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# GENDER-BASED DISCRIMINATION AND LABOUR IN NORTH MACEDONIA



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# GENDER - BASED DISCRIMINATION AND LABOUR IN NORTH MACEDONIA

Reactor – Research in Action

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## **Gender-based Discrimination and Labour in North Macedonia**

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# Table of contents

<b>Acronyms</b> . . . . .	8
<b>Executive Summary</b> . . . . .	9
<b>Introduction</b> . . . . .	11
<b>Legal Analysis</b> . . . . .	14
International Law . . . . .	15
Constitutional Law . . . . .	16
Equality and Non-Discrimination Legislation . . . . .	17
Law on Prevention and Protection against Discrimination . . . . .	18
Law on Equal Opportunities of Women and Men . . . . .	23
Labour Law . . . . .	23
Law on Labour Relations . . . . .	24
Criminal Law . . . . .	31
Responsible Institutions . . . . .	31
The Judiciary . . . . .	32
Commission for Protection against Discrimination . . . . .	32
The Ombudsperson . . . . .	34
The Sector for Equal Opportunities at the Ministry of Labour and Social Policy – Legal Representative . . . . .	36
Labour inspectorate . . . . .	36
Peaceful resolution of disputes . . . . .	37
Sanctions . . . . .	37
<b>People’s Awareness and Attitudes towards Discrimination</b> . . . . .	38
Awareness . . . . .	38
<b>Prevalence and Experiences with Discrimination</b> . . . . .	41
Thoughts on Overall Prevalence . . . . .	41
Types of Discrimination . . . . .	46
Discrimination in Hiring . . . . .	46
Discrimination in Promotion . . . . .	48
Violations of Contracts . . . . .	49
Violations of the Right to Equal Pay for Equal Work . . . . .	51
Poor Working Conditions and Equal Treatment . . . . .	53

Violations of Pregnancy and Maternity Leave Rights. . . . . 53

Violations of Rights to Paternity Leave . . . . . 54

Sexual Harassment at Work. . . . . 55

**The Institutional Response to discrimination** . . . . . 62

Awareness of relevant institutions . . . . . 62

Attitudes . . . . . 64

Gender-based Discrimination Cases Reported to Institutions . . . . . 67

Courts . . . . . 68

The Ombudsman . . . . . 69

Commission for Protection of Discrimination . . . . . 70

Types of Discrimination . . . . . 74

Gender-based Discrimination against Persons with Disabilities . . . . . 74

Gender-based Discrimination against LGBTIQIA+ Persons . . . . . 74

Gender-based Discrimination against Minority Ethnic Groups . . . . . 75

Other . . . . . 75

Labour Unions . . . . . 75

**Recommendations** . . . . . 77

**Works Cited** . . . . . 81

**Annexes** . . . . . 87

**Annex 1. Methodology** . . . . . 87

Survey Sample . . . . . 87

Demographics of the sample that completed approximately 90% of the questionnaire . . . . . 87

Methodological considerations . . . . . 91

When statistical significance is not significant . . . . . 91

The homogeneousness of the sample: full-time employed and highly educated women . . . . . 91

**Annex 2. Sample interview guide** . . . . . 93

**Annex 3. Survey** . . . . . 96

# ACRONYMS

ADL	The Law on Prevention and Protection against Discrimination (Anti-discrimination Law)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPAD	Commission for Protection against Discrimination
CSO	Civil society organisation
EU	European Union
GBD	Gender-based discrimination
LGBTQIA+	Lesbian, gay, bisexual, trans*, queer/questioning, inter sex, asexual
WCOSOs	Women's civil society organisations

# 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 aims to inform actions of the Reactor – Research in Action 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 North Macedonia is rather comprehensive, however, additional accordance with EU law is needed particularly in the current anti-discrimination legislation and Labour Law. Namely, the Law on Prevention and Protection against Discrimination it explicitly includes nineteen discrimination grounds, including (and going well beyond) the ground enlisted in all EU directives except sexual orientation. However, many of the definitions regarding the forms of discrimination should be amended in order to bring them in line with the EU law and with other international standards and further avoid legal implications. The Labour Law requires several amendments to harmonize it with EU directives and to further gender equality (recognise the concept of parental leave and the right to paternity leave, give further provisions for affirmative measures etc.).

Survey findings suggest that gender based discrimination at work affects women more than men. Regarding the sector of employment, gender-based discrimination is more prevalent in the private sector. Not sufficient information exists regarding work-related gender-based discrimination among persons with disabilities, minority ethnic groups and persons with various gender identities and sexual orientations. The qualitative analysis of respondents' experiences with gender-based discrimination suggests insufficient knowledge regarding what constitutes gender-based discrimination and this could affect the rate of reported experience.

The institutions responsible for addressing gender-based discrimination at work lack data about its prevalence. The precise prevalence of gender-based discrimination cannot be known given that cases often may not be reported. There is no harmonized data collection across institutions and data collection within individual institutions was noted as a challenge. Often, the civil court system for collecting data does not register cases on the grounds of gender-based discrimination but rather as a violation of labour rights, which is also an additional factor that can be attributed to the lack of reporting.

The awareness of interviewed stakeholders regarding discrimination in the workplace differs depending on their position. Those who come in contact with persons that have experienced discrimination such as CSOs, Ombudsman or Labour Inspectorate are more likely to be aware about gender-based discrimination at work, compared to judges or public prosecutors who seldom or have not come in contact with such cases. Overall, interviewed stakeholders presume that gender-based discrimination is not reported due to lack of knowledge where to go, distrust in the institutions and lengthy and expensive processes to prove discrimination.

Very few cases of gender-based discrimination against women at work have been reported to the different mechanisms available for prevention and protection from discrimination. The few cases reported to courts in particular suggest that women seldom take their cases to court. Both interviewed judges and other stakeholders have attributed this to lengthy and costly proceedings. The report concludes with recommendations targeted to reach relevant actor.

# INTRODUCTION

## Background

This report examines gender-based discrimination (GBD), defined as discrimination that affects a person because of her or his gender. It is discrimination that occurs *on the basis* of one's gender and *because* one is a woman, man, or other gender expression or identity<sup>1</sup>. GBD can affect women and men. However, as evidence in this report suggests, it tends to affect women more than men. Therefore, the report focuses on GBD affecting women. The terms 'discrimination against women' and 'discrimination against men' clarify who GBD has affected.

Women's participation in the labour market in North Macedonia remains low and women continue to be overrepresented in lower paying sectors and industries, such as the garment and textile industry, as well as hospitality, health and education sectors<sup>2</sup>. The legal framework for prevention of and protection from discrimination in the workplace is broad. The Labour Relations Law (2010)<sup>3</sup> serves to protect the rights of workers and contains provisions for protection from discrimination in the workplace. The Law for Prevention and Protection of Discrimination<sup>4</sup> sets the legal framework and complaints mechanisms, which should assist to protect and prevent discrimination at work. Despite a reasonably satisfactory legal framework, discrimination against women in the labour market/workplace is a phenomenon that remains largely unreported without concrete data showing what women experience in terms of discrimination prior to and during their time of work. Namely, little factual information was available to provide the evidence needed to effectively

1 This research study does not define gender as a binary (woman or man) but rather, other gender expressions and identities that fall outside of the binary are recognised in an effort to broaden inclusivity and include traditionally marginalised voices and experiences.

2 State Statistical Office (SSO), 2018. Labour Force Survey, 2017. Available at <http://www.stat.gov.mk/Publikacii/2.4.18.03.pdf>

3 Law for Labor Relations (2010). Official gazette No. 129/2015 – Available at <https://www.pravdiko.mk/wp-content/uploads/2013/11/Zakon-za-rabotnite-odnosi-Prechisten-tekst-28-09-2015.pdf>.

4 The Law for prevention and protection of discrimination. Official Gazette No. 50/2010 – Available at [http://mtsp.gov.mk/WBStorage/Files/diskriminacija\\_konsolidiran.pdf](http://mtsp.gov.mk/WBStorage/Files/diskriminacija_konsolidiran.pdf).

tackle this issue and other forms of gender-based discrimination in the labour market.

At the beginning of 2018, Reactor - Research in Action started its close cooperation with five women's rights civil society organizations from the Western Balkan towards furthering women's labour rights, focusing on addressing gender-based discrimination in the labour market, supported by the European Union (EU). This research report is a fundamental part of it. Moreover, it will serve as a baseline, which will inform future advocacy and outreach towards decreasing the prevalence of gender-based discrimination in the labour market.

## Aims

In order to address this lack of information, Reactor – Research in Action conducted this research with the aim of establishing a baseline regarding the nature of gender-based discrimination in the labour market, the extent to which discrimination claims are being filed and to gather additional information with regard to how institutions are treating such cases. As a long-term aim of Reactor – Research in Action is to hold institutions accountable and to advocate for anti-discrimination legislation to be implemented, this research will provide the needed evidence to do so in an effective manner.

More specifically, this research aimed to answer the following research questions:

- i. To what extent is the legal framework complete?
- ii. How many work-related discrimination cases have been reported to different types of institutions from 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 research questions enlisted above, Reactor – Research in Action conducted research from March to December 2018. The results can be found in this report. The research involved mixed research methods. First, a legal analysis was conducted in order to examine and assess current anti-discrimination legislation in place in North Macedonia, including any shortcomings in aligning national legislation with the Acquis Communautaire, with a specific focus on gender equality related legislation. It examines international laws, treaties and conventions, the Constitution of the Republic of North Macedonia, relevant national laws and secondary legislation. The legal analysis also served to identify the relevant institutions, their roles and responsibilities. Second, existing literature of available data on discrimination was reviewed.

Third, existing data related to discrimination cases, disaggregated by gender, was requested and collected from several institutions that have a legal responsibility related to addressing discrimination (such as Police, the Ombudsperson Institution of North Macedonia, courts, etc.). Moreover, representatives from these institutions (selected using variation sampling) were interviewed using a semi-structured interview guide to measure their knowledge, awareness and experiences with gender-based discrimination in the labour market.

Lastly, an anonymous online survey in three languages (Macedonian, Albanian and English) using Lime Survey was launched with the aim of collecting input from diverse women and men regarding their knowledge of anti-discrimination legislation, attitudes, personal experiences with discrimination, whether such cases were reported and the reasons as to why they did not report discrimination when it occurred. The survey was promoted broadly, targeting under-represented groups, including through media, email and Facebook boosting. In total, 631 people (83% women and 17% men), completed the survey, while an additional 419 people partially answered the survey. For further information about the methodology, please see Annex 1.

# LEGAL ANALYSIS

This chapter analyses the legal framework relevant to discrimination on the grounds of gender in the field of labour relations. The analysis was conducted primarily as a critical gender analysis of primary materials,<sup>5</sup> focusing on laws). It involved a comparative analysis of national vis-à-vis EU law, supported by findings from secondary materials, such as analyses by international and national governmental and non-governmental organisations.<sup>6</sup>

Within national law, the following pieces of legislation are important for regulating gender equality and protection against discrimination on the grounds of gender in labour relations:

- Constitutional law:
  - Constitution of the Republic of Macedonia (the Constitution) and its amendments
- International law<sup>7</sup>
- Equality and non-discrimination law:
  - Law on Equal Opportunities between Women and Men
  - Law on Prevention and Protection against Discrimination<sup>8</sup>

5 All primary and secondary sources are duly referenced throughout the text.

6 In this respect, it is worth underlying that the main body of knowledge was generated by non-profits in the country, both directly by publishing analyses and reports, and indirectly by taking cases to competent institutions and by advocating for legislative changes. Part of the latter is also the initiative for adopting a new comprehensive Law on Prevention and Protection against Discrimination, which is currently in Parliament. This draft was prepared by an inclusive working group convened by the competent ministry, the Ministry of Labour and Social Policy, with significant input by non-profits. The draft-law was proposed to the Parliament by the Government.

7 Under the Constitution, all international treaties ratified in line with the Constitution are part of national law, and, in the legal hierarchy, are above national laws and bylaws (Source: Constitution of the Republic of Macedonia. Official Website of the Assembly of the Republic of Macedonia, [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix), Art. 118. All hyperlinks accessed on: 16.02.2019).

8 In preparing this analysis, the draft-Law on Prevention and Protection against Discrimination, mentioned in footnote 2 was proposed to the Parliament, but is currently blocked. Thus, it is not expected that it will be adopted before the publication on this analysis. Thus, this law is not discussed herein. On the parliamentary stalemate, please see: European Equality Law Network, 'The proposed new law on anti-discrimination blocked in Parliament' (31.01.2019), EELN Website. <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>.

- Law on the Ombudsperson of the Republic of Macedonia
- Labour law:
  - Law on Labour Relations
- Criminal law:
  - Criminal Code and relevant amendments

The chapter first examines relevant international law. It, then, turns to the relevant national law. It starts with the constitutional provisions, moves on to equality and non-discrimination legislation, labour law and finishes with criminal law. Following this, the chapter presents the relevant procedural pathways, by focusing on the responsible institutions. It ends with a brief overview of relevant sanctions.

## International Law

This section lists the international law instruments that are relevant for gender-based discrimination at work and which, as ratified in line with the Constitution,<sup>9</sup> are considered part of the national law. No reservations relevant for the present discussion have been logged upon ratification of these instruments.

- **United Nations:**<sup>10</sup> Universal Declaration of Human Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol related to individual complaints and investigation procedures; Convention on the Rights of the Child; International Covenant on Civil and Political Rights and the Optional Protocol; International Covenant on Economic, Social and Cultural Rights and the Optional Protocol; Convention on the Rights of Persons with Disabilities.
- **Council of Europe:** Convention on Preventing and Combating Violence against Women and Domestic Violence (also referred to as the Istanbul

<sup>9</sup> Please note that the term ‘ratified’ is used loosely here to refer to both instruments that were ratified and those that were acceded by succession from the former Yugoslav federation.

<sup>10</sup> See also: Beijing Declaration and Platform for Action (1995).

Convention); Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (also referred to as the ECHR); European Social Charter - Revised.

- **International Labour Organization:**<sup>11</sup> C111 Discrimination (Employment and Occupation) Convention.

## Constitutional Law

The principle of equality is a fundamental value of the 1991 Constitution of the Republic of Macedonia (hereinafter the Constitution). Article 8, which lists these values, includes:

*‘the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution; the free expression of national identity, equitable representation of citizens belonging to all communities in the bodies of state authority and the other public institutions at all levels.’<sup>12</sup>*

Further, Article 9 regulates the right to equality. It provides that:

*‘Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law. (Emphasis added).’<sup>13</sup>*

Notably, no separate special provision regulates the equality of women and men. The Constitution stipulates the ‘right to work, free choice of employment, protection at work and material assistance during temporary unemployment’ for every person (Art. 32, para. 1). Further, it establishes that all jobs at the labour market are open to all and under equal conditions (Art.32, para.2). Considering Article 9, both provisions should be read to include equality on grounds of sex. Articles 40 - 42 regulate rights related to family, freedom to decide on procreation and children and confer special protection to mothers and minors at work.

11 It is worth noting that Macedonia ratified the C171 Night Work Convention on March 2, 2018, and it will enter into force on March 2, 2019.

12 Constitution of the Republic of Macedonia. Official Website of the Assembly of the Republic of Macedonia, [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx), Art. 8.

13 *bid*, Art. 9, paras. 1 and 2.

These (and other) constitutional rights and freedoms can be restricted, but not in a way which will discriminate ‘on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status’ (emphasis added).<sup>14</sup> The protection of these constitutional rights and freedoms, including the prohibition of discrimination ‘on the grounds of sex, race, religious, national, social and political affiliation’ (emphasis added)<sup>15</sup> is part of the competences of the Constitutional Court, the institution primarily tasked with ‘protecting the constitutionality and legality’.<sup>16</sup>

## Equality and Non-Discrimination Legislation

Under the national law, the Law on Prevention and Protection against Discrimination is *lex generalis* dealing with equality and non-discrimination issues. Therefore, it is discussed first in this analysis. It is also a *lex specialis* on equality and non-discrimination issues treated under other laws, including the key law on employment: the Law on Labour Relations (discussed in the next section). Together with the Law on Equal Opportunities of Women and Men and the Law on the Ombudsperson, these comprise the main legal framework on equality and non-discrimination, regulating the personal and material scope of protection, procedural aspects, fines and the institutional framework. The Law on the Ombudsperson is discussed in section ‘Institutional Framework’, whereas the other two laws are discussed herein.

