>172</sup> LPD, Arts. 12.4 and 13.2.

<sup>173</sup> LPD, Art. 18.

## Conclusion

In conclusion, the legal and policy framework related to gender-based discrimination and labour in Kosovo seems rather comprehensive, particularly considering that much of the law is drafted in accordance with EU law. The Constitution's broad protections, bolstered by a commitment for international law to take precedence, perhaps may be used to seek protection through constitutional challenges. Several specific laws deal with gender-based discrimination in relation to labour. However, the inharmonious legal framework, with overlapping and differing definitions and sanctions, may contribute to significant confusion and legal uncertainty in courts. Potential for confusion also exists considering the various possible procedures for filing a claim related to gender-based discrimination and work.

More specifically, the LL does not offer adequate protections related to: the period for receiving a permanent contract; the assignment of tasks for pregnant women; and discrimination in employment. Moreover, the LL's focus on maternity leave may reinforce existing gender norms, undermine women's participation in the labour force and serve as a form of legal discrimination against men, considering their presently unequal rights to paternity or parental leave. The LPD lacks: harmonization of its definitions related to fines for offences; a clear definition of sexual harassment as per the Recast Directive; stipulations that severe forms of discrimination shall receive higher fines; and clarity regarding the violation procedure for imposing sanctions. The LGE does not clearly prohibit various forms of gender-based discrimination or impose sanctions sufficient for prohibiting individuals or employers from engaging in gender-based discrimination.

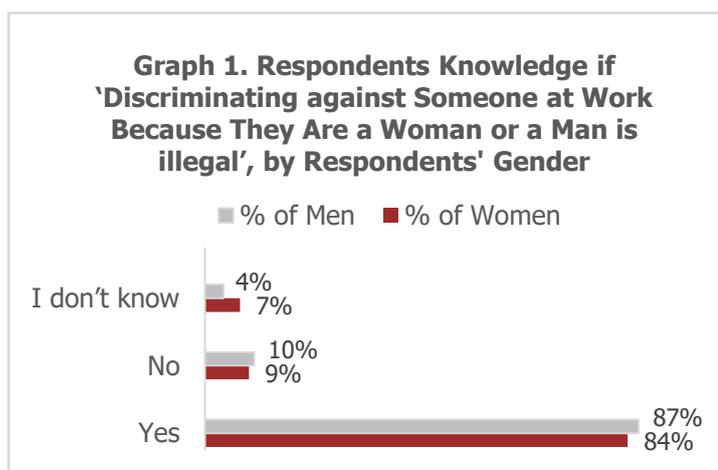
Little case law related to gender-based discrimination and labour could be found in Kosovo, which explains the omission of any discussion of case law in this section. Thus, the function and implementation of the law in practice is difficult to assess. Nevertheless, justice institutions can draw on the functioning of the EU legal order to facilitate understanding of the legislative intentions underpinning how the law should function in Kosovo.

# PEOPLE'S AWARENESS AND REPORTING OF GENDER-BASED DISCRIMINATION

This section examines people's awareness towards gender-based discrimination, towards better understanding the reasons why people may or may not report gender-based discrimination in relation to labour.

## People's Awareness about Gender-based Discrimination

The online survey sought to measure people's awareness of the relevant legal framework, procedures and remedies, as described in the last section. Overall, 85% of the survey respondents agreed that 'discriminating against someone at work because they are a woman or a man is illegal' in their country.<sup>1</sup> Thus, most survey respondents knew that Kosovo's legal framework regulates this. Little difference existed between women and men (see Graph 1); 84% of women and 87% of men respondents knew gender-based discrimination is illegal. Even so, roughly one in ten respondents, of both genders, thought discrimination was legal, whereas 7% of women and 4% of men did not know. The relationship between knowing that discrimination is illegal and age was statistically significant, with more older respondents being knowledgeable than younger respondents; fewer youth ages 18 to 29 knew discrimination was illegal (79%) than persons older than them. Persons with lower levels of education were less likely to know that gender-based discrimination is illegal.<sup>2</sup>

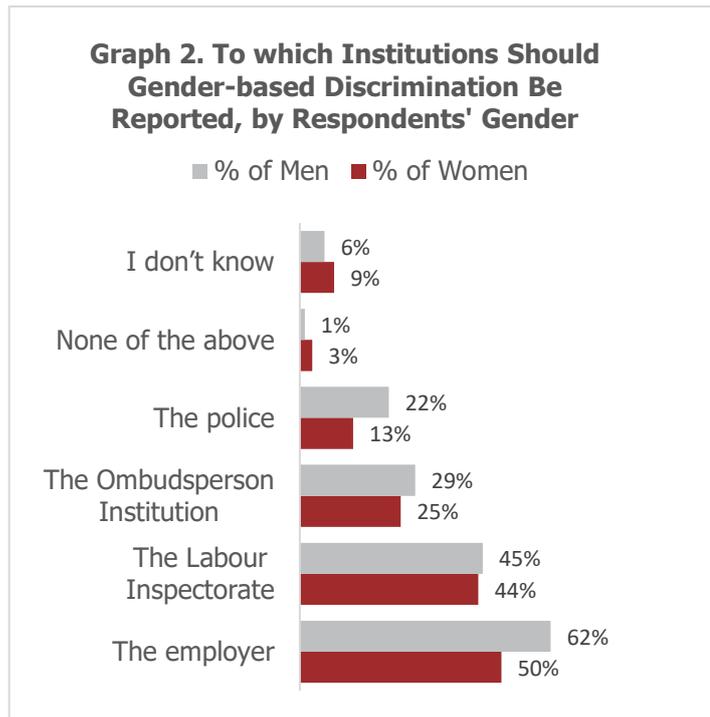


An analysis of qualitative survey responses suggests insufficient knowledge regarding what specifically may constitute gender-based discrimination. Participants that indicated they had experienced gender-based discrimination at work provided detailed accounts of their experiences. However, most accounts dealt with labour rights violations that did not necessarily involve no strong grounds for claims of gender-based discrimination.

<sup>1</sup> N = 1,790.

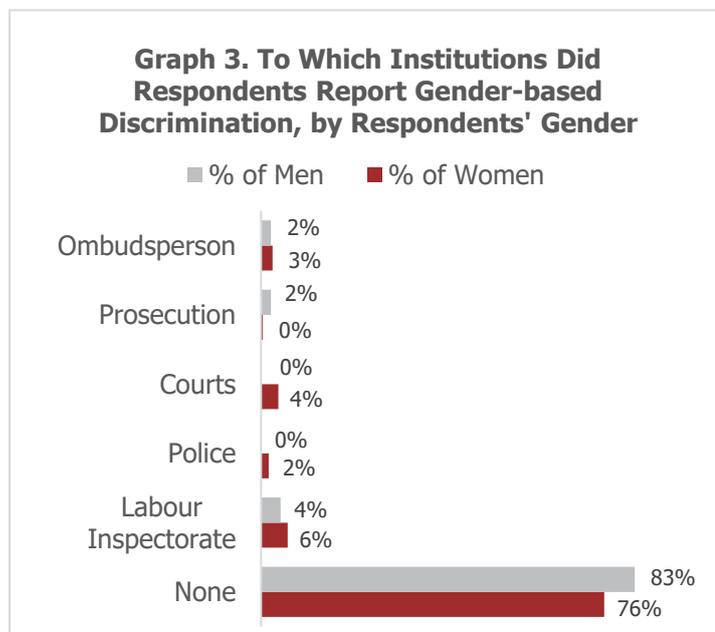
<sup>2</sup> N = 1,832. However, notably the sample size for persons from rural areas was small. The sample sizes for ethnicity were too small to make conclusions.

Regarding people's knowledge of relevant institutions, if gender-based discrimination occurs at work, most survey respondents thought it should be reported to the employer (50% of women and 62% of men).<sup>3</sup> In addition, 44% of women and 45% of men said that discrimination at work should be reported to the Labour Inspectorate (see Graph 2). Approximately one-fourth of respondents said it should be reported to the OI (25% of women and 29% of men). While gender-based discrimination perhaps may be reported to police only on rare occasions, as per Kosovo's legal framework, women (13%) seem less likely to know that they can report discrimination to the police than do men (22%). This suggests that respondents may know more about internal procedures for reporting gender-based discrimination, but less about other procedures they may undertake in accordance with the legal framework.<sup>4</sup> Insufficient awareness regarding what constitutes gender-based discrimination may contribute to low reporting.



## Reporting Gender-based Discrimination

The online survey sought to estimate the extent to which people may report gender-based discrimination in relation to labour, as well as to analyse why people may or may not report it. Of the survey respondents who said they had experienced gender-based discrimination at work, most women (76%) and men (83%) did not report it to any institution (Graph 3).<sup>5</sup> Of those who did report it, most women (14) and men (two) contacted the Labour Inspectorate. Perhaps this is unsurprising considering the aforementioned findings that more respondents knew about the Labour



<sup>3</sup> N = 2,151.

<sup>4</sup> Labour Union representatives confirmed that employees may lack awareness on what constitutes gender-based discrimination.

<sup>5</sup> N = 456. Interview respondents, particularly judges and labour union representatives, confirmed the finding that employees hesitate to report gender-based discrimination (KWN interviews, 2018).

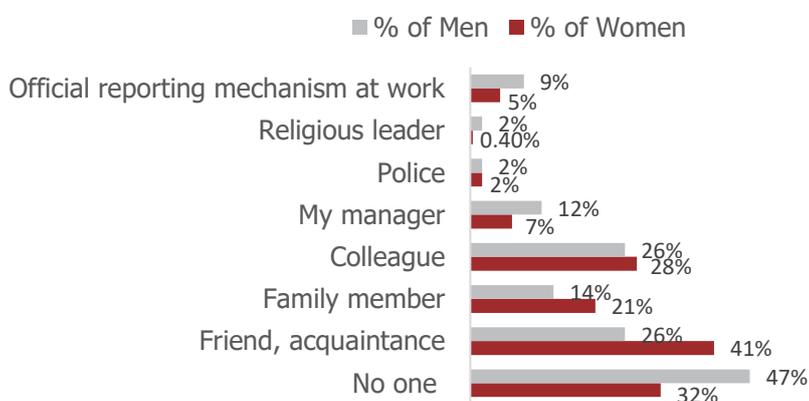
Inspectorate's role than other institutions' roles in addressing gender-based discrimination at work. Only nine women, and no men, brought cases to court.

“ People are not aware enough of their rights to file cases in court.

- Woman judge, Gjakovë/Đakovica

As a specific form of gender-based discrimination, several survey respondents said they experienced sexual harassment at work (337). As Graph 4 illustrates, most women survey respondents who had experienced sexual harassment told a friend (41%), acquaintance, colleague (28%) or family member (21%).<sup>6</sup> For the few women who reported sexual harassment, they informed their manager (7%), a person in an official reporting mechanism at their workplace (5%) or police (2%). While men survey respondents who experienced sexual harassment also were more likely to tell friends (37%), colleagues (27%) or family members (19%), a higher percentage of men reported sexual harassment to their managers than did women (12%). Approximately one-third of the women and nearly half of the men did not tell anyone about the sexual harassment they experienced.

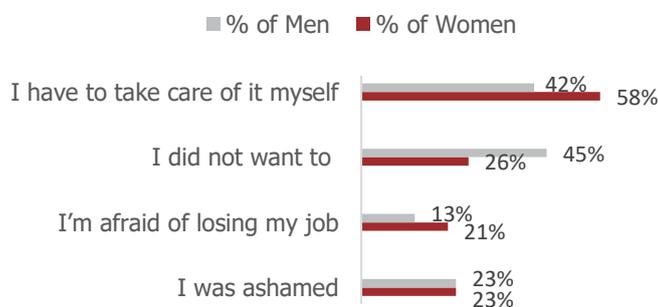
**Graph 4. To Whom Did Respondents Report Sexual Harassment**



Similarly, KWN's 2016 research found that only 4% of all persons who had experienced sexual harassment ever reported it to the authorities.<sup>7</sup> This is worrying as it suggests that unreported sexual harassment at work may be rather widespread.

When asked why they did not report sexual harassment to institutions, men tended to respond that they 'did not want to' (45%); only 26% of women said this.<sup>8</sup> Both women (58%) and men (42%) felt they 'have to take care of it' themselves. More women (21%) did not report this phenomenon for fear of losing their jobs than men (13%). Underreporting may be attributed in part to Kosovo's fragile economic situation; people who fear losing their jobs may endure discriminatory working conditions.<sup>9</sup>

**Graph 5. Reasons Why Sexual Harassment at Work Was Not Reported**



<sup>6</sup> N = 456.

<sup>7</sup> KWN, *Sexual Harassment in Kosovo*, Pristina: KWN, 2016, p. 4, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160223185243349.pdf>.

<sup>8</sup> N = 148.

<sup>9</sup> This was a recurring response from the interviewed police officers (KWN interviews, 2018).

Representatives of different institutions tended to agree that few people report gender-based discrimination to institutions for fear of losing their jobs;<sup>10</sup> due to insufficient awareness regarding discrimination and labour rights; general discouragement over long bureaucratic procedures in relevant institutions; difficulty documenting discrimination cases; and a fear that anonymity will be breached.

“ *Discrimination is happening everywhere, but people do not report it. They sacrifice everything for their jobs.*

- Woman police officer,  
Ferizaj/Uroševac

## Conclusion

Generally, most women and men respondents seemed aware that gender-based discrimination is illegal in Kosovo. Most believed that such discrimination should be reported to the employer. However, awareness seems minimal regarding other institutions that may deal with gender-based discrimination cases. Low awareness may be a factor contributing to minimal reporting to relevant institutions. Other factors may include concern over their anonymity, fear of job loss, long bureaucratic procedures and difficulties documenting cases.

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<sup>10</sup> This was a recurring theme among diverse respondents from institutions (KWN interviews, 2018).

# PREVALENCE OF AND EXPERIENCES WITH DISCRIMINATION

Considering that many cases of gender-based discrimination are never reported, its precise prevalence cannot be determined. Therefore, this research drew from mixed methods and data sources in investigating how many work-related gender-based discrimination cases have been reported to different institutions in the last decade. In addition to examining data maintained by various institutions, this section draws from the online survey and interviews with diverse actors to better understand people's experiences with different forms of gender-based discrimination in Kosovo. It first presents general findings related to the prevalence of gender-based discrimination in labour. Then, it examines potential discrimination against people based on the protected grounds previously outlined in the Legal Analysis. Finally, the section discusses various forms of gender-based discrimination in relation to labour.

## General Findings related to Gender-based Discrimination

In 2017, research by the Riinvest Institute found that more than one in ten surveyed employed women had experienced gender-based discrimination at work.<sup>1</sup> KWN's 2018 research provides further evidence that such discrimination exists. Among the online survey respondents, 28% of women and 11% of men assessed that they had experienced gender-based discrimination at work. The strongest predictor of the probability of being discriminated against is gender.<sup>2</sup> The odds of experiencing gender-based discrimination at work are 2.8 times greater for women than for men. Moreover, the chances of experiencing gender-based discrimination are two times higher if you work in the private sector (compared to the public sector). Meanwhile, evidence exists that discrimination has occurred in the public administration or government, as well. Persons ages 40 to 49 and individuals receiving less than €300 monthly salary also seem to be more at risk of such discrimination. The probability of experiencing gender-based discrimination at work may be higher for persons with higher education, such as a Master's degree or PHD. However, this may be attributable to more educated respondents being better able to recognize different forms of sexual harassment.

Regarding geographic location, gender-based discrimination seems more prevalent in the capital city, Prishtinë/Priština, than in other cities. Every fourth respondent (25%) living in Prishtinë/Priština experienced gender-based discrimination at work, compared to 18% of those living in other cities. While the sample of respondents living in rural areas was inconclusively small, one-third of them reported experiencing gender-based discrimination at work.

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<sup>1</sup> Riinvest Institute, *Women in the Workforce: An Analysis of the Workforce Conditions for Women in Kosovo*, Pristina: 2017, p. 9, at:

[https://riinvestinstitute.org/uploads/files/2017/November/10/Women\\_in\\_the\\_workforce1510308291.pdf](https://riinvestinstitute.org/uploads/files/2017/November/10/Women_in_the_workforce1510308291.pdf).

