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GENDER-BASED DISCRIMINATION AND LABOUR IN KOSOVO

Second Edition



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WOMEN'S RIGHTS CENTER
CENTAR ZA ŽENSKA PRAVA

GENDER-BASED DISCRIMINATION AND LABOUR IN KOSOVO

Second Edition

By Iliriana Banjska, David JJ Ryan, Endrita Banjska, Nicole Farnsworth, Lirika Demiri,
Liridona Sijarina, Adelina Tërshani, Rita Berisha, and Besarta Breznica

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ACRONYMS

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

EXECUTIVE SUMMARY

This report examines gender-based discrimination and labour, as part of a regional initiative to address such discrimination in six Western Balkan countries, supported by the European Union (EU) and co-funded by the Swedish International Development Agency (Sida). The research aimed to provide information about shortcomings in the relevant legal framework; the prevalence and nature of gender-based discrimination related to labour; the extent to which people have filed claims; and how institutions have treated such cases. The research sought to inform actions of the Kosovo Women's Network (KWN) and its partner organisations, among others. Conducted in 2018 and replicated in 2021, the research involved mixed methods, including a desk review, online survey, and interviews.

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

Most women and men survey respondents seemed aware that gender-based discrimination is illegal. While awareness seems to have increased since 2018, knowledge on where to report gender-based discrimination has remained low. While several knew that such discrimination should be reported to employers or the Labour Inspectorate, few knew of other institutions dealing with such cases. Low awareness contributes to minimal reporting of gender-based discrimination to relevant institutions. Other factors include workers' concerns over anonymity, fear of job loss, bureaucratic procedures, difficulties documenting cases, and, for some, distrust in institutions.

The institutions responsible for addressing gender-based discrimination at work still lack data about its prevalence. However, evidence shows that gender-based discrimination exists, particularly in hiring, promotion, maternity leave, and sexual harassment at work. Minimal information exists about work-related gender-based discrimination among persons with different abilities, minority ethnic groups and persons with various gender identities and sexual orientations.

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

INTRODUCTION

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

Women’s labour force participation in Kosovo has remained worryingly low, increasing only slightly from 12.6% of women employed in 2018 to 14.1% in 2020, according to official statistics.¹ Several reasons for women’s low labour force participation have been identified, including prevalent socialized gender roles according to which some people still believe women’s role is in the home (see Box 1);² the absence of affordable, accessible childcare; occupational gender stereotypes; low property ownership (17% of all properties) that hinders access to capital; undocumented work in the informal economy; and the overall poor economic climate.³ Most women who start families quickly join the category of the long-term unemployed.⁴ Recent research by the Agency for Gender Equality (AGE) evidences the gender pay gap in Kosovo; men systematically receive more pay than do women.⁵ Following prior research suggesting that gender-based discrimination can affect women’s labour force

Box 1. Socialised Gender Roles and Discrimination

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

¹ Kosovo Agency of Statistics (KAS), Labour Force Survey Q3 2018, p. 10, at: <https://ask.rks-gov.net/media/4551/labour-force-survey-q3-2018.pdf>; KAS, Labour Force Survey in Kosovo, 2020, at: <https://ask.rks-gov.net/en/kosovo-agency-of-statistics/add-news/labor-force-survey-in-kosovo-2020>.

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

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

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

⁴ Abazi Morina, L., & Delibashzade, R., for Democracy for Development, *Women's inactivity in the labor market. Factors hindering women's participation in the labor market*, 2017; Shaipi, K., for Kosovo Stability Initiative (IKS), *Being a woman in the labor market*, 2021.

⁵ Agency for Gender Equality, *Gender pay gap in Kosovo*, 2020.

participation in Kosovo,⁶ this research aimed to assess whether there have been any changes since the first edition of this report.

Ensuring protection from gender-based discrimination in relation to labour holds significant social and political importance. Broadly, addressing discrimination is important for safeguarding fundamental rights, and Kosovo must ensure respect for fundamental rights in its efforts to become a member of the European Union (EU).⁷ Towards aligning Kosovo law with the *Acquis Communautaire*,⁸ the ongoing process of amending Kosovo's Law on Labour began in 2015.⁹ During this process, civil society representatives and governmental officials alike have discussed the implications that amending this Law may have for women's participation in the labour market. Prior research has suggested that current maternity leave provisions contribute to discrimination against women in hiring, as employers seek to circumvent costs affiliated with maternity leave.¹⁰ This research sought to continue monitoring the implementation of the relevant legal framework pertaining to gender-based discrimination.

Starting in 2020, the COVID-19 pandemic also influenced labour participation and rights, among other areas of life. Historically, pandemics have tended to affect women more than men.¹¹ During this pandemic, globally, more women have lost their jobs than have men. A recent study found that 5.3% of women and 2.6% of men in Kosovo lost their jobs during the pandemic; additionally, 26% of women were sent to leave without pay, and 19.5% of women did not receive their full pay during some months of the pandemic.¹² The same study has shown that the measures introduced by the then Government of Kosovo did not benefit men and women equally; 61.1% of women did not benefit from any measure, and only 18.5% of women benefitted from the €170 pay benefit in April and May 2020. In 2020, 79.2% of women were inactive in the labour compared to 78.9% in 2019.¹³ Largely as a result of isolation measures and childcare closures, women had to quit their jobs to care for children. Women had additional unpaid care work at home, including added responsibilities for caring for children, elderly and other family members at home.¹⁴ In a recent study, 34% of women indicated that their workload increased during the pandemic.¹⁵ This report also reflects on the impacts that COVID-19 may have had on gender-based discrimination in labour, as well as women's labour rights.

Since 2018, the Kosovo Women's Network (KWN) has cooperated with women's rights civil society organizations (hereafter, "WCOSOs") from five other Western Balkan countries towards addressing gender-based discrimination in relation to labour. Following baseline research conducted in 2018, KWN repeated this research in 2021, partly to assess progress over time. This research report is one of six country reports and an accompanying,

⁶ See KWN, *Striking a Balance: Policy Options for Amending Kosovo's Law on Labour to Benefit Women, Men, Employers and the State*, Pristina: KWN, 2016, at: <https://womensnetwork.org/wpcontent/uploads/2018/10/20160504154201373.pdf>; and Riinvest Institute, *Women in the Workplace: an Analysis of the Workforce Conditions for Women in Kosovo*, Pristina: 2017, p. 9, at: https://riinvestinstitute.org/uploads/files/2017/November/10/Women_in_the_workforce1510308291.pdf.

⁷ Chapter 23.

⁸ Pursuant to the Stabilisation and Association Agreement between the European Union and Kosovo (10728/1/15 REV), Kosovo has committed to approximate its legislation to that of the EU (Art. 74). ⁷ KWN, *Striking a Balance*.

⁹ In 2020, the Government's Legal Office prepared four draft laws related labour and eliminating discrimination, submitting them to the government to be considered for approval: the Draft Law on Pension Schemes Financed by the State; the Draft Law on Labour; the Draft Law on Maternity and Parental Leave; and the Draft Law on Labour Inspectorate (Ombudsperson Institution Kosovo, *Annual report 2020*, <https://oik-rks.org/en/2021/04/14/annual-report-2020/> No. 20, 2021).

¹⁰ KWN, *Striking a Balance*.

¹¹ Wenham et al., *Women are most affected by pandemics — lessons from past outbreaks*, 2020.

¹² Krasniqi, J. for D4D, *Who pays the highest price? The impact of Covid-19 on women's employment in Kosovo*, 2021. [originally in Albanian: *Kush e paguan çmimin më të lartë? Ndikimi i Covid-19 në punësimin e grave në Kosovë*].

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Shaipi, K., for IKS, *Being a woman in the labor market*, 2021, N = 500, random sample.

comprehensive regional report that examine gender-based discrimination as it relates to labour. This research seeks to continue to inform the WCSO partners', among others', awareness-raising efforts, and advocacy initiatives, towards decreasing the prevalence of gender-based discrimination in labour. The research aims to provide improved information about the prevalence and nature of gender-based discrimination related to labour; the extent to which people have filed gender-based discrimination claims; and how institutions have treated such cases. More specifically, this 2021 research aimed to answer the following research questions:

- I. To what extent is the legal and policy framework relating to gender-based discrimination complete in accordance with relevant EU directives and adequate protections?
- II. How many work-related gender-based discrimination cases have been reported to different types of institutions in 2008-2020?
- III. For what reasons have few discrimination cases been reported and/or filed? Related, to what extent are people aware of various forms of discrimination and how to report them, and how has this awareness changed over time?
- IV. How have relevant institutions treated discrimination cases to date, and how has this changed over time, if at all?

Methodology

In order to answer the aforementioned questions, KWN conducted research from March to December 2018 for the first edition of this report, and again from February to April 2021 for this second edition. The research involved mixed research methods. First, the legal analysis examined and assessed current anti-discrimination legislation in place in Kosovo, including changes since the first edition. This included identifying any shortcomings in aligning national legislation with the *Acquis Communautaire*, focusing on gender equality related legislation. It examined international laws, treaties and conventions, the Constitution of the Republic of Kosovo, Kosovo's relevant national laws and secondary legislation. The legal analysis also identified the relevant institutions, their roles, and responsibilities. Second, literature on discrimination was reviewed.