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14 Ibid. Art. 54.

15 Ibid. Art. 110, para. 1(3). Please note: Although the article states ‘sex’ the case law of the Constitutional Court suggests that it actually reads this ground as including both sex and gender.

16 Ibid. Art. 108.

## Law on Prevention and Protection against Discrimination

The Law on Prevention and Protection against Discrimination (Anti-discrimination Law, ADL)<sup>17</sup> was adopted in 2010 and entered into force at the beginning of 2011.<sup>18</sup> It is the first<sup>19</sup> comprehensive anti-discrimination law in the country. Before this law, equality and non-discrimination provisions were scattered in various laws.

According to the ADL, discrimination is:

*‘any unjustified legal or factual, direct or indirect, differentiation or unequal treatment, i.e. omission (exclusion, limitation or giving priority) with respect to persons or groups based on sex, race, colour, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, education, political affiliation, personal or social status, mental and physical impediment,*

17 There are a wealth of studies and analyses on the content of the law, the process in which it was adopted, contested legal issues, issues with alignment with EU acquis and international standards, and the practice of its implementation. Some of these studies include: Мирјана Најчевска, ‘Извештај во сенка за Комисија во сенка’ (ФООМ 2012); Авдиј Насиф (ед), ‘Анализа на механизмите за спречување и заштита од дискриминација во Република Македонија’ (ЦПИА и ЗМПМ 2013); Biljana Kotevska, ‘National Human Rights Institutions in Macedonia: Normative Models and Challenges’ (CRPRC Studiorum 2012); Жанета Попоска et al, ‘Анализа на дискриминациските практики во областа на вработувањето и работните односи’ (ОБСЕ и МТСП 2013); Марија Ристеска и Биљана Страмшак - Ѓуровска, ‘Конечен извештај за оценката за проведувањето на Законот за спречување и заштита од дискриминација’ (МТСП и ОСБЕ, 2013); Центар за човекови права, ‘Анализа за примената на Законот за спречување и заштита од дискриминација’ (Центар за човекови права 2013); Marija Risteska et al, ‘Shadow Report on Antidiscrimination’ (CED and CRPM 2012); ЦИКП, ‘Како да се елиминира дискриминацијата во јавниот сектор?’ (ЦИКП, 2011); Биљана Котевска, ‘Како Македонија да држи чекор со европските стандарди за спречување и заштита од дискриминација’ (ЦРИС Студиорум 2010); Ана Мицковска Ралева et al, ‘Проценка на потребите за градење на капацитет на КЗД’ (ХЕРА, 2015); Жанета Попоска et al, ‘Водич за улогата на Комисијата за заштита од дискриминација во судска постапка и преминување на товарот на докажување’ (ОБСЕ и АСЈО 2013); Biljana Kotevska, ‘Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата’ (OSCE 2015); Mirjana Najčevska and Biljana Kotevska, ‘Country Report on Gender Equality - Macedonia 2018’ (European Network of Legal Experts in Gender and Non-discrimination 2019); Biljana Kotevska, ‘Country Report on Measures to Combat Discrimination – Macedonia 2018’ (European Network of Legal Experts in Gender and Non-discrimination 2018).

18 Закон за спречување и заштита од дискриминација 2010 (Службен весник на РМ, бр: 50/10, 44/2014, 150/2015, 31/2016, Одлука на Уставен суд (У бр): 82/2010).

19 The Law on Equal Opportunities of Women and Men from 2006 cannot be considered such a law since it does not cover many equality law institutes, which one would expect to find in a comprehensive law.

*age, family or marital status, property status, health condition or any other ground.*<sup>20</sup> (Emphasis added.)

This prohibition applies with a wide personal and material scope. It explicitly includes nineteen discrimination grounds,<sup>21</sup> including (and going well beyond) the ground enlisted in all EU directives except sexual orientation.<sup>22</sup> Both sex and gender are explicitly included as protected grounds.<sup>23</sup> It also includes all fields in which these grounds are protected under EU law, including employment and goes wider.<sup>24</sup>

### Forms of discrimination

The ADL prohibits the following forms of discrimination: direct discrimination, indirect discrimination, harassment, sexual harassment, discrimination of persons with mental and physical disabilities, instruction and incitement of discrimination, victimisation and discrimination in the provision of goods and services. In addition to these, the law defines the so-called grave forms of discrimination, within which it proscribes multiple discrimination, repeated discrimination and extended discrimination.<sup>25</sup> Under the national law, the

20 Закон за спречување и заштита од дискримinacija Art. 5(1-3).

21 bid Art.3.

22 Having sexual orientation in the list of explicitly protected grounds was problematic for conservative actors, including religious groups and some members of Parliament. The members of Parliament (MPs) of the then-ruling Christian democratic party, the Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity (VMRO-DPMNE), were particularly vocal in expressing religious beliefs, as well as appealing to culture and tradition to oppose including sexual orientation as a protected ground. They put forward homophobic claims and even used hate speech related to sexual orientation. These events and attempts to rectify this failure to align the law with the EU acquis and international standards are discussed in the European Commission annual progress reports from 2013 onwards, universal periodic review (UPR) reports, International Lesbian, Gay, Bisexual, Trans and Intersex Association - Europe's statement on the ADL ([http://www.ilgaeurope.org/home/guide\\_europe/country\\_by\\_country/fyr\\_macedonia/ilga\\_europe\\_s\\_statement\\_on\\_new\\_anti\\_discrimination\\_law\\_in\\_former\\_yugoslav\\_republic\\_of\\_macedonia](http://www.ilgaeurope.org/home/guide_europe/country_by_country/fyr_macedonia/ilga_europe_s_statement_on_new_anti_discrimination_law_in_former_yugoslav_republic_of_macedonia)), and by the Article 3 Initiative: [http://coalition.org.mk/wp-content/uploads/2014/05/merged\\_document.pdf](http://coalition.org.mk/wp-content/uploads/2014/05/merged_document.pdf).

23 On the understanding, interpretation and application of 'sex' and 'gender' under national law, as well as on why this could cause problems for including trans\* persons within the scope of protection of these grounds and why other grounds might be considered a better fit (such as belonging to a marginalized group or the open-ended character of the provision), see: Biljana Kotevska, Guide on Discrimination Grounds (OSCE and CPAD 2013).

24 Закон за спречување и заштита од дискримinacija Art.4.

25 Ibid Art.12.

definition for multiple discrimination is considered to include intersectional discrimination.<sup>26</sup>

Many of these definitions should be amended in order to bring them in line with EU law and with other international standards.<sup>27</sup> The definition of direct discrimination is unnecessarily complicated compared to those in EU directives.<sup>28</sup> The definition of indirect discrimination contains an unfortunate translation of the term ‘apparently’ into ‘очигледно’ (which translated into English would be ‘obviously’ or ‘clearly’) instead of ‘навигум’ (‘apparently’).<sup>29</sup> This may have legal implications.<sup>30</sup> The definition of harassment does not include the important element of a conduct constituting harassment being ‘unwanted’.<sup>31</sup> The definition of discrimination in relation to mental and physical disabilities does not include psychosocial disabilities and also limits the scope to a few fields enlisted within the article, which is not in line with the Convention on the Rights of Persons with Disabilities.<sup>32</sup> Additionally, the ADL does not prohibit assumed or associated discrimination. It also does not include gender-based violence and segregation as forms of discrimination.<sup>33</sup>

### Unequal treatment not considered to constitute discrimination

The ADL has a chapter on ‘exceptions to discrimination’, which includes three groups of exceptions: affirmative action, unequal treatment that will not be considered discrimination and special protection measures for certain social groups.<sup>34</sup> The ‘genuine and determining occupational requirement’ is part of these exceptions and is formulated in line with the standard required by EU

26 Najčevska and Kotevska (n 13).

27 All of the points raised in relation to these definitions were addressed by the new law, save adding ‘gender-based violence’ as a separate form of discrimination.

28 Kotevska, ‘Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата’ (n 13).

29 Ibid.

30 However, no such occurrence in practice have been reported yet.

31 Kotevska, ‘Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата’ (n 13).

32 bid.

33 Ibid.

34 Закон за спречување и заштита од дискриминација Arts. 13, 14, 15.

law. It provides that the:

*'difference of treatment that is based on a characteristic related to any of the discriminatory grounds will not constitute discrimination if, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement does not overstep the level necessary for implementation.'*<sup>35</sup>

These three articles<sup>36</sup> read together, however, provide for very broad exceptions, which may even contradict with the aim of the law.<sup>37</sup> The ambiguous formulations and wide scope contribute to this.<sup>38</sup>

## Equality body

The first equality body in the country, the Commission for Protection against Discrimination (CPAD), was established in 2010 and started operating in January 2011, based on the ADL. The CPAD was envisaged to serve as an independent national human rights institution with an equality mandate in both the public and the private sphere and as an equality body as per the requirements of EU directives.

Its current composition, however, is highly controversial. It has *de jure* and *de facto* independence, transparency, accessibility, resources and professional capacity issues.<sup>39</sup> Moreover, of seven members, its second composition has

35 Ibid Art.14(2).

36 Each article has several paragraphs, not discussed individually herein. The reader is kindly directed to a detailed analysis of these in: Kotevska, 'Country Report on Measures to Combat Discrimination – Macedonia 2018' (n 13); Kotevska, 'Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата' (n 13).

37 Kotevska, 'Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата' (n 13).

38 The draft-ADL contains a very short and precise list of 'unequal treatment that will not be considered to be discrimination'. This not only helps the law keep its wide scope of protection, but also corrects the understanding of affirmative action as unequal treatment, which is not discrimination, instead of treating it like an 'exception'. For more on this final point, see the opinion of the Venice Commission on the draft-ADL, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)001-e).

39 See studies mentioned in footnote 13.

only one woman. This represents a decline in equal gender representation, considering that its first composition had three women. This is expected to change with the proposed draft-law, which is currently in Parliament.<sup>40</sup>

The CPAD has all competences required by EU directives and more. However, for a body that lawmakers established to have seven people, all whom perform their own daily administrative tasks, the list of competences is too extensive. The resources allocated also do not reflect or correspond with the extent of its competences under the law.<sup>41</sup>

In relation to procedural issues, the CPAD is *de jure* well-placed, but with room for improvement. For example, under the ADL, shifting the burden of proof is mentioned once, in the chapter where the law talks about judicial procedure. However, it is not mentioned among the procedures of the CPAD. This was interpreted by some scholars and former CPAD members to mean that shifting the burden of proof does not apply to them.<sup>42</sup>

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40 Should the draft-ADL, as currently proposed to the Parliament, be passed, the election of members of the Commission will be more open and transparent and the criteria for selection of the commissioners stricter. In addition, the draft-ADL proscribes that when selecting the commissioners, the selection committee has to have in mind the principle of equal representation of both sexes. However, not everything in relation to the proposed draft is positive. In fact, in a highly controversial move, the draft-law also foresees that the mandate of the current composition will end with the adoption of the new law. This is most probably the only solution (or this author would argue easiest for the majority, in terms of efforts needed and with the least political price to the current government coalition), which the current Parliament majority is prepared to adopt for removing the controversial members of the current composition. They could have attempted, at least, to initiate a process of dismissal through the Parliament, a possibility under the ADL, even if odds are high that this would fail. The current proposal for ending the mandate sets a dangerous precedent for the future for all NHRIs and other independent public bodies in the country. The Venice Commission, which did issue an opinion on the draft law, advised against this too. However, the draft-law is proposed to Parliament with this provision.

41 Kotevska, 'Country Report on Measures to Combat Discrimination – Macedonia 2018' (n 13).

42 Жанета Попоска et al, 'Водич за улогата на Комисијата за заштита од дискриминација во судска постапка и преминување на товарот на докажување' (ОБСЕ и АСЈО 2013); Kotevska, 'Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата' (n 13).

## Law on Equal Opportunities of Women and Men

The general legislation for mainstreaming gender equality is the Law on Equal Opportunities of Women and Men,<sup>43</sup> adopted in 2012.<sup>44</sup> The main aim of this law is to establish equal opportunities for women and men in all spheres of life, in both the private and public sector and to eliminate barriers to achieving full gender equality. Equal opportunities is understood to mean promotion of the principle of including equal participation of women and men in all spheres of the public and private sector, equal status and treatment in the exercising of all rights and in the development of their individual potential and equal access to the results from this development. Thus, the law provides a framework for gender mainstreaming and aims to overcome the current unfavourable social position of women and men, which is 'a result of systematic discrimination or structural gender inequality resulting from historical and socio-cultural conditions'. It provides legal grounds for introducing special measures (positive, encouraging and program measures) for achieving *de facto* gender equality.

Positive measures include giving priority to the less represented gender under equal conditions until equal representation is achieved. The encouraging measures ensure special motivation to introduce special benefits in order to eliminate conditions that lead to inequality. Program measures are those focused on awareness-raising, organizing activities and developing and implementing action plans for equal opportunities. The main responsible entities for implementing all these measures are the Parliament, the Government, state bodies, the Ministry of Labour and Social Policy, the Ombudsperson, units of local self-government, political parties and media. The law specifically prohibits discrimination, harassment and sexual harassment.

## Labour Law

The key piece of legislation in relation to labour law is the Law on Labour Relations, which is discussed in details in this section. Another important law

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<sup>43</sup> Law on Equal Opportunities of Women and Men, Official Gazette, No.6, 13.01.2012.

<sup>44</sup> This text was preceded by the 2006 legislation with the same title. However, this law was found to be ineffective in many respects. So, the 2012 law was adopted. Source: Najčevska and Kotevska (n 13).

related to labour rights is the Law on Employment of Persons with Disabilities (2000 and subsequent amendments), which regulates special conditions for the employment and work of disabled persons (Art. 1). While this legislation is, of course, applicable to women with disabilities, it has no provisions pertaining explicitly to gender, so it is not further discussed here. It should be noted that there is also the Law on Protection from Harassment in the Workplace. However, this law explicitly states that ‘any type of unjustified differentiation during an unequal treatment of an employee on whatever ground of discrimination, which is prohibited and in view of which protection is provided, in accordance with law’, does not fall within the material scope of this law.<sup>45</sup> Thus, this law clearly falls outside of the scope of this legal analysis.

## Law on Labour Relations

The Law on Labour Relations, adopted in 2005 and amended many times afterwards (hereinafter Labour Law), regulates labour relations between workers and employers, established by an employment contract (Art.1). The Labour Law contains several equality and non-discrimination provisions, including provisions specifically prohibiting discrimination against women and discrimination in relation to pregnancy. The law applies to both the public and the private sphere, to both part-time and full-time work and to self-employment.

### General anti-discrimination principles

The Labour Law prohibits employers from discriminating against a job applicant or employee based on ‘racial or ethnic origin, colour, sex, age, health condition or disability, religious, political or other beliefs, union membership, national or social origin, family status, property status, sexual orientation or other personal circumstances’ (emphasis added).<sup>46</sup> It stipulates that:

<sup>45</sup> Закон за заштита од вознемирување на работно место (Службен весник на РМ, бр: 108/13) Art.8(3).

<sup>46</sup> Закон за работните односи (Службен весник на РМ, бр: 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016; Constitutional Court Decisions: U.no 139/2005, U.no 161/2005, U.no 134/2005, U.no 187/2005, U.no 111/2006, U.no 188/2006, U.no 170/2006, U.no 200/2008, U.no 20/2009, U.no 176/2009, U.no 263/2009, U.no 62/2013, U.no114/2014) Art.6(1). Labour law, Art.6(1).

*‘Women and men must be ensured equal opportunities and equal treatment in relation to: (1) Access to Employment, including advancement and technical and professional on-the-job training; (2) Work Conditions; (3) Equal Pay for Equal Work [which is further codified in Article 108]; (4) Professional packages for Social Insurance; (5) Leave; (6) Working hours; (7) Terminating the employment contract.’<sup>47</sup>*

The principle of equal treatment is defined as a ‘ban of direct and/or indirect discrimination’ in relation to the two previously mentioned provisions.<sup>48</sup>

Two enforcement aspects are important for processing discrimination claims. First, the Labour Law stipulates that shifting the burden of proof applies to discrimination cases.