<sup>2</sup> Researchers used logistic regression to test whether the probability of experiencing gender-based discrimination at work is determined by gender, age category, educational level, current employment position and monthly salary. The model is significant  $\chi^2(22) = 66.476$ ,  $p = .000$ , and explains between 6 (Cox & Snell  $R^2 = .065$ ) и 10 (Nagelkerke  $R^2 = .108$ ) percent of the variance. The Hosmer and Lemeshow Test is insignificant  $\chi^2(8) = 9.477$ ,  $p = .304$ , additionally confirming the fit of the model.

## **Institutional Data**

KWN also sent official data requests to the OI, Union of Independent Unions in Kosovo, Labour Inspectorate, police and courts. Unfortunately, none of them seem to maintain relevant data. Police sent overall statistics on sexual harassment and sexual assault cases from 2008 to 2018. However, the police do not have the location where these cases occurred readily available, so it is unclear if they involved harassment at work. The OI, Union of Independent Unions in Kosovo and Labour Inspectorate do not possess data disaggregated by gender and the legal articles relevant to gender-based discrimination. The prosecution has started using the System of Informative Management of Cases (SMIL), but it does not have gender-disaggregated data or the location where the crime occurred, such as the workplace. The courts do not have such data either.

Although these institutions that have a legal responsibility to address gender-based discrimination at work may have encountered such cases, qualitative interviews with representatives of these institutions suggested that very few had encountered such cases.<sup>3</sup> Of the few cases they had seen, these tended to involve women.

## **Discrimination Based on Specific Protected Grounds**

The Legal Analysis described the various protected grounds according to which the legal framework may protect individuals from gender-based discrimination related to labour. This sub-section examines the experiences of protected persons with different abilities; lesbian, gay, bisexual, transgender, intersex, queer and differently identifying persons (LGBTIQ+); and individuals from minority ethnic groups.

### **Gender-based Discrimination against Persons with Different Abilities**

Kosovo law includes affirmative measures for the employment of persons with different abilities; every state institution, private sector employer and civil society organisations (CSOs) must employ at least one person with different abilities for every 50 employees that they have.<sup>4</sup> However, the fact that this Law is not implemented in practice was a recurring theme among CSO representatives working with people with different abilities.

CSO representatives said that very few people with different abilities are employed, particularly women. For example, in Gjakovë/Đakovica region, among the 668 known persons with different abilities that are of working age, only 14 (two women) are employed in municipal public institutions, whereas four (one woman and three men) are employed in CSOs, primarily in organisations working with people with different abilities.<sup>5</sup> Very few work in private businesses, and these tend to be owned by their families. In Gjilan/Gnjilane, from roughly 1,160 known persons with different abilities of working age, only approximately 20 are employed, primarily men working in the private sector.<sup>6</sup> 'Most persons with different abilities that are employed in the Municipality of Ferizaj/Uroševac are men', another woman observed.<sup>7</sup>

Considering the low employment rates of persons with different abilities, and the limited number of survey responses received, it was difficult to assess the extent to which

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<sup>3</sup> This was a recurring trend among interview respondents across different institutions (KWN interviews, 2018).

<sup>4</sup> Assembly of the Republic of Kosovo, Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities, No. 03/L-019, Art. 12, at: [https://www.kuvendikosoves.org/common/docs/liqjet/2008\\_03-L-019\\_en.pdf](https://www.kuvendikosoves.org/common/docs/liqjet/2008_03-L-019_en.pdf).

<sup>5</sup> Research by HandiKOS in Gjakovë/Đakovica (KWN interview, October 2018).

<sup>6</sup> KWN interview with CSO representing people with different abilities, Gjilan/Gnjilane, November 2018.

<sup>7</sup> KWN interview with a woman representative of HandiKOS, Ferizaj/Uroševac, November 2018.

they face discrimination at work.<sup>8</sup> However, discrimination, including based on gender, may prevent them from securing work.<sup>9</sup> CSOs working with people with different abilities said that most of the cases they hear involve discrimination in hiring, despite applicants having the appropriate qualifications, as well as discrimination in promotion. However, respondents had few examples of discrimination based explicitly on gender; instead, they spoke more generally about discrimination against persons with different abilities due to their ability. However, a couple respondents observed that women with different abilities face discrimination due to their gender and ability. For example, a person with different abilities shared her personal experience of not being hired in different positions. Moreover, she said that few job advertisements encourage women with different abilities to apply.<sup>10</sup>

## Gender-based Discrimination against LGBTIQ+ Persons

According to The Headhunter Kosovo, 95% of the 65 companies participating in their research stated that they have a policy for non-discrimination and equal opportunities.<sup>11</sup> However, when asked if these policies were specific to 'LGBTIQ and related status', 43% of companies stated that their policies included only gender identity, 32% had no such relevant terms included and only 22% had policies including language related to LGBTIQ and related status.<sup>12</sup> Moreover, only 6% of the companies reported that they train their human resource managers or other similar persons on non-discrimination and equal opportunities, towards implementing their policies.<sup>13</sup> This suggests that while such policies may exist, people may lack the knowledge and capacities to implement them in practice.

In a 2015 LGBTI Public Opinion Poll, LGBTI-identifying persons were asked, 'in which area are LGBTI people most frequently exposed to discrimination?'. Most mentioned employment, education and professional development.<sup>14</sup> KWN's interviews have confirmed that discrimination based on gender identity and sexual orientation occurs in the labour market.<sup>15</sup> LGBTI activists said they encounter a few such cases each year, involving firing and sexual harassment, primarily within the service sector. For example, in one case recorded by IMPAQ, a private sector employer immediately terminated an employment contract upon learning that an employee was gay.<sup>16</sup> Meanwhile, gay men stated that they face discrimination in hiring, struggling to get jobs as waiters because 'people

“ People who look more feminine do not fit the stereotypically "masculine" image of a waiter.

- Cited by IMPAQ

<sup>8</sup> Of the survey respondents, 10% indicated that they consider themselves as persons with different abilities.

<sup>9</sup> Interviews and focus groups conducted with people with different abilities confirm these findings, suggesting that employment for people with different abilities remains challenging. Findings suggested that companies in Kosovo do not provide people with different abilities appropriate environments in which they can work, though any gender differences are not discussed (IMPAQ International for USAID Kosovo, *Gender, LGBTI, and Persons with Disabilities Assessment*, Pristina: 2018, p. 52, at: <https://www.edu-links.org/sites/default/files/media/file/Gender-LGBTI-PWD%20assessment%20Kosovo%202018.pdf>).

<sup>10</sup> KWN interview with a woman representative of HandiKOS, Prishtinë/Priština, October 2018.

<sup>11</sup> The Headhunter, *LGBTIQ Employment Equality Index: 2018 Annual Report Findings*, Kosovo: 2018, p. 15, at: [http://headhunter.al/uploads/files/2018/June/11/LGBTIQ\\_Index\\_Report\\_Kosovo\\_2018\\_English\\_version15287229\\_89.pdf](http://headhunter.al/uploads/files/2018/June/11/LGBTIQ_Index_Report_Kosovo_2018_English_version15287229_89.pdf).

<sup>12</sup> Ibid., p. 16.

<sup>13</sup> Ibid., p. 19.

<sup>14</sup> National Democratic Institute et. al., *LGBTI Public Opinion Poll Western Balkans*, 2015, p. 14, at: <https://www.lgbti-era.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf>.

<sup>15</sup> KWN interviews with two representatives of LGBTI s, Prishtinë/Priština, October 2018; and by IMPAQ International for USAID Kosovo, 2018.

<sup>16</sup> This case was filed at the Labour Inspectorate and OI (in IMPAQ International for USAID Kosovo, *Gender, LGBTI, and Persons with Disabilities Assessment*, p. 39).

who look more feminine do not fit the stereotypically “masculine” image of a waiter’.<sup>17</sup> This discrimination based on gender stereotypes affects men more than women, LGBTI respondents said, because ‘lesbians who look more “masculine” can be hired as waitresses more easily than gay men, because people perceive them as ‘cool’ and ‘tough’’.<sup>18</sup> Meanwhile, among the KWN online survey respondents, 18 persons (16 women and two men) said employers did not promote them because of their sexual orientation.

Representatives of CSOs working on LGBTI<sup>19</sup> rights in Kosovo said that no concrete actions have been taken to address gender-based discrimination against LGBTI persons. This is due in part to LGBTI persons not reporting gender-based discrimination when it occurs.



*People are not allowed to talk about their sexual orientation; they are rejected by society. Imagine their position when it comes to employment.*

- CSO representative, North Mitrovicë/Mitrovica

‘People do not report it because the discrimination is very sophisticated, so they are not aware that they are being discriminated against because of their gender identity or sexual orientation’, an CSO representative said.<sup>20</sup> Reportedly, insufficient awareness of their rights, fear of losing their jobs and a lack of trust in institutions contribute to non-reporting among LGBTI persons.

## Gender-based Discrimination against Minority Ethnic Groups

Only a few survey respondents (4% of women and 5% of men) said they had been discriminated against based on their ethnicity. Nevertheless, interviews with CSO representatives working with minority ethnic groups living in Kosovo seemed to suggest that minority persons may face discrimination at work, especially women. Rarely do they receive decision-making positions. One respondent working with Roma, Ashkali and Egyptian persons said that discussing gender-based discrimination is a ‘luxury’ because both men and women face discrimination constantly due to their ethnicity. Thus, gender-based discrimination becomes secondary to ethnic discrimination, in her view. That ethnic-based discrimination took precedence over gender-based discrimination was a recurring theme among respondents from CSOs working with minority ethnic groups. Thus, they had limited information or examples of instances of multiple discrimination based on both gender and ethnicity. While people share their experiences with CSOs, they usually do not want to report cases to the authorities either because they do not know their rights or they distrust institutions, CSO representatives said. Therefore, the CSOs interviewed had not assisted any cases.

## Different Forms of Gender-based Discrimination

This subsection examines different forms of gender-based discrimination related to labour, including discrimination in hiring, promotion, contracts, pay, working conditions, maternity leave, paternity leave and sexual harassment at work, respectively.

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> KWN uses this acronym as it is most commonly used among organisations to describe with whom they work in Kosovo. This term does not deny that other people may identify differently than LGBTI; they still deserve the same rights.

<sup>20</sup> KWN interview with CSO representative working on LGBTI issues, Prishtinë/Priština, October 2018.

## Discrimination in Hiring

Approximately 32% of women and 26% of men have had a job interview two to five times since 2008. Survey findings suggest that, on average, women have more job interviews than men.<sup>21</sup> Fewer than one in four women (23%), compared to one in three men (33%), had never attended a job interview. Considering that most men respondents were employed, this may suggest that more men may be able to secure jobs without interviews than women, and/or that women may have to change jobs more frequently than men. While other factors may exist, this may suggest discrimination against women in hiring.

Indeed, KWN's 2016 survey of a random sample of employers found that 47% of employers believed that the work they offer is fit *only* for men, whereas 9% said it was *only* for women; only 35% thought the work fit for both women and men.<sup>22</sup> When asked 'if they had to choose between a woman and a man candidate who had the same level of education, same qualifications and same experience in hiring', 48% said they preferred a man and 23% said they would choose a woman.<sup>23</sup> Such attitudes among employers, suggests that gender-based discrimination in hiring is likely widespread in Kosovo. This was reaffirmed by the GAP Institute's 2017 report on labour market discrimination, which found discrimination in the gender-suggestive language of job advertisements posted by private and public sectors. The textual analysis also evidenced that employers tend to seek women for lower positions.<sup>24</sup>

This 2018 online survey further substantiated the findings of KWN's and the GAP Institute's prior research. From the survey respondents who had at least one job interview in their lifetimes, 63% said they had interview questions that involved some form of discrimination, though the discrimination perhaps was not always gender-related.<sup>25</sup> More specifically, among the surveyed women who attended job interviews, 26% believed that employers did not hire them *because* they are woman. In comparison, only 16% of men said they were not hired because they were men. For example, women tended to be asked about their plans to get married or if they had children. Moreover, approximately 2% of the women who had job interviews were asked for medical proof that they were not pregnant. KWN's 2016 paper corroborates that such requirements exist in some workplaces,<sup>26</sup> and that some employers in Kosovo openly discriminate against women in hiring processes, based on women's plans to start a family. In fact, 45% of employers surveyed by KWN in 2016 explicitly stated they consider a job applicant's family plans during the hiring process.<sup>27</sup> These findings suggest that gender-based discrimination often exists in hiring in Kosovo.

“ In a lot of interviews [for jobs at a supermarket], I was asked if I had children or planned to have them.

- Woman, age 33, Prishtinë/Priština

<sup>21</sup> N = 1,632 (1,107 women, 525 men).

<sup>22</sup> KWN, *Striking a Balance*, p. 14.

<sup>23</sup> *Ibid.*, p. 15.

<sup>24</sup> They analysed 562 job vacancies within the period of January 2016 to March 2017 (GAP Institute, *Labour Market Discrimination: How job advertisements create gender inequality*, Pristina: 2017, at: [http://www.institutigap.org/documents/20684\\_LABOUR%20MARKET%20DISCRIMINATION.pdf](http://www.institutigap.org/documents/20684_LABOUR%20MARKET%20DISCRIMINATION.pdf)).

<sup>25</sup> N = 1,091 (771 women, 320 men). For example, some mentioned discrimination based on political party affiliation, ethnicity and age. Notably, eight interviewed representatives of institutions and s also said they faced work-related gender-based discrimination in hiring (KWN interviews, 2018).

<sup>26</sup> KWN, *Striking a Balance*, p. 15.

<sup>27</sup> *Ibid.*

## Discrimination in Promotion

Regarding promotion, 54% of all survey respondents perceived that employers do not provide all employees with equal opportunities for promotion. Among respondents ever employed in the last decade, 16% of women and 4% of men said they have been discriminated against in promotion due to their gender.

“ I am a construction engineer by profession. When I worked in the private sector, I was never given any facilities to manage because, according to my bosses, a woman cannot lead a project.

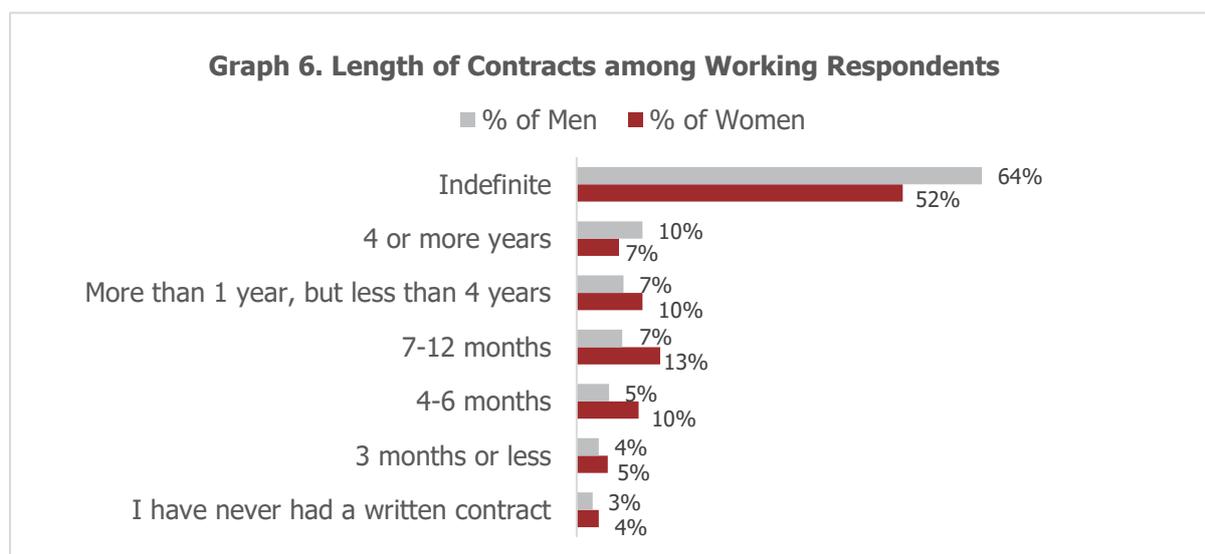
- Woman, age 31, Glllogoc/Glogovac

Interviews with institutions and CSOs reaffirmed that such discrimination exists.<sup>28</sup> Nearly every third employee (32%) living in Pristina felt they had experienced discrimination in promotion, compared to 24% of employees living in other cities.