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

Fifth, an anonymous online survey in three languages (Albanian, Serbian, and English) was launched using Lime Survey to collect input from diverse women and men regarding their knowledge of discrimination legislation, attitudes, personal experiences with discrimination, whether such cases were reported and the reasons why they did not report discrimination. The survey was promoted broadly, also targeting under-represented groups, through media, email and Facebook boosting. In close collaboration with AGE, it was shared with all public servants in Kosovo for further distribution. In 2018, of 3,782 total respondents, 1,279 (34%) completed at least 90% of the questionnaire. Of them, 67% were women and 33% men. In 2021, 5,778 participants started the online questionnaire, but only 681 completed approximately 90% of it (12%). The length of the survey coupled with general weariness with online surveys are hypothesized as reasons for the low completion rate. In 2021, more women (76%) than men (24%) participated, as well. Considering that the number of respondents to each question differed, and to utilize as many complete responses as possible for each question, the precise number of respondents is presented in the findings ("n"). Considering the small sample size and the fact that it was not a random sample, few analyses were

performed regarding the relationship between responses and ethnicity, age or rural/urban location, respectively. Any statements including the term “significant” in relation to the survey findings suggest statistical testing with a confidence level $\alpha = 0.05$. However, given the limitations affiliated with convenience sampling, findings referred to as “statistically significant” should be interpreted as suggestive, but not conclusive nor generalizable.

A research team comprised of five persons in 2018, and four persons in 2021, carried out the quantitative and qualitative data analysis. The research therefore involved triangulation of researchers, methods, and sources, towards enhancing validity. The main limitations of this research relate to the online survey, which was not statistically representative of the population. Hence, a shortcoming of the methodology includes potential bias in general interpretations, given the overrepresentation of certain social groups. For example, from the survey there is an overrepresentation of: women; respondents 39 years old and younger (59% in 2018; 52% in 2021); respondents with high levels of education, i.e., BA, MA, and PhD (88% in 2018; 82% in 2021); respondents located in urban areas (50% in 2018; 82% in 2021), compared to only 2% in 2018 and 18% in rural areas in 2021. Despite these sampling limitations, the research team believes that the survey provided useful qualitative data regarding people’s interpretations of their experiences with gender-based discrimination, which otherwise may have been difficult to collect via random sampling, given the sensitivity of the topic and the need to access persons who believed they had suffered discrimination. For further information about the methodology, please see Annex 1.

About This Report

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

LEGAL ANALYSIS

This chapter examines the extent to which the legal and policy framework related to gender-based discrimination and work is complete in Kosovo. The format of this analysis follows the hierarchy of laws in Kosovo, beginning with international agreements and instruments, followed by the Constitution of the Republic of Kosovo. Then, it analyses relevant laws, focusing on the Law on Labour, Law on Protection from Discrimination and Law on Gender Equality. It discusses relevant secondary instruments, where applicable. Finally, this section discusses the roles of responsible institutions and procedures in place for filing discrimination cases, respectively.¹

International Agreements and Instruments

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

1. Universal Declaration of Human Rights
2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
3. International Covenant on Civil and Political Rights and its Protocols
4. Council of Europe Framework Convention for the Protection of National Minorities
5. Convention on the Elimination of All Forms of Racial Discrimination
6. Convention on the Elimination of All Forms of Discrimination Against Women
7. Convention on the Rights of the Child
8. Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
9. Council of Europe Convention on preventing and combating violence against women and domestic violence²

Additionally, the Constitution provides that human rights and fundamental freedoms shall be interpreted consistent with the decisions of the European Court of Human Rights (hereinafter, ECtHR), established under the European Convention of Human Rights (hereinafter, ECHR).³ The means by which these instruments have been adopted is unique, as Kosovo does not yet have the international legal capacity required to ratify or participate fully in conventions of the United Nations or the Council of Europe.⁴ This method of

¹ This analysis was prepared based on the English translation of the law. Where the law is unclear, the Albanian text was consulted. However, this did not always provide clarification.

² Constitution of the Republic of Kosovo, 2008, at:

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

³ Ibid, Art. 53. Three major cases have come before the Constitutional Court concerning the use of ECtHR case law: Ibrahim and others v Supreme Court, Kastrati v Supreme Court and Bislimi v MI and others. A common line of reasoning is identifiable in these cases, in that while the Court accepts its obligation to refer to ECtHR case law, it does not find itself bound by ECtHR rulings by virtue of Article 53. Thus, the term "interpreted consistent with" may be read as "not against" ECtHR case law.

⁴ De Hert, P. and Korenica, F., "The New Kosovo Constitution and Its Relationship with the European Convention on Human Rights: Constitutionalization "Without" Ratification in Post-Conflict Societies", *ZaöRV* 76(1), 2016, p. 165, at: http://www.zaoerv.de/76_2016/76_2016_1_a_143_166.pdf.

“constitutionalisation without ratification” raises questions as to the logic of integration, rank, applicability, effect and function of these instruments domestically.⁵ Similarly, without access to the monitoring and reporting processes under the various instruments, their practical impact within Kosovo is vague, with the exception of possible constitutional challenges.

In the Stabilisation and Association Agreement between the European Union and Kosovo, Kosovo has committed to approximate its legislation to that of the EU.⁶ Several EU directives have relevance to gender-based discrimination at work, including the Employment Equality Directive, Gender Goods and Services Directive, Gender Social Security Directive, Part-time Work Directive, Pregnancy Directive, Racial Equality Directive, Recast Directive, Self-employment Directive, and the Work-Life Balance Directive.⁷ Kosovo is still in the process of approximating its legislation to that of the EU. Specific areas of interest are discussed in relation to the national laws described later in this section.

In 2019, the International Labour Organisation (ILO) adopted the Violence and Harassment Convention. This Convention seeks to eliminate violence against and harassment of workers in the labour force. The scope of the Convention spans to all sectors, private and public, and tackles both the formal and non-formal economy. The Convention addresses a number of areas, such as health and safety at work and non-discrimination, that are already heavily regulated within EU law and transposed into Kosovo law. Nonetheless, there are certain innovative aspects of the Convention which would be valuable additions to the legal framework in Kosovo. For example, the Convention expressly states that harassment at work may arise from a single occurrence.⁸ The Convention also provides a broader scope of protection by capturing, for example, commuting to and from work and work-related communications through technology.⁹ The Convention additionally contains the following definition of gender-based violence and harassment:

the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.¹⁰

In accordance with the ILO Constitution, member countries are required to submit the Convention to their national competent authorities (ordinarily the legislature) to consider ratification.¹¹ While 61 countries, including Montenegro and Serbia, have done so to date, only ten countries have ratified the Convention. The Convention is yet to enter into force in seven of the ten ratifying countries. As Kosovo is not a member of the ILO, there is currently no formal obligation for Kosovo to consider ratification of the Convention. However, existing labour-related legislation in Kosovo takes into account conventions of the ILO,¹² and the legal framework would be strengthened through harmonisation with the Convention.

⁵ Ibid.

⁶ 10728/1/15 REV, Art. 74.

⁷ Directives 2000/78/EC, 2004/113/EC, 79/7/EEC, 97/81/EC, 92/85/EEC, 2000/43/EC, 2006/54/EC, 2010/41/EU and 2019/1158, respectively. The Work-Life Balance Directive repealed the Parental Leave Directive (Directive 2010/18/EU) with effect from 2 August 2022.

⁸ ILO, Violence and Harassment Convention 2019 (No. 190), Article 1.1(a).

⁹ Ibid, Article 3.

¹⁰ International Labour Organisation, *Violence and Harassment Convention*, 2019 (No. 190), Article 1.

¹¹ ILO, Constitution, Article 19.5.

¹² See, for example, the preamble to the Law No.03/L –212 on Labour.

The Constitution

The Constitution of the Republic of Kosovo is the highest legal authority of Kosovo.¹³ The constitutional order is stated to be based on the principle of non-discrimination.¹⁴ Gender equality is ensured “as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life”.¹⁵ Chapter II sets out fundamental rights and freedoms applicable to all, including the right to work and exercise profession.¹⁶ The operative provision on equality before the law provides:

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.¹⁷

Thus, the Constitution allows for positive action measures. Chapter III further specifies rights for inhabitants belonging to the same national, ethnic, linguistic or religious group (“communities”) in Kosovo.

Although the Constitution provides for a wide range of rights and liberties, Article 55 states that “[f]undamental rights and freedoms guaranteed by this Constitution may only be limited by law.” This provision has attracted some criticism, with some arguing it to be an illogical inclusion.¹⁸ However, such a limitation clause is relatively common in constitutional legal orders,¹⁹ and the remainder of the provision contains standard safeguards such as a proportionality requirement and various considerations for courts to consider. The principles set forth in the Constitution are effectuated by the various laws examined below.

The Criminal Code of Kosovo

In Kosovo, criminal matters related to labour are dealt with according to the Criminal Code.²⁰ Related offences include:

¹³ Constitution of the Republic of Kosovo, 2008, Art. 16.

¹⁴ As well as principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, the right to property, the protection of environment, social justice, pluralism, separation of state powers and a market economy (Art. 7.1).

¹⁵ Art. 7.2.