The definition is in line with EU directives, requiring only facts in order to show a *prima facie* case of discrimination, following which the burden of proof shifts to the defendant.<sup>49</sup> In addition to this, in the event of discrimination, the employee is entitled to compensation in accordance with the Law on Obligation Relations.<sup>50</sup>

### Forms of discrimination

The Labour Law defines the following forms of discrimination: direct discrimination, indirect discrimination, harassment, sexual harassment, psychological harassment and discrimination of a female employee<sup>51</sup> on the grounds of pregnancy, giving birth and parenthood.<sup>52</sup> These definitions differ from the ones in the ADL. Additionally, the definition of indirect discrimination

47 Ibid. Art.6(2).

48 Ibid. Art.6(3).

49 Ibid. Art.11.

50 Ibid. Art.10. Also, for more on this, please see section ‘8. Sanctions’.

51 As can be read, the Labour Law limits protection in relation to pregnancy to women alone. Thus, it does not include here, nor in any of the other pregnancy and birth-related provision, the protection of pregnant men or men that have given birth. The trans\* exclusive language in this part of the analysis reflects the content of the law and not the opinion of the author on this issue. In the opinion of the author, this is one more point in relation to which the Labour Law should be amended in order to include all pregnant people and people that have given birth.

52 Закон за работните односи Arts.7, 9, 9a and 9b.

does not include the element of objective justification. The definition of indirect discrimination from the ADL, however, can be used to read this element into the Labour Law. In any case, the Labour Law should be aligned with the ADL in this respect.

### Unequal treatment that will not be considered to constitute discrimination

Under the Labour Law, there are a few ‘exceptions to the ban of discrimination’. These are the genuine occupational requirement, special protection of specific categories of employees (elderly, persons with a disability, women) including pregnancy-related exceptions and objective reasons for distinguishing between persons employed with fixed duration contracts, compared to those with indefinite contracts.<sup>53</sup>

### Vacancy ads

One article of the Labour Law deals with gender equality in vacancy advertisements. It provides a ban on announcing vacancies only for women or for men ‘unless the particular gender is an essential requirement for carrying out the work’. The same applies for giving priority to a particular gender.<sup>54</sup> The inability to prioritize hiring persons of a given gender might be interpreted as a provision preventing the adoption and implementation of measures towards gender equality such as, for example, by introducing quotas. Read together with Article 8, on ‘exceptions from discrimination’, at present, the Labour Law might be read as not allowing for quotas or other affirmative measures. This is a point which should be rectified by amending the law.

### Equal pay

Under the Labour Law, there is an obligation to pay all workers an equal salary ‘for equal work with equal job requirements, regardless of their gender’. This law also proscribes as null and void all provisions which are contrary to this, be they from employment contracts, collective agreements, or other general regulations of the employer.<sup>55</sup>

<sup>53</sup> Ibid. Art. 8.

<sup>54</sup> Ibid. Art. 24.

<sup>55</sup> Ibid. Art. 108.

## Nightwork regulation

The Labour Law still contains some gender-regressive provisions related to nightwork in industry and construction. Namely, it provides that a

*‘female employee in industry and construction may not be assigned to night work if that work does not allow her to rest at least seven hours between 22:00 and 05:00 the following day [with the exception of] female employee that has special authorizations and responsibilities or carries out works related to health care, social and other protection of employees.’*

It also excludes *force majeure* events and ‘especially serious economic, social and similar circumstances’.<sup>56</sup> This provision has nothing to do with pregnancy and does not relate specifically to pregnant women. This provision has not been challenged as discriminatory on the grounds of sex in front of the Constitutional Court yet. With the recent ratification and forthcoming entering into force of the ILO convention in relation to nightwork, this provision will have to change.

## Part-time workers

The law equalises the rights of part-time workers with those of full-time workers. Part-time contracts are defined as contracts that are with shorter working hours than the full 40 hours per week contract. The Labour Law foresees the exception of introducing this principle into ‘occupations that are regulated by other laws’<sup>57</sup>.

## Protection for Pregnancy, Birth and Parenthood

The Labour Law does not recognise or include the concept of ‘parental leave’. Instead, it focuses on maternity leave and provides only seven days of leave for fathers. Fathers can use leave only if mothers decide not to. Aside from Article 96 (which was already discussed), the Labour Law explicitly adds an article prohibiting the termination of an employment contract during an approved

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<sup>56</sup> Ibid. Art. 131.

<sup>57</sup> Ibid. Art. 48(3).

leave for pregnancy, birth and parenthood (including by adoption and for fathers), as well as for caring for a family member (including explicitly caring for children ‘with special needs’ until the age of three<sup>58</sup>) and unpaid parental leave.<sup>59</sup> However, this protection is not extended if the contract expires while the person is on such a leave.

A provision declares that special care will be afforded to vulnerable workers and includes pregnancy, birth and parenthood as such cases. It stipulates an obligation for the employer to facilitate a work-private life balance for the worker,<sup>60</sup> to create a safe working environment or to exempt vulnerable workers from work until safety can be guaranteed,<sup>61</sup> and prohibits assigning a pregnant worker to work if her health or the baby’s health can be affected by the work assignment.<sup>62</sup> Pregnant workers who work with hazardous chemicals have the right to be informed of the risks.

The special protection of women during pregnancy, birth and parenthood are defined in Articles 163 to 170 (with the exception of Article 167 which ensures that the father is entitled to take the parental leave if the mother is not using it). A woman is entitled to nine consecutive months of maternity leave (or 15 for multiple births/adoptions). The leave may begin 45 days before her due date, but must begin 28 days before her due date. The remuneration is 100% of the pregnant woman’s salary and it is paid by the Fund for Health Insurance for the duration of this leave. Should the pregnant woman return to work before the end of these nine months, she is entitled to an additional remuneration in the amount of 50% of her salary, paid in addition to her salary by the employer. In relation to this, no study has been conducted to date as to the effect on the practice of hiring women.

In addition to paid leave, the worker is entitled to up to three additional months of unpaid leave. However, anecdotal evidence suggests that employers do not have adequate knowledge on how to handle such requests and there

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58 For such cases, the law also prohibits working overtime and extends this to single parents with a child up to six years old, unless the employee accepts the overtime work. Source: Ibid. Art. 120.

59 Ibid. Arts. 77, 101.

60 Ibid. Art. 161.

61 Ibid. Art. 162.

62 Posts which fall within this prohibition are established by a list drafted jointly by the ministers of health and of labour and social policy.

is evidence that workers have their contracts terminated for three months as they seemingly have no other recourse.<sup>63</sup>

At the end of the leave, the worker is entitled to be returned to the same position or to an equivalent one and according to terms and conditions that are equally favourable (Article 166, Law on Labour Relations). However, the law is not explicit when it comes to any potential improvement in working conditions to which pregnant women would be entitled during their absence. Article 9-b, which is specifically on protection against discrimination against female employees on the grounds of pregnancy, giving birth and parenthood, might be useful in this regard. It proscribes:

*‘all forms of discrimination of a female employee on grounds of pregnancy, giving birth and parenthood, no matter the duration and the type of employment established in accordance with the law [...] [in relation] to the access to employment, the working conditions and all the rights under the employment and the termination of the employment contract of female employees that are pregnant or exercise rights resulting from giving birth and parenthood.’<sup>64</sup>*

In addition, judicial interpretation might establish that the provisions regulating abeyance (Articles 45 and 147) can serve as grounds to claim the right to benefit from such improvements.

Article 171 regulates the right of female workers that are breastfeeding. The article states that female workers have a right to an hour and a half-paid break in order to breastfeed their children until age one.

### Social security schemes and legislation

The national pension system consists of three separate pillars regulated by the following laws (one for each pillar): Law on Pension and Disability Insurance (regulates the first pillar of mandatory contributions, managed by the state Pension Fund), Law on Mandatory Financed Insurance (regulates the second pillar of mandatory contributions, managed by hedge funds and

<sup>63</sup> Information provided by Reactor’s staff.

<sup>64</sup> Закон за работните односи Art.9б.

banks) and Law on Voluntary Financed Pension insurance (regulates the third pillar of voluntary extra contributions, managed by hedge funds and banks). However, only the law regulating the third pillar has a non-discrimination provision, proscribing discrimination in this type of pension insurance as 'discrimination on the basis of sex, colour of skin, language, religion, political or any other affiliation, national or social heritage, members of national or ethnic minorities, or on the basis of owned capital, family affiliation, health situation or age' (emphasis added).<sup>65</sup> Since the ADL has this field of law within its material scope, the lack of discrimination provisions does not mean that the other two pillars are not covered by the prohibition of discrimination.

Both women and men need to have 15 years of work experience (and contributions) to qualify for social security. However, the age when one becomes eligible to receive pensions differs based on gender, with women being able to retire at 62 and men at 64 years of age. Both women and men can continue to work until age 67. This is the only gender distinction in the way that pensions are awarded and calculated. The pension is calculated based on the years spent in employment (and paying contributions) and the amount of the person's salary.<sup>66</sup>

Another aspect of social security deals with social protection and assistance.<sup>67</sup> Most beneficiaries qualify by not being employed, by working in the grey economy, by performing jobs that are not economically gainful, by undertaking care responsibilities and the like. Unlike the pension laws, the social protection laws usually contain non-discrimination provisions, stating the prohibition of discrimination on a number of protected grounds. These, like the ones in other laws discussed in this section, are not in line with the ADL.<sup>68</sup>

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65 Закон за доброволно капитално финансирано пензиско осигурување (Службен весник на РМ, бр: 7/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decisions: U.no 117/2008, U.no 162/2008) Art.3.

66 Закон за пензиско и инвалидско осигурување (Службен весник на РМ, бр: 98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014, 20/2015, 61/2015, 97/2015, 129/2015, 147/2015, 154/2015, 173/2015, 217/2015, 27/2016, 120/2016, 132/2016;).

67 Major changes are expected in this area due to the ongoing process of reforms. The scope of changes made it impossible to include a reflection on these in this analysis. Analyzing these changes should be the subject of a separate analysis.

68 Kotevska, 'Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата' (п 13).

## Criminal Law

Since 1996, the Criminal Code has proscribed discrimination as a criminal offence. This code contains the prohibition of discrimination both as an autonomous provision (Art.137(1)) and as a parasitic provision (Art.417).<sup>69</sup> The former proscribes the breach of equality among citizens on, inter alia, grounds of sex, as a criminal act on its own, whereas the latter does this in relation to rights acknowledged by the international community.<sup>70</sup> In addition, two other articles (Arts. 319(1) and 394-r) refer to the spread of hatred and other crimes, but do not include sex or gender among the grounds.

## Responsible Institutions

Different institutions share legal competences related to prevention, promotion, protection and advancement of the principle of equality. In relation to protection and bringing discrimination claims, persons can take their claim to the following:

- The judiciary:
  - Constitutional court (for natural persons only and only if the discrimination is among the discrimination grounds enlisted in the Constitution)
  - Regular courts (civil, administrative and criminal, depending on the type of claim)
- National human rights institutions (NHRIs):
  - CPAD (in both the public and the private sector)
  - Ombudsperson (in the public sector only)
- Administrative bodies:
  - Legal representative on gender equality
  - Labour inspectorates
  - Peaceful resolution of disputes

<sup>69</sup> Najčevska and Kotevska (n 13).

<sup>70</sup> Though 'rights acknowledged by the international community' might sound ambiguous, it is, in fact, just referring to the heading in the Criminal Law in which the article is based, which talks about crimes such as genocide, slavery, and so on.

The procedural options are considered here in the order of these relevant institutions.

## The Judiciary

Persons claiming discrimination can go to either the Constitutional Court or to regular courts. At the Constitutional Court, natural persons can file a Request for protection of their fundamental rights and freedoms based on any of the discrimination grounds (i.e. sex) and in relation to any of the constitutional rights (i.e. labour relations, within the scope discussed above). In regular courts, they can file (1) criminal charges, (2) labour claims or other civil law claims, or (3) administrative claims. The shifting of the burden of proof applies to all judicial processes, save for criminal and misdemeanour proceedings.

However, courts are not the usual venue for potential victims of discrimination for two reasons. Firstly, they are not financially accessible. This mechanism is costly, as legal representation fees and court taxes make costs high.<sup>71</sup> In cases when a discrimination claim is raised in relation to a lost job, the claimant must pay all these fees without having any secure income. Second, court proceedings tend to last long.

Only one court case was published in which the court found the employer guilty of discrimination in relation to pregnancy, for which the applicant argued based on the ground of personal or societal status, family and relationship status. The applicant was a pregnant woman who was fired from her job once the employer learned of her pregnancy.<sup>72</sup>

## Commission for Protection against Discrimination

Every person who believes they have been discriminated can submit a complaint to the CPAD. Such applications can be made by individual persons,

<sup>71</sup> Under the draft-ADL, no court taxes are to be charged for persons filing discrimination cases.

<sup>72</sup> This case was part of larger strategic litigation efforts by the Young Lawyers Association of Macedonia, an NGO providing legal aid. Source: Академик, 'The First Court Judgment on a Case of Discrimination against a Pregnant Person Is Very Important for the Workers Rights' (2016) <<https://www.akademik.mk/prvata-presuda-za-diskriminatsija-vrz-osnova-na-bremenost-e-mnogu-vazhna-za-ostvaruvaneto-na-rabotnichkite-prava-advokat-sofija-bojkovska/>>.

groups of persons, or by organisations with legitimate interest on behalf of individuals. However, currently under the law, there is no possibility to file such a claim without a formally acquired statement of consent of at least one potential victim of discrimination, so class actions and *actio popularis*<sup>73</sup> claims are not a clear option under the law.<sup>74</sup>

According to the law, the applicant must submit an application to the CPAD within three months of the potentially discriminatory act or within a year after they learned of it. The applicant is to submit ‘facts and proofs’<sup>75</sup> for the CPAD to establish a *prima facie* case of discrimination. The CPAD has 90 days to process the claim and issue an opinion. It can address the potential discriminator(s) and ask for a response and supporting evidence. If an opinion is issued establishing discrimination, the discriminator has to act upon it within 30 days. This does not mean that the opinions of the CPAD are legally binding, since they are not. However, the CPAD can bring the case to further ‘competent authorities’<sup>76</sup> if the discriminator does not act upon its opinion.

Although the law currently does not include such a competence, the CPAD has started to issue General Recommendations. In it, it provides guidance on how persons should deal with issues that the CPAD has identified as recurring or burning issues.<sup>77</sup> The first such recommendation related to wearing religious clothing (face veils) in places of education. However, the CPAD approached this issue as an issue of religious discrimination alone, disregarding the intersectional aspects of it, which involve important gender aspects to consider.

The last available statistics about cases received and processed by the CPAD are for 2017. In that year, CPAD received 59 cases. Of the applicants, natural persons, 25% were women and 34% were men. The numbers show that, except in one year, the number of cases filed has continued to drop, a trend

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73 For more on *actio popularis* in general and in the national context, please see: Славица Чубрик and Неда Чаловска, ‘Користење На Actio Popularis Во Случаи На Дискриминација’ (МНС and OSCE 2016).

74 The draft-law, if it is adopted as currently proposed to the Parliament, explicitly allows for *actio popularis*.

75 On the challenge this formulation ‘facts and proofs’ causes the shifting of the burden of proof (see section 4.1. on the ADL).

76 Kotevska, ‘Country Report on Measures to Combat Discrimination – Macedonia 2018’ (n 13).

77 The draft-ADL foresees this competence for the CPAD.

noted in 2016 when the number of cases dropped to 60, compared to 70 in 2015 and 106 in 2014. For the first time, sex and gender topped the list of grounds on which claims were made, comprising 19% of cases filed. Previously more cases related to ethnicity and political affiliation were filed (18% and 17% respectively). As in previous years, the main field in which discrimination seems to have occurred is employment: 41% of cases.<sup>78</sup> Table one summarises the number of applications the CPAD received based on grounds of sex and gender in 2011-2017.<sup>79</sup> As discussed, lower reporting is clear. While the last available statistics (2017) show a rise in the number of cases, the bigger picture shows a significant drop, especially compared to 2014.