## Violations of Contracts

Working without a contract can place workers in a precarious position and entail several rights violations. Of the survey respondents who worked in the last ten years, one in four (25%) had worked without a contract, including for family businesses.<sup>29</sup> A slightly higher percentage of women (26%) had this experience than men (22%). Among respondents currently employed, 6% do not have an employment contract (7% of women and 5% of men). More than one in five employees (22%) works without a contract in the private sector, compared to only 2% in the public sector.

When asked who they think tends to have longer contracts, most survey respondents (79%) agreed that it is similar for women and men. However, among the respondents who have had employment contracts at some time since 2008, men tended to have longer employment contracts than women (see Graph 6).<sup>30</sup> For example, 64% of men respondents had an indefinite contract, compared to 52% of women.<sup>31</sup> However, without further information for comparison or additional research, it is difficult to conclude if gender-based discrimination exists related to contracts. Meanwhile, 12% of survey respondents employed



<sup>28</sup> KWN interviews with five different respondents (2018).

<sup>29</sup> N = 1,288 (855 women, 433 men). Riinvest's survey similarly found that 29% of surveyed women said they did not have an employment contract (*Women in the Workforce*, p. 40).

<sup>30</sup> N = 1,288 (855 women, 433 men).

<sup>31</sup> While more than half of the employed survey respondents had indefinite contracts, on average, employed persons in Pristina had shorter contracts than workers living in other cities.

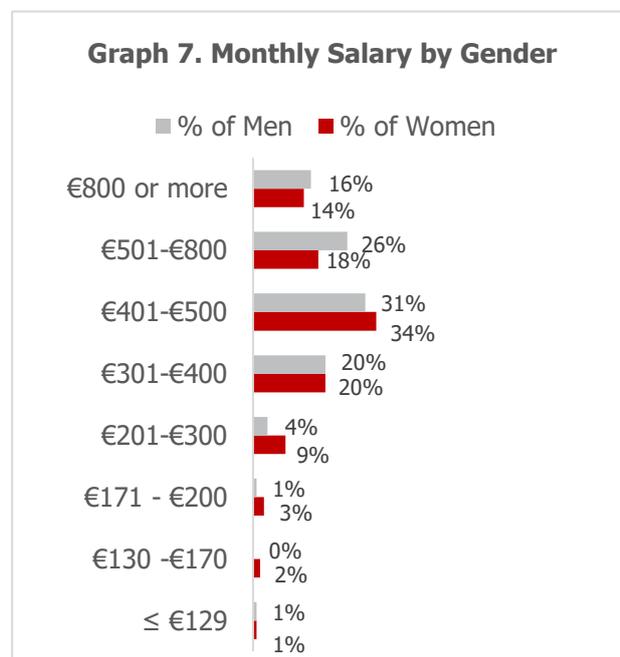
since 2008 indicated that at least once an employer had asked them to sign an employment contract without being allowed to read and understand the terms of the contract (13% of women and 11% of men).

Regarding working hours, more than half of the employed survey respondents (63%) work between 21 and 40 hours per week, on average, with little difference between women and men.<sup>32</sup> Meanwhile, 5% of women reported working between one and 20 hours per week, on average, compared to 2% of men. Without further information as to whether employees selected to work part-time, no conclusions can be drawn as to whether any discrimination may exist in full- or part-time hiring; indeed, some women may prefer working part-time to balance work and private responsibilities that they may have due to traditional gender norms.

Meanwhile, one-third of the respondents said that, on average, they work more than 40 hours per week (overtime); 6% of men and 3% of women said they work more than 61 hours per week. More people working in the private sector tended to work overtime: 60% of private sector employees said they work more than 40 hours per week. In comparison, only one-fourth of the employees in the public sector, and 42% of persons in the civil society sector worked more than 40 hours per week. Moreover, persons working without a contract were more likely to work overtime with nearly half reporting that they work overtime. Kosovo law foresees that overtime work shall be compensated either monetarily or by time off.<sup>33</sup> However, nearly half of the survey respondents who had worked overtime (47%) did not receive compensation for their overtime work. More men had time off as compensation for overtime (25%) than did women (19%). Moreover, a higher percentage of men received financial compensation for overtime (6%) than did women (3%). Again, further research would be needed to provide a clearer basis for comparison to understand whether receiving overtime compensation may involve gender-based discrimination or not.

## Violations of the Right to Equal Pay for Equal Work

As stated, equal pay for equal work is a fundamental value of the EU. Prior research has found that on average men have higher wages than women do in Kosovo.<sup>34</sup> As Graph 7 illustrates, the survey findings similarly found that men seem to have higher salaries than women.<sup>35</sup> Compared to 32% of women, 42% of surveyed men had salaries higher than €500 net per month. Meanwhile, a higher percentage of women than men had salaries amounting to less than €300 net monthly. Qualitative data provided further evidence that differences in salaries could involve gender-based discrimination against women, as women respondents explained how they received lower salaries than their men colleagues, even though they performed the same work.



<sup>32</sup> N = 1,178.

<sup>33</sup> LL, Art. 56.

<sup>34</sup> Millennium Challenge Corporation, Kosovo - Labor Force & Time Use Survey, 2017, at: <https://data.mcc.gov/evaluations/index.php/catalog/205>. They found on average women receive €289 per month compared to men receiving €353.

<sup>35</sup> N = 1,175 (757 women, 418 men).

When asked about their employers purposefully making false declarations of employees' salaries to the relevant authorities, such as to avoid paying taxes or pensions, most survey respondents (86%) stated that their employer correctly declares their salary.<sup>36</sup> In one interview, a woman respondent explained how the company in which she worked paid half of her salary through the bank and half in cash to avoid paying higher taxes. 'We had "internal contracts" for the real salary, so I only declared €350 as my salary at the bank', she said.<sup>37</sup> A 2016 policy brief similarly suggested that so-called 'hidden salaries', that is income partially or completely undeclared, is prevalent in Kosovo, reported by 37% of employees.<sup>38</sup> In KWN's research, a larger percentage of surveyed women (12%) than men (9%) did not know if their employer declares the actual salary that they receive or not.

“ In my job as a legal representative of the bank, for three years I have been paid €150 less than my male colleagues in the same position.

- Woman, age 33, Prizren/Prizren

While reported elsewhere in Western Balkan countries, seemingly few employers in Kosovo require workers to return parts of their salaries. Even so, some survey responses suggest that this may occur. Of the ever-employed survey respondents, 4% of women and 2% of men stated that this had happened to them.<sup>39</sup> Despite these findings of general violations of the law related to 'hidden salaries', it is difficult to conclude whether such phenomena involve any gender-based discrimination; further research is needed.

## Poor Working Conditions and Equal Treatment

In 2018, health and safety at work, under the general umbrella of work conditions, dominated public debate in Kosovo. Several deaths in the construction industry sparked questions about working conditions in the private sector.<sup>40</sup> The fact that men tend to be overrepresented in this sector, and therefore more at risk of these safety violations, cannot be characterized as gender-based discrimination, per se, given the lack of comparison of similar work. No known analyses have assessed potential gender-based discrimination related to infringements on workers' rights related to health and safety at work. The online survey deployed for this research found that every third (34%) person ever employed in the last ten years perceived that their health or safety has been at risk because of their work. Seemingly, more women (37%) felt at risk than men (29%).

Additionally, approximately 28% of ever-employed survey respondents said they had been denied their rights to sick leave or days off on national holidays at least once. Of those who had experienced such rights violations, 17% had worked in the public sector and 62% worked in the private sector. Significantly more women (35%) than men (15%) experienced such labour rights violations. Perhaps this may suggest that women are at greater risk of having their rights to leave violated than are men, which potentially could involve gender-based discrimination. However, further research is needed.

Regarding equal treatment at work, according to Riinvest's 2017 survey, 30% of employed women believed that 'their supervisor discriminates against them based on their

<sup>36</sup> N = 1,144 (733 women, 411 men).

<sup>37</sup> KWN interview with a woman, age 31, Glogoc/Glogovac, December 2018.

<sup>38</sup> Center for Research and Policy Making, Institute for Democracy and Mediation and Democracy for Development, *The Shadow Worker - Hidden Economy and Undeclared Labor in Macedonia, Albania and Kosovo*, 2016, p. 1, at: <http://www.crpm.org.mk/wp-content/uploads/2016/11/23.-PB1-RHEM-07.11.2016-Final.pdf>.

<sup>39</sup> N = 1,137 (727 women, 410 men).

<sup>40</sup> Fazliu, E., "KDI Condemns Safety Conditions for Private Sector Employees", *Prishtina Insight*, accessed 16/02/2019, at: <https://prishtinainsight.com/kdi-condemns-safety-conditions-for-private-sector-employees/>

gender when delegating work', and 20% thought that 'their gender impacts their profession'.<sup>41</sup> Moreover, '20% believe their colleagues treat them differently because of their gender'.

## Violations of Pregnancy and Maternity Leave Rights

KWN's prior research has documented violations of women's rights during pregnancy. This research found that only 15% of employers had policies identifying risks to pregnant persons, as determined by Kosovo law.<sup>42</sup> One in five surveyed women said their work placed them and their unborn children at risk:

31% of women employed while pregnant said they had to lift, carry, push, or pull loads; 80% had long periods of sitting or standing at work; nearly one-fourth were exposed to biological, chemical, or physical agents; 54% were exposed to extreme temperatures (hot or cold) or vibrations; 8% had to do night work (defined as at least two hours between 22:00 and 05:00); and 53% had to work extended hours or overtime while pregnant.<sup>43</sup>

These represent breaches of the LL.

In this 2018 research, interview respondents said that violations of legal rights to pregnancy and maternity leave are among the most common forms of gender-based discrimination at work.<sup>44</sup> They described 12 specific cases involving breaches of maternity leave rights. In most of these cases, employers terminated the contracts of women employees during their pregnancies or while they were on maternity leave, without prior notification. In one case, a pregnant woman was fired from the board of a public enterprise, though her contract was valid until 2021.<sup>45</sup> The use of short-term contracts in order to avoid paying for maternity leave also is present.

Of the women surveyed, 28% were pregnant while employed. Of them, 26% said that they were denied their right to paid maternity leave; they were neither paid, nor received government compensation.<sup>46</sup> The probability of not receiving any compensation during maternity leave seems higher for women working in the private sector. Concerningly, 62% of the women survey respondents who took maternity leave while employed in the private sector were neither paid, nor received government compensation. Labour inspectors confirmed that they have dealt with several instances of violations of maternity leave rights, particularly in the private sector.<sup>47</sup> In comparison, 15% of women employed in the public sector, 29% of those in local CSOs and 17% of women working in international bodies did not receive compensation.<sup>48</sup>

*“I was advised by my colleagues to keep my pregnancy a secret because [according to them,] the moment I would say that I was pregnant, I would lose my job. I hid it for five months. I managed to do that! During the fifth month, they discovered the pregnancy and I was put under a lot of pressure when my manager found out. She did all sorts of things to make me quit. However, I just continued working for another month. After that, they gave me a one-month contract because they saw that I did not want to quit, and after that month, I was sent home.*

- Woman, private sector, age 33,  
Prishtinë/Priština

<sup>41</sup> Riinvest Institute, *Women in the Workforce*, p. 9.

<sup>42</sup> KWN, *Striking a Balance*, p. 17.

<sup>43</sup> Ibid.

<sup>44</sup> KWN interviews with institutional and s representatives.

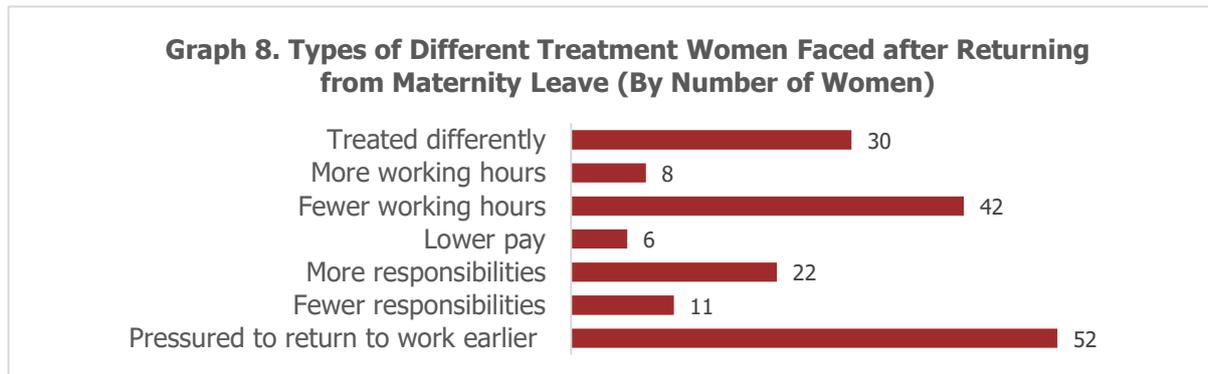
<sup>45</sup> This case is being treated in the Appeal Court (KWN interview with a man judge, Mitrovicë/Mitrovica, November 2018).

<sup>46</sup> N = 245.

<sup>47</sup> KWN interviews, 2018.

<sup>48</sup> Examples of international bodies included: the EU, United Nations (UN), UN agency and foreign embassy.

Of the 245 women who took maternity leave at least once since 2018, 83% returned to their previous place of employment after their leave. However, 21% of these women indicated that they were pressured into returning to work earlier than planned (see Graph 8).



Some women (15%) felt they were treated differently by their peers or bosses upon returning from maternity leave. When asked specifically about the 'before and after treatment', 5% said they had fewer responsibilities and 11% said they had more responsibilities when they returned; 3% said they had lower pay after they took their leave. Every fifth women (21%) said she had fewer working hours when she returned from maternity leave, while 4% said that they had more working hours. Treating a person differently after maternity leave, if not explicitly requested by the woman employee, can involve a violation of her rights and a form of gender-based discrimination.

### Violations of Rights to Paternity Leave

Of the men survey respondents, approximately one-third had a new-born child while employed since 2008. Of them, 59% said that their employer allowed them to take one to three days off, while 25% had four to ten days off.<sup>49</sup> Very few men reported that they were treated differently upon returning from this leave (only 2%). Approximately 11% of new fathers did not receive any days off, which constitutes a violation of their rights under the LL.

As discussed in the Legal Analysis, men's comparatively shorter paternity leave could be interpreted as a form of gender-based discrimination against men. However, substantial public debate has surrounded whether forthcoming amendments to the LL should extend paid paternity leave in Kosovo. Research by Democracy for Development (D4D) in 2017 suggested that fathers want to have the ability to spend more time with their new-borns, 'but the societal pressure to conform to traditional gender roles and the perceived impact on their careers, means fathers simply don't have enough incentives to take more than two weeks of paternity leave'.<sup>50</sup> D4D's survey results showed that 42% of men respondents said they would definitely consider sharing parental leave with their partner.<sup>51</sup> Moreover, six public consultations that D4D organized in different regions of Kosovo found that 'fathers are ready to take at least a month up to three months of leave'.<sup>52</sup> These findings have been substantiated by men respondents to KWN's 2018 online survey; 64% said that men should have more paid time off for paternity leave. Meanwhile, 20% were against increasing this leave and 16% did not know. Altogether, significant evidence from various sources points to men's general support for amending the LL so that fathers can take longer paternity leave.

<sup>49</sup> N = 149.

<sup>50</sup> D4D, *Shifting paradigms: Equity through Parental Leave*, Pristina: 2017, p. 7, at: [https://d4d-ks.org/wp-content/uploads/2017/12/D4D\\_PI\\_13\\_ENG\\_WEB.pdf](https://d4d-ks.org/wp-content/uploads/2017/12/D4D_PI_13_ENG_WEB.pdf).