¹⁶ Art. 49.

¹⁷ Art. 24.

¹⁸ Doli, D. and Korenica, F., “Calling Kosovo’s Constitution: A Legal Review”, *The Denning Law Journal*, 2010, p. 82, at: <http://www.ubplj.org/index.php/dlj/article/view/354/383>.

¹⁹ Dawood, A. and Bulmer, E. for the International Institute for Democracy and Electoral Assistance, “Limitation Clauses: International IDEA Constitution-Building Primer 11”, 2017, at: <https://www.idea.int/sites/default/files/publications/limitation-clauses-primer.pdf>, where examples of the Canadian Charter of Rights and Freedoms, the Constitution of South Africa and the European Convention of Human Rights are discussed.

²⁰ Criminal Code of the Republic of Kosovo, Code No. 06/L-074, Chapter XIX, at:

http://ligjet.kuvendikosoves.org/Uploads/Data/Documents/Codeno06L-074_km3reesd5V.pdf; and LPD, Art. 17.

- Violating rights in labour relations, including those related to employment or termination, salaries or other income, length of working hours, absence from work and the protection of women and persons with different abilities;
- Violating rights of employment or unemployment (denial or restriction of employment under equal conditions);
- Violation of the right to management;
- Violation of the right to strike;
- Violation of social insurance rights; and
- Misuse of social insurance rights.²¹

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

In 2019, Kosovo adopted a new Criminal Code. In addition to maintaining the aforementioned offences, it includes a new article on sexual harassment, defined as: “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment”.²² This definition is consistent with both the EU Recast Directive and the Istanbul Convention.²³ Perpetrators of sexual harassment, particularly against persons who are “vulnerable due to age, illness, disability, addiction, pregnancy”, can receive a fine or up to three years’ imprisonment. Sexual harassment committed by a person in a position of authority over the victim carries a higher sentence of six months to three years imprisonment.

The Law on Labour

The Law on Labour (LL) No. 03/L-212 aims at regulating the rights and obligations deriving from employment relationships²⁴ and is applicable to natural or legal persons in both the public and private sectors.²⁵

Employment Contracts

The LL sets out the formal requirements of **employment contracts** and regulates time periods for contracts.²⁶ A 2017 KWN Policy Paper observed that the current Law’s provision requiring a period of 10 years of fixed-term contracts prior to an employee’s contract being deemed to be a permanent contract is far too long and lacks adequate protection for parents.²⁷ Moreover, experience suggests that employers use temporary contracts to avoid repercussions for breaching LL provisions, particularly those relevant to maternity leave.²⁸ KWN has recommended reducing the period to three years and introducing an explicit statement that certain cases will not interrupt the calculation of the duration of the contract,

²¹ Ibid, Arts. 218-224.

²² Art. 183.

²³ Recast Directive Art. 2.1(d); Council of Europe, “Convention on preventing and combating violence against women and domestic violence” (the “Istanbul Convention”), 2011, Art. 40, at: <https://rm.coe.int/168008482e>. Kosovo incorporated the Istanbul Convention as a directly applicable instrument under Article 22 of the Constitution of Kosovo in 2020.

²⁴ Republic of Kosovo, Assembly, Law on Labour No. 03-L-212, 2010, Art. 1, at: <http://www.assemblykosova.org/common/docs/liqjet/2010-212-eng.pdf>.

²⁵ LL, Art. 2.1.

²⁶ LL, Arts. 10-11.

²⁷ KWN, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis”, Pristina: KWN, 2017, p. 19, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20171108105226438.pdf>. Some labour inspectors reaffirmed this, suggesting that long-term contracts would serve as a useful mechanism for preventing employers from avoiding implementation of maternity leave provisions (KWN interviews, 2018).

²⁸ This was a recurring theme among labour inspectors interviewed by KWN (2018).

namely: temporary incapacity, risk during pregnancy, maternity, adoption, custody for adoption, foster care, risk during breastfeeding and paternity.²⁹ Moreover, the termination of a probationary period linked to pregnancy should be explicitly treated as direct discrimination under the law.³⁰ While Article 12 provides that maternity leave “or any other leave” taken in accordance with the Law will not interrupt the employment relationship, the Policy Paper suggests that paternity leave and parental leave should be included explicitly.

Implementation of the Work-Life Balance Directive (discussed further below) would resolve some of the issues arising from employers’ abuse of successive fixed-term contracts to avoid payments related to parental rights. The Directive provides that, in the case of successive fixed-term contracts with the same employer, the sum of those contracts must be considered for the purpose of calculating the qualifying period for parental leave.³¹ The same principle applies to calculating the eligibility period for requesting flexible working arrangements. Further possible amendments to curtail fixed-term contracts being used to avoid fulfilling leave rights include requiring objective reasons for any fixed-term appointment and clarifying the meaning of “successive” contracts to prevent short gaps between fixed-term appointments being used to circumvent employees becoming permanent.³²

Occupational Protections

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

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

²⁹ Ibid, p. 19.

³⁰ Ibid, p. 20.

³¹ Work-Life Balance Directive, Article 5.4.

³² Ryan, D. for KWN, *Expanding Choices through Family-Friendly Policies. Kosovo Analytical Report*, 2021.

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

³⁴ KWN, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis”, p. 23.

³⁵ Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, at:

<https://eurlex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>.

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

³⁷ LL, Art. 48.

Breastfeeding mothers also have additional rights under the Law on the Protection of Breastfeeding.³⁸

Maternity, Parental and Paternity Leave

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

Parental leave rights in Kosovo are extremely limited and generally only amount to a transferring of maternity leave to a father or three days leave for all employees following the birth of their child.⁴³ Fathers may assume the above maternity leave rights if the mother "dies or abandons the child before the end of the maternity leave".⁴⁴ The extension periods also may be conveyed to the father of the child if the mother agrees.⁴⁵ Kosovo has not yet transposed the EU Work-Life Balance Directive, nor its predecessor the Parental Leave Directive. Under the Work-Life Balance Directive, parental leave is an individual right of each worker. The entitlement is for four months leave to be taken before a child reaches a specified age, up to eight years of age.⁴⁶ At least two of the four months must be non-transferable between parents.⁴⁷ However, as the KWN 2017 Policy Paper highlighted, in principle workers should be allowed to take all of their leave, and, therefore, no period should be transferable.⁴⁸ The European Commission's Impact Assessment on the Work-Life Balance Directive also recognised the considerable benefits associated with increasing the length of non-transferable

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

³⁹ LL, Art. 49.

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

⁴¹ LL, Art. 51.

⁴² Recital 19.

⁴³ LL, Art. 39.

⁴⁴ LL, Art. 49.7. Art. 50 repeats Art. 49.7 but including cases in which the mother becomes sick.

⁴⁵ LL, Art. 49.8.

⁴⁶ Work-Life Balance Directive, Art. 5.1

⁴⁷ Ibid, Art. 5.2.

⁴⁸ KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", p. 24.

leave in terms of increased household incomes and individual well-being (for fathers, mothers and children).⁴⁹

The Work-Life Balance Directive only requires parental leave to be paid “in such a way as to facilitate the take-up of parental leave by both parents.”⁵⁰ However, Recital 31 recognises that families are only able to make use of parental leave if it is sufficiently remunerated “with a view to allowing for a decent living standard”. Research has consistently indicated that the level of compensation is a key factor in the utilisation of family-related leaves, particularly for low-income families and men.⁵¹ In order to facilitate the use of parental leave by both parents, the rate of compensation should at least match the level provided for maternity leave (70% of basic salary). This level would be consistent with the European Commission’s definition of “well-paid” leave (66% of previous earnings).⁵² However, the OECD has pointed out that, as it may be unaffordable for a family’s primary earner to take paid leave without full income replacement, 80-100% pay may be necessary to achieve substantial uptake of leave entitlements.⁵³ The development of an employment-related social insurance scheme in Kosovo could facilitate an improved level of compensation for all forms of family leave.

Another significant factor which influences the take-up of parental leave is flexibility in design.⁵⁴ This is reflected in the Work-Life Balance Directive through the requirement that workers must have the right to request that they take parental leave in flexible ways.⁵⁵ While the detail of this is left to states to determine, Recital 23 suggests the options of “full-time or a part-time basis, in alternating periods, such as for a number of consecutive weeks of leave separated by periods of work, or in other flexible ways”. The adoption of this language into the Kosovo legal framework would provide illustrative examples of what can be requested by workers while leaving open the possibility for other flexible options that might be appropriate for individual families.⁵⁶ Extending the eight-year age limit of children up to which parents may take parental leave to 12 years of age may further facilitate greater flexibility for parents who wish to take leave in shorter periods and allow parents to accompany their children as they gain greater autonomy and integrate into secondary school.⁵⁷ Regarding **paternity leave**, the Law appears to contain an error because three days paid leave are foreseen for all employees following the birth of their child, but the paternity leave provision provides fathers with only two days paid leave at the birth or adoption of their child, rendering the latter redundant.⁵⁸ The father also is entitled to two weeks’ unpaid leave after the birth or adoption

⁴⁹ European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#)), p. 97.

⁵⁰ Work-Life Balance Directive, Art. 8.3.