**Table 1:** Number of applications the CPAD has received in total and on grounds of sex and gender in 2011-2017

Ground/Year	2011	2012	2013	2014	2015	2016	2017
Sex	4	5	9	10	2	8	11
Gender	5	2	0	4	1		
All	60	75	84	106	70	60	59

Source: Annual reports of the CPAD for 2011, 2012, 2013, 2014, 2015, 2016 and 2017.<sup>80</sup>

## The Ombudsperson

The Ombudsperson of the Republic of Macedonia (hereinafter the Ombudsperson) is a national human rights institution, established on

<sup>78</sup> European Equality Law Network, 'No changes in reporting to the equality body CPAD and to the Ombudsperson', EELN Website, <https://www.equalitylaw.eu/downloads/4600-fyr-macedonia-no-changes-in-reporting-to-the-equality-body-cpad-and-to-the-ombudsperson-pdf-148-kb>.

<sup>79</sup> Please note that, at the national level, it is often the case to bring pregnancy discrimination and trans\* discrimination cases under other grounds as well (mostly on 'personal or other societal status' for the former or 'marginalised group' or 'other status' for the later). Thus, these numbers do not necessarily include all cases which under EU law would be treated under the grounds of sex and gender. In addition, considering that these grounds are not well delineated under the national law and practice, the reader should not read much into the differences in the numbers reported between these two grounds. In fact, it might be more accurate to present the sum of these grounds, rather than individual reporting.

<sup>80</sup> At the time of writing of this analysis, the website of the CPAD was under construction, so no links to these reports have been provided. They can, however, be found on the website of the Parliament: [sobranie.mk](http://sobranie.mk).

grounds of the Constitution.<sup>81</sup> It is established for the purpose of protecting the constitutional and legal rights of citizens in the public sector. This means it can process cases where a potential violation was conducted by bodies of the state administration and by other bodies and organisations with public powers. The Ombudsperson also has competences in relation to equality on grounds of ethnicity. Namely, under the Constitution, the Ombudsperson 'gives particular attention to safeguarding the principles of non-discrimination and equitable representation of members of communities in the bodies of state authority, in the bodies of local self-government units and in the public institutions and services.'<sup>82</sup>

The Law on the Ombudsperson was amended several times in order to expand its mandate, including on matters of importance for equality. So, at present, this institution has a special division dealing with non-discrimination issues (including on grounds of sex, as per the Constitution). One of the deputy-Ombudspersons at the national level covers the theme of non-discrimination.<sup>83</sup> In 2012, the then International Coordinating Committee of National Human Rights Institutions (now Global Alliance of National Human Rights Institutions) evaluated the Ombudsperson as a NHRI with a B status because it lacked a promotional mandate. The Ombudsperson was until that point conducting promotional activities, but it lacked legal grounds for these, which added uncertainty as to the future prospect of continuing these activities under a new head of the institution.<sup>84</sup> So, the law was then amended to award the institution such a mandate.<sup>85</sup>

The annual reports of the Ombudsperson show that, like the CPAD, there is an overall drop in the number of cases reported to the institution (receiving 3,224 cases in 2017, compared to 3,775 in 2016 and 4,403 in 2015). However, the number of cases on non-discrimination and equitable representation reached

81 Constitution of the Republic of Macedonia (n8), Amendment XI.

82 Constitution of the Republic of Macedonia (n8), Amendment XI.

83 Ицет Мемети, 'Народен Правобранител На Република Македонија' (2012) 16 Списание за европски прашања 'Евродијалог' 61.

84 Bijlana Kotevska, National Human Rights Institutions in Macedonia: Normative Models and Challenges (Centre for Regional Policy Research and Cooperation 'Studiorum' 2012) <[http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI\\_Study\\_MKD-2012for\\_web.pdf](http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf)> accessed 15 February 2019.

85 Kotevska, 'Country Report on Measures to Combat Discrimination – Macedonia 2018' (n 13).

2.17% (70 cases, or the highest representation thus far, compared to 1.83% or 69 cases in 2016, 1.2% or 53 cases in 2015 and 1.55% or 66 cases in 2014).<sup>86</sup>

## The Sector for Equal Opportunities at the Ministry of Labour and Social Policy – Legal Representative

The Law on Equal Opportunities for Women and Men established the post of a Legal Representative in the Sector for Equal Opportunities at the Ministry of Labour and Social Policy (MLSP). This representative has the competence to decide in individual claims on unequal treatment between women and men and to cooperate with other protection mechanisms (the Ombudsperson, the CPAD, state inspection bodies, etc). The Legal Representative can also initiate *ex officio* unequal treatment investigations, which also opens the possibility for anonymous reporting.

However, several issues are problematic. First, it is seated in the MLSP, which raises issues of independence. Second, research shows that reporting rates are extremely low and that the visibility and activity of the Legal Representative is almost non-existent.<sup>87</sup> Third, the institution faces serious (financial and human) resources issues.<sup>88</sup>

## Labour inspectorate

The Labour Inspectorate can process a claim it has received on grounds of both the ADL and the Law on Equal Opportunities for Women and Men. If it finds unjustified unequal treatment, it can issue a fine.<sup>89</sup> It also can issue a recommendation so that future violations can be prevented.

86 European Equality Law Network, 'No changes in reporting to the equality body CPAD and to the Ombudsperson', EELN Website, <https://www.equalitylaw.eu/downloads/4600-fyr-macedonia-no-changes-in-reporting-to-the-equality-body-cpad-and-to-the-ombudsperson-pdf-148-kb>.

87 Najčevska and Kotevska (n 13).

88 Reactor, 'CEDAW Submission', Official Website of the OHCHR, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30045\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30045_E.pdf).

89 On the range of fines, see next section – '8. Sanctions'.

## Peaceful resolution of disputes

Under the Law on Peaceful Resolution of Labour Disputes, as adopted in 2007 and subsequent amendments, a peaceful resolution can be sought in collective and individual cases regarding the selection, rights and obligations and other labour relations disputes. In individual cases, the peaceful resolution mechanism is available if the dispute relates to termination of a working contract or unpaid salaries. The disputes are decided by a Board. In the case of collective disputes, the Board issues a recommendation, whereas in individual disputes it adopts a decision.<sup>90</sup> For both, the deadline is 20 days from the start of the dispute, which is an advantage compared to the length of court cases.<sup>91</sup>

## Sanctions

The sanctions and remedies vary according to the law and grounds on which a discrimination claim is filed and the procedure in which it is processed. Under the ADL, sanctions vary according to the procedure, with administrative procedures offering the possibility of reversing an original decision and rectifying the violation within 30 days. The misdemeanour procedure envisages fines ranging from 70 to 1000 euros depending on the particularities of the case, whereas litigation provides for possible compensation. Pecuniary and non-pecuniary damages can be claimed if processing a discrimination claim in labour cases and in other civil court litigation.<sup>92</sup> When anti-discrimination sanctions are compared to other sanctions, they are at the lower end of the scale, fairing equally with, for example, throwing a cigarette bud on the street.<sup>93</sup> Thus, it cannot be said that the anti-discrimination sanctions satisfy the EU criteria of being effective, proportionate and dissuasive.<sup>94</sup>

90 Закон за мирно решавање на работните спорови (Службен весник на РМ, бр: 87/2007, 27/2014, 102/2014, 30/2016).

91 More information on this mechanism are available on the website of the MLSP: <http://www.mtsp.gov.mk/mirno-reshavanje-na-rabotni-sporovi-baner.nspх>

92 Закон за работните односи Arts.264-266.

93 Жарко Трајановски, Копитата на Букефал тежат колку кампањата за недискриминација (Дневник, 21 февруари 2010).

94 Kotevska, 'Анализа На Хармонизираноста На Домашното Законодавство За Еднаквоста и Недискриминацијата' (п 13).

# PEOPLE'S AWARENESS AND ATTITUDES TOWARDS DISCRIMINATION

This section examines people's awareness towards gender-based discrimination. The findings presented from here on are based on the anonymous online survey. Considering that the online survey sample is convenient and non-representative, readers should bear in mind that percentages reported do not reflect the prevalence of the explored phenomena in the general population in North Macedonia. Furthermore, it must be noted that the homogeneity of the online survey sample could limit the variability of the 'sampled' experiences (63% of respondents had high education, 73% were full-time employed and 75% were younger than age 39). Beside the fact that the survey involved a non-probability sample, ambitions for gender comparisons were constrained considering the gender imbalance in the sample; the ratio of women to men among survey participants was approximately 5:1. The gender disproportion may limit the possibility of concluding gender-based differences, however if indicative, established relationships i.e. gender based differences are interpreted although the conclusions are restrained in terms of generalizability.

## Awareness

More than half of the online survey participants (68%) agreed that gender-based discrimination is against the law. More than every tenth (13%) thought it is not and nearly every fifth (19%) did not know.

## Is discriminating against someone at work because they are a woman or a man illegal in Macedonia?

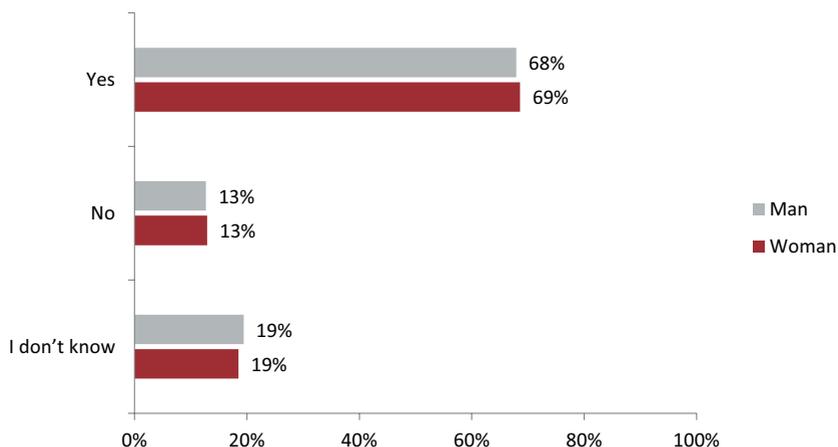


Figure 1. Awareness about laws related to gender-based discrimination at work, by gender (women = 739, men = 156)

The data indicates that higher educational attainment and higher income relate to awareness about the legal framework on gender-based discrimination at work. This 'stratification of awareness' is especially noticeable when comparing the distribution of answers by educational level. While most survey respondents (84%) with a Master's degree agree that discriminating against someone at work because s/he is a woman or a man is illegal in Macedonia, 54% of participants with a secondary education and 47% of participants with a primary or incomplete primary education said that gender-based discrimination is illegal. Although the data is not representative for the respective populations (people with lower educational levels are particularly underrepresented in the sample), the evidenced relationships may indicate that workers who are socioeconomically more marginalized are even more vulnerable to violations, considering that they may not have the resources to recognize and thus utilize the legal mechanisms.

When asked to which institutions they could report gender-based discrimination at work, both women and men most frequently identified

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the Labour Inspectorate (54% of women and 50% of men). Approximately one-fourth of the respondents knew they could report discrimination to the Ombudsperson Institution (24% of women and 30% of men), while 12% of women and 17% of men thought they could report discrimination to police. Approximately one-third (35% of women and 30% of men) said it could be reported to the employer.

The qualitative analysis of respondents' experiences with gender-based discrimination suggests insufficient knowledge regarding what constitutes gender-based discrimination and this could affect the rate of reported experience.

# PREVALENCE AND EXPERIENCES WITH DISCRIMINATION

This section summaries findings related to people’s experiences with different forms of gender-based discrimination in North Macedonia. It presents general findings related to the prevalence of gender-based discrimination in labour and various forms of gender-based discrimination in relation to labour.

## Thoughts on Overall Prevalence

The precise prevalence of gender-based discrimination cannot be known given that many cases are never reported.

Experience with Gender-based Discrimination  
(Self-assessed)

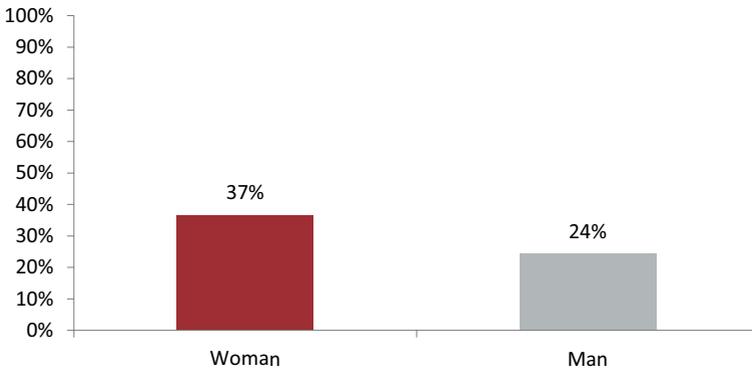


Figure 2. Experience with gender-based discrimination, by gender (women = 524, men = 107)

Asked to reflect overall, 37% of women and 24% of men stated that they have experienced gender-based discrimination at work. When controlled for other demographic characteristics, sector of employment, work position and monthly net salary, women have two times (2.15) greater odds of experiencing gender-based discrimination at work than men do. The assessment of multivariate

relation also suggested that workers with higher educational levels are more likely to experience gender-based discrimination at work, but it may be argued that more educated persons are more inclined to recognize discrimination. Regarding the sector of employment, more than half of the workers who experienced gender-based discrimination (61%) were working in the private sector when they experienced discrimination.

To better understand the nature of the experienced gender-based discrimination we analysed the respondents' recollections of these experiences. The qualitative analysis of reported experiences suggests that even in a professional workplace environment, women are reduced to the stereotype of a housewife:

*They force you to clean because you are a woman. (Woman, 48, Urban)*

They are 'cast' in traditional gender roles that are perceived as incongruent with the professional context. Moreover, women may have to choose between family and career. Often, the choice is made for them:

*At a job interview, they asked me if I am married and whether I plan to have children in the near future [...] I was not hired and a man got the position. (Woman, 36, Urban)*

The 'burden of choice' lurks even when women get the job:

*I worked 4-5 years with a temporary service contract. When I got married, I was told that I should be very careful with my childbearing plans [...] because my job position is not secure (I repeat this happened after 4-5 years working in that company). After this talk with my supervisor, I decided to quit. (Women, 36, Urban)*

The experiences collected through the online survey confirmed that pregnancy is a critical event in a woman's career and often the terminal point in her career path:

*I lost my job due to pregnancy and I worked three years in [the company]. I was four months pregnant when I announced that I was pregnant. I lost my job in a week. (Woman, 24, Urban)*

*I was demoted just because I was pregnant. (Woman, 32, Urban)*

*Not to lose my job, I was forced to return to work 14 days after I gave birth. (Woman, 40, Urban)*

In addition to the housewife and child-bearer stereotypes, working women face coercion and sexism in the form of objectification:

*I was fired three weeks after I decided not to sleep with my boss. I was very good at my job and he didn't give me a reason why he fired me. He just said they don't need me anymore. (Woman, 28, Urban)*

*I don't want to go into details, but I was offered a higher working position in exchange for sex. (Woman, 27, Urban)*

Given gender roles, women are perceived as less competent than their male colleagues:

*At a job interview, I was told that the work they do could not be performed by women because women are less intelligent than men. (Women, 22, Urban)*

*My boss prefers male colleagues for promotions and business deals. (Women, 32, Urban)*

*My new manager downgraded my position although I had been in the company for seven years, since it was establishment and I have 25 years of working experience. His words were: 'I am satisfied with your work, but because you are a woman, you will have to work at a lower position. It is for your own good'. (Woman, 44, Urban)*

Thus, women also are perceived as less deserving:

*In the same working position, with the same work responsibilities and the same level of education, I received 3,000 denars less than my male colleague. When I pointed out that it is discrimination, we started to receive equal salaries. (Woman, 29, Urban).*

In summary, as these experiences shared through the online survey illustrate, the gender-based discrimination that women face at work seems fuelled by sexism and gender stereotypes, which suggest that their 'reproductive and care roles, and domestic work' conflict with the work environment. Pregnancy remains a risky career move and women are forced to choose between their careers or having children. Women may not have a choice, as this decision sometimes is predetermined for them. When not reduced to their reproductive function, women are treated as sexual objects and 'offered' to trade sexual services for career advances. Just because they are women, they are penalized with lower working positions and lower salaries.

The sample of men that shared their experiences with gender-based discrimination is inconclusively small, but it could be observed that men also face discrimination when the job position is gender-segregated.