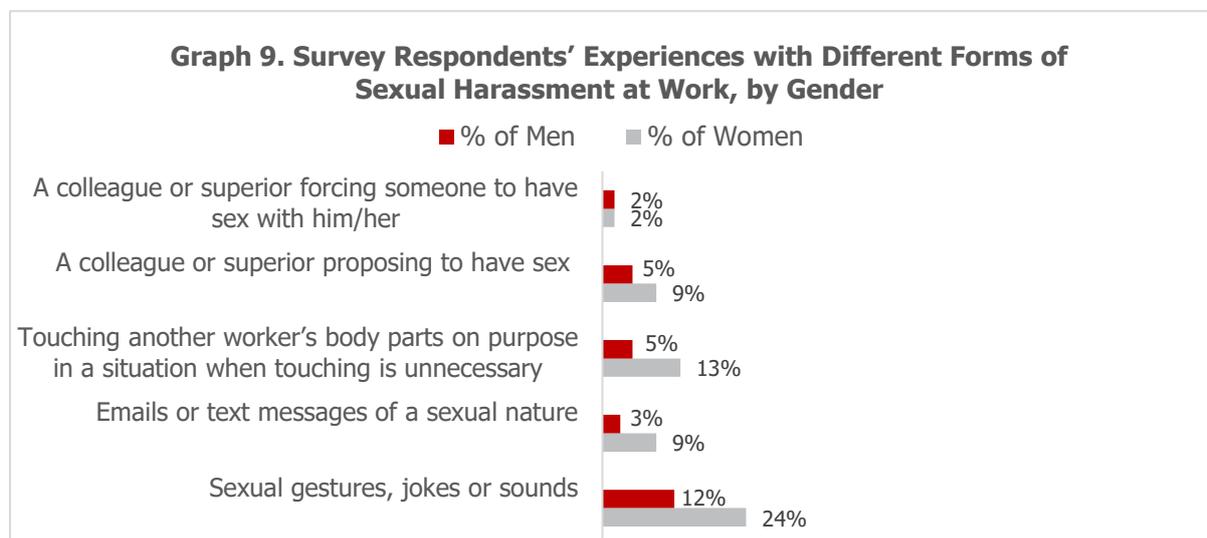
<sup>51</sup> *Ibid.*, p. 37.

<sup>52</sup> *Ibid.*, p. 34.

## Sexual Harassment at Work

As explained in the Legal Analysis, sexual harassment can be understood as a form of gender-based discrimination at work. The online survey reaffirmed KWN’s prior research findings that significantly more women than men have experienced sexual harassment at work.<sup>53</sup> Compared to 15% of surveyed men, 30% of surveyed women indicated that they had experienced at least one form of sexual harassment.<sup>54</sup> Meanwhile, 12% of women were subjected to sexual harassment more than once, compared to 8% of men.

More women than men experienced every different form of sexual harassment examined in the survey (see Graph 9). Compared to 12% of men, 24% of women were subjected to sexual gestures, jokes or sounds. Three times as many surveyed women (9%) as men (3%) received emails or text messages of a sexual nature. Concerningly, 13% of the women and 5% of the men were touched physically in situations when touching was unnecessary. Meanwhile, 9% of women and 5% of men had a colleague or superior propose to have sex with her/him, whereas 2% of both women and men had a colleague or superior force them to have sex.



Statistically, the odds of being sexually harassed are higher if you are a woman or if you work in the private or civil society sector (compared to the public sector).<sup>55</sup> Regarding age, people older than 50 are least likely to face sexual harassment. The odds of being sexually harassed are higher for those with a Master’s degree or PhD, compared to those with a secondary or vocational education. However, these differences may be attributable to the probability that survey participants with more education may recognize different forms of sexual harassment more easily. According to the survey, more employed people living in Pristina have faced sexual harassment at work (approximately 30%) than people living in other cities of Kosovo (21%).<sup>56</sup>

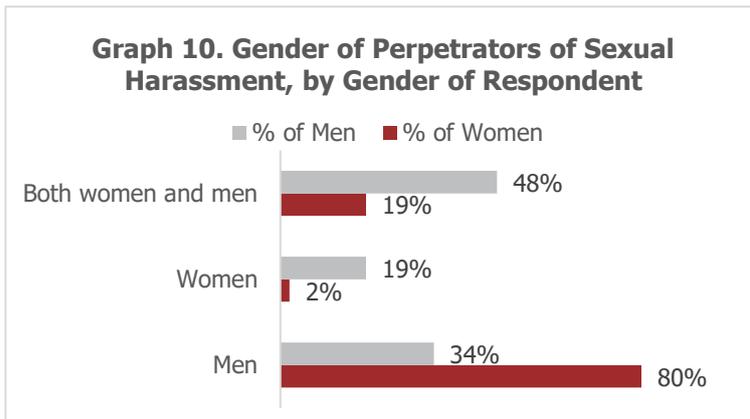
<sup>53</sup> KWN, *Sexual Harassment in Kosovo*, 2016.

<sup>54</sup> N = 1,346 (915 women, 431 men). Interview respondents also detailed seven accounts of sexual harassment at work, all but one involving women (KWN interviews with representatives of institutions, 2018).

<sup>55</sup> Researchers used logistic regression to test whether the probability of experiencing sexual harassment is determined by gender, age category, educational level, current employment position and monthly salary. The model is significant  $\chi^2(12) = 100.218$ ,  $p = .000$ , and explains between 9 (Cox & Snell  $R^2 = .093$ ) и 14 (Nagelkerke  $R^2 = .145$ ) percentage of the variance. The Hosmer and Lemeshow Test is insignificant  $\chi^2(8) = 14.224$ ,  $p = .076$ , confirming the fit of the model.

<sup>56</sup> The sample size was too small to draw conclusions regarding the situation of persons living in rural areas.

Regarding the gender of perpetrators (Graph 10), according to 80% of women survey respondents who had suffered sexual harassment at work, men had perpetrated it against them.<sup>57</sup> However, 19% said both men and women perpetrated sexual harassment. Fewer than 2% of women said that the perpetrator was a woman. While the sample of men subjected to sexual harassment at work was comparatively smaller, nearly half (48%) stated that perpetrators have been both women and men. Meanwhile 12 participants (19%) said women perpetrated sexual harassment against them.



Examining the perpetrator's position within the workplace can reveal whether a relationship exists between gender, power dynamics and sexual harassment at work. Moreover, as discussed in the Legal Analysis, the Criminal Code now foresees a heavier sentence when persons in positions of power misuse that power by sexually harassing others. Indeed, most survey respondents who had suffered harassment said that persons in higher positions had harassed them sexually (75% of women and 56% of men).<sup>58</sup> For every third man, the harasser was in a lower position, whereas this was the case for only 16% of women.

“ He [the school's Director] gave me a phone and would constantly call me on it. 'Come to the office', he would say, even though I told him I was in class. 'You just come to the office', he said. This continued until once he tried to forcefully kiss me.

- Woman, teacher, age 36, Prizren/Prizren

## Conclusions

Relevant institutions lack data about the prevalence of gender-based discrimination at work. Yet, significant evidence suggests that gender-based discrimination at work exists. Survey findings suggest that such discrimination particularly affects women in the private sector, those receiving lower salaries and persons ages 40 to 49. Meanwhile, qualitative data and other research evidence gender-based discrimination occurring in the public sector and affecting other people, as well. Persons with different abilities, minority ethnic groups and LGBTQI+ persons seemingly hesitate to report discrimination, so minimal information exists about their experiences.

Evidence suggests that gender-based discrimination affects women in hiring and promotion in Kosovo. More women than men seemingly face labour rights violations related to their contracts, overtime compensation, work conditions and rights to paid leave. However, further research would be needed to assess if this necessarily constitutes gender-based discrimination. Violations of maternity leave rights seem widespread. Given the short duration of paternity leave, few violations of this right have been reported. Yet, significant evidence suggests that men generally would support amending the LL so that fathers may have more

<sup>57</sup> N = 335 (270 women and 65 men).

<sup>58</sup> N = 240 (203 women, 37 men).

paternity leave, towards addressing this currently gender-discriminatory law. Sexual harassment at work remains widespread, particularly affecting women.

# THE INSTITUTIONAL RESPONSE TO GENDER-BASED DISCRIMINATION AT WORK

This section examines the knowledge, awareness and experiences of relevant institutions related to gender-based discrimination at work. It seeks to understand how they have treated such discrimination cases to date, in accordance with the legal framework described in the Legal Analysis. The findings draw primarily from interviews with diverse representatives of these institutions, but also from survey findings and interviews with persons who experienced gender-based discrimination. The section is organized by institution, including the police, prosecution, courts, OI and Labour Inspectorate. Then, the work of labour unions and CSOs is discussed. Finally, the section reflects on the overall institutional response to gender-based discrimination at work in accordance with the relevant legal framework.

## The Police

Police are responsible for investigating any criminal act.<sup>1</sup> Therefore, police should investigate all alleged acts of gender-based discrimination enlisted in the Criminal Code, such as criminal offences related to labour rights, sexual harassment and sexual abuse, including by persons in positions of authority.

Police officers stated that they had undergone training on human rights and gender equality as part of Kosovo Police training programs.<sup>2</sup> Thus, they were inclined to be rather knowledgeable about the legal framework related to gender-based discrimination at work. Officers tended to be able to identify different situations that constitute gender-based discrimination at work, knowing their investigative responsibilities. They declared their determination to investigate any reported case of gender-based discrimination.

Yet, as officers observed, discrimination cases usually fall outside their competences. Thus, the officers interviewed had encountered few cases of gender-based discrimination at work. In one case, an officer referred a person to receive assistance from the appropriate institution, the Labour Inspectorate. The only five identified cases treated by police, primarily involved sexual harassment reported by women working in the private sector. In these cases, police tended to open investigations, and cases were passed on to the prosecution.

Overall, the fact that very few cases of gender-based discrimination at work were reported to police, made it difficult to assess their capacities for addressing this issue. Meanwhile, prior research by KWN has suggested that some police officers may lack knowledge or have attitudes that hinder their treatment of some forms of gender-based discrimination, such as sexual harassment.<sup>3</sup> One CSO respondent working with LGBTIQ+ persons expressed concern that police may not always treat cases quickly or without discrimination.

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<sup>1</sup> Assembly of the Republic of Kosovo, Law on Police No. 04/L-076, Art. 10, at: [http://www.kosovopolice.com/repository/docs/law\\_on\\_police.pdf](http://www.kosovopolice.com/repository/docs/law_on_police.pdf).

<sup>2</sup> KWN interviews, 2018.

<sup>3</sup> KWN, *Sexual Harassment in Kosovo*, pp. 39-42.

## The Prosecution

The State Prosecutor can initiate a criminal procedure when any indication exists that a crime act has been committed, as defined in the Criminal Code.<sup>4</sup> The police, a public institution, a private institution, media or a citizen can inform the prosecution if they believe a crime has been committed.<sup>5</sup>

Although the prosecutors interviewed had considerable knowledge regarding the legal framework in general, they tended to lack detailed knowledge about laws protecting people from gender-based discrimination. 'I am not very familiar with this issue', a prosecutor said, illustrative of this recurring trend.<sup>6</sup> One

“ We cannot know the law very well if we do not deal with cases.

- Man prosecutor, Mitrovicë/Mitrovica

prosecutor could not explain or identify any act of gender-based discrimination. Even so, prosecutors tended to feel very competent and capable of dealing with such cases. 'We are 100% competent and capable to deal with such cases, professionally, and to close them in reasonable time', a prosecutor said.<sup>7</sup>

The prosecutors interviewed in seven Basic Prosecution offices stated that they have not encountered any cases of work-related gender-based discrimination. Some prosecutors believed that 'there is no gender discrimination in Kosovo. I myself did not hear, nor have my colleagues told me about any case [...] so this is why there are no such cases'.<sup>8</sup> In contrast, other prosecutors acknowledged that gender-based discrimination exists, though they have not had any such cases. This may be due in part to the fact that it is not explicitly defined as a criminal offence in the Criminal Code.

One prosecutor mentioned a case involving the criminal act of a man employer harassing a woman employee, which was still under review.<sup>9</sup> However, the prosecutor emphasized that this case involved harassment as defined in the Criminal Code, and not sexual harassment. In another case described by a police officer, two brothers who owned a shop sexually assaulted a woman at work.<sup>10</sup> However, the case was resolved by a private mediator, and the prosecutor terminated the case. Considering that criminal offences should be automatically prosecuted, this may suggest improper treatment of this case by the prosecution.

Generally, some prosecutors stated that having more prosecutors would help reduce the backlog of cases. Moreover, some said that ensuring the specialisation of prosecutors would enhance performance.

## Courts

According to the Law on Courts, 'Basic Courts are competent to adjudicate in the first instance all cases'.<sup>11</sup> The General Department adjudicates 'all first instance cases unless within

<sup>4</sup> Assembly of Republic of Kosovo, Criminal Procedure Code No. 04/L-123, at: <https://www.kuvendikosoves.org/common/docs/liqjet/Criminal%20Procedure%20Code.pdf>. As discussed in the Legal Analysis, criminal acts are enlisted in chapter XIX on Criminal Offenses against Labour Relations Rights, and Chapter XX on Criminal Offenses against Sexual Integrity (Criminal Code No. 04/L-082).

<sup>5</sup> Ibid., Art. 6, paragraph 3.

<sup>6</sup> KWN interview with man prosecutor, Prishtinë/Priština, December 2018.

<sup>7</sup> KWN interview with man prosecutor, Gjilan/Gnjilane, November 2018

<sup>8</sup> KWN interview with a woman prosecutor, Ferizaj/Uroševac, December 2018.

<sup>9</sup> KWN interview with a man prosecutor, Gjilan/Gnjilane, November 2018

<sup>10</sup> KWN interview with a man police officer, Ferizaj/Uroševac, November 2018.

<sup>11</sup> Law on Courts No. 03/L-199, Art. 11, paragraph 1.

the competence of another Department'.<sup>12</sup> Basic courts deal with both criminal and civil cases. The Criminal Division adjudicates all criminal cases that are not in the exclusive competence of the Serious Crimes Department. Meanwhile, the Civil Division adjudicates all civil cases, except otherwise foreseen by law.<sup>13</sup>

Courts do not collect and maintain data disaggregated by the gender of the plaintiff or the defendant.<sup>14</sup> As cases are logged by the type of criminal offence based on definitions in the Criminal Code, no offenses specifically related to gender-based discrimination have been recorded, considering that it is not explicitly defined as a crime. Nor is the location where a crime occurred logged electronically, which makes it difficult to quantify the number of court cases that have treated gender-based discrimination at work.

Survey data also suggest that very few discrimination cases seem to have been filed with courts. Only 21 respondents, or 8% of those who had experienced gender-based discrimination at work, were involved in some form of court action related to their case. The percentage of men (18%) was significantly higher than that of women (6%). Court representatives also said that they have received very few cases involving gender-based discrimination at work.<sup>15</sup> Both civil and criminal division judges tended to state that they have not dealt with such cases. Nor did they know of other judges having such cases. Only a few judges from civil courts had seen very few such cases. In these cases, plaintiffs tended to be women and perpetrators tended to be men employers. Cases related to violations of women's right to maternity leave, gender-based dismissals from work and sexual harassment.

This lack of judicial practice likely affects judges' knowledge regarding the relevant legal framework. In general, judges know their responsibilities and competences. However, they possess only very general knowledge about the legal framework protecting women and men from gender-based discrimination at work. Even so, judges generally feel competent and stated that they would treat cases of work-related gender-based discrimination with priority.

In general, the few judges who had treated cases of gender-based discrimination claim that they responded to the cases correctly. A judge mentioned a case of a public company firing a pregnant woman, though she had a contract until 2021.<sup>16</sup> This act violated the LL. Therefore, the judge fined the company and required the company to compensate the woman her unpaid salary from the moment they terminated her contract. However, the defendant filed a complaint, and the case remains with the Appeals Court. Generally, this example suggests that the court properly treated this case, as per the LL. Prosecutors and police officers generally agreed that courts tend to treat such cases correctly.

“ I have been working as a judge for 23 years, and I did not encounter a case of gender-based discrimination in the labour market.

- Woman judge,  
Gjakovë/Đakovica

<sup>12</sup> Ibid., Art. 16, paragraph 1.