⁵¹ ETUC, “Rebalance: ETUC Toolkit on the implementation and transposition of the Work Life Balance Directive” (2019), p. 15; de la Porte, C., Larsen, T. P., and Szelewa, D., “A Gender Equalizing Regulatory Welfare State? Enacting the EU’s Work-Life Balance Directive in Denmark and Poland” [2020] *The Annals of American Academy of Political and Social Science* 84–103.

⁵² van Belle, J. for RAND Europe, “Paternity and parental leave policies across the European Union” (2016), p. 4; European Commission, Indicators for monitoring the Employment Guidelines including indicators for additional employment analysis, 2010 compendium, Table 18.M3.

⁵³ OECD, “Paid Parental Leave: A Detailed Look at Approaches Across OECD Countries” (2018), p. 9.

⁵⁴ Aumayr-Pintar, C. for Eurofound “Parental and paternity leave – Uptake by fathers” (2019), p. 20.

⁵⁵ Work-Life Balance Directive, Art. 5.6.

⁵⁶ The Work-Life Balance Directive only provides the right to request flexible arrangements. Employers are allowed to refuse such requests (Article 5.6) and, more broadly, to postpone parental leave generally for a reasonable period of time where granting leave would “seriously disrupt the good functioning of the employer” (Article 5.5). Detail will be needed in the implementing law to prevent unjustified refusals/postponements, particularly through defining what amounts to a “serious” disruption.

⁵⁷ European Commission, Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ([SWD\(2017\) 202 final](#)), pp. 63-64.

⁵⁸ LL, Art. 39 and Art. 50.2, respectively.

of a child before the child reaches the age of three.⁵⁹ These entitlements fall short of the 10 days paid leave provided by the Work-Life Balance Directive.⁶⁰ It is notable that the initial paternity leave period is fully paid. Reform should extend the paternity leave period to at least 10 days fully paid and maintain the option for a further two weeks unpaid leave to be taken flexibly.

The Law prohibits the termination of an employment contract and/or transfer to another post during pregnancy, maternity leave and/or absence from work to care for a child requiring special care.⁶¹ This provision should be amended to explicitly include parental and paternity leave.

Violations of the rights outlined in the LL attract fines ranging from €100 to €10,000.⁶²

The Work-Life Balance Directive requires paternity leave entitlements to be extended to **equivalent second parents** "insofar as recognised by national law"⁶³ and encourages states to extend parental leave rights to "**all workers who exercise parental responsibilities**".⁶⁴ Kosovo's Constitution allows any two persons to marry and prohibits discrimination based on sexual orientation or gender.⁶⁵ Sexual orientation is a protected characteristic in both the Law on Gender Equality (LGE) and the Law on Protection from Discrimination (LPD), and the denial or restriction of any constitutional right on the basis of sexual orientation or gender is prohibited under the Criminal Code.⁶⁶ Despite these protections, the Family Law contains references to "two persons of different sexes" for marriage and "two persons of different gender" for engagement.⁶⁷ These conflicting references should be removed for consistency with the Constitution. While the Family Law does not restrict same-sex adoption, spouses may only adopt a child jointly and unmarried persons may only adopt a child alone,⁶⁸ thereby limiting joint or second parent adoption for some. In transposing the Work-Life Balance Directive, the concept of "equivalent second parent" should be adequately defined to ensure that paternity and parental leave rights extend to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities. In order to support one-parent families, consideration should be given to allowing paternity leave to be utilised by a nominated person.⁶⁹

The Work-Life Balance Directive requires states to assess whether parental leave will need to be adapted to the needs of **adoptive parents, parents with a disability, and parents with children with a disability or a long-term illness**.⁷⁰ The position of adoptive parents in the LL is currently ambiguous.⁷¹ Revisions to the law should ensure that adoptive

⁵⁹ LL, Art. 50.2. Article 50 rights extend to guardians if both parents have died or abandoned the child (Art. 3).

⁶⁰ Art. 4.1.

⁶¹ LL, Art. 53. The only exception is cases of termination according to Art. 76 on collective dismissals.

⁶² Each violation of Articles 46 (protection of women employees), 48 (protection of motherhood), 49 (maternity leave) or 53 (prohibition of contract termination) attracts a fine between €100 and €10,000 (Arts. 5.9, 5.11, 5.12 and 5.13). Each violation of Articles 50 (rights of the child's father), 51 (maternity leave for the loss of a child) or 52 (absence from work due to special care for the child) attracts a fine of between 100€ and 9,000€ (Arts. 4.5, 4.6 and 4.7). (Administrative Instruction No. 07/2012 on the determination of fines and specific amounts for violation of the provisions of labour law, at:

<https://ak.rksgov.net/assets/cms/uploads/files/7.%20U.A.%20NR.%2007-%20MBI%20KRITERET%20P%C3%8BR%20LIRIMIN%20OSE%20ULJEN%20E%20MAS%C3%8BS%20ADM INISTRATIVE.pdf>).

⁶³ Art. 4.1

⁶⁴ Recital 21.

⁶⁵ [Constitution of the Republic of Kosovo](#), Arts. 37.1 and 24.2.

⁶⁶ LGE, Art. 4.1; LPD, Art. 1.1; CCK, Art. 190.1.

⁶⁷ Law No. [2004/32](#) Family Law of Kosovo, Articles 14.1 and 9.

⁶⁸ Law No. [2004/32](#) Family Law of Kosovo, Articles 164.

⁶⁹ COFACE, "Assessment of the EU Work-life balance Directive" (2019), p. 7.

⁷⁰ Work-Life Balance Directive, Article 5.8.

⁷¹ Adoptive parents have access to paternity leave rights (Art. 50.2) and somewhat limited access to maternity leave rights (Art. 50.3). However, the right to three days paid absence from work appears to exclude adoptive

parents have equal access to all family leave rights. Persons with disabilities are currently provided two additional days of leave per year.⁷² This protection could be extended to persons with children who have special health care requirements. Consideration should also be given to including additional protections for such persons such as: increasing the age limit of children up to which parental leave may be taken to 18 or removing the limit in certain circumstances; extending the leave period; or imposing further restrictions on employers' ability to refuse or postpone parental leave.

The current Law evidently is premised on an unequal distribution of parental responsibility between mothers and fathers which reinforces traditional divisions of responsibility. For, the mother is assumed the primary carer; by seeking to protect the special relationship between mother and child, the Law denies the father the opportunity to develop such a relationship with his child in the period immediately after birth.⁷³ In practice, significant evidence suggests that these legal provisions have resulted in employers avoiding hiring women who may become pregnant, thereby contributing indirectly to gender-based discrimination in hiring.⁷⁴ In the 2018, 2019, and 2020 Kosovo reports, the European Commission confirmed that reform of the system of maternity and parental leave is needed, as it currently represents an obstacle to the hiring of women, particularly in the private sector.⁷⁵

Carers' and Force Majeure Leave

The Work-Life Balance Directive provides workers with five days of "carers' leave" per year for the purpose of providing care or support to a relative, or a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason.⁷⁶ States are encouraged to provide a payment or allowance for carers' leave but no minimum is mandated.⁷⁷ The concept of carers' leave has not yet been transposed in Kosovo.

Force majeure leave refers to time off for "urgent family reasons in the case of illness or accident making the immediate attendance of the worker indispensable".⁷⁸ The LL currently provides for up to five days of compassionate leave where a "close member" of the family dies.⁷⁹ This provision should be broadened to account for illness or accident.

Discrimination

The LL obliges employers to pay women and men **equal remuneration for work of equal value**, covering base salary and any other allowances.⁸⁰ "Salary" is defined as "the

parents (Art. 39.1.3). The definition of "close family members" includes adopted children (Art. 3.16) but has limited applicability in the LL.

⁷² LL, Article 32.4.

⁷³ Craig, P. and Gráinne de Búrca, *EU Law: Text, Cases and Materials* (5th), 2011, p. 877, making the same observation on the ECJ Case 184/83 Hofmann at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61983CJ0184>.

⁷⁴ KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", reaffirmed by interview respondents from diverse institutions (KWN interviews, 2018). See also, KWN, *Striking a Balance*.

⁷⁵ European Commission, Kosovo 2018 Report, 156 final, Strasbourg: 2018, p. 60, at:

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>; Kosovo 2019 Report, 256 final, Brussels: 2019, p. 68, at:

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>; and Kosovo 2020 Report, 356 final, Brussels: 2020, p. 80, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf.

⁷⁶ Work-Life Balance Directive, Arts. 6.1 and 3.1(c).

⁷⁷ Work-Life Balance Directive, Recital 32.

⁷⁸ Work-Life Balance Directive, Art. 7.

⁷⁹ LL, Art. 39.1.2.

⁸⁰ LL, Art. 55.3.

remuneration or earning of any calculated level in the form of money for the employee".⁸¹ "Allowances" is described as additional pay, which the employee is entitled to for working extended hours, during national holidays or night shifts.⁸² It is unclear if "other allowances" refers exclusively to this additional pay, or if the term includes further supplements. The concept appears to be adopted from EU law.⁸³ For example, the European Court of Justice (ECJ) has considered that travel benefits for workers or family members; maternity benefits; Christmas bonuses; and termination payments all fall within the definition (albeit not social security benefits).⁸⁴ Kosovo courts potentially could interpret "other allowances" just as broadly. Each violation of the equal pay provision attracts a fine between €100 and €7,000.⁸⁵

EU discrimination law works based on "comparators"; the claimant must bring a case in comparison to someone in a similar situation. Thus, in assessing equal pay for work of "equal value", only workers in the same or a similar position could be compared; comparisons could not be made with workers in other jobs.⁸⁶ While the concept of comparators is used in reference to direct discrimination within the Law on Protection from Discrimination,⁸⁷ the LL does not reference comparators explicitly.