*'That's not a job for a man; people like to see young girls working in that position'. (Men, 30, Urban).*

Although several workers reported experiencing gender-based discrimination alarmingly, few reported their experience to an institution, official mechanism. When asked what institutions they contacted regarding what happened

to them, 85% said that they did not contact any of the listed institutions. Meanwhile, 5% contacted the Labour Inspectorate; 4% contacted police; 3% contacted a court; 2% contacted the Ombudsperson; and 1% the prosecution. Only 14 participants (13 of them women) answered about the response of the authorities and nine of them (eight women) said that the authorities listened, but could not do anything. Only 14 participants i.e. 7% of those who experienced gender-based discrimination were involved in court actions related to discrimination at work; 12 of them were women.

With which institutions were you in contact regarding what happened to you?

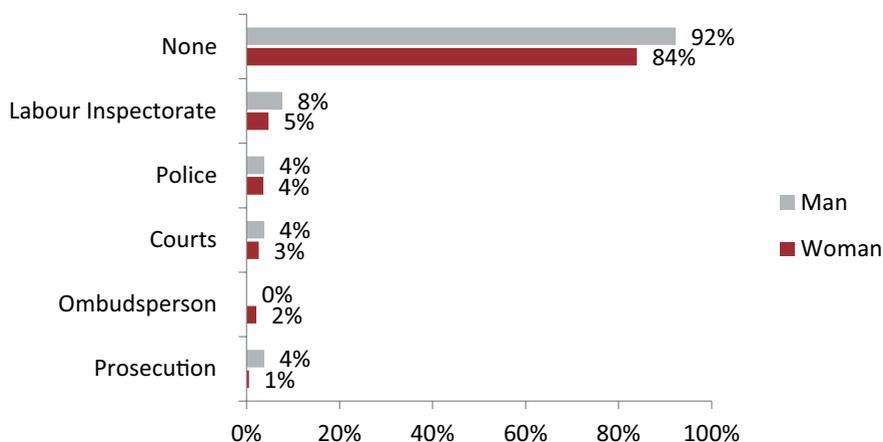


Figure 3. Institutions contacted for the gender-based discrimination experienced at work (women = 192, men = 26)

## Types of 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.

### Discrimination in Hiring

The online survey data suggest that interview questions that may involve discrimination in hiring are a 'common interview experience'. More than half of the men (54%) and most women (74%) who had participated in at least one job interview had faced such discriminatory questions. The data also suggest that women are significantly more likely to be 'interrogated' on matters unrelated to their skills and competences; compared to less than every fifth man (18%), more than every third (36%) woman was asked about future plans for children during a job interview and 8% of women were asked for medical proof that they were not pregnant.

Both women and men encountered questions about their marital status; most women (65%) and fewer than half of the men (47%) reported that they faced these kind of questions during job interviews. Additionally, a substantial percentage of both women and men were asked about the number of children they have (43% of women and 28% of men) and future plans for marriage (30% of women and 21% of men).

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

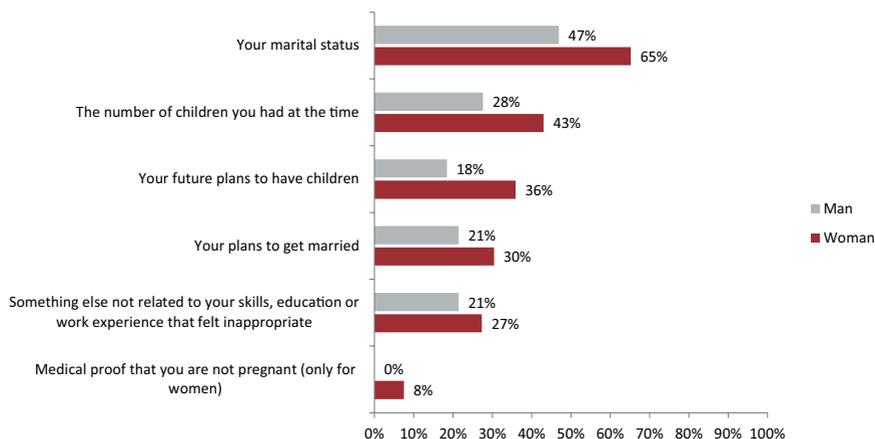


Figure 4. Experience with potentially discriminatory interview questions among workers who had at least one job interview in the last ten years, by gender (women = 445, men = 96)

Overall, 66% of respondents who had at least one job interview in the last ten years, thought that they had been discriminated against in hiring. Consistent with the evidenced gender differences with discriminatory interview questions, significantly more women felt they faced discrimination in hiring (68%) than men (58%). For both women and men the most frequently faced type of discrimination was age-based discrimination (40%) and gender-based discrimination (27%). However, comparatively more men faced discrimination based on their political preference (17% of women and 26% of men), while more women faced discrimination based on their future plans to have children (18% of women and 5% of men).

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

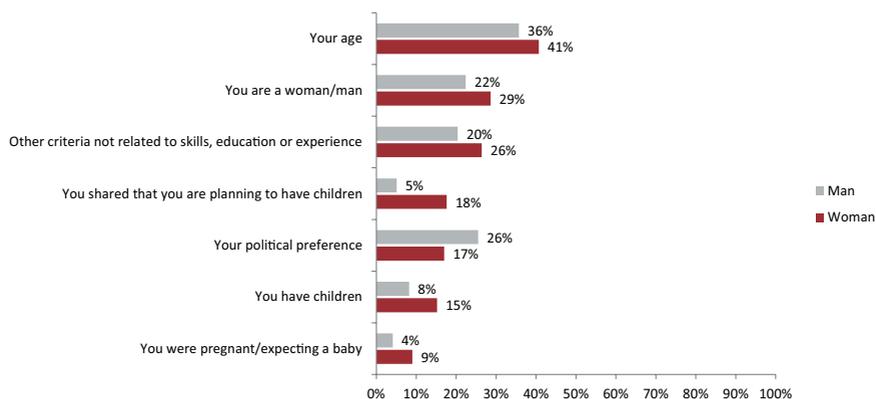


Figure 5. Experiences with discrimination in hiring among workers who had at least one job interview in the last ten years, by gender (women = 427, men = 96)

## Discrimination in Promotion

The online survey assessed workers' perceptions and experiences with discrimination in promotion. When asked if their employer(s) have given both them and other employees an equal opportunity to be promoted, 66% stated that some employees are treated differently than others and additional 14% had mixed experiences, depending upon the employer they had. Only 16% of respondents who had worked in the last ten years perceived that all employees have an equal opportunity to be promoted. Both women and men tended to perceive that all employees are not considered equally for promotion.

Consistent with the prevalent perception of unequal opportunities, more than half of the respondents (54%) indicated that they had experienced discrimination in promotion. Although women and men were equally likely to experience discrimination in promotion, they faced discrimination for different 'reasons'. More women tended to face gender-based discrimination (14% of women compared to 5% of men), while men were more likely to face discrimination based on their ethnicity (7% of women compared to 15% of men) or religion (2% of women compared to 9% of men).

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

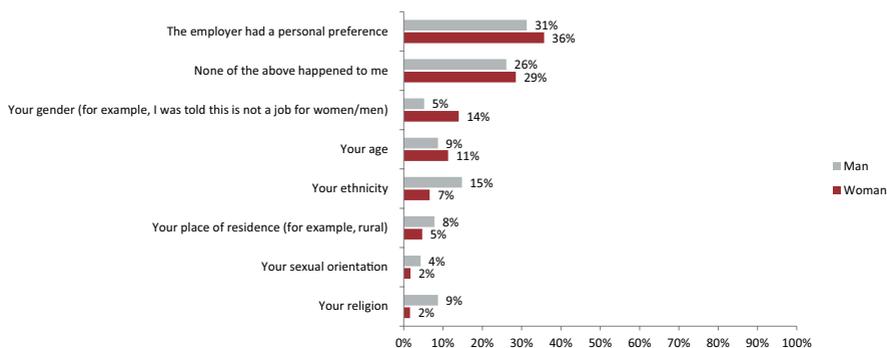


Figure 6. Experiences with discrimination in promotion among persons who worked in the last ten years, by gender (women = 331, men = 89)

While these latter forms of discrimination in promotion may not involve gender-based discrimination, they are interesting to observe. Nevertheless, the findings suggest that gender-based discrimination does occur in promotion processes in North Macedonia and affects more often women than men.

## Violations of Contracts

The online survey also sought to assess the extensiveness of labour rights violations and conditions that may perpetuate them, focusing on potential gender-based differences that imply gender inequalities.

Of the online survey participants who have worked in the last ten years, 36% have been asked to work regularly without a contract. Moreover, 11% of the currently employed respondents did not have employment contracts. The percentage of workers without employment contracts was highest among those employed in entry-level positions; 14% of entry level workers did not have an employment contract compared with 5% of persons employed in senior level positions and 7% of those employed in mid-level positions.

Of the participants who had worked in the last 10 years, 31% indicated that at

least once they had been asked to sign an employment contract without being allowed to read and understand the terms of the contract. A comparably larger percentage of men reported having this experience (42%) than women (29%).

Regarding the contract duration, among the participants who have had an employment contract, more than half (53%) had indefinite contracts, while every third (35%) had an employment contract with duration of less than a year. A nontrivial minority of workers, 15%, had an employment contract with duration of three months or less.

The survey also assessed the perception of employed participants regarding who tends to have longer work contracts: -women, men or whether it is the same for both. More than half of the respondents (56%) stated that it is the same for both and 29% do not know. From the rest of the participants, only 5% think that men have longer contracts and 3.9% that women have longer contracts.

Regarding working hours, slightly more than half the respondents (52%) stated that they usually work from 21 to 40 hours per week. Meanwhile, 44% said that they usually work overtime i.e. more than 40 hours per week. The sector of employment significantly determines the probability of overtime work; compared with every third (34%) person working in the public sector, half (51%) of those employed in the private sector work more than 40 hours per week. A comparably larger percentage of men stated that they usually work overtime than women; 55% of men work between 41 and 60 hours per week compared to 38% of women. Meanwhile, 4% of men stated that they work more than 61 hours per week compared to 3% of women.

The online survey data suggests that overtime work is more prevalent among men, but also that men are more often compensated for overtime work. A comparably larger percentage of men were paid for the extra time worked (28%) than women (19%). A significantly larger proportion of men received time off as a compensation for overtime worked (28%) than women (15%). Meanwhile, 45% of women and 35% of men were not compensated for overtime work.

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

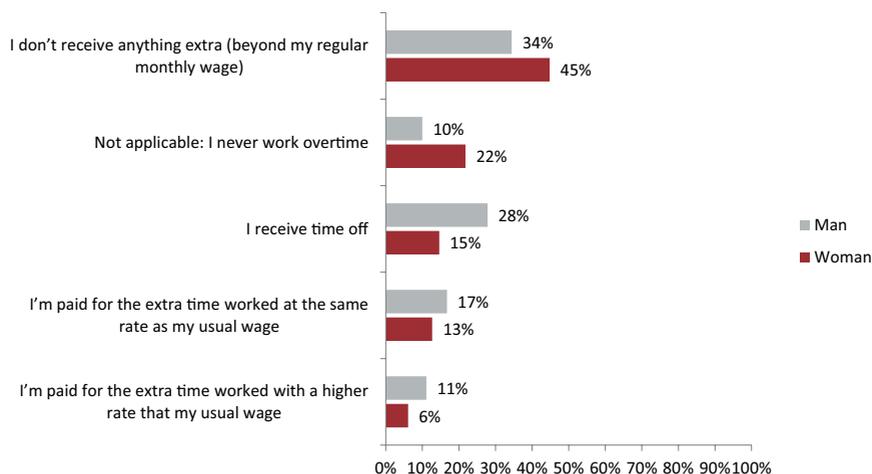


Figure 7. Types of compensation for overtime work, by gender (women = 426, men = 90)

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

Only 5% of the employed participants received less 12,000 Macedonian denars (195 EUR). Approximately 42% had a monthly net salary between 12,001 and 20,000 denars, more than one third (34%) received between 20,001 and 30,000 denars and 20% had a monthly net salary of more than 30,000 denars. On average, men in the sample had higher salaries than women; nearly every third (32%) employed man had a monthly net salary of more than 30,000 denars, compared to less than every fifth employed woman (17%). The survey data does not allow us to explicitly infer violations of the right to equal pay for equal work but it is indicative of possible gender based income inequalities. Other research suggests that the gender pay gap in North Macedonia is 18-19%.<sup>95</sup>

<sup>95</sup> Petreski, M. and Mojsoska Blazevski, N., 2015. The gender and motherhood wage gap in the Former Yugoslav Republic of Macedonia: An econometric analysis, Working Paper No. 6 / 2015, ILO.

## Currently, what salary do you actually receive each month (net in Macedonian denars)?

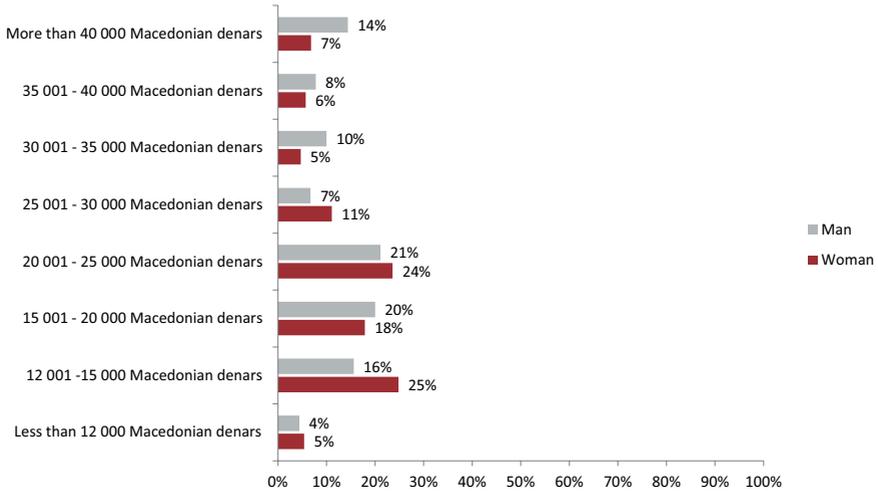


Figure 8. Monthly net salary, by gender (women = 424, men = 90)

When asked about any experience with their employer incorrectly declaring their salary, 12% indicated that their employer does not declare their actual, real salary to state authorities and 15% did not know if this was the case. The data indicates that workers who have experiences with incorrectly declared salaries, on average, have smaller salaries; more than every fifth (22%) worker with a monthly net salary between 12,001 and 15,000 Macedonian denars had experience with a wrongly declared salary, compared to 3% of workers with a monthly net salary between 20,001 and 25,000 denars.

The sector of employment is also a significant determinant; data suggests that persons employed in the private sector are more likely to have experiences with incorrectly declared salaries. Compared to 4% of persons employed in the public sector, one-fifth (20%) of those employed in the private sector stated that their employer does not declare to the state authorities the actual, real salary that they receive.

Moreover, employers have asked 10% of the employed survey respondents

to return part of their salary. This occurs significantly less often in the public sector (5% of respondents) than in the private sector (13%). The data also suggest that a comparably larger percentage of men (16%) reported that they had been asked to return part of their salary to their employer than women (8%).

Although the sample of participants with low salaries or less than the minimum wage is too small to be conclusive, it is indicative that 10 out of 24 of these workers (42%) have been asked to return part of their salary to their employer.

The online survey findings suggests that labour rights violations regarding contracts and pay are a “common” experience among workers in North Macedonia. More than one third of the workers had been asked to work without contract and to nearly half of the workers, the rights to take off work for sick leave, national holidays, or annual leave have been at least once denied. The data also shows gender-based differences in monthly net salary and although this suggests gender-based discrimination, further research is needed to confirm the inferred conclusions.

### Poor Working Conditions and Equal Treatment

Nearly half (50%) of the survey respondents who have work experience, have experienced denied right to take off work for sick leave, national holidays, or annual at least once. Prevalence is significantly determined by the sector of employment; compared to 36% of persons employed in the public sector, more than half (55%) of those employed in the private sector experienced this kind of violation.

Asked about their perception of work-related health or safety risks, half (50%) of the respondents who had been employed in the last ten years thought that their health or safety was at risk because of their work.

### Violations of Pregnancy and Maternity Leave Rights

Of the surveyed women, 30% were pregnant while employed at least once in the last ten years. For 17% of those women, the right to paid maternity leave

was denied; they neither were paid nor received a government benefit during their maternity leave. The probability of not receiving a government benefit during maternity leave tends to be higher for women working in the private sector; 30% of women employed in the private sector neither were paid, nor received a government benefit, compared to 12% of those employed in the public sector.