<sup>13</sup> Republic of Kosovo, Kosovo Judicial Council, Basic Court Pristina, at: <http://www.gjyqesori-rks.org/en/courts/page/index/120>.

<sup>14</sup> KWN email correspondence with officials responding to KWN information requests for statistics (2018).

<sup>15</sup> KWN interviews with diverse judges, 2018.

<sup>16</sup> KWN interview with man judge, Mitrovicë/Mitrovica, November 2018.

In contrast, interview respondents from unions and CSOs had other opinions about the performance of courts. For example, a Labour Union representative said, 'the court favours men more than women'.<sup>17</sup> Similarly, an CSO representative said that courts prolong cases of this nature and that cases 'are not taken seriously'.<sup>18</sup>

One judge stated that the practice of victim-blaming continues in the judicial system.<sup>19</sup>

During court hearings on a sexual harassment case, the perpetrator's lawyer made sexist and insulting comments, stating that the victim 'asked for it'. However, the judge fined the alleged perpetrator, the head of a public company, only €600. The judge's colleague, interviewed by KWN, believed the verdict inappropriate and that there was a legal basis for a higher sentence. She believed that the fact that the judge was a man contributed to this incorrect decision. The prosecution has re-opened the case with the Appeals Court.

Some judges believed that the low number of judges hindered their performance. They and others believed that is important for judges to be specialised.

“

*When a case goes to court, it is not really clear if the businessman is bribing the judge or what is going on. Because it comes down to a battle between a powerful business versus a simple employee.*

- Woman, OI representative,  
Pejë/Peć

## Labour Inspectorate

The Labour Inspectorate should supervise implementation of the LL. It must address any employee's request concerning potential violations of labour rights. In cases when a violation is verified, the Labour Inspectorate must initiate disciplinary measures for the employer.<sup>20</sup> Complaints submitted to the Labour Inspectorate must remain confidential to protect employees. Labour Inspectors also are authorized to inspect any workplace and employers' headquarters without prior notice and to document any infringement of the LL. If labour inspectors assess that working conditions pose a danger to the security, health and dignity of employees, they can issue written notice about the irregularities found and set a time limit for addressing these.

Labour inspectors seemed somewhat knowledgeable about the legal provisions pertaining to gender-based discrimination at work, particularly gender-related LL provisions. However, they knew less about the LGE and LPD. Some inspectors' responses suggested that they may not be able to identify gender-based discrimination. In contrast, other inspectors were very knowledgeable, identifying all the work-related situations that could constitute gender-based discrimination. Inspectors generally seemed sensitive to situations that may constitute gender-based discrimination at work, declaring that they are dedicated to addressing any reported case of discrimination.

The Labour Inspectorate does not possess an electric data system that would enable the classification of cases based on specific violations. Thus, no consolidated information exists regarding cases reported to the Labour Inspectorate, including related to gender-based discrimination. Rather, inspectors merely save individual case files on their computers without

<sup>17</sup> KWN interview with man labour union representative, Prishtinë/Priština, October 2018.

<sup>18</sup> KWN interview with woman representative, Gjakovë/Đakovica, November 2018.

<sup>19</sup> KWN interview with woman judge, October 2018. KWN also found evidence of victim-blaming in its other research: *Sexual Harassment in Kosovo* (2016) and *From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo* (Pristina: KWN, 2017, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20180312142859762.pdf>).

<sup>20</sup> Law on Labour Inspectorate, No. 2002/9, Art. 5.

any specific classification system. This makes it very difficult to track how many and which types of cases treated by the Labour Inspectorate have involved gender-based discrimination.

From their personal experiences, inspectors said that very few cases of gender-based discrimination have been filed by employees or identified during their routine inspections. Most of these types of cases involved violations of maternity leave provisions, especially in the private sector. This included the unlawful termination of contracts of pregnant women employees and discrimination in hiring to avoid maternity leave costs.

In treating gender-based discrimination cases, inspectors tended not to consider gender-based discrimination a priority. They noted that they must deal with many other cases. The labour inspectors interviewed almost unanimously agreed that the low number of inspectors tremendously impinges upon their performance. Most of them considered that having more labour inspectors would contribute to more effective inspection of discrimination cases. Some also noted the lack of proper vehicles for inspections and the need for training to better qualify them to inspect specific employment sectors.

In one instance, when asked about any inspected cases of sexual harassment at work, an inspector stated that sometimes the appearance of women workers may be the reason that sexual harassment occurs. 'Women's clothing may be a sexual provocation to male colleagues', he said.<sup>21</sup> This exemplifies 'victim-blaming' and suggests insufficient knowledge on how to treat such cases.

“ *Women's clothing may be a sexual provocation to male colleagues.*  
- Male Labour Inspector,  
Gjilan/Gnjilane

Another inspector said that sometimes women inspectors refuse to inspect workplaces considered degrading for women, such as massage centres suspected of prostitution; the inspectors are afraid that persons in their social circles may judge them for entering such places, he said. These examples suggest that social norms may hinder some inspectors from performing their duties.

Dissatisfaction with the performance of the Labour Inspectorate was a recurring theme among prosecutors, judges and OI representatives. For example, they noted the inadequate inspection of discrimination cases, breaches of confidentiality and vague reporting on inspected cases. 'Their reports are vague, leaving room for interpretation', a prosecutor stated. This makes 'it difficult for other institutions to give a verdict'.<sup>22</sup> Officials from different institutions expressed concern that the Labour Inspectorate does not always identify cases of discrimination correctly, which may contribute to few cases reaching courts.

Similarly, of the few survey respondents who did report gender-based discrimination at work, most sought support from the Labour Inspectorate. They described what they perceived as misconduct in handling their cases. Respondents attributed this to a lack of power, corruption and political nepotism among inspectors.

## The Ombudspersons Institution

As an independent body, the OI supervises and promotes respect for fundamental human rights and liberties. In accordance with the LGE and LPD, it is responsible for addressing any complaints of unequal and discriminatory treatment.<sup>23</sup> In alleged cases of gender-based discrimination at work, the OI can investigate violations and make recommendations for ending discriminatory practices. The OI has offices in each of Kosovo's five regions.

Generally, OI representatives seemed very knowledgeable about the legal framework related to gender-based discrimination. They could refer to and comment on the LPD and

<sup>21</sup> KWN interview with a male Labour Inspector, Gjilan/Gnjilane, November 2018.

<sup>22</sup> KWN interview with a male prosecutor, Pejë/Peć, December 2018.

<sup>23</sup> Law on Ombudsperson, No. 03/L-195.

LGE. They knew their legal responsibilities for addressing complaints and could mention a variety of situations that may constitute gender-based discrimination at work. Most OI representatives assessed that they have adequate professional capacities for dealing with such cases. Nevertheless, some noted that they lack infrastructure, such as sufficient office space for confidentiality and physical access for people with different abilities. Involving more women employees at OI regional offices may make some women more comfortable in discussing discrimination experiences, an OI representative said.

The OI has an electronic database where received complaints are filed. However, gender-based discrimination does not figure as a category or filter. Therefore, it is difficult to estimate the number of gender-based discrimination cases at work addressed by the OI. However, interviews suggest that the OI has treated very few cases of gender-based discrimination.<sup>24</sup> The complaints received mainly dealt with unfair hiring, promotion, firing or maternity leave violations. Most cases occurred in the banking sector and public health institutions. In one case, the OI recommendations and court decision resulted in a woman employee returning to work after her contract had been unlawfully terminated during her maternity leave.

Other officials interviewed stated that the OI has some influence when it comes to addressing gender-based discrimination at work, highlighting the importance of the OI's recommendations.<sup>25</sup> Judges seemed to think that this institution has a lot of influence related to gender-based discrimination in labour. In contrast, a prosecutor observed, the Ombudsperson's 'power is only recommending, not binding'.<sup>26</sup> Similarly, some other respondents considered that this institution has minimal influence because its recommendations are not binding.

## Labour Unions

As defined by law, unions are 'independent organizations that are created as a voluntary union of employees whose aim is the representation and protection of the legal rights and interests of economic, social and professional to their members [sic]'.<sup>27</sup> They can support employees in filing claims of gender-based discrimination at work, as well as improve employees' awareness of their rights through general awareness-raising and outreach.

The labour union representatives interviewed for this research know their role as key actors working towards the advancement of employees' rights. They accept complaints from their members regarding work-related concerns. Labour union representatives claimed that they aim to achieve gender equality in the labour force. In general, unions feel capable of addressing gender-based discrimination. Union representatives said that employees should be more active in using the channels provided by labour unions for addressing their concerns. In this regard, the Women's Network that operates within the Union of Independent Unions of Kosovo was mentioned as an internal body committed to addressing gender sensitive issues. This Network has organized trainings and campaigns on addressing sexual harassment at work and disseminated questionnaires to measure its prevalence.

However, some statements suggested that some union representatives may not understand what gender-based discrimination entails. For example, one union representative said, 'in the educational system, there is no gender-based discrimination'.<sup>28</sup> When probed for clarity, it became clear that the respondent was referring to unequal representation in a sector,

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<sup>24</sup> KWN interviews with OI representatives in each region, 2018.

<sup>25</sup> KWN interviews with 27 representatives of different institutions, 2018.

<sup>26</sup> KWN interview with a woman prosecutor, Gjakovë/Đakovica, November, 2018.

<sup>27</sup> Assembly of the Republic of Kosovo, Law No. 04/L-011 For Organizing Trade Union in Kosovo, Art. 1.1, at: <https://www.kuvendikosoves.org/common/docs/liqjet/Law%20on%20organizing%20trade%20union.pdf>.

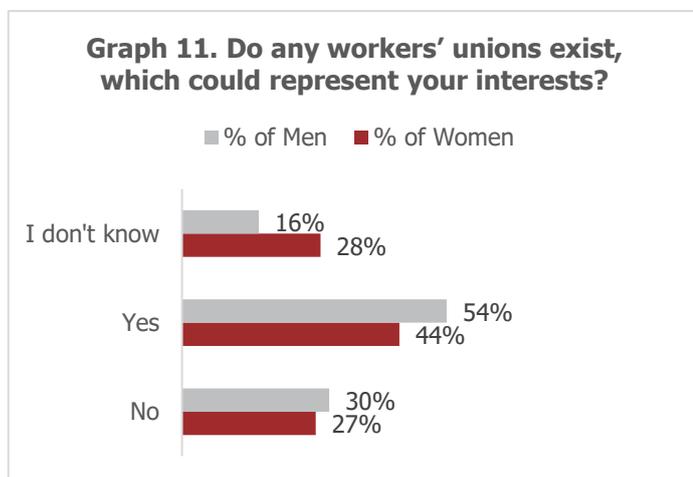
<sup>28</sup> KWN interview with woman labour union representative, Prishtinë/Priština, October 2018.

but implying that a higher percentage of women employed in the education sector is an indicator of equal treatment. Moreover, a different union representative stated that 'in health institutions, women are positively discriminated against when it comes to hiring because the nature of this vocation is sensitive'. These statements suggest that gender norms and stereotypes may undermine some union representatives' knowledge and understanding of what constitutes gender-based discrimination. This may interfere with their ability to appropriately assist with instances of gender-based discrimination at work.

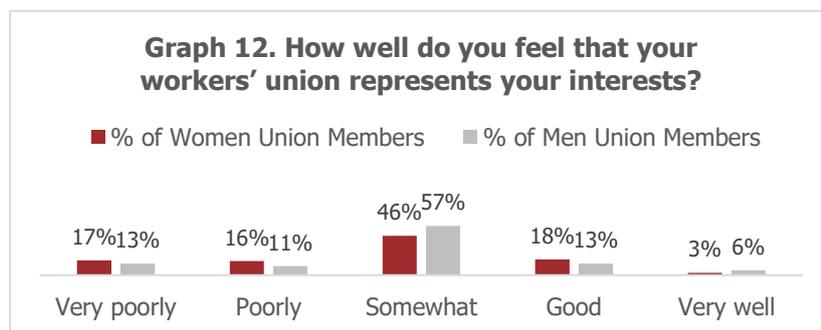
Few work-related gender-based discrimination cases or complaints seem to have reached unions. Union representatives tended to believe that such discrimination exists, but that employees do not report it, primarily due to a lack of awareness among employees on what constitutes gender-based discrimination, they said. In addition, one representative said that employees 'are afraid to report because they fear that they can lose their jobs'.<sup>29</sup>

Low reporting of gender-based discrimination to unions may be due in part to employees' generally limited engagement in unions. While precise union membership is difficult to assess, estimates suggest that approximately 60,000 people are members of trade unions in Kosovo, including roughly 80% of persons working in the public sector and less than one percent of private sector employees.<sup>30</sup>

As Graph 11 illustrates, 24% of the respondents to KWN's online survey did not know if any union exists in Kosovo that could represent their interests (28% of women and 16% of men).<sup>31</sup> Meanwhile, 28% of respondents said that no labour union can represent their interests (27% of women and 30% of men). A larger percentage of men (54%) than women (44%) said labour unions exist that could represent their interests. Of the respondents that said a union did exist in Kosovo, which could represent their interests, 36% said that they were members of a union.<sup>32</sup> This may be reflective of the fact that a large proportion of respondents worked in the public sector, where union membership tends to be more common. More men (41%) than women (33%) respondents were members of unions.



Of the respondents who are union members,<sup>33</sup> half think that unions somewhat represent their interests (Graph 12). Approximately 21% of women and 19% of men said that unions are good or very good at representing their interests. However, 33% of women and 24% of men respondents believed that unions are poor or very poor at



<sup>29</sup> KWN interview with man labour union representative, Prishtinë/Priština, October 2018.

<sup>30</sup> Friedrich Ebert Stiftung, *2016 Annual Review of Labour Relations and Social Dialogue Kosovo*, 2017, pp. 10-11, at: <https://library.fes.de/pdf-files/bueros/bratislava/13231.pdf>.

<sup>31</sup> N = 1,475 (1004 women and 471 men).

<sup>32</sup> N = 700 (446 women and 254 men).

<sup>33</sup> N = 252 (147 women, 105 men).

representing employees' interests. These findings suggest that poor knowledge about unions among workers, particularly women, coupled with distrust in unions' ability to represent workers' rights may contribute to the low number of cases reported to unions.

Among the very few cases reported to unions, all involved women experiencing gender-based discrimination. Cases occurred more in the banking sector, but also in the civil society sector, according to union respondents. The cases involved discrimination in hiring, promotion, firing, treatment, working conditions and violations of maternity leave provisions, they said. 'There was a case when a woman was fired from a bank because of her age, which was sent to the Labour Inspectorate', a union representative said.<sup>34</sup>

Reportedly, according to respondents, gender-based discrimination also may exist within unions themselves. 'If there is a meeting with the Prime Minister, the delegation is comprised of men [...] because "men are more intelligent"', a woman union representative said.<sup>35</sup>

“ If there is a meeting with the Prime Minister, the delegation is comprised of men [...] because 'men are more intelligent'.

- Woman Labour Union representative, Prishtinë/Priština

## Civil Society Organizations

CSOs do not have any legal responsibilities to addressing gender-based discrimination at work. However, several CSOs work to address discrimination in Kosovo. WCSOs work to decrease discrimination against women; LGBTI organizations promote and protect the rights of LGBTI persons, fighting discrimination based on gender identity and sexual orientation; organizations working with people with different abilities support their members in fighting discrimination based on ability; and CSOs active in protecting minority rights work to end ethnically-motivated discrimination, among others.

Most of the CSO representatives interviewed knew about the relevant legal framework and what gender-based discrimination entails. Perhaps this may be attributed to the fact that many of the interviewed CSOs advocated for aspects of the LGE and LPD. Most indicated that they feel somewhat to very capable to address this issue. However, very few CSOs operating in Kosovo have directly assisted persons affected by gender-based discrimination at work. Rather, CSOs have tended to provide space for people who have suffered discrimination to talk about the problems they face and receive advice on what steps they should take. Meanwhile, organisations working with people with different abilities emphasized that they continuously grapple with insufficient funding, which hinders their work.