The LL **prohibits discrimination** in employment. This relates to recruitment, training, promotion, terms and conditions of employment, disciplinary measures, cancellation of the employment contract or other matters arising out of the employment relationship.⁸⁸ 'Discrimination' is defined as:

any discrimination including exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, language or trade-union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation capacity building...⁸⁹

A specific provision is included on prohibiting direct or indirect discrimination of persons with different abilities during employment, promotion and capacity-building.⁹⁰ The Law makes an exception if a job is not performed "adequately" by a person with a disability, which raises the question of what level of evidence would be required to show that individuals do not have the required capacity, as well as a risk of stereotyped assumptions about the capabilities of people with different abilities being used in a negative fashion to limit opportunities.⁹¹

No other specific provisions for other grounds of discrimination are included. However, in the hiring process, employers are "obliged to create equal opportunities and criteria to both male and female applicants".⁹² The Law fails to mention other forms of discrimination, such

⁸¹ LL, Art. 3.1.13.

⁸² LL, Art. 56.

⁸³ Art. 157 of the Treaty on the Functioning of the European Union and Art. 2.1(e) of the Recast Directive provide that "pay" means "the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his/her employment, from his/her employer".

⁸⁴ Craig, P. and de Búrca, G., *EU Law: Text, Cases and Materials*, 2011, pp. 860-861.

⁸⁵ Administrative Instruction No. 07/2012, on the determination of fines and specific amounts for violation of the provisions of labour law, Art. 2.24, at: http://kryeministri-ks.net/repository/docs/RREGULLORE_QRK_NR_03_2017_P%C3%8BR_MEKANIZMAT_INSTITUCIONAL_P%C3%8BR_MBROJTJE_N....pdf.

⁸⁶ Recast Directive, recitals 9-10.

⁸⁷ LPD, Art. 4.

⁸⁸ LL, Art. 5.

⁸⁹ LL, Art. 3.1.17.

⁹⁰ LL, Art. 5.2.

⁹¹ Pitt, G., "Genuine Occupational Requirements", *Academy of European Law, Trier*, 2009, p. 7, at: http://www.era-comm.eu/oldoku/Adiskri/05_Occupational_requirements/2009_Pitt_EN.pdf). This exception should be read with Art. 19 of the Law on Protection from Discrimination, which obliges reasonable accommodation in employment for persons with different abilities.

⁹² LL, Art. 5.4.

as harassment, sexual harassment, and instruction to discriminate. The distinction between direct and indirect discrimination is neither defined nor applied to the listed grounds for discrimination, aside with regard to disability.

The Law contains a general “genuine and determining occupational requirement” exception.⁹³ This exception is derived from the EU anti-discrimination directives, under which direct discrimination may be justified where the nature of a specific role makes it unsuitable for a person with particular characteristics, provided that the objective pursued is legitimate and the requirement is proportionate.

The discrimination provisions of the LL can be described as minimalistic. These deficiencies are somewhat alleviated by Article 5.5, which provides that the Law Against Discrimination No. 2004/3 (now replaced by the Law on Protection from Discrimination No. 05/L-021) is directly applicable within employment relationships (dealt with separately below). However, a more developed and detailed protection from discrimination specifically set out in the LL for the employment context would be preferable to this cross reference.

Each violation of the prohibition of discrimination attracts a fine of between €100 and €10,000.⁹⁴ However, the Administrative Instruction that details the sanctions later states, “[w]hen the employer or responsible person discriminates against persons seeking employment or employees shall be fined in the treble amount of the specified provisions of this Administrative Instruction [sic]”.⁹⁵ It is unclear what exactly attracts this penalty increase. As the LL covers discrimination in various aspects of employment, it is unclear how “where the employer or responsible person discriminates against persons seeking employment or employees” differs from what is already contained in the LL.

Law on Protection from Discrimination

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

to establish a general framework for prevention and combating discrimination based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, in order to implement the principle of equal treatment.⁹⁶

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

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

⁹³ LL, Art. 5.3.

⁹⁴ Administrative Instruction No. 07/2012 on the determination of fines and specific amounts for violation of the provisions of labour law, Art. 5.2.

⁹⁵ Ibid, Art 11. Original text in Albanian: “Kur punëdhënësi apo personi përgjegjës bënë diskriminim ndaj personave të cilët kërkojnë punë apo punonjëseve do të gjobiten në lartësinë e shumë së trefishtë të përcaktuar me dispozitat e ketij Udhezim Administrativ”. A similar provision is duplicated in LL, Art. 92.3.

⁹⁶ Law on Protection from Discrimination No. 05/-L-021, at: <https://www.kuvendikosoves.org/common/docs/liqjet/05-L-021%20a.pdf>, Art. 1.

- conditions for access to employment, self-employment and occupation, including employment conditions and selection criteria, regardless of activity and at all levels of the professional hierarchy, including promotions;
- access to all types and levels of vocational guidance, vocational training, advanced vocational training and re-qualifications, including internship experience;
- conditions of employment and working conditions, including discharge or termination of the contract and salary;
- membership and involvement in organizations of workers or employers or any organization whose members exercise a particular profession, including the benefits provided for by such organizations; and
- social protection, including social assistance schemes, social security and health protection.⁹⁷

The LPD establishes that the principle of equal treatment requires there to be no **direct or indirect discrimination** in relation to any of the protected grounds.⁹⁸ "Discrimination" is defined as "any distinction, exclusion, restriction or preference based on the protected grounds which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislation of the Republic of Kosovo".⁹⁹ The inclusion of "impact" reflects the rule in EU discrimination law that it is not necessary to prove motivation for prejudice (for example, that the respondent has "sexist" views) or that a rule or practice was intended to result in differential treatment, if it can be shown that the rule or practice had the effect of disadvantaging a protected group.¹⁰⁰ This is an attempt to relieve issues related to securing evidence in discrimination cases, considering that discrimination by its very nature tends not to be manifested in an easily identifiable and open manner;¹⁰¹ and that law cannot regulate attitudes, but only actions through which such attitudes manifest.¹⁰² Thus, certain ancillary facts surrounding situations of discrimination do not need to be proven for a successful claim to be established.

The LPD defines various forms of **unequal treatment**.¹⁰³ "Direct discrimination" is defined as an instance in which one person is treated less favourably than another is, has been or would be treated in a comparable situation, based on one or more of the protected grounds. Thus, an accusation of direct discrimination can be rebutted by establishing that the claimant is not actually in a similar or comparative situation to their "comparator";¹⁰⁴ or that the differential treatment was not based on a protected ground, but rather on objective differences. There were cases that were brought to court with elements of discrimination, but

⁹⁷ LPD, Art. 2.1.

⁹⁸ LPD, Art. 3.2.

⁹⁹ Ibid.

¹⁰⁰ European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, "Handbook on European Non-Discrimination Law", 2018, p. 240.

¹⁰¹ Ibid, p. 239.

¹⁰² Ibid.

¹⁰³ LPD, Art. 4.

¹⁰⁴ Direct discrimination in EU law is based on differential treatment from a similarly situated hypothetical comparator (save in exceptional circumstances where no comparator exists: C-177/88 Dekker at: <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0177>). See the ECJ's guidance in C-381/99 Brunnhofer, at: <http://curia.europa.eu/juris/document/document.jsf?docid=45902&text=&dir=&doclang=EN&part=1&occ=first&mode=req&pageIndex=1&cid=10952744> and C-54/07 Feryn at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=70156&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10842030>.

KWN and its partners did not identify cases in which the court has ruled that discrimination existed.¹⁰⁵

“Indirect discrimination” is defined as situations when a provision, criterion or practice appears impartial, but has put or will put a person in an unequal position compared to others, according to one or more of the protected grounds. Exceptionally, if the provision, criterion or practice can be objectively justified by a legitimate purpose, and the means of achieving that purpose are appropriate and necessary, then the accusation can be refuted. The “objective justification” exception provided for under the definition of indirect discrimination has its basis in EU law. EU law involves an open system and exactly what can constitute an objective justification is not defined, but rather often left to the national court to decide. However, the ECJ has given some guidance by declaring that certain justifications are too general and indicating that others may be sufficient. In *Bilka*, the ECJ formed a test for objective justification of an indirectly discriminatory measure,¹⁰⁶ which is similar to the Kosovo LPD:

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

Regarding sex discrimination, economic cost or customer preference usually will not justify indirect discrimination, as the standard of justification is high. For example, the ECJ has not given weight to arguments regarding the higher cost of ensuring equal pay between men and women for governments, national economies or private enterprises.¹⁰⁷ However, ECJ guidance does not necessarily determine how Kosovo courts will interpret this exception.