After their maternity leave, 71% of the women returned to their previous place of employment and 22% indicated that they were pressured to return to work earlier than planned. When they returned to work, 29% felt that their peers or boss treated them differently because they took the leave.

When asked specifically about the 'before and after treatment', 8% stated that they had lower pay after they took their leave; one fifth (22%) thought they had more responsibilities when they returned while 6% said they had fewer responsibilities. Moreover, 3% said they had fewer working hours after their maternity leave, while 8% said that they had more working hours. Unless explicitly requested from employees, the different treatment after maternity leave suggests a form of gender-based discrimination and violation of worker's labour rights.

## Violations of Rights to Paternity Leave

The online survey also explored attitudes towards paternity leave and actual experiences. Regarding attitudes, more than half the male participants (67%) who answered the question on paternity leave agreed that men should have more paid time off for paternity leave. However, substantial percentages were either reserved (19%) or are against it (13%). Contemplating the possibility of receiving paternity leave, nearly half (48%) of the employed men in the sample did not know if their employer would allow them to take paternity leave. Meanwhile, the other half of the participants was split; 24% thought that they could receive paid paternity leave, whereas 22% were convinced that they would not be allowed to take it. A few respondents (5%, five participants) stated that they could have paternity leave, but that it would be unpaid.

Regarding actual experiences, 41 male participants (37%) had a new-born child while employed. The sample is too small to be indicative, but, of them,

80% (31 participants) received at least one day off when their child was born. Only 14 participants (36%) received three or more days off when their child was born. According to the Law on labour relations the father is allowed to take up to maximum 7 days leave (depending on the collective agreement in different industries and sectors) when they have new-born (or adopted) child (or children), however this is not considered as paternity leave in the legislation, but leave for family matters and it is compensated by the employer (in the case of the mothers, maternity leave is compensated from the Health Insurance Fund).<sup>96</sup> The labour legislation in the country do not provide paternity leave as granted right for employed fathers (partners) as it is the case for maternity leave.<sup>97</sup> Fathers can use paternity leave only if mothers are not able to take their maternity leave, or decide to grant their right to maternity leave to the fathers (their partners).<sup>98</sup>

## Sexual Harassment at Work

The online survey explored the pervasiveness of sexual harassment as a form of gender-based discrimination at work, the incidence of different forms, the share of reported experiences and the attributes of the ‘typical perpetrator’, such as work position asymmetries (power relations) and gender.

Nearly half of the women respondents (47%) and 44% of men respondents reported that have been subjected to sexual harassment at work. However, survey data indicate that women are exposed to different forms of sexual harassment at work more often than men (Figure 9). The qualitative analysis of respondents’ answers suggests that women are treated as sexual objects at work.

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96 Law on Labour Relations, Official Gazette 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016; Constitutional Court Decisions: U.no 139/2005, U.no 161/2005, U.no 134/2005, U.no 187/2005, U.no 111/2006, U.no 188/2006, U.no 170/2006, U.no 200/2008, U.no 20/2009, U.no 176/2009, U.no 263/2009, U.no 62/2013, U.no114/2014

97 Ibid.

98 Ibid.

*In an ocean type office, with many colleagues, seating two meters apart from me, a male colleague stared at me saying that he masturbates and that he wants to fuck. (Women, 39, Urban).*

*While I was working in my office, one of the superiors came and started cuddling me, asking me when he and I will arrange a meeting without anyone knowing, saying that something might happen after that. I said there is no need for that and I left the office angry. (Women, 29, Urban).*

Regarding specific forms of sexual harassment at work, 41% of respondents had been subjected to sexual gestures, jokes, or sounds; 13% had received emails or text messages of a sexual nature from colleague or superior; 17% had been subjected to inappropriate touching, such as their bottom or breasts; 16% received a proposal for sex from a colleague or superior; and 5% were forced to have sex by colleague or superior.

Please indicate if the following has ever happened to you at work:

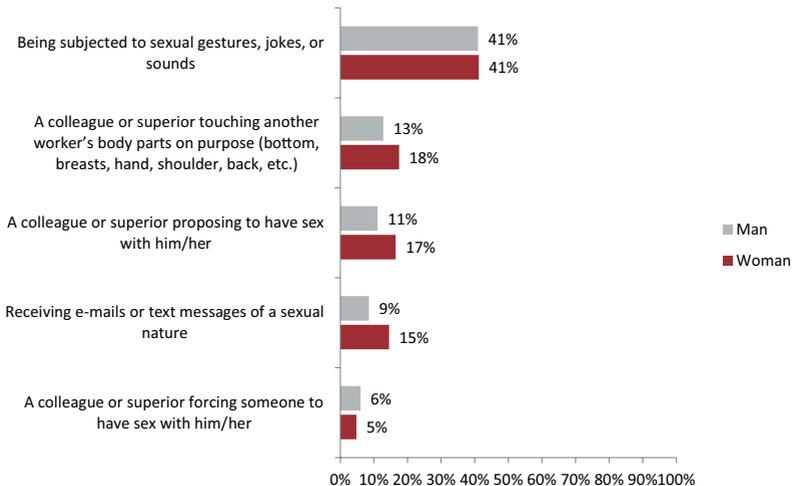


Figure 9. Forms of sexual harassment experienced at work, by gender (women = 565, men = 117)

Although they did not differ in their susceptibility, men and women in the sample clearly differed in terms of who was their 'typical' perpetrator. Of the women who were victims of sexual harassment at work, 77% stated that the perpetrators were men, 13% had experienced harassment from both men and women and 10% said that the perpetrator was a woman. The sample of men subjected to sexual harassment at work is comparatively smaller (only 50 participants). However, 40% stated that they had suffered sexual harassment from women, whereas 32% had both men and women harass them and 28% faced sexual harassment perpetrated by men.

Were the persons who did this to you:

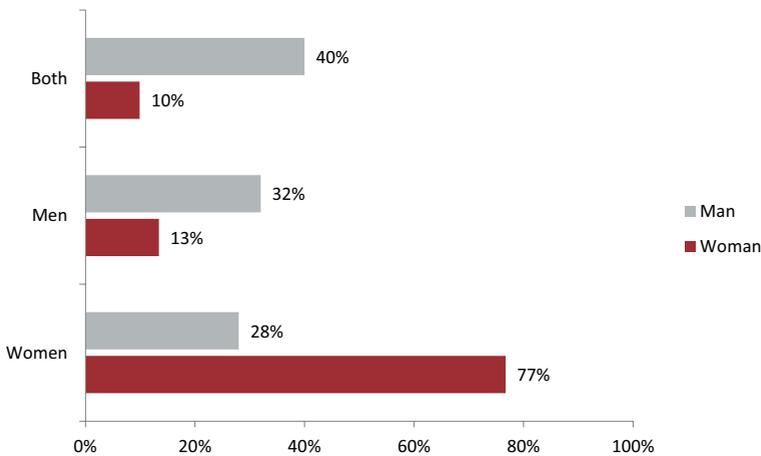


Figure 10. Gender of perpetrators, by the gender of workers who experienced sexual harassment (women = 262, men = 50)

When asked about the position of perpetrators, 65% of persons who had suffered sexual harassment stated that they were victimized by persons who work in a higher position than they do. This implies that power asymmetries at work are inherent to sexual harassment abuses. However, a significant percentage experienced sexual harassment from a colleague at the same level of the hierarchy while 14% said that the perpetrator was employed at a lower position than them. Interestingly, a comparably larger percentage of men were harassed by persons in lower positions than them (12% of women and 26% of men).

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

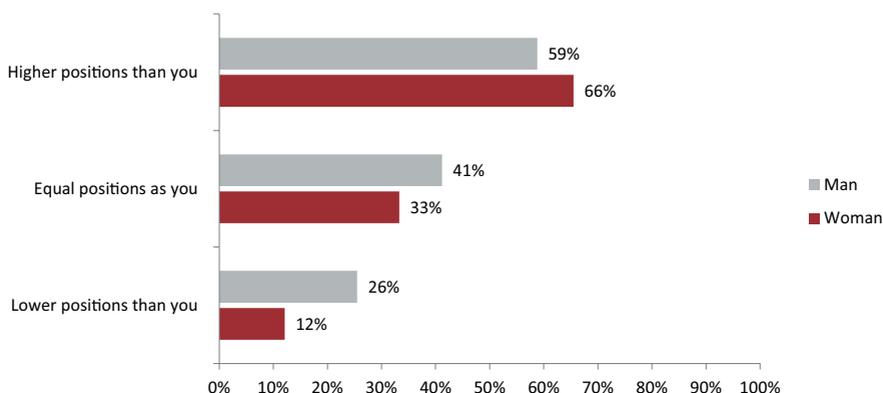


Figure 11. Position of perpetrators by gender of workers who experienced sexual harassment (women = 264, men = 51)

Of the victims of sexual harassment at the work place, 45% have not shared or reported the experience; 29% told a friend or acquaintance; and 20% shared the experience with a family member. Smaller percentage reported the experience to a more formal instance i.e. 10% told their manager, 4% to an official reporting mechanism at their workplace and 1% to the police.

Comparably larger percentage of men did not report or shared the experience (43% of women compared to 57% of men).

Who did you tell? Please check all that apply:

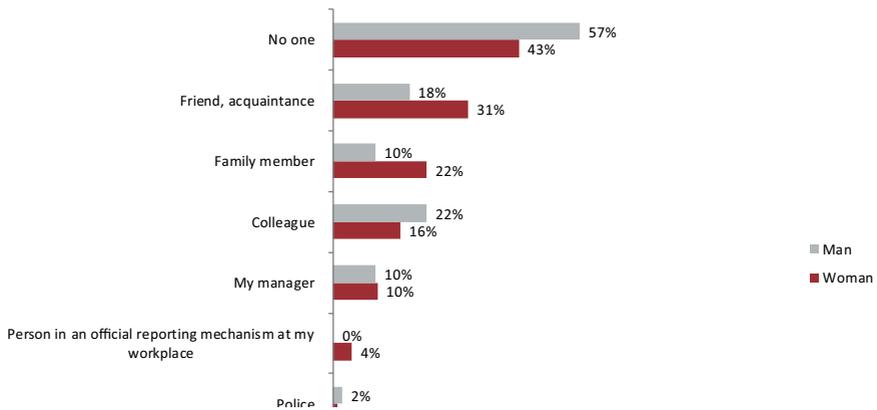


Figure 12. With whom did they share experiences of sexual harassment, by gender of respondent (women = 264, men = 51)

The sample of women and men who suffered sexual harassment and told someone about their experience is relatively small to be indicative. However, notably the most frequent reason as to why people did not report sexual harassment was that they thought harassment should be handled privately, by themselves (44%). Notably, every fourth woman (26%) did not report their experience of sexual harassment because she was ashamed; and every fifth did not report it out of fear of losing her job (22%).

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

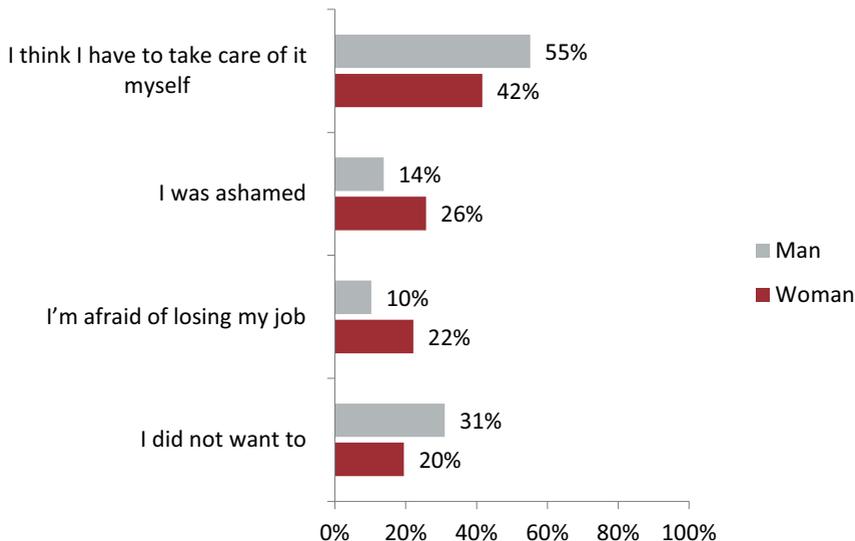


Figure 13. Reason as to why people did not report sexual harassment (women = 113, men = 29)

These findings suggest that women compared to men are more often exposed to different forms of sexual harassment at work. Less than half of the women in the sample have reported the violations to relevant instances. Most often the perpetrators are men colleagues, on a higher ranking work positions (position of power).

## Conclusion

Survey findings suggest that gender based discrimination at work affects women more than men. Compared to women, men more often face discrimination based on their political preference, their ethnicity and religion. Additionally, overtime work is more prevalent among men; however, men are more often compensated for overtime work than women. Regarding the sector of employment, gender-based discrimination is more prevalent in the private sector. The qualitative analysis of respondents' experiences with

gender-based discrimination suggests insufficient knowledge regarding what constitutes gender-based discrimination and this could affect the rate of reported experience.

The gender-based discrimination that women face at work seems fuelled by sexism and gender stereotypes, which suggest that their 'reproductive and care roles, and domestic work' conflict with the work environment as it is perceived as a barrier for career development and progress by the employers and managers. Pregnancy remains a risky career move and women are often forced to choose between their careers or having children. Women may not have a choice, as this decision sometimes is predetermined for them by employers. When not reduced to their reproductive function, women are treated as sexual objects and 'offered' to trade sexual services for career advances. Just because they are women, they are penalized with lower working positions (barriers in the promotion process) and lower salaries compared to men.

# THE INSTITUTIONAL RESPONSE TO DISCRIMINATION

This part of the study will provide an overview of the institutional response to discrimination such as the level of reporting of gender based discrimination, the perception and overall understanding of gender based discrimination in the workplace by the institutions and relevant stakeholders. 13 interviews were conducted with different stakeholders: judges, public prosecutors, a representative from the ombudsman's office, civil society organizations, the labour inspectorate and trade unions. The minimal variation in the respondents limits the generalizability of the findings. However, they may still be telling of potential levels of awareness and institutions' treatment of some cases to date.

## Awareness of relevant institutions

Interviewed stakeholders suggested that in general, the public does not fully understand the concept of discrimination and what acts can be considered as discriminatory in the workplace. While, it was indicated that the public has heard of discrimination and may have some limited understanding of what discrimination is, overall discrimination is not a concept of which the public is aware or can comprehend well.

Interviewees indicated that workers are not aware about their experiences with discrimination and therefore are not taking adequate steps to prevent or report discrimination. Violations of workers' rights are mistaken for discrimination and there is not a clear understanding and distinction between these two concepts. There has been very little or no public awareness campaigns or education about what gender based discrimination in the work place involves. Therefore not only employees but also employers may not fully understand what discrimination is.

*'It is obvious that in this country we do not understand what the meaning of discrimination still is. We confuse discrimination (especially in labour relations) with violations of workers' rights.'* - Representative from the State Labour Inspectorate

According to stakeholders' responses, mechanisms for protection from discrimination are not well known including what is within the scope of their work and authority to make decisions. It can be added that within institutions even those directly responsible for cases of gender based discrimination in the workplace often lack knowledge and understanding of the full concept of what gender based discrimination encompasses. When experiencing discrimination, women usually do not know where to seek assistance. Sometimes they access free legal aid provided by civil society organizations (CSOs). CSOs may assist them or refer them to the appropriate institutions or mechanism (e.g., Ombudsman, commission for protection of discrimination, court) or may lodge a complaint on their behalf. In many instances, CSOs are often viewed as partners and support to women that are involved in procedures/complaints/reporting of gender based discrimination.

Information received from the Ombudsman's office representative suggested that overall the general public but also institutions, perceive discrimination as a phenomenon that typically occurs only towards members of minorities or persons with lower educational attainment. Often discrimination is not viewed as something that can be experienced by educated women.

Overall, the awareness of stakeholders regarding discrimination in the workplace differs depending on their position. Those persons who come in contact with persons that have experienced discrimination such as CSOs, Ombudsman or Labour Inspectorate are more likely to be aware about gender based discrimination at work, compared to judges or public prosecutors who seldom or have not come in contact with such cases. Generally speaking, participants tended to be aware that discrimination in the workplace exists. However, they presume that it is not reported due to lack of knowledge where to go, distrust in the institutions and lengthy and expensive processes to prove discrimination.