## Implementing the Legal Framework: General Reflections

Overall, representatives of all interviewed institutions, aside from labour inspectors, emphasized the generally poor implementation of the legal framework relevant to gender-based discrimination at work. As a CSO representative stated, 'In theory, the written laws are complete, but they are not functional, and that makes them incomplete'. At times, this was attributed to a perceived inapplicability of these laws. As a police officer said, 'laws are very advanced, which then causes implications when it comes to implementation because of our

<sup>34</sup> KWN interview with woman labour union representative, Prishtinë/Priština, October 2018.

<sup>35</sup> KWN interview with woman labour union representative, Prishtinë/Priština, October 2018.

traditions and mentality'.<sup>36</sup> That 'traditional' values are obstacles to the implementation of laws was a recurring theme.

Generally, no compelling differences seemed to exist based on gender or geographic location among the representatives of institutions, regarding their knowledge, perceptions and performance in treating gender-based discrimination.<sup>37</sup>

## Conclusions

While police seemed generally knowledgeable about their responsibilities to investigate criminal acts involving gender-based discrimination at work, very few such cases have been reported to police, so it is difficult to assess how they have treated such cases. Similarly, prosecutors tended to know the relevant legal framework, but lacked practical experience. Courts also have very little judicial practice, and very few judges seemed to have knowledge regarding the relevant legal framework. While labour inspectors tended to be knowledgeable about gender-related provisions in the LL, they had few cases and seemingly do not consider treating gender-based discrimination a priority; reportedly they treated some cases inappropriately due to social norms, among other factors. While OI representatives seemed very knowledgeable about the relevant legal framework, they too have had few cases and may have limited impact in such cases given their mandate.

Labour unions seek to represent workers' rights, but some union representatives have limited knowledge about gender-based discrimination. This and citizens' minimal knowledge about and trust in unions likely has limited their support of workers in addressing gender-based discrimination to date. Persons working in CSOs tended to be knowledgeable about the relevant legal framework, but have assisted few cases directly.

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<sup>36</sup> KWN interview with man police officer, Gjakovë/Đakovica, October 2018.

<sup>37</sup> KWN used variation sampling to select respondents from relevant institutions, including women and men working in rural and urban areas (see Annex 1 for details).

# RECOMMENDATIONS

## For the Legal Framework

- Consider establishing a more logical division of the legal framework, towards addressing the presently inharmonious legal framework's overlapping and differing definitions and sanctions, which, at present, may contribute to confusion and legal uncertainty. For example, consider amending the LL to specifically address discrimination in the employment context and the LPD to address discrimination in the non-employment context. Then, the LGE would not necessarily need to serve as a basis for a discrimination claim, as this would be covered adequately in the LL and LPD. At minimum, revisions should harmonize definitions and sanctions, as well as clarify the procedures through which claims are filed under the different relevant laws.
- Ensure that amendments to the LL include the following:
  - Reduce the fixed period for becoming a permanent employee from 10 years to three years, which may prevent employers from using short-term contracts to avoid having to implement maternity leave provisions. Introduce an explicit statement that temporary incapacity, risk during pregnancy, maternity leave, adoption, custody for adoption, foster care, risk during breastfeeding and paternity will not interrupt the calculation of this fixed period to receive a permanent contract.
  - Extend the term 'maternity leave' in Article 12 to include also that paternity leave and parental leave shall not interrupt or affect the employment contract.
  - Treat the termination of a probationary period due to pregnancy as direct discrimination.
  - Amend the provision on 'special protection' for pregnant and breastfeeding women (Article 46) to ensure that the employer gives the employee another task in instances when regular labour responsibilities may be harmful to the health of the mother or child. Introduce an assessment and information provision similar to articles 4 and 5 of the EU Pregnancy Directive to ensure that sufficient consideration is given to the nature, degree and exposure of risk before exclusionary action is taken.
  - Amend legal provisions to meet the minimal requirements of the EU Directive 2010/18/EU on parental leave by giving both fathers and mothers four months of parental leave, of which one is non-transferable. Ensure that some financial incentive is provided for fathers to take up this leave by providing financial compensation for time taken off from work related to the birth of a child.
  - Transpose correctly the concept of self-employed capacity into Kosovo law. Self-employed parents should receive maternity and parental rights equal to those of parents who are employees, and self-employed women should be registered officially as such. If they work for their husbands or other family members, they should be able to access social protection and maternity benefits based exclusively on this familial relationship.
  - Further develop and elaborate protection from discrimination specifically in the employment context, including by mentioning other forms of discrimination, such as harassment, sexual harassment and instruction to discriminate; distinguish between direct and indirect discrimination; and apply other listed grounds for discrimination.
- Amend the Law on Breastfeeding to provide protection for women to breastfeed during the first six months following the birth of a child.
- Review and amend the LPD to ensure that all definitions are harmonized, including related to fines for offences. Ensure a separate definition of sexual harassment in

accordance with the Recast Directive. Clarify whether multiple discrimination and discrimination found to be severe shall receive higher fines. Clarify articles 15 and 24 regarding the responsibility of individuals, employers and state institutions for discriminatory actions.

- Amend the LGE to improve and clarify it. Expand the protections related to gender-based discrimination in relation to occupational social security schemes to protect against the risk of unemployment and to prohibit explicitly discrimination in public social security schemes related to work. Clarify provisions for gender-based discrimination, harassment, sexual harassment and other forms of unequal treatment, stating these explicitly as offences. Establish a clear violation procedure for imposing sanctions within the Law. Clarify specific sanctions for different forms of discrimination prohibited within the Law, and not for violations of *definitions* of discrimination. Increase sanctions towards preventing individuals and companies from engaging in gender-based discrimination.

### **For the Kosovo Police**

- Improve data collection and management by ensuring that all electronically managed data is disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).
- As part of the regular training for police, ensure inclusion of information on the legal framework pertaining to gender-based discrimination at work, focusing on sexual harassment at work according to the new definition in the Criminal Code.

### **For the Prosecution**

- Update the SMIL database to ensure collection and management of data disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).
- Ensure all prosecutors undergo training on gender equality and the new Criminal Code definition of sexual harassment.
- Consider designating specialised prosecutors who are well-trained in prosecuting gender-based crimes, including the specific approaches required for investigating cases that may involve persons experiencing trauma.

### **For the Kosovo Judicial Council**

- Improve data collection and management by ensuring that all electronically managed data is disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).
- Ensure all judges undergo training on gender equality and the new Criminal Code definition of sexual harassment.
- Consider designating specialised judges well-trained in gender-based crimes, including gender norms, power relations and identifying instances of 'blaming the victim'.

## **For the Labour Inspectorate**

- Improve data management systems. Log complaints received, inspections undertaken and disciplinary measures initiated, disaggregating these by gender of the worker, gender of the alleged perpetrator and the relevant laws breached, by article.
- In hiring more inspectors, seek to ensure a gender balance by using affirmative measures to recruit and hire more women inspectors, in accordance with the LGE.
- Institutionalize regular training for all inspectors on gender equality in general, as well as on gender-based discrimination at work more specifically.

## **For the Ombudsperson Institution**

- Revise the current OI database to include gender-disaggregated data and marking of cases as to whether they have involved gender-based discrimination at work, facilitating future monitoring and reporting of this information.
- Consider ensuring that women representatives of the OI are available to meet women who have suffered gender-based discrimination.
- Ensure that all OI offices have confidential spaces available for OI representatives to meet women and other actors.
- In close cooperation with CSOs, the Labour Inspectorate and labour unions, organize regular awareness-raising campaigns on gender-based discrimination towards increasing citizens' knowledge of what it entails, how they can file claims and what support the OI can provide.

## **For Labour Unions**

- Collect data on gender-based discrimination cases related to work by the type of violation, the gender of the person who files the complaint and the person to whom the complaint is addressed.
- Ensure policies against gender-based discrimination and equal opportunities are in place and implemented.
- Provide training for all union representatives regarding the relevant legal framework pertaining to gender-based discrimination at work.
- Launch outreach campaigns to inform workers about the legal framework pertaining to gender-based discrimination and labour. Collaborate with experienced WCSOs for more effective outreach, including that targets women workers specifically.
- Undertake public outreach to improve people's awareness, understanding and trust in labour unions, including how they can support persons who have experienced gender-based discrimination at work.
- Improve women's participation in unions at all levels, and explicitly target more women to become active union members; collaborate with experienced WCSOs for planning effective outreach.
- Monitor the work of the Labour Inspectorate to verify if gender-based discrimination at work is being addressed correctly.

## **For Civil Society Organizations**

- Collaborate through a diverse network of CSOs involved in anti-discrimination activities in order to coordinate efforts, towards efficiency, effectiveness and wise use of limited

resources; set a joint strategy for shared work against gender-based discrimination in labour; share information regularly; and exchange best practices.

- Organise awareness-raising campaigns to increase women's and men's knowledge about gender-based discrimination in the labour market, as well as relevant institutions and procedures for seeking recourse for rights violations.
- Specifically target people from minority ethnic groups, LGBTQI+ persons and persons with different abilities with information about their rights; support them in reporting and seeking justice for gender-based discrimination.
- Contribute to the establishment of case law on gender-based discrimination at work by providing legal aid for such cases and strategic litigation.
- File more official complaints with the Agency for Gender Equality, OI and labour inspectors, as relevant.
- Consider researching, documenting and bringing cases on behalf of groups of persons who have suffered discrimination, according to the LPD, such as to:
  - Decide that such behaviour has violated the right to equal treatment;
  - End activities that violate or may violate the right to equal treatment; and
  - Bring court cases, as well as request the publishing of any resulting decisions in media, with expenses paid by the respondent, towards preventing future discriminatory behaviour.
- Further research multiple discriminations related to labour, such as based on gender and ethnicity, ability, sexuality, age and other differences.

## **For Employers in Private and Public Sectors**

- Post in public areas information about gender-based discrimination and workers' rights under the legal framework, towards ensuring that workers have access to information about their rights.
- Develop and implement policies that will prevent gender-based discrimination in hiring and promotion, as well as harassment and sexual harassment at work. Put in place clear mechanisms for reporting gender-based discrimination and harassment, as well as ensure that employees are informed of their rights and how to report such discrimination.

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# ANNEXES

## Annex 1. Methodology

This annex provides further details about the research methodology. In order to address the research questions outlined in the introduction, the research involved mixed methods, involving: an analysis of the relevant legal framework; a literature review; review of any existing institutional data related to discrimination cases; semi-structured interviews with representatives of relevant institutions to measure their knowledge of, awareness on and experiences with gender-based discrimination in the labour market; and an anonymous online survey of women and men. This section provides further details about each research method.

### Key Terms and Delimitation

The research focused on gender-based discrimination in relation to labour. It did not examine gender-based discrimination that may occur outside the workplace. The key research terms were defined and operationalized as follows. 'Discrimination' included all forms of gender-based discrimination, as defined by law. The term 'labour' was used rather than 'employment' to include study of unpaid and unregistered forms of labour. 'Gender' involved all gender expressions and identities, including but not limited to: women, men, trans\*, gender non-conforming, gender fluid and intersex. The term 'gender' was used rather than sex, as the research team chose to focus on people's socially ascribed roles (gender) rather than their biological sex. A description of these terms was not included in the survey due to concerns that it may deter certain groups from responding to the survey. 'Gender-based discrimination', then, was defined to involve discrimination affecting persons *because of their gender*.

### Legal Analysis

The Legal Analysis examined and assessed current anti-discrimination legislation in place in each country, including any shortcomings in aligning national legislation with the *Acquis Communautaire* (the 'Gender Equality Acquis'). It also sought to identify the relevant institutions, their roles and responsibilities. It involved examination of international laws, treaties, conventions, national constitutions, national laws and secondary legislation/policies. The topics examined included: How is discrimination defined? What protection measures exist against discrimination? What mechanisms have been put in place to address or mitigate discrimination? What methods exist for reporting discrimination? What gaps exist in the legal framework? What are the relevant institutions and their responsibilities?

### Literature Review

The Literature Review examined any existing data on gender-based discrimination that was available, so as to ground the report in existing information and avoid duplication of existing research. It included examination of the research methods used and timeframes.

### Data Collection

The research team sought to collect data related to discrimination cases at work for the period of 2008 – 2017, disaggregated by gender, from: the Kosovo Police, the Prosecution, the Kosovo Judicial Council, the Ombudsperson's Institution, the Labour Inspectorate, labour unions and legal aid providers (state and non-state). This involved sending official data requests to these institutions.

## The Survey

The research team sought to collect input from diverse women and men regarding their knowledge of anti-discrimination legislation, personal experiences with discrimination, whether such cases were reported and why they did not report discrimination if it occurred. KWN collaborated with its partner organisations in the region, particularly Reactor Research in Action (Macedonia), to create the online survey in three languages (Albanian, Serbian and English), using Lime Survey. The survey was promoted broadly, including through social media, boosting on Facebook and email, including an email circulated to public servants and government officials by the Agency for Gender Equality, requesting their participation. The survey was open from 1 November through 3 December. For demographic information about respondents, see Annex 2 and for the survey tool, see Annex 3.

## Interviews

In total, KWN conducted 101 interviews. Of these, KWN interviewed 95 representatives from six institutions responsible for implementing the relevant legal framework, regarding their knowledge, attitudes and experiences in treating discrimination cases to date. KWN interviewed police officers, prosecutors, civil court judges, criminal court judges, labour inspectors and OI representatives. KWN used variation sampling to select a diverse range of interview respondents of different genders, ethnicities and geographic locations.

With assistance from the Kosovo Police headquarters, 32 police officers were selected by region. Sixteen women and 16 men were interviewed in urban and rural areas in Prishtinë/Priština, Lipjan/Lipljan, Ferizaj/Uroševac, Shtime/Štimlje, Gjakovë/Đakovica, Malishevë/Mališevo, Prizren/Prizren, Mamushë/Mamuša/Mamuša, Gjilan/Gnjilane and Mitrovicë/Mitrovica (south and north). In Gjilan/Gnjilane and Mitrovicë/Mitrovica, police officers were from stations located in urban areas. The police officers appointed by police headquarters to participate in interviews generally came from the Domestic Violence Investigation Units. Police officers serving in these Units have undergone more training related to gender-based violence than other police officers. Therefore, one may hypothesize that their level of knowledge may be more advanced than that of the general police force allowing for some 'positive bias' in the sample regarding the level of knowledge of police pertaining to gender-based discrimination, though further research would be needed.

In total, 13 prosecutors were interviewed, including six women and seven men. Researchers faced several difficulties securing these interviews, but eventually all interviews were scheduled except one. While KWN aimed to have equal gender representation, no women prosecutors in the Gjakovë/Đakovica Basic Court were willing to participate.

KWN also faced some difficulties in adhering to the planned variation sampling when scheduling interviews with judges. The 26 judges interviewed included 12 women and 14 men. Of them, five women and eight men were from the Criminal Division. This was because in Mitrovicë/Mitrovica, no Albanian women judges worked in the Criminal Division. Despite several attempts, the Serbian judges from the Criminal Court there refused to participate in the research. In the Basic Court of Gjilan/Gnjilane, the head of the Court appointed two men judges from the Criminal Division and two women judges from the Civil Division, despite KWN's request to have equal gender representation from both divisions. In Pejë/Peć, the three interviewed judges were from the Civil Division (two women and one man). Thus, the knowledge, attitudes and experiences of some judges may be under-reflected in findings.

KWN interviewed seven labour inspectors. KWN could not interview an equal number of women and men labour inspectors because from the seven regional offices, only one woman inspector was employed in this institution. For the Ombudsperson Institution, one representative was interviewed in each region, totalling seven respondents.

Three labour union representatives were interviewed (one man and two women), all located in Prishtinë/Priština. KWN also interviewed representatives of CSOs hypothesized to have encountered and/or supported persons who had experienced discrimination, including CSOs working with LGBTQI+ persons, persons with different abilities and ethnic minorities. Fourteen representatives of CSOs participated in the research (10 women and four men) from Prishtinë/Priština, Prizren/Prizren, Gjakovë/Đakovica, Ferizaj/Uroševac and Pejë/Peć.

Interviews also were conducted with six women who said they had experienced gender-based discrimination. None of the instances of discrimination reported by men in the survey involved gender-based discrimination explicitly. Nor could KWN identify any persons with different abilities, LGBTQI+ persons or persons from minority ethnic groups who had experienced gender-based discrimination who were willing to be interviewed, so researchers could not conduct the interviews planned with such respondents. Overall, low reporting of gender-based discrimination, coupled with low knowledge of what acts may involve such discrimination constituted barriers to identifying potential respondents for in-depth interviews.