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

The LPD defines “victimisation” as discrimination when “a person suffers adverse or negative consequences in response to a complaint or non-complaint (started procedures) or actions in order to apply the principle of equal treatment or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination”. This principle is reflected in most of the EU equal treatment directives.¹⁰⁸ An example of this principle would be if an employer refused to provide a reference for a previous employee, if the refusal constituted retaliation for legal proceedings brought by the employee.¹⁰⁹

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

¹⁰⁵ KLI, *(In)equality and Gender-based Discrimination in the Labour Force [(Pa)Drejtësia dhe diskriminimi me bazë gjinore në marrëdhëniet e punës]*, 2021.

¹⁰⁶ C-170/84 *Bilka-Kaufhaus GmbH v Weber von Hartz*, 1986, at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:61984CJ0170&from=EN>.

¹⁰⁷ Case C-43/75 *Defrenne*, at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:61975CJ0043&from=NL>.

¹⁰⁸ Recast Directive, Art. 34; Racial Equality Directive, Art. 9; Employment Equality Directive, Art. 11.

¹⁰⁹ Case C-185/97 *Belinda Jane Coote v Granada Hospitality Ltd*, 1998, ECR I-05199, at: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=44105&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10842670>.

"Multiple discrimination", as the final form of unequal treatment listed, is when discrimination occurs based on more than one of the protected grounds. The LPD explains that multiple discrimination, among other forms of discriminatory behaviour, is considered severe. Others are: discrimination committed more than once, or which lasts for a long period of time or which "had harmful consequences especially for the victim".¹¹⁰ Presumably, the court determines what satisfies the final example.

Strangely, "severe" discrimination is not punished with a distinctively higher fine than "ordinary" discrimination. Seemingly the only effect of a finding of "severe" discrimination is that a judge may choose the higher end of the penalty scale. For example, the LPD provides that a natural person who performs an act of discrimination may be fined between €400 and €600.¹¹¹ If this act of discrimination is found to be severe, the person presumably would be fined an amount closer to €600. In calculating compensation for a victim, however, the LPD provides that a court "should consider if the case involved serious forms of discrimination".¹¹² Therefore, it is within a judge's discretion to consider multiple discrimination in this context. The **offences** and associated fines are as follows:¹¹³

- €400-600 for a natural person who performs, calls for, instigates or assists in discriminatory activities based on the protected grounds;
- €1050-1350 for a legal entity that in performing its activities, performs, calls for, instigates or assists in discriminatory activities based on the protected grounds;
- €750-1050 for a natural person who is acting in a position of responsibility within a legal entity, state, legal institution or body with public authorisation, or to an individual who has a registered profession (or their delegates), for performing, calling for, instigating or assisting in discriminatory activities. The provision is imprecise;
- €450-750 for concealing facts or information required by the Administrative body or competent court related to a discrimination claim;
- €1050-1350 for failure to implement a decision of the court;
- €450-750 "to every person for offenses, who violates the dignity of certain person or for the creation, access or application of intimidating, hostile, humiliating or frightening environment". This appears to be a specific fine for harassment, but with a slightly different definition;¹¹⁴
- €450-750 "to every person for offenses, who would bring in unfavourable condition the person who filed a complaint on discrimination or in any other form participated in the action for discrimination". This appears to be a specific fine for victimisation, but with a slightly different definition;¹¹⁵
- €450-750 "to every person for offenses, who purposely would bring in unfavourable condition a person who was a witness in the action for discrimination or has rejected the order for discriminatory behaviour". The meaning of this offence is unclear.¹¹⁶

The first three offences appear to be intended as blanket offences covering all forms of unequal treatment in the LPD, separated by the relevant perpetrator (natural person, legal

¹¹⁰ LPD, Art. 5.

¹¹¹ LPD, Art. 23.1.

¹¹² LPD, Art. 16.7.

¹¹³ LPD, Art. 23.

¹¹⁴ The definition differs from that in Art. 4.

¹¹⁵ Similarly, it differs from the definition in Art. 4.

¹¹⁶ Original text in Albanian: "Gjobë në shumë prej katërqind e pesëdhjetë (450) deri në shtatëqind e pesëdhjetë (750) euro, i shqiptohet për kundërvajtje secilit që me qëllim e sjell në gjendje të pavolitshme personin, që ka qenë dëshmitar në veprimin për diskriminim, ose e ka refuzuar zbatimin e vendimit për sjellje diskriminuese".

entity or a person in a position of responsibility). However, it is unclear why harassment and victimisation are given specific offences while the other forms of unequal treatment are not. Moreover, rather than linking these two offences to definitions established in Article 4, the Law establishes slightly different definitions for the offence provisions.

Employers are vicariously liable for all discriminatory actions of their employees, regardless of whether employees committed such actions with or without the knowledge or approval of the employer.¹¹⁷ The employer can defend themselves from such liability if they can prove that they took reasonable and practical steps to prevent an employee from performing discriminatory actions.

While Article 15 establishes that any action carried out by a person during employment is treated as if committed by the employer, Article 24 establishes that any person is responsible for their own acts or omissions and that their individual responsibility does not exclude the responsibility of state institutions or private legal persons. These provisions appear to be in conflict. A possible interpretation is that for a discriminatory action committed by an employee, the perpetrator and their employer could both be charged; and if an employer defends themselves in accordance with Article 15, the natural person who committed the discriminatory action could still be charged based on their individual responsibility under Article 24.

Apart from the aforementioned potential justifications specific to direct and indirect discrimination, a general **justification for unequal treatment** also is included.¹¹⁸ Similar to the LL, this justification reflects the "genuine and determining occupational requirement" exception under EU equal treatment directives, by which direct discrimination may be justified in certain circumstances. It appears that the justification here applies to all forms of unequal treatment under the Law.

Another exception is affirmative action, which may be taken to prevent discrimination of, or to compensate, persons within any of the protected grounds. Such action is deemed not to be discrimination until the purpose for which the measures are set is achieved.¹¹⁹ The LPD provides a non-exhaustive example of when affirmative action may apply:

- where the targeted group is underrepresented in a position,
- has the same qualifications as a counter candidate in terms of eligibility, ability and professional performance,
- an objective assessment of each candidate's application is undertaken which must take account of all criteria that are "typical to each individual candidate", and
- priority given to the underrepresented group candidate cannot be automatic and unconditional but, "can be ignored if the specific reasons for an individual candidate may be in his/her favour".¹²⁰

Law on Gender Equality

The purpose of the Law on Gender Equality (LGE) is to "guarantee, protect and promote equality between genders as a basic value of democratic development of society".¹²¹ The scope of the Law is broad. It applies to:

¹¹⁷ LPD, Art. 15.

¹¹⁸ LPD, Art. 6.

¹¹⁹ LPD, Art. 7.

¹²⁰ Original text in Albanian: "mund të shpërfilllet nëse arsyet specike për një kandidat individual mund të shkojnë në favor të tij".

¹²¹ Law on Gender Equality No. 05/L-020, Art. 1.1., at: <http://www.assembly-kosova.org/common/docs/liqjet/05L-020%20a.pdf>.

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

The LGE explicitly defines gender as the “socially-constructed roles assigned to women and men, which is an acquired identity that is learned, changed over time, and varies widely within and across cultures”. It distinguishes gender from sex: “the biological and physiological characteristics that define men and women”.¹²² The Law also adopts definitions of “woman” and “man” progressively based on self-identification (“who considers themselves as such”).¹²³ This is reinforced by the definition of “gender-identity”, which explicitly does not require medical intervention. Gender identity has a dedicated paragraph in the scope of the Law.¹²⁴

The LGE generally prohibits discrimination, while having specific chapters on employment relationships and education. The Law specifies various general¹²⁵ and special¹²⁶ measures for public institutions to prevent gender discrimination and ensure gender equality. Unfortunately, the LGE is littered with mistakes and inconsistencies.

The LGE **prohibits direct or indirect gender discrimination generally**, including less favourable treatment of women for reasons of pregnancy and maternity, marital status, nationality, race, disability, sexual orientation, social status, religion and belief, age or any other basis defined by law or agreement and international instruments in force.¹²⁷ The Law adopts the same definitions of direct and indirect discrimination as the LPD. Thus, the same exceptions exist.

The LGE recognises gender-based violence as a form of discrimination, and prohibits instruction to discriminate directly or indirectly, harassment¹²⁸ and sexual harassment. The definition of sexual harassment replicates the common definition used by the EU and Council of Europe:

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

Formulating the definition with a focus on the victim is said to be in recognition of the classical tension between men’s perception of behaviours and women’s experiences of it, particularly for crimes such as stalking, sexual harassment and rape.¹²⁹ The LGE states that no one may be victimised in the filing or processing of complaints of discrimination, harassment or sexual harassment.¹³⁰ The LGE has the same definition of victimisation as the LPD.

¹²² LGE, Arts. 3.1.7 and 3.1.8.

¹²³ LGE, Arts. 3.1.2 and 3.1.3.

¹²⁴ LGE, Art. 2.2.

¹²⁵ Consisting of analysis, strategies, gender mainstreaming, equal representation, gender responsive budgeting, adequate allocation of financial resources, gender-disaggregated data and gender equality in naming institutions, schools and streets (LGE, Art. 5).