*‘Citizens are not aware what discrimination is. They have heard about discrimination and have some idea of what it is but they are not aware how to protect themselves. This is evident by the fact that people first come to civil society organizations which they consider as partners in the process. Usually people lodge complaints through civil society organizations (with the help of CSOs). Employers are still not aware what discrimination is and what are acts of discrimination.’ – Representative from Civil Society organization*

Civil Society Organizations and the Ombudsman are the only stakeholders that have received comprehensive training regarding gender based discrimination. Although some limited training for discrimination has been completed by some of the interviewed participants, specific training about gender based discrimination on the labour market and at work has not. The lack of such training suggests that there is a crucial need for all relevant stakeholders that are involved in identifying, preventing and dealing with gender based discrimination at work to have such training as this will not only assist them in better understanding this phenomenon but also how to appropriately address it.

## **Attitudes**

Generally the attitudes of those interviewed are that gender-based discrimination in the labour market and at work exists, especially in the industries where women are dominantly employed. Personal experiences were shared regarding job interviews where women reportedly very frequently are asked if they are married or planning a family. Further, interviewees based their attitudes on their experiences within their workplace or information available in public, such as job advertisements that specifically seek women employees for work, such as in the hospitality or textile industry.

*'I am sure that there are more cases of gender-based discrimination than reported. I assume that they are not encouraged to report it. Gender based discrimination exists everywhere since I believe it's the most common discrimination.'*  
– Judge, Primary Court 1 Skopje

CSOs in close contact with women that have experienced discrimination believe that discrimination against women in the workplace occurs frequently, particularly for women working in the textile industry and women who are employed with temporary contracts, such as on a monthly or quarterly basis. This view was shared by the State Labour Inspectorate: those women on temporary contracts are the easiest to discriminate against as employers will not renew their contracts due to 'not needing them'. In most cases this occurs when the employee becomes pregnant and informs the employer that their services are no longer needed. Although protection of pregnant women is set in the legislative framework, overall this appears to be only a declarative measure. Most women of reproductive age are usually employed with a temporary contract, which ends once they inform their employer that they are pregnant.

*'We mainly receive complaints when it comes to work relations and pregnancy, when women do not receive extension of contracts due to the fact that they are pregnant.'* – State Labour Inspectorate

The Law for Labour Relations, pregnancy, motherhood and breastfeeding regulates that women should be protected from discrimination in the workplace. However, in reality, women do not seem adequately protected and the mechanisms for protection such as the State Labour Inspectorate, Ombudsman, the Commission for protection of discrimination and State Labor Inspectorate also cannot enforce adequate implementation of the law.

*'I think that the situation regarding the rights for pregnancy, motherhood and breastfeeding is far from ideal. The supervision and control (of workplaces) on behalf of institutions, I assume, is far from optimal.'* – Member of the Commission for Protection of Discrimination

The State Labour Inspectorate whose role is to protect the rights of workers has voiced concerns regarding what is within their scope of responsibilities and the difficulty in proving gender-based discrimination at work. Additionally, when it comes to salary discrepancies or not paying out the salary, the Inspectorate can send a letter to the employer asking them to pay the outstanding amount within a given time frame. If the amount is not paid in the given period, then the matter can be taken to the Violation committee. However, the decision of this committee is not binding. Ironically, if the committee concludes that there was a violation, there is usually a fine imposed on the employer; however, the employer still is not obliged to pay the employee. In such cases the State Inspectorate encourages the damaged party to take the matter to court. This is concerning as not only it is time consuming, but it also indicates that the Inspectorate does have power for decision making.

Job advertisements placed through the official State Employment Agency are regulated and cannot contain information such as the gender of the required employee. However, job advertisements not placed through the Employment Agency are not regulated and often specify the gender and age of the desired employee. According to the information received by the representative from the State Labour Inspectorate this is considered a loophole often used by employers to discriminate, seeking women only for specific, lower paid industries or excluding women from certain positions.

An important aspect to mention is the role trade unions when it comes to protecting workers' rights including health and safety, unequal treatment, pay discrepancies and gender-based discrimination at work. Trade Unions can also represent employees when it comes to work related disputes such as contracts, leave, work agreement, leave and payments. Representatives of the two interviewed trade unions did not provide any concrete information regarding their role in prevention, awareness-raising and protection from gender-based discrimination in the workplace. Thus far, there is a lack of measures on behalf of Trade Unions to systematically improve the knowledge and understanding of employees and employers about gender based discrimination. Apart from some small scale events usually organized to mark International Woman's Day there, there are no other significant measures or attempts on behalf of Trade Unions to comprehensively advocate on behalf of employers for protection from gender based discrimination in the workplace.

## Gender-based Discrimination Cases Reported to Institutions

The cases presented in Table 2 were collected from interviews with different stakeholders and official reports. None of the other respondents interviewed reported any cases of gender based discrimination due to lack of reporting of cases or not being directly involved in procedures overseeing complaints and therefore not being aware of complaints that may or may have not occurred. Furthermore, there is no harmonized data collection across institutions and it is still possible for one case to be lodged in two institutions (prior to court proceeding) Data collection within individual institutions was also noted as a challenge and only a number of institutions such as the courts have a proper data base system in place.

**Table 2:** Number of gender based discrimination cases

Number of gender based discrimination cases	
Primary Court Judge (Skopje)	2 Cases since 2002
Ombudsman office	9 Cases Since 2011
Civil Society Organization	14 Cases in 18 months
Civil Society Organization	4 cases since 2012
Commission for Protection of Discrimination	32 cases since 2014

### Courts

As mentioned, the precise prevalence of gender-based discrimination cannot be known given that cases often may not be reported. However, in order to see how many cases courts have treated, Freedom of Information Requests (FOI) were sent to 27 primary courts across the country. Sixteen primary courts provided information regarding cases of discrimination, mobbing and workplace relations.

Overall, Table 2 suggests that very few cases of gender-based discrimination against women at work have been reported to the different mechanisms available for prevention and protection from discrimination. The few cases reported to courts in particular suggest that women seldom take their cases

to court. Both judges and other stakeholders have attributed this to lengthy and costly proceedings. Distrust of the court system further discourages women from accessing court protection for gender-based discrimination at work. Considering that there has been only one court case in North Macedonia with a final judgment that discrimination occurred (based on pregnancy), it is understandable that women are reluctant to access court protection. Uncertainty about the outcome and whether the proceedings will have a positive outcome also deter women from taking their cases to court. Another issue raised was that the civil court system for collecting data does not register cases on the grounds of discrimination but rather as a violation of labour rights, which is also an additional factor that can be attributed to the lack of reporting.

*‘The court process for discrimination is lengthy and expensive and they [victims] do not trust the court system and usually do not have the financial means to proceed to court.’ – Representative from the Ombudsman office*

*‘In our court, we have lots of cases and it would take longer than compared to other courts for the case to be closed. (We) try to process them with a priority. We attempt to close work-related cases within six months, but it will likely be appealed and this will extend the time frame (to at least a year in total).’ - Civil Court Judge*

This suggest that although efforts are made for cases to be closed in a short time frame, however if a case is appealed than the process will extend well over six months. Although in comparison to other courts, such as the criminal court, the primary (civil court) attempts to close off cases in a shorter manner, the time frame is still at least six to nine months before a case is completely closed. Such prolonged periods are a deteriorating factor for reporting/ seeking legal protection for cases of gender based discrimination.

## **The Ombudsman**

According to the interviewed representatives from the Ombudsman’s office,

distrust of the different mechanisms such as the Commission for protection of discrimination and courts, further deters women from reporting cases of discrimination at work. The power and authority of anti-discrimination institutions and their capacity to execute decisions in which discrimination was established is also limited, which can be connected to the low reporting of discrimination at work. While survey respondents were most likely to identify the Ombudsman as a mechanism to which people can report discrimination, the Ombudsman also only can provide opinions; it does not actually have the authority to make a decision that must be implemented. In cases where elements of discrimination are established, especially in cases when the employer denies that discrimination occurred, the Ombudsman encourages clients to take their cases to court and to use their ‘indication of discrimination’ as evidence in court proceedings.

*‘The Ombudsman’s decisions and opinions are not mandatory.’  
– Civil Society Organization*

*‘Although I am not really aware, I think that their role is not significant when it comes to protection from discrimination. The office of the ombudsman can provide an opinion, but they do not have authority to make a decision.’ – Judge at the Civil Court*

*‘In our area the ombudsman is ineffective and the public is not aware where they should report cases of discrimination.’  
– Public Prosecutor, Tetovo*

The lack of visibility and understanding of the role of this protection mechanism also may deter people from reporting gender discrimination at work to this institution.

## Commission for Protection of Discrimination

Similarly, the Commission for Protection of Discrimination has very little public visibility. Few people seem to understand what is within their scope of work. Weak implementation of the law, lack of power to execute the decisions (at present only establishing discrimination) and poor oversight of the appropriate implementation of the legal framework particularly by the Commission also was raised as a concern that impacts women's decision to report a case. In this sense, once the Commission establishes discrimination the decision can be used to seek court protection, however the Commission does not have the authority to take any additional measures if the decision is not respected by those that are committing discrimination (eg. The Commission cannot legally impose any further measures, however can initiate court proceedings). Furthermore, the Commission in its current composition has come under public scrutiny due to the members' lack of expertise in the area of discrimination and human rights.

*'The procedures that are before the Anti-discrimination Commission are not processed or decided in the legally binding time frame. There is no individualized approach to the different cases and the Commission does not take into consideration the different circumstances. I would also comment on the professionalism of the members of the Commission and the apathy of the Commission to follow-up on their recommendations.'* - Civil Society Organization

*'The legislation should protect against gender-based discrimination. However, the question remains whether the institutions appointed to supervise and control the implementation of the legal framework do so. Implementation is a problem and the question remains whether those employed in the institutions to oversee the implementation of the legislation in practise are willing to do so'* – Representative of the Ombudsman office.

Fear of repercussions such as being fired and losing their job sways women from reporting their experiences to relevant institutions. According to the

interviewed respondents, women are afraid to report their cases specifically if they are still in the same working position as they may face additional discrimination, harassment or may even lose their jobs. Such attitudes can relate to the absence of adequate legal framework which protects victims of gender based discrimination following their decision to formally make a complaint and during the period while the complaint is pending.

Discrimination, specifically gender-based discrimination, it is a complex occurrence and at times difficult to prove, according to the interviewed respondents. This tied together with expensive and lengthy processes can contribute to underreporting of discrimination against women at work. The challenge with reporting gender-based discrimination against women at work is that it must be shown that a right has been denied solely because the worker is a woman. An example would be proving that a woman receives a lesser salary than a male co-worker when performing the same work, only because she is a woman. Further, as most reported cases relate to dismissal from work due to pregnancy, these are hard to prove as employers protect themselves by giving women temporary employment contracts. This means that once the pregnancy is announced the employer may not renew women's contract under the pretext that they are no longer needed or that the position is no longer part of their work. Although the pregnancy may be the reason behind the dismissal, formally the employer seems to have followed the law. Therefore, the refusal to extend the work contract would be extremely difficult to prove by victims, regardless of where the complaints is submitted (court, commission for protection of discrimination, ombudsman).

Since 2008, only three of the sixteen responding courts indicated that they have treated discrimination cases. Firstly, The Primary Court in Skopje is the largest primary court in the country and the court that deals with the highest overall volume of cases. Since 2008, there have been eight cases for which discrimination was established based on gender or sex. In the same period, 56 procedures were initiated in the area of work relations, for discrimination based on gender and sex. Additionally, there have been five cases of discrimination based on pregnancy. In three cases, it was established that discrimination existed. Reportedly, there have been 52 cases submitted for harassment at work (bullying). It must be noted, however, that the current database used for statistical purposes does not have the option to generate

the gender of persons submitting complaints, apart from complaints based on pregnancy. The Primary Court in Shtip reported three cases of discrimination and all complaints were submitted by women. No additional information was provided about the cases. However, it may be noted that Shtip and surrounding area are well-known for the vast number of textile industries, in which more than 80%<sup>99</sup> of employees are women. However, no direct link can be established as no further information was available or provided.

The Primary Court Kavadarci reported cases of discrimination involving two men complainants and one woman. Additionally, two complaints involved workplace harassment and both submitted by men. The court does not hold any records regarding cases of discrimination based on pregnancy, motherhood or parenthood. No further information was provided the court.

Different complaints relating to work were reported to eight courts in the country. Even though some cases referred to harassment and mobbing, many cases were related to work place injuries, contributions to the pensioners and insurance fund and unpaid salaries. Unfortunately, no information was provided regarding the industries in which these cases occurred. However, from the information provided, a general observation can be made that men are more likely to be complainants; this may be expected to some extent since men are more active in the labour market compared to women.

Although a conclusion cannot be made regarding the prevalence of discrimination against women at work, the findings indicate discrimination at work is likely to be underreported. Considering that not all courts answered the FOI requests, and that only three of those that did had dealt with gender-based discrimination, it can be presumed that discrimination against women at work is underreported and women rarely choose to take their cases to court.

As previously noted, information from both data collection and interviews with different stakeholders, indicates that cancelling or not extending work contracts due to pregnancy were commonly mentioned as one of the grounds for discrimination of women at work. However, from the administrative data provided concrete conclusion cannot be drawn.

99 State Statistical Office (2016). Labor Force Survey. Available at <http://www.stat.gov.mk/Publikaciji/2.4.17.02.pdf>.

*'All the cases are for pregnancy. One case is with a final court verdict where it was established that discrimination occurred. The second one is currently proceeding. The third one is in front of the court for human rights in Strasbourg and the fourth one is in with a verdict that discrimination did not occur and is currently before the high court.'* – Civil Society Organization

## Types of Discrimination

### Gender-based Discrimination against Persons with Disabilities

According to interviews, persons with disabilities are perceived to experience discrimination on many different levels. Although no data was collected regarding women with disabilities and discrimination in the labour market and at work, many concerns were raised on behalf of the Ombudsman's office regarding the experiences of persons with disabilities. Although there is a state fund that employers should use to modify workplaces and make them more accessible for persons with disabilities, reportedly only about 1%<sup>100</sup> of these funds have been used. Further, the fact that persons with (physical) disabilities do not have accessible workplaces such as ramps suggests that employers may not be willing to hire persons with disabilities. However, no further information was available which specifically refers to gender-based discrimination against persons with disabilities at work.

### Gender-based Discrimination against LGBTIQIA+ Persons

Although LGBTI persons also were mentioned by Civil Society Organizations as a group that in general experience discrimination, no particular information was provided about LGBTIQIA+ persons experiencing discrimination at work. An example was given about a transgender person experiencing discrimination in the court system, where during court proceeding she was not referred to as a woman but rather as a man, addressing her as Mr., rather than Mrs., according to her ID card.

100 Interview with representative from a CSO.

Additionally, according to CSO's a factor that could contribute towards low reporting of discrimination in workplace by LGBTIQ+ may include not wanting to publically declare their sexual orientation or gender identity as a way of self-protection in conservative and patriarchal society where institutional mechanism for protection are lacking.

## **Gender-based Discrimination against Minority Ethnic Groups**

Roma persons also were mentioned by the Ombudsman's representative and Civil Society representatives as a group that frequently experiences discrimination, but no concrete examples were provided of Roma woman experiencing gender-based discrimination at work. It was observed, however, that although discrimination towards Roma persons seems frequent, Roma people are among the least likely to report their experiences.

## **Other**

During the heightened political crises that occurred in North Macedonia from 2014 to 2017, women seem to have been more likely to report discrimination or harassment and bullying at work, based on their political affiliation.

## **Labour Unions**

Asked about workers' unions in North Macedonia, nearly half of the survey respondents (49%) thought that no unions exist in the country that represent their interests and 29% did not know if such unions exist. Meanwhile, 22% believed that there are workers' unions in North Macedonia that represent their interests. A comparably larger percentage of men thought that no workers' unions represent their interests (68%) than women (45%). Meanwhile, a comparably larger percentage of women did not know if workers' unions exist in North Macedonia that could represent their interests (31% of women compared to 19% of men).