## Data Analysis

The KWN research team coded the qualitative data resulting from interviews in a coding document, as per the research questions, to identify recurring trends and differences. At least two people participated in the coding of every interview, towards triangulation of researchers. Reactor carried out the statistical analysis of survey data using SPSS, which was reviewed by KWN researchers. Towards maximizing the usage of the data gathered, the data from everyone who completed a particular question was processed and presented. Thus, the number of missing cases differed for each variable and increased for questions posed towards the end of the survey. The number of responses ('n') is reported in the presentation of findings. Any statements including the term 'significant' in relation to the survey findings suggest statistical testing with a confidence level  $\alpha = 0.05$ . However, limitations outlined in the next section must be considered.

## Limitations

The team considered that the costs of surveying a nationally representative sample outweighed the benefits that this kind of sample offers in terms of generalizability of the findings. Therefore, the research team had to find a balance between cost and quality, selecting to use an online survey involving convenience sampling instead. If well-advertised, online surveys can be a very efficient means for understanding qualitatively the challenges affiliated with discrimination cases. The research team considered that identifying and understanding *qualitatively* discrimination cases would be more important than finding the actual 'extent' of discrimination. Moreover, the team thought that underreporting of discrimination likely would be widespread in a household survey, given the general population's hypothesized low level of knowledge regarding which acts could constitute gender-based discrimination. Further, the research team considered that the complete anonymity allowed by online surveys may enhance the willingness of people to report their experiences without fear of repercussions, given the sensitivity of the topic. Even so, these methodological choices contribute to some limitations regarding the research findings.

First, since random sampling was not used, the findings cannot be generalized to the entire population. Statistical inference means to generalize the findings from a sample to a population, usually using significance tests. Considering that the survey sample was a non-probability sample and that statistical inference based on conventions for p values presupposes probability sampling, the findings referred to as 'statistically significant' should be interpreted as suggestive, but not conclusive, and in no way generalizable. Statistical tests were used as heuristics to differentiate 'large enough' differences or correlations on which the research team could comment.

Second and related, since the survey sample was convenient, it was not demographically representative of the population of Kosovo. Therefore, the percentages reported do not reflect the prevalence of the phenomena among the general population in Kosovo; and the variability of the 'sampled' experiences may be restricted. All variables were cross-tabulated with gender, not only because this was a key variable, but also because the sample was imbalanced in terms of gender. In the sample of persons that completed 90% of the questionnaire, twice as many women respondents as men completed the survey. This means that the observed distributions of answers in the sample were based more on the responses of women participants than on men respondents. This gender disproportion could constrain the possibility of observing gender-based differences. However, where indicative, established relationships (i.e., gender-based differences) were interpreted, but the conclusions remain 'restrained' in terms of generalizability.

Third and related, the sample involved more respondents who were educated and living in urban areas (see Annex 2). Thus, the sample was rather homogenous in terms of education and geographic location. Therefore, the level of knowledge and experiences of persons with lower levels of education and of those living in rural areas is underrepresented in the findings. Considering the experiences of discrimination that existed among persons with higher levels of education and working in urban areas, where additional information and protections may be available, the research team hypothesizes that the level of knowledge about discrimination and the experiences with discrimination may be even worse for persons working in rural areas and/or who have lower levels of education.

## **Reflexivity**

KWN envisions a more gender equal society and, based on experience, believes that affirmative measures, such as those foreseen in the Law on Gender Equality, are necessary to further gender equality in Kosovo. From this position, the KWN research team conducted research and analysed results from the position of an organisation that seeks to further gender equality. This means that the research team in a few, rare instances chose not to reflect some perspectives that arose from interview respondents. For example, some respondents believed that Kosovo laws should be in line with the 'reality', meaning current social norms that exist in Kosovo, rather than progressively seeking to further social, cultural and economic changes towards gender equality. In contrast, KWN in its work and this report has taken the perspective that progressive laws are necessary, albeit insufficient, for contributing to social change, namely gender equality. Therefore, KWN has made recommendations from this perspective, towards improving the legal framework for addressing gender-based discrimination. KWN acknowledges that education, awareness-raising and penalties for institutional failures must accompany these legal changes for them to be implemented properly. KWN's recommendations result from this particular position and approach to social change.

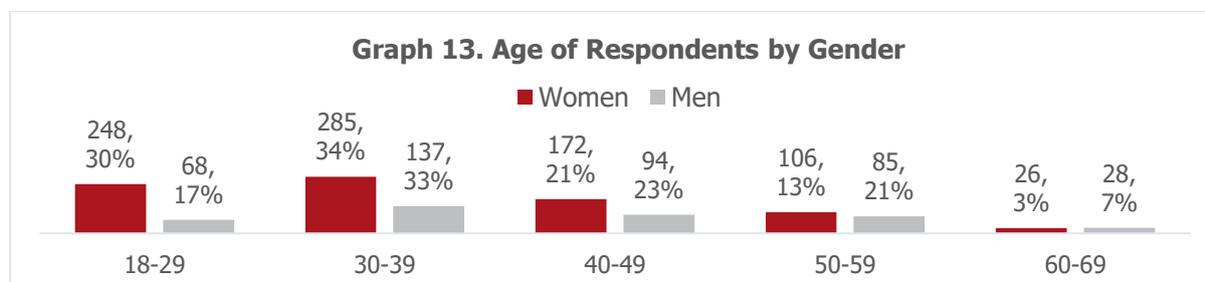
Also pertaining to reflexivity, the research team was instructed to take note of how their presence and approach during interviews may have influenced the research findings and to estimate any potential resulting error. In some instances, the fact that the researchers were young women may have meant that some representatives of institutions perhaps perceived the researchers to lack expertise; however, researchers observed that respondents took the interviews seriously once researchers began asking questions on the legal framework.

## **Validity**

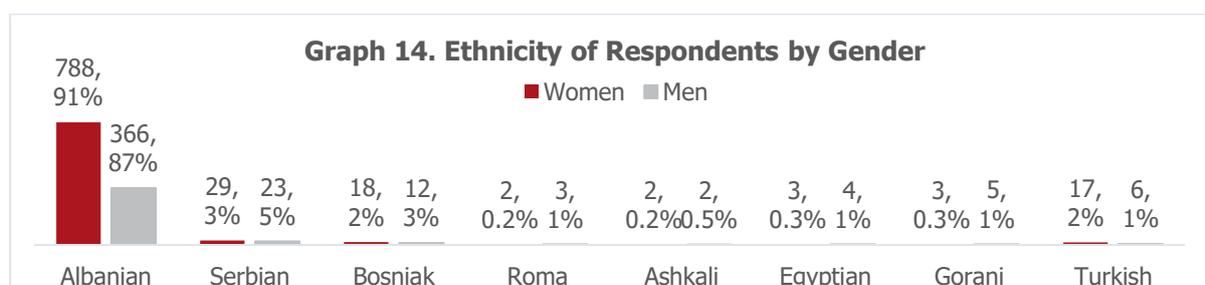
The research team sought to enhance the validity of the findings through triangulation of data sources (e.g., citizens, institutions, CSOs, statistics), methods and researchers. Peer review of findings by diverse experts also sought to identify any potential error prior to finalizing the report. These steps sought to enhance the validity of the findings.

## Annex 2. Demographic Information about the Sample

Of the respondents that completed 90% of the questionnaire, 67% were women and 33% were men.<sup>1</sup> As Graph 13 illustrates, most respondents were ages 30-39 (34%) and 18-29 (25%).<sup>2</sup> Most women respondents tended to be ages 30-39 (34%) and ages 18-29 (30%). Meanwhile, most men were 30-39 (33%) and 40-49 years old (23%).

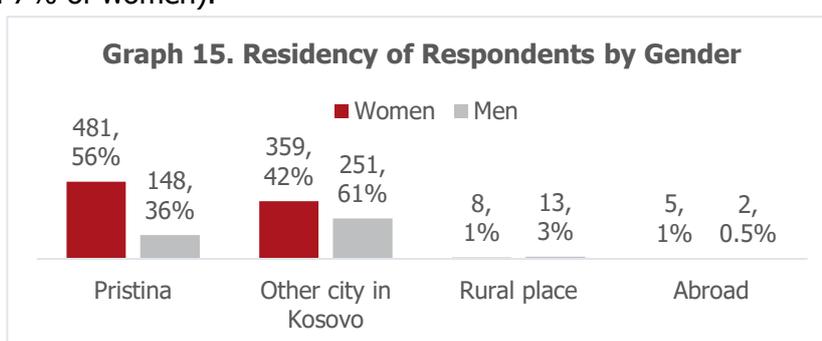


Concerning ethnicity, 91% of women and 87% of men respondents identified as Albanians; 3% of women and 5% of men as Serbians; 2% of women and 3% of men as Bosnians; and, 3% of women and 5% of men as Roma, Ashkali, Egyptian or Turkish (Graph 14).<sup>3</sup>



Ten percent (123 participants) of respondents considered themselves persons with disabilities (14% of men and 7% of women).<sup>4</sup>

As Graph 15 illustrates, half of the respondents were from Prishtinë/Priština (56% of women and 36% of men).<sup>5</sup> Meanwhile, half of the respondents were from other cities in Kosovo (42% of women and 61% of men). Only 2% of respondents lived in a rural place (1% of women and 3% of men), and 0.6% lived abroad.



Only 2% of respondents lived in a rural place (1% of women and 3% of men), and 0.6% lived abroad.

Among respondents, 26% were single and 64% were married. Additionally, 3% were engaged, 3% co-habiting and 3% were divorced.

<sup>1</sup> N = 1,279.

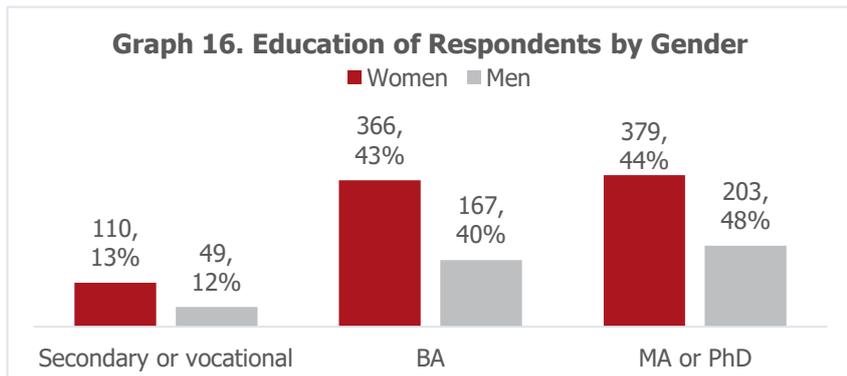
<sup>2</sup> N = 1,249.

<sup>3</sup> N = 1,283.

<sup>4</sup> N = 1,279.

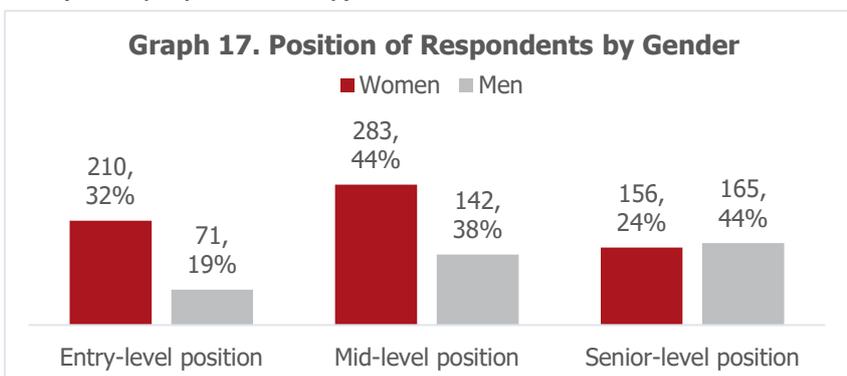
<sup>5</sup> N = 1,267.

Most respondents held a Bachelor's degree (42%), Master's degree and/or PhD (46%).<sup>6</sup> More specifically, 87% of women and 88% of men respondents had these higher levels of education, while only 13% of women and 12% of men had secondary or vocational education (Graph 16). Thus, most respondents were highly educated. Educational level and age category significantly determined the probability of completing the questionnaire. Participants with lower levels of education (secondary or vocational school) and those under 30 years old were more likely to discontinue before the survey was finished.

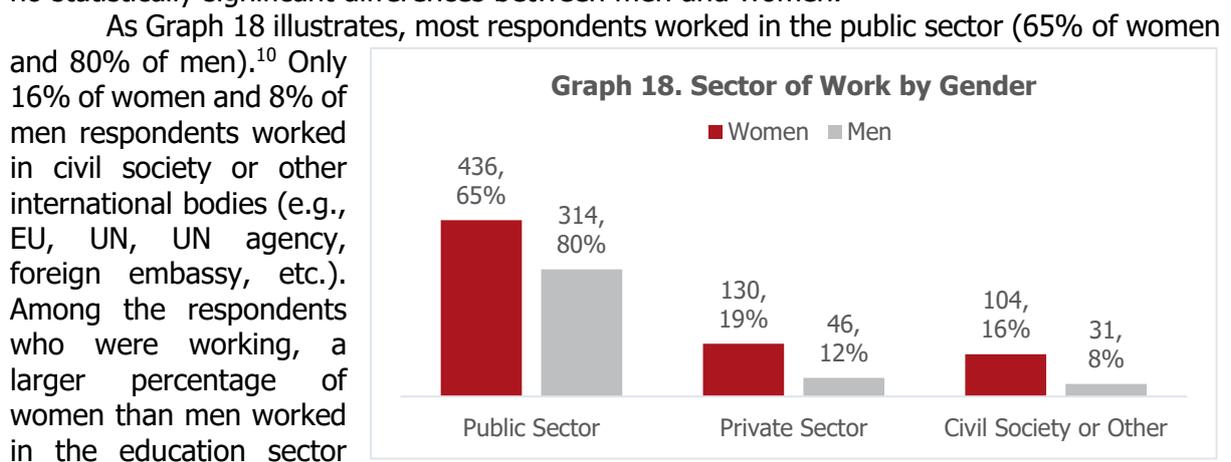


Most respondents were employed (82% of women and 95% of men).<sup>7</sup> Of them, 67% were employed full-time, 8% part-time and 6% were self-employed.<sup>8</sup> Respondents who were unemployed and looking for a job comprised 10% of the sample, whereas 1% were unemployed and not seeking work. Students are 3% and 0.2% are pensioners. 0.3% of the sample performed unpaid work (unemployed officially).

On average, the employed respondents tended to work in mid-level positions (41%).<sup>9</sup> However, most women respondents worked in mid-level positions (44%) and most men respondents worked in senior-level positions (44%). Interestingly, 82% of the respondents had been working more than one year in their current position, with no statistically significant differences between men and women.



As Graph 18 illustrates, most respondents worked in the public sector (65% of women and 80% of men).<sup>10</sup> Only 16% of women and 8% of men respondents worked in civil society or other international bodies (e.g., EU, UN, UN agency, foreign embassy, etc.). Among the respondents who were working, a larger percentage of women than men worked in the education sector



<sup>6</sup> N = 1,274.

<sup>7</sup> N = 1,267.

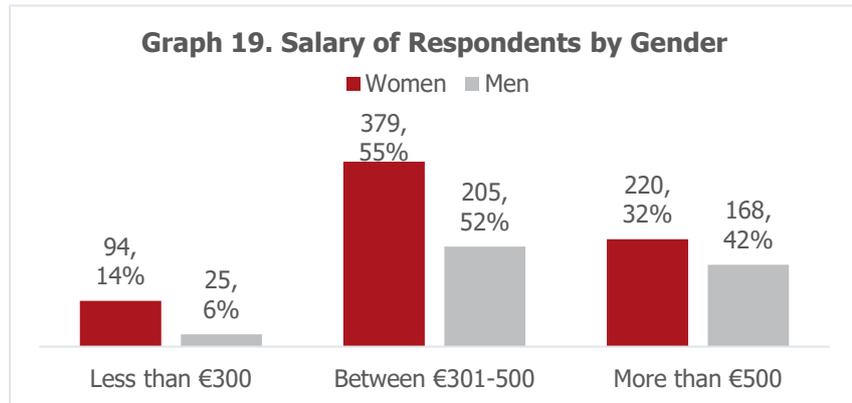
<sup>8</sup> N = 1,096.