¹²⁶ Temporary measures consisting of quotas, support programmes, economic empowerment, positive action and increasing gender representation to a minimum of 50% (LGE, Art. 6).

¹²⁷ LGE, Art. 4.

¹²⁸ The definition is similar to that under the LPD.

¹²⁹ Nousiainen, Kevät and Chinkin, Christine, “Legal Implications of EU Accession to the Istanbul Convention”, European Commission, 2015, p. 44, at:

https://ravnopravnost.gov.hr/UserDocsImages/dokumenti/Europska%20unija/Publication_Legal%20implications%20of%20EU%20accession%20to%20the%20Istanbul%20Convention.pdf.

¹³⁰ LGE, Art. 4.6.

Regarding **specific areas**, Chapter III prohibits gender discrimination in employment relationships, social security schemes at work and access to and supply of goods and services. Specifically, it includes direct and indirect discrimination on the grounds of sex, marital or family status, pregnancy, birth, parenting and each custody form in the public or private sectors in the same areas as the LPD.¹³¹ As with the LPD, the “genuine and determining occupational requirement” exception is included.

The LGE sets out a list of actions that are deemed contrary to the principle of equal treatment in social security schemes at work.¹³² The LGE is the only Law that defines occupational social security schemes:

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

Prohibiting gender discrimination in occupational social security schemes does not protect against the risk of unemployment and does not explicitly prohibit discrimination in public social security schemes related to work. The 2017 KWN Policy Paper strongly recommends for this provision to be extended accordingly.¹³³

The LGE establishes various obligations for employers in employment relationships. These relate primarily to hiring practices, training and education opportunities, performance evaluation, equal pay, working environment, and disciplinary measures.¹³⁴

The LGE obliges employers to take all necessary measures to enable women and men to “correspond to both their professional and family obligations”.¹³⁵ This provision provides a potential basis for **flexible work arrangements** but lacks requisite detail for practical application. The Work-Life Balance Directive contains a right for workers to request flexible working arrangements, defined as “the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours,”¹³⁶ in order to adapt their working schedules to their personal needs and preferences. Parents are entitled to make the request up until their children turn a specified age (at least eight).¹³⁷ Carers are also granted the right to make the request. However, the right is not an automatic entitlement, and employers may refuse or postpone once reasons are provided.¹³⁸

The LL currently allows one of the parents of a child with special health care needs to work part-time following the expiry of the maternity leave period until the child turns two.¹³⁹ This provision should be replaced with a right of all parents, guardians, and carers to request flexible work arrangements. The additional protection of parents with children with special health care needs should be maintained by providing that requests from such parents cannot be refused. The reframed position should not be limited to the option to work part-time. As acknowledged by the Directive, while part-time work may be useful in allowing “some women to remain in the labour market after having children or caring for relatives with care or support

¹³¹ LGE, Art. 15.

¹³² LGE, Art. 16.

¹³³ KWN, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis”, pp. 16 and 26.

¹³⁴ LGE, Art. 17.

¹³⁵ LGE, Art 17.1.15.

¹³⁶ Work-Life Balance Directive, Art. 3.1(f).

¹³⁷ Work-Life Balance Directive, Art. 9.

¹³⁸ Work-Life Balance Directive, Art. 9.2.

¹³⁹ LL, Art. 52.

needs, long periods of reduced working hours can lead to lower social security contributions and thus reduced or non-existing pension entitlements.”¹⁴⁰

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

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

The Albanian version of the Law provides some clarification, in that it is closer to the EU provisions.¹⁴¹ However, both the Albanian and English versions mix gender neutral and gender specific language. For example, the English version uses: “every person” and “parental leave”, but also “her” and “she”.¹⁴² Part of the confusion may derive from the fact that the Recast Directive is gender specific to maternity leave, while the Parental Leave Directive (in force when the LL was adopted) is gender neutral and applies to both parents. The use of *tij/saj* (his/her) in the Albanian version facilitates the interpretation that the LGE is intended to comply with the Parental Leave Directive and thus the protection should apply to both parents.

Article 10.2 of the Work-Life Balance Directive has replaced Clause 5.1 of the Parental Leave Directive and extended the protection to paternity and carers’ leave. In resolving the ambiguity of Article 17.2 of the LGE, these other forms of family leave should be explicitly included.

The Law considers unpaid work of women and men to be a contribution to the development of the family and society, including care for family welfare, children, a member of the family or dealing with agriculture and the family economy.¹⁴³ People engaged in such work “shall benefit from community services, labour policies and employment and vocational training”, according to the Law.

The prohibition of gender discrimination in access to and supply of goods and services under the LGE includes an exception for objective justification.¹⁴⁴ This exception is adopted from the EU Gender Goods and Services Directive.¹⁴⁵ The Directive gives some examples of what may fall under this exception, such as single-sex shelters (justified for the protection of victims of violence) and single-sex private clubs (justified due to freedom of association).¹⁴⁶

The LGE provides that persons who consider that their right to equal treatment has been violated may initiate procedures with an administrative authority or with a competent court in accordance with the provisions of the LPD.¹⁴⁷ This provision is within Chapter IV on Education. However, presumably it was intended to apply to the entire Law, as the provision is phrased generally and includes nothing specific to education.

¹⁴⁰ Work-Life Balance Directive, Recital 35.

¹⁴¹ Original text in Albanian: “Çdo person pas pushimit prindor, ka të drejtë, të kthehet në punën e tij/saj sipas kushteve të cilat janë jo më pak të favorshme për të dhe të përfitojë nga kushtet e mira të punës në të cilën ajo ka të drejtë gjatë mungesës së saj përfshirë mundësitë e avancimit”.

¹⁴² In the same context, the Albanian version uses “çdo person”, “pushimit prindor”, “tij/saj” and “për të”, but also “ajd” and “saj”.

¹⁴³ LGE, Art. 18.

¹⁴⁴ LGE, Art. 19.4.

¹⁴⁵ Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, 2004, Art. 4.5, at: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32004L0113>.

¹⁴⁶ Ibid, Recital 16.

¹⁴⁷ LGE, Art. 22.

Regarding **sanctions**, the clause on punitive provisions is unusual in a few respects.¹⁴⁸ First, it provides that for violations of Articles 2 (scope), 3 (definitions) and 5 (general measures to prevent gender discrimination and ensure gender equality), “the competent court shall develop a violation procedure and shall impose sanctions”. It is unclear why the LGE could not set out such a procedure; when the court should develop such a procedure; which court should do so; what sanctions should be introduced; and how an individual can violate the scope or definitions of a law. Then, the LGE establishes the following penalties:¹⁴⁹

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

The LGE does not contain any specific sanctions for violating any of the discrimination prohibitions within the Law, including the general prohibition on discrimination, discrimination in employment relationships or discrimination in education.¹⁵⁰ The only possible interpretation is that the fine for violating the “scope” (Article 2.1) is intended to cover all of these provisions for a natural person, and the fine for violating the definition of “equal treatment” (Article 3.1.4) is intended to cover all of these provisions for legal entities. However, drafting the LGE in such an imprecise manner lacks foresight, at best.

As with the LPD, it is unclear why harassment and sexual harassment are specifically singled out, while other forms of unequal treatment are not. Although the provision is linked to definitions in Article 3.1.11 and 3.1.12, a slightly different definition is established in the punitive provision. This provision is drafted in a particularly unclear manner, which significantly weakens the clarity of the Law. Meanwhile, the sanctions are arguably insufficient for preventing individuals or companies from engaging in gender-based discrimination.¹⁵¹

Other Relevant Laws

The conditions for employment of **foreigners** is dealt with under the Law on Foreigners.¹⁵² The Law establishes a right to equal treatment for foreigners working in Kosovo and provides that state institutions and organisations shall provide foreigners with protection from any form of discrimination.¹⁵³

The Law for Organizing Trade Union in Kosovo regulates **trade union** rights.¹⁵⁴ Under the Law, employees are protected from discrimination on the grounds of membership, non-membership or activity in a trade union. The Law on Strikes contains a similar provision that

¹⁴⁸ LGE, Art. 23.

¹⁴⁹ LGE, Arts. 23.2-23.5.

¹⁵⁰ Art. 4, Chapter III and Chapter IV, respectively.

¹⁵¹ KWN, “Kosovo’s Progress in Aligning its Laws with the European Union Gender Equality Acquis” 2017, p. 40.

¹⁵² No. 04/L-219. Particularly Art. 67. Art. 68 deals with an annual employment quota for foreigners, which is not public. Working within or outside the quota is elaborated in Arts. 69-73.

¹⁵³ See Arts. 83 and 127 respectively.