Although a significant proportion of the workers in the sample do not know if workers' unions exist or think that there are any that represent their interest, more than every third employed person surveyed (34%) is a member of a workers' union.

Asked about their attitudes towards workers' unions, 43% of the survey respondents thought that workers' unions represented poorly or very poorly their interests, 27% were neutral and 30% thought that unions adequately represent their interests. In the conducted interviews with trade union no concrete information was provided in terms of cases which they have dealt with. Regarding the legal framework only one of the representatives of the trade union spoke more coherently about the legislative framework and the rights of workers in terms of gender based discrimination.

# RECOMMENDATIONS

## Legal framework

Regarding the Law on Prevention and Protection against Discrimination it is important to note that the points raised in relation to the definitions and the scope of material and personal protection included in the law, as well as the shortcomings of the Commission for Protection against Discrimination have been addressed in the new Law<sup>101</sup> expected to be adopted in the following period close to the publication of this report.

Concerning the labour legislation, it needs to be ensured that the amendments include the following:

- Align the Labour Law with the Law on Prevention and Protection against Discrimination regarding the definition of indirect discrimination;
- Reduce the period for becoming a permanent employee to two years, which also may prevent employers from using short-term contracts to avoid responsibilities related to maternity leave provisions; introduce an explicit statement that cases such as pregnancy and maternity leave will not interrupt the calculation of the duration of this contract;
- Amend the provisions which might be interpreted as preventing the adoption and implementation of measures towards gender equality such as, for example, introducing quotas. Namely, read together with Article 8, on 'exceptions from discrimination', at present, the Labour Law might be read as not allowing for quotas or other affirmative measures;
- Amend the gender-regressive provisions related to nightwork in industry and construction in accordance with the ILO convention in relation to nightwork;
- Introduce the concept of parental leave and right to paternity leave,

101 The results of the consistent implementation of the new law will be monitored in the next period and presented in report expected in 2021.

thus align the law with the EU law (the current EU Directive 2010/18/EU on parental leave and the forthcoming EU directive on work-life balance).

## The 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, 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.

## The Judiciary

- 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, public space);
- Ensure all judges undergo training on gender equality and gender-based discrimination related to labour;
- Consider designating specialised judges well-trained in gender-based crimes, including gender norms, power relations and identifying instances of ‘blaming the victim’;
- Ensure this mechanism is financially accessible by reducing the legal representation fees and court taxes, with particular provisions for marginalised and vulnerable claimants.

## The Prosecution

- Update the 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, public space);
- Ensure all prosecutors undergo training on gender equality and gender-based discrimination related to labour;
  - 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.

## The Ombudsperson Institution

- Improve the data-collection and database to include gender-disaggregated data and marking of cases as to whether they have involved gender-based discrimination at work, facilitating easy accessibility, 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.

## The Labour Inspectorate

- Improve the data-collection and database to include gender-disaggregated data. 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;
- Ensure a gender balance in hiring procedures for inspectors by using affirmative measures to recruit and hire more women inspectors;
- Ministry of Labour and Social Policy to ensure mechanisms for

compliance to the rules and regulations which apply to inspectors regarding their scope of work and competencies. Corruption and any other illegal practice undertaken by inspectors which may favor employers and violate the workers' rights according to the labour legislation must be sanctioned;

- Institutionalize regular training for all inspectors on gender equality in general, as well as on gender-based discrimination at work more specifically.

## The 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.

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# ANNEXES

## ANNEX 1. METHODOLOGY

### Survey Sample

A total of 1359 participants clicked the online questionnaire, 1050 started answering and 631 participants completed approximately 90% of the questionnaire. Gender and age significantly determined the probability of completing the questionnaire. Men and participants younger than age 30 were more likely to leave the questionnaire incomplete.

### Demographics of the sample that completed approximately 90% of the questionnaire

The majority of the sample are women (83%) and younger than 39 years old (75%). Most participants are highly educated, with 62% of the sample holding Bachelor or Master's degree.

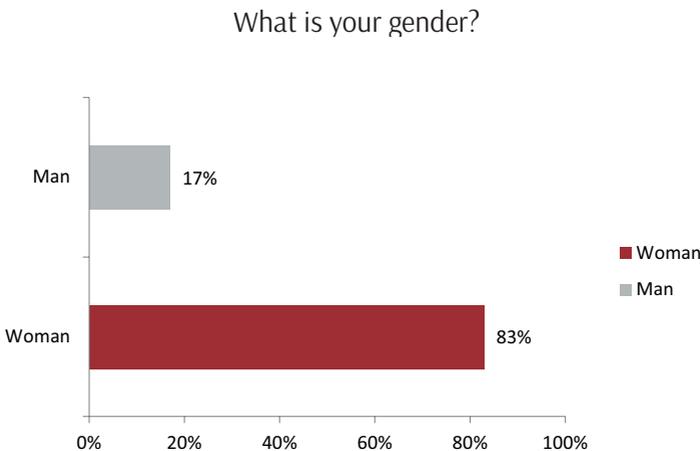


Figure 14. Gender distribution in the sample that completed 90% of the questionnaire (N= 631)

The majority of the sample ethnically identified as Macedonians (89%), 4% identified as ethnic Albanians, 2% as ethnic Serbians and 2% as ethnic Roma. Other ethnicities represented less than 2% of the sample. Respondents from Skopje comprised 52% of the sample, 43% lived in other cities in Macedonia and 5% lived in rural places.

### Age

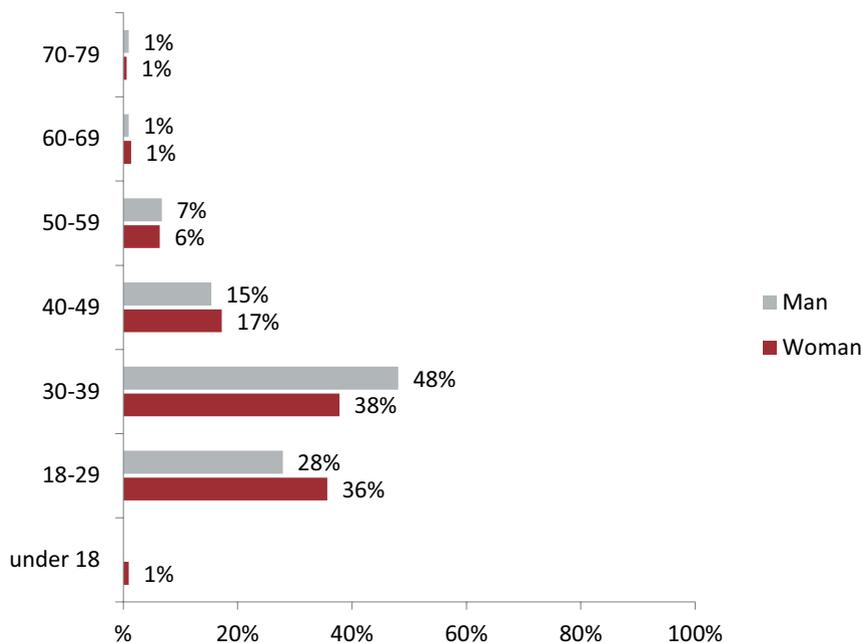


Figure 15. Age distribution by gender in the sample that completed 90% of the questionnaire (women = 516, men = 104)

## Educational level

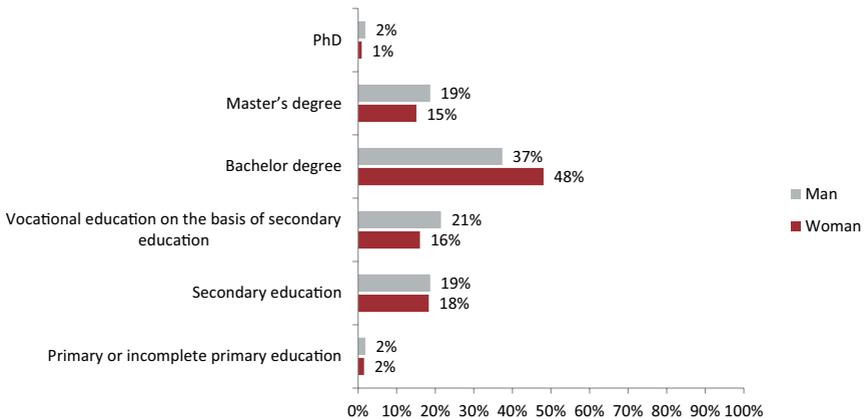


Figure 16. Education level distribution in the sample that completed 90% of the questionnaire (women = 524, men = 107)

Regarding relationship status, 26% are single, 59% married, 6% engaged, 2% co-habiting and 4% widowed.

Of the sample 13%, or 84 participants, consider themselves as persons with disabilities.

Employed persons comprised 79% of the sample. Among them, 73% were employed full-time, 4% were employed part-time; and 2% were self-employed. Meanwhile, 12% were unemployed and looking for a job, 2% were not looking for work and 5% were students. Additionally, 0.2% performed unpaid work (unemployed officially) and 2% were on pension.

## Employment status

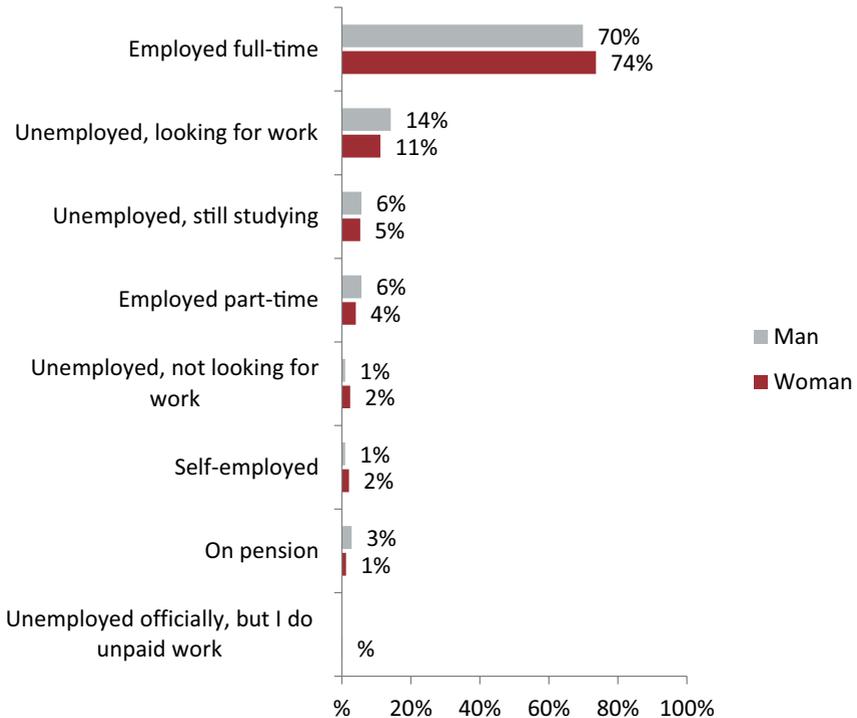


Figure 17. Employment status distribution by sample, in the sample that completed 90% of the questionnaire (women = 493, men = 106)

Among those employed, 31% were employed in the public administration and 4% in publicly owned enterprises in the public sector. In the private sector, 49% worked. In civil society organizations, 14% worked. An additional 1% worked in an international body (EU, UN, UN agency, foreign embassy, etc.).

## Sector of employment

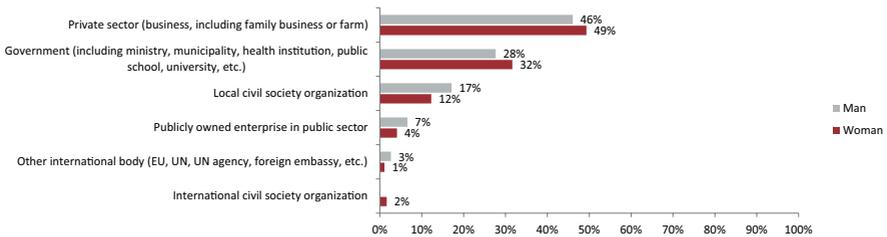


Figure 18. Sector of employment distribution in the sample that completed 90% of the questionnaire (women = 367, men = 76)

Only 5% of respondents received a monthly net salary of less than 12,000 Macedonian denars. Most, 42%, had a monthly net salary between 12,001 and 20,000 Macedonian denars monthly net salary have, 34% had between 20,001 and 30,000 and 20% received more than 30.000 Macedonian denars.

## Methodological considerations

### When statistical significance is not significant

Statistical inference means to generalize the findings from a sample to a population usually using significance tests. Having in mind that the survey sample is a non-probability sample and that the statistical inference based on conventions for p values presupposes probability sampling, the authors stress that the findings that refer to 'statistical significance' should be interpreted as 'suggestive' but not conclusive and in no way generalizable. The statistical tests are used as heuristics to differentiate 'large enough' differences or correlations to be commented upon.

### The homogeneity of the sample: full-time employed and highly educated women

The survey sample is convenient and it is not demographically representative of the national population of North Macedonia. Most participants are women (83%), younger than age 39 (75%) and highly educated, with 62% of the

sample holding a Bachelor or Master's degree. Most (73%) are employed full-time.

Having in mind that the sample is convenient and non-representative, the percentages reported do not reflect the prevalence of the explored phenomena in the general population in North Macedonia; and the variability of the 'sampled' experiences may be restricted. The possibility to compare and contrast is limited.

# ANNEX 2. SAMPLE INTERVIEW GUIDE

## Interview Guide Civil Court Judges

**[To complete before interview and checked at beginning]**

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 XXX, thank you for agreeing to be interviewed and to be part of this research. [Read consent form, secure consent, and leave consent form with respondent].

### 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”? [RQIV.3.1]
14. What types of acts, for example, would you consider to be “gender-based discrimination”? [RQ4.3]
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? [RQI.1, I.2, IV.3.2]

16. Based on your opinion and experience, to what extent is this legal framework related to gender-based discrimination complete or incomplete? Please elaborate. [RQI.1, I.2]
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 [RQIV.8.].

### **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? [RQIV.5]
19. If a woman believes that she has been discriminated against at work *because she is a woman*, what should she do? [RQIV.3]

### **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] [RQIV.3.1.]

### **Filter: Gender-based discrimination cases reported**

21. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008? [RQIV.6]
  - 21.0.1 Yes
  - 21.0.2 No

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

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

### **Gender-based discrimination cases reported Cases**

*[Researcher listen for any potential lack of awareness/knowledge/attitudes]*

**23. Please tell me about the cases you have dealt with?**

- 23.1 If yes, how many approximately? [RQII.1]
- 23.2 What was the gender of persons who suffered discrimination [women, men, both]? [RQII.2.]
- 23.3 What was the gender of the alleged perpetrator? [RQII.3.]
- 23.4 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 [RQII.4.]
- 23.5 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?
- 23.6 What types of discrimination did you encounter? [RQII.5.]
- 23.7 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. [RQIV.7]
- 23.8 How long does it approximately take for cases of discrimination based on gender in the labour market to be dealt with (including the verdict)? [RQIV.7.1]
- 23.9 What decision does the court usually take? [Probe: what punishments have been given, if any] [RQIV.7.2]

*If this is not answered detailed enough, ask following questions and ask for detailed description of the case*

**Data Collection Practices**

- 24. What are the current practices of collecting and tracking data related to gender-based discrimination in your institution?
  - 24.1 [Probe] What are the strengths and weaknesses of data collection practices related to logging these cases? [RQII.7]
- 25. Do you have any other comments or things you'd like to add?
- 26. [Researcher notes (reflexivity)]

# ANNEX 3. SURVEY

## 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: Reactor - Research in action (info@reactor.org.mk). By clicking “Next”, you consent to participate in this important research. Thanks so much!

You can change the language of the survey by choosing from the drop-down menu below the title of the survey.

### 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

Macedonian

Roma

Serbian

Bosnian

Turkish

Vlach

Other (please write) \_\_\_\_\_

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

Primary or incomplete primary education

Secondary school

Vocational education on the basis of secondary 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 Macedonia?**

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 Macedonia, 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 Macedonian denars)?**

Less than 12 000  
12 001 - 15 000  
15 001 - 20 000  
20 001 - 25 000  
25 001 - 30 000  
30 001 - 35 000  
35 001 - 40 000  
More than 40 000

**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)			

	Yes, this happened to me, more than once	Yes, this happened to me once	No, this never happened to me
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.*