<sup>9</sup> N = 1,027.

<sup>10</sup> N = 1,061.

(10% of women and 3% of men), health sector (7% of women and 3% of men) and civil society sector (7% of women and 5% of men).<sup>11</sup> Meanwhile a larger percentage of men worked in the public administration or government (42% of women and 52% of men), as well as in the police, military or security sectors (2% of women and 8% of men).

As Graph 19 illustrates, more than half of the respondents received €301-500 net per month (55% of women and 52% of men).<sup>12</sup> Approximately 11% of the respondents received less than €300, including a higher percentage of women (14%) than men (6%). A higher percentage of men (42%) than women (32%) received salaries amounting to more than €500.



<sup>11</sup> N = 998.

<sup>12</sup> N = 1,091.

## **Annex 3. Survey Instrument**

### **Survey on Discrimination at Work**

Thank you for taking part in this important survey, which aims to identify ways to better address different forms of discrimination that can occur in relation to work. Understanding your thoughts and experiences can support us in identifying actions that can help prevent discrimination, as well as contribute to improved access to justice for discrimination when it occurs. The survey will take approximately 10 minutes. Be assured that all of your answers will be kept strictly confidential. No one will know who you are. If you have any questions or concerns about this survey, please contact: info@womensnetwork.org. By clicking "okay", you consent to participate in this important research. Thanks so much!

### **GENERAL INFORMATION**

**In which city or town do you currently live or spend most of your time?**

**What is your gender?**

Woman  
Man  
Other

**In which year were you born?**

**With which ethnic group do you identify? If more than one, please check all that apply.**

Albanian  
Serbian  
Bosniak  
Roma  
Ashkali  
Egyptian  
Gorani  
Turkish  
Other (please write) \_\_\_\_\_

**What is the highest level of education that you have completed?**

Primary or incomplete primary education  
Secondary school  
Vocational education  
Bachelor degree  
Master's degree  
PhD

**What is your current marital status?**

Single  
Engaged  
Married  
Divorced  
Co-habiting  
Widowed

**Do you consider yourself to have a disability?**

Yes  
No

## **EMPLOYMENT INFORMATION**

### **Are you currently:**

- Employed full-time
- Employed part-time
- Self-employed
- Unemployed, looking for work
- Unemployed, not looking for work
- Unemployed, still studying
- Unemployed officially, but I do unpaid work outside the home such as farming, caring for animals like cows or chickens, etc.
- On pension
- Other (please write)

### **In the last 10 years (so since 2008), has any of the following been true for you? Please check all that apply:**

- I was unemployed and not looking for work
- I was unemployed and looking for work
- I was employed part time
- I was employed full time
- I was in school/university
- I was self-employed
- I worked without pay for a family business or farm

### **Where do you work? Please check all that apply.**

- Private sector (business, including family business or farm)
- Government (including ministry, municipality, health institution, public school, university, etc.)
- Publicly owned enterprise in public sector
- Local civil society organization
- International civil society organization
- Other international body (EU, UN, UN agency, foreign embassy, etc.)

### **In which field do you work?**

- Administrative and support services
- Accommodation and food service (hotel, restaurant)
- Agriculture, forestry or fishing
- Arts and Entertainment
- Civil society / human rights activism
- Construction
- Education
- Electricity, gas, steam and air conditioning supply
- Finance and insurance (banks)
- Health
- Information and communication, including media
- Manufacturing clothes and shoes
- Manufacturing other
- Mining and quarrying
- Police, military and security
- Professional, scientific and technical activities
- Public administration or governance
- Real estate
- Repair of motor vehicles and motorcycles
- Research
- Social work
- Transportation and storage
- Water supply, sewage, waste management
- Wholesale and retail trade (e.g., shops, stores)
- Other (please write)

**For how long have you been working in your current position?**

- Four months or less
- 5-8 months
- 9-12 months
- 1-3 years
- 4-10 years
- 11+ years

**Which of the following best describes your current position?**

- Entry-level position (e.g., assistant, worker)
- Mid-level position (e.g., coordinator)
- Senior-level position (e.g., manager, director)
- I'm my own boss
- Other (please write)

**YOUR VIEWS**

**Is discriminating against someone at work because they are a woman or a man illegal in your country?**

- Yes
- No
- I don't know

**If it happens, this type of discrimination at work should be reported to [please check all that apply]:**

- The employer
- The Labour Inspectorate
- The Ombudsperson Institution
- The police
- None of the above
- I don't know

**HIRING**

*Now we have some questions about your experiences with hiring processes.*

**How many times have you been in a job interview since 2008?**

- Never
- Once
- 2-5 times
- More than 5 times
- Don't remember

**Since 2008, in a job interview have you ever been asked questions concerning:**

	Yes	No
Your marital status		
Your plans to get married		
The number of children you had at the time		
Your future plans to have children		
Medical proof that you are not pregnant		
Something else not related to your skills, education or work experience that felt inappropriate (if yes, please elaborate):		

**Please elaborate:**

**Since 2008, in your opinion, have you ever not gotten a job that you applied for because:**

	Yes	No
You are a woman		
You were pregnant		
You have children		
You shared that you are planning to have children		
Your age		
Your appearance		

	Yes	No
You are a man		
You are expecting a baby		
You have children		
You shared that you are planning to have children		
Your age		
Your appearance		

## **PROMOTION**

**Do you feel that your employer(s) have given both you and other employees an equal opportunity to be promoted?**

- Yes, all employees have an equal opportunity
- No, some employees are treated differently than others
- Both - It differs depending on the employer I have had
- Don't know

**Has it ever happened to you that your employer didn't consider you for a promotion because... (please check all that apply)**

- Your gender (for example, I was told this is not a job for women/men)
- Your ethnicity
- Your sexual orientation
- The employer had a personal preference
- Your age
- Your religion
- Your place of residence (for example, rural)
- I don't know
- None of the above happened to me
- Other (please write):

## **WORKING CONDITIONS**

**Have you ever been denied the right to take off work for sick leave, national holidays, or annual leave?**

- Yes
- No

**Do you think your health or safety is at risk because of your work?**

- Yes
- No

## **UNIONS**

**Do any workers' unions exist in your country, which could represent your interests?**

- Yes
- No
- I don't know

**Are you a member of any workers' union?**

Yes  
No

**How well do you feel that your workers' union represents your interests?**

Very well  
Good  
Somewhat  
Poorly  
Very poorly

**PREGNANCY AND MATERNITY LEAVE**

**Since 2008, have you ever been pregnant when you were employed?**

Yes  
No  
I am currently pregnant but haven't taken up maternity leave yet

**Has it ever happened that you were neither paid, nor received a government benefit during your maternity leave?**

Yes  
No

**Did you return to your previous place of employment after your most recent maternity leave?**

Yes  
No  
I am still on maternity leave

**Why not? Please mark all that apply.**

I did not want to work anymore  
I started a new job  
The employer terminated my contract/fired me  
My contract expired while I was on maternity leave  
The employer decided to employ my replacement instead  
I have no one to take care of my children or childcare is too expensive  
I could not find work  
Due to illness or injury  
Another reason (please write)

**Has any employer ever pressured you to return to work earlier than you had planned to be on maternity leave?**

Yes  
No

**When you returned to work, did you have:**

More responsibilities  
Fewer responsibilities  
The same responsibilities

**Did you have:**

Higher pay  
Lower pay  
The same pay

**Did you have:**

- More working hours
- Less working hours
- The same working hours

**When you returned, were you:**

- Treated the same as before you left
- Treated differently by your peers or boss because you took the leave

**PATERNITY LEAVE**

**Would your employer give you paternity leave?**

- Yes, PAID paternity leave
- Yes, UNPAID paternity leave
- No
- Do not know

**Since 2008, have you ever had a new born child while being employed?**

- Yes
- No

**How many days did your employer allow you to take off?**

**When you returned from leave, were you:**

- Treated the same as before you left
- Treated differently by your peers or boss because you took the leave

**Do you think that men should have more paid time off for paternity leave?**

- Yes
- No
- I don't know

**CONTRACTS AND PAY**

**Since 2008, have you ever been asked to work regularly without a contract (including for a family business)?**

- Yes
- No

**Do you currently have a contract?**

- Yes
- No

**What is the length of your current contract (or the last contract that you had) in months?**

- Three months or less
- 4-6 months
- 7-12 months
- 1-3 years
- 4 or more years
- Indefinite

**In your workplace, who tends to have longer contracts?**

- Women
- Men
- It's the same for both
- Not applicable (only men or only women work here)
- I don't know

**Since 2008, have you ever been asked to sign an employment contract without being allowed to read and understand the terms of your contract before signing it?**

- Yes
- No

**On average, how many hours do you usually work per week?**

- 1-20
- 21-40
- 41-60
- More than 61

**Currently, what salary do you actually receive each month (net in EUR)?**

- Less than or equal to 129
- 130-170
- 171-200
- 201-300
- 301-400
- 401-500
- 501-800
- 801 or more

**Does your employer declare to the state authorities the actual, real salary that you received?**

- Yes
- No, my employer tells the authorities something else
- I don't know

**Has your employer ever asked you to return part of your salary to the employer?**

- Yes
- No

**Usually, how are you compensated for overtime worked?**

- I don't receive anything extra (beyond my regular monthly wage)
- I'm paid for the extra time worked at the same rate as my usual wage
- I'm paid for the extra time worked with a higher rate than my usual wage
- I receive time off
- Other (please write)
- Not applicable: I never work overtime

**SEXUAL HARASSMENT AT WORK**

**The following is a list of situations that reflect certain behaviours. Please indicate if it ever happened to you at work. Your identity will remain anonymous.**

	Yes, this happened to me, more than once	Yes, this happened to me once	No, this never happened to me
Making sexual gestures, jokes, or sounds			
Sending emails or text messages of a sexual nature (including after work hours)			
Touching another worker's body parts on purpose (bottom, breasts, hand, etc.) which touching is unnecessary			
A colleague or superior proposing to have sex with him/her			
A colleague or superior forcing someone to have sex with him/her			

**Were the persons who did this to you:**

Women  
Men  
Both

**Were the persons who did this in (please check all that apply):**

Lower positions than you  
Equal positions as you  
Higher positions than you

**Who did you tell? Please check all that apply.**

No one  
Friend, acquaintance  
Family member  
Colleague  
My manager  
Police  
Religious leader  
Person in an official reporting mechanism at my workplace  
Someone else, please specify:

**For what reason(s) did you decide not to tell anybody about this situation? Please check all that apply.**

I was ashamed  
I'm afraid of losing my job  
I did not want to  
I think I have to take care of it myself  
Other (please write):

**OVERALL REFLECTIONS**

**Many of the acts we asked about in this survey so far could be considered forms of discrimination. Considering this, would you say that you have ever been treated differently (discriminated against), because you are a woman/man?**

Yes  
No

***If no, do you have any comments, stories or examples you want to share, including cases of discrimination that may have happened to someone you know? Please provide details.***

***If yes, please, can you describe in detail any experience(s) that you have had with discrimination at work since 2008? We greatly appreciate any information you can share. Your identity will remain anonymous.***

**In which sector were you working when this occurred?**

Private sector (business, including family business or farm)  
Government (including ministry, municipality, health institution, public school, university, etc.)  
Local civil society organization  
International civil society organization  
Other international body (EU, UN, UN agency, foreign embassy, etc.)  
Other:

**With which institutions were you in contact regarding what happened to you? Please select all that apply.**

None  
Labour Inspectorate  
Police  
Courts  
Prosecution  
Ombudsman  
Other (please write)

**What happened when you reported discrimination to the relevant authorities?**

They would not hear my case  
They listened, but said they could not do anything  
They listened and tried to assist me  
They were very helpful and helped me file the case  
Other (please write)

**Have you been involved in any court action related to discrimination at work?**

Yes  
No

#### **FOLLOW-UP**

**The research team may conduct a small number of follow-up interviews lasting up to one hour with respondents this fall. Your identity would be kept confidential and information protected. Such an interview would help us a lot in better understanding what happened, and potentially helping you or others like you in the future. Would you be willing to participate in a follow-up interview?**

Yes  
No

**Please enter your e-mail address and phone number so that we can contact you. This information will remain fully confidential.**

Phone:  
Email:

**Thank you for your time and contribution to this important research.**

*This survey was created by a network of women's rights organizations in the region, with financial support from the European Union. Its contents are the sole responsibility of these organizations and do not necessarily reflect the views of the European Union.*

## Annex 4. Sample Interview Guide

### (For the Labour Inspectorate)

1. Interview code number: K \_\_\_ \_\_\_ \_\_\_
2. Name interviewer:
3. Date:
4. Start time of the interview:
5. End time of the interview:
6. Location (city):
7. Name
8. Title
9. Email
10. Phone number

#### Introduction

Hello, my name is \_\_\_\_\_ and I am here on behalf of KWN, thank you for agreeing to be interviewed and to be part of this research.

#### Demographics

11. Year of birth
12. For how long have you been working in this position (years, months)?

#### Knowledge

13. First, please can you tell me how you personally define "discrimination"?
14. What types of acts, for example, would you consider to be "gender-based discrimination"?
15. To what extent does the legal framework offer protection if discrimination occurs because of a person's gender, meaning because they are a woman or a man?
16. Based on your opinion and experience, to what extent is this legal framework related to gender-based discrimination complete or incomplete? Please elaborate.
17. In your view, what impact or influence does the Ombudsperson institution have in relation to discrimination cases at work, based on gender? Please can you elaborate.

#### Attitudes and Perceptions

18. Generally speaking, what do your colleagues (including from other institutions that have a mandate to deal with this issue) think about discrimination against women related to labour?
19. If a woman believes that she has been discriminated against at work because she is a woman, what should she do?

#### Training

20. What types of training did you receive related to discrimination on the basis of being a woman or a man? [Probe: or on gender equality specifically? When was the last training on each theme, how long, on what themes, by whom]

#### Laws and Implementation

21. To what extent do you think that the Law on Labour is being implemented in practice, in relation to certain provisions that might affect women more?
  - 21.1. What about maternity leave provisions?
  - 21.2. What about the prohibition on pregnant and breastfeeding women from labour that is classified as harmful for the health of the mother or the child?
  - 21.3. What about the protection of pregnant women, mothers of children under 3, and single parents with a child under the age of 3, and/or a child with a serious disability and guardians (where both parents have died or abandoned the child) who are not obliged to work more than full-time working hours (40 hours per week, Article 20.2) or night shifts?
  - 21.4. What about equal pay for women and men?
22. To what extent do you think that the Anti-Discrimination Law is being implemented in the labour market?

23. To what extent do you think that the Law on Gender Equality is being implemented in the labour market?  
24. Other comments related to this:

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25. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008?  
25.1.1 Yes  
25.1.2 No

[Skip the following questions if the answer is No, and ask:]

26. For what reason do you think few discrimination cases been reported and/or filed?

Gender-based discrimination cases reported

27. Please tell me about the cases you have dealt with?  
27.1 If yes, how many approximately?  
27.2 What was the gender of persons who suffered discrimination [women, men, both]?  
27.3 What was the gender of the alleged perpetrator?  
27.4 Have you observed whether discrimination tended to happen more to people in any of the following groups: ethnicity, sexuality, age, ability, geographic location? Please elaborate.  
27.5 Have you seen any cases in which multiple discriminations were claimed, such as on the basis of both gender and disability OR gender and ethnicity?  
27.6 What types of discrimination did you encounter?  
27.7 In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.
28. How many were investigated based on appeals that employees have submitted?  
29. What steps have you taken?  
30. Were any disciplinary measures taken?  
31. If so, which?  
32. What was the biggest challenge?  
33. In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.
34. What are the strengths and weaknesses of data collection practices related to logging these cases?  
35. Do you have any other comments or things you'd like to add?  
36. [Researcher notes (reflexivity)]

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