¹⁵⁴ No. 04/L-011.

employees are protected from discrimination based on organisation or participation in a **strike**.¹⁵⁵

The employment of **civil servants** is governed by separate laws and regulations, though much of the law is the same as the LL.¹⁵⁶ Of particular importance is Law No. 03/L149 on the Civil Service of the Republic of Kosovo, which confirms the concept of non-discrimination on the grounds of gender for civil servants and provides for the right to equal treatment and career development opportunities, regardless of sex.¹⁵⁷ Civil servants have the right to make a complaint, including the right to appeal against administrative decisions, any violation or any omission of the general administrative rules or procedures related to their working relationship.¹⁵⁸ Regulation No. 05/2011 On Procedures for Resolving Disputes and Complaints elaborates on the complaint process. The procedure begins with written submissions to an internal commission within 30 days of the complaint arising. An appeal of the commission's decision may be taken to the Independent Oversight Body.¹⁵⁹

Kosovo law does not protect adequately **self-employed persons**. The 2017 KWN Policy Paper found that the concept of self-employed capacity in EU law is not transposed correctly into Kosovo law.¹⁶⁰ The Policy Paper recommends that the status of self-employed parents regarding maternity and parental rights should be equal to that of parents who are employees, and that self-employed women should be registered officially as such. If they work for their husbands or other family members, they should be able to access social protection and maternity benefits based exclusively on this familial relationship.¹⁶¹

Interpreting the Legal Framework

Generally, representatives of diverse, relevant institutions tend to believe that Kosovo's legal and policy framework pertaining to gender-based discrimination and work is complete, for the most part.¹⁶² However, as illustrated in this section, the legal framework has not been drafted harmoniously. By taking a minimal approach at regulating discrimination and merely referencing the LPD, the LL blurs the legal framework significantly. The LPD and LGE further obscure the lines between laws by addressing employment-related matters. Each law has significant overlap, but also significant differences. Moreover, they have separate offences with varying fines, making the framework tangled and unclear. The blurring of the respective scopes of the laws in the employment context, and the dispersion and overlap of offences and fines among the various laws, may be a source of significant confusion and legal uncertainty in courts.

In other areas, positive efforts have been made at harmonising sanctions when new law was introduced. For example, the Law on Minor Offences contains an explicit provision that sanctions in other laws that conflict with the new law must be brought into compliance within one year.¹⁶³ Unfortunately, such harmonisation measures were not undertaken related to discrimination and gender equality in the employment context.

Notwithstanding these issues, it is evident that the most pertinent issue related to the Kosovo anti-discrimination framework is implementation. The European Commission's 2019,

¹⁵⁵ No. 03/L-200.

¹⁵⁶ For example, Regulation No 06/2011 on the Civil Servants Leave provides the same rights to maternity leave, breastfeeding protection and paternity leave the LL.

¹⁵⁷ Arts. 5.1 and 43 respectively.

¹⁵⁸ Art. 50.

¹⁵⁹ Governed by Law No 03/L –192 on Independent Oversight Board for Civil Service of Kosovo, at:

<http://www.kuvendikosoves.org/common/docs/liqjet/2010-192-eng.pdf>.

¹⁶⁰ KWN, "Kosovo's Progress in Aligning its Laws with the European Union Gender Equality Acquis", p. 27.

¹⁶¹ Ibid, p. 4.

¹⁶² KWN interviews with diverse, relevant institutions, 2018 and 2021.

¹⁶³ Law on Minor Offences No. 05/L-087, at: <https://md.rks-gov.net/desk/inc/media/2ED17925-7275-4FFA-A191FBBC5FBCB5A0.pdf>, Art. 167.

2020, and 2021 Kosovo reports highlighted that while the LPD is “broadly in line with European and international standards,” implementation is limited. The 2019 and 2020 reports noted that more needed to be done to implement the LGE. Notably, the 2021 report highlighted significant efforts to implement the LGE, particularly in the context of equality in recruitment and changing stereotypes in the public administration. However, the 2021 report also noted that:

Domestic case law on non-discrimination is poor, partly due to victims often being discouraged to file cases due to the lengths of court proceedings. Discrimination cases are frequently not taken seriously and processed slowly by the police, prosecution, and courts.

The 2019 and 2020 reports similarly highlighted that “both rule of law institutions and victims have difficulties in identifying situations in which [the LPD’s] provisions can be applied”. It is perhaps unsurprising that difficulties are arising in applying anti-discrimination provisions considering the issues of fragmentation and inconsistency in the legal framework. The lack of case law similarly suggests that, while strong efforts have been made to reach the technical transposition requirements, there is a lack of understanding of how the law is supposed to work in practice, causing difficulties in its application.

Implementation was identified as a common issue for WB countries in the regional edition of this report in 2019.¹⁶⁴ Various methods for improving implementation were included in that report, such as:

- specialised anti-discrimination training for judges and prosecutors;
- specialised training in a broader context for groups that may have a special role in protecting members of society from discrimination (e.g., law enforcement, lawyers, trade unions, journalists, advocacy groups, medical professionals, religious organisations and business associations);
- improving data collection procedures; and
- ongoing education and directing public awareness towards the values of equal treatment and equal opportunities.

The European Commission 2021 Kosovo report further identifies the need to strengthen the role of anti-discrimination officers in the municipalities and ministries, particularly through establishing clear reporting lines and descriptions of duties.

Notably, funds collected from imposed fines under the LL, LPD and LGE are transferred to the budget of the Republic of Kosovo.¹⁶⁵ Thus, remedies for victims of discrimination do not derive from these sanctions, but rather from procedures outlined below.¹⁶⁶

Responsible Institutions

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

¹⁶⁴ KWN, *Gender-based Discrimination and Labour in Kosovo*, KWN, Pristina: 2019.

¹⁶⁵ LL, Art. 93; LPD, Art. 23.9; and LGE, Art. 23.6.

¹⁶⁶ See section XX.

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

The LPD details the competences of the **Ombudsperson Institution (OI)**, which handles discrimination cases on behalf of the State.¹⁶⁷ These include investigating claims; giving opinions and recommendations in cases of discrimination; assisting victims in preparing complaints; and providing information on rights, obligations and protective tools. The LGE also states that the OI is an equality institution that handles cases related to gender discrimination, in accordance with procedures established by the Law on Ombudsperson.¹⁶⁸ The competences, responsibilities and complaint procedures of the OI are elaborated in the Law on Ombudsperson.

The LPD explains the duties of the **Office of Good Governance**, located in the Office of the Prime Minister.¹⁶⁹ These include assisting the government in promoting equality and protecting from discrimination, as well as monitoring implementation of OI recommendations.¹⁷⁰

The LPD states that **all ministries and municipalities** are obliged to assign an appropriate unit or official to coordinate and report on the Law's implementation.¹⁷¹ The LGE contains a similar obligation for the appointment of relevant officials for gender equality to coordinate the Law's implementation.¹⁷² The LGE further details the role of these officials, which includes gender mainstreaming, gender budgeting and preparation of annual reports on the implementation of the Kosovo Program for Gender Equality. The LGE reiterates that political parties must implement measures to promote equal participation of women and men.¹⁷³

Procedures and Remedies

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

The Law on Labour

The first step in any claim under the LL is an **internal procedure**, whereby an employee who considers that the employer has violated her/his labour rights may submit a request to the employer, or to the relevant bodies of the employer, for the rights to be exercised (see Figure 1).¹⁷⁴ Following the internal procedure, the employee has three options:

1. If the employee is dissatisfied with the response to the request, or if the employee has received no response, she/he is entitled to initiate a work dispute in the competent **court**.¹⁷⁵ The applicable procedural protections are outlined in a

¹⁶⁷ LPD, Art. 9.

¹⁶⁸ LGE, Art. 13. Law on Ombudsperson No. 03/L-195, at: <http://www.kuvendikosoves.org/common/docs/liqjet/2010-195-eng.pdf>.

¹⁶⁹ LPD, Art. 10.

¹⁷⁰ Elaborated in Regulation No. 03/2017 on institutional mechanisms on protection against discrimination in government and municipalities, at: http://kryeministri-ks.net/repository/docs/RREGULLORE_QRK_NR_03_2017_P%C3%8BR_MEKANIZMAT_INSTITUCIONAL_P%C3%8BR_MBROJTJE_N....pdf.

¹⁷¹ Ibid. LPD, Art. 11.

¹⁷² LGE, Art. 12.

¹⁷³ LGE, Art. 14.

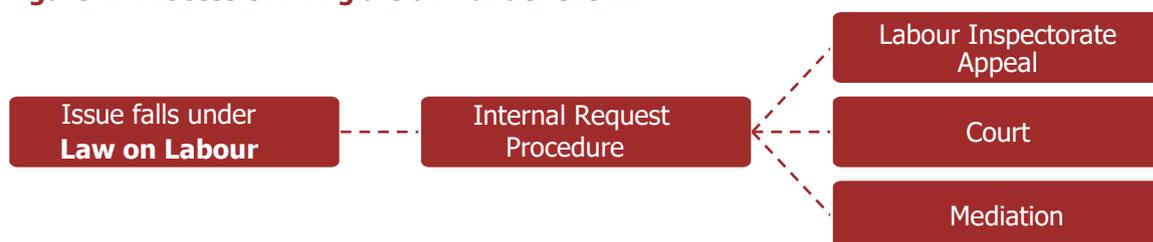
¹⁷⁴ LL, Art. 78. The procedure is laid out in Chapter IX.

¹⁷⁵ Paragraph 2 of Article 78 states that the employer has 15 days to decide on the employee's submitted request. However, paragraph 3 states that the decision from paragraph 2 must be delivered in written form to the employee within eight days. Therefore, the provision is unclear, particularly because under Article 79, an

later section. The LL provides specific remedies only for **unlawful termination**.¹⁷⁶ The court may either oblige the payment of compensation (no less than twice the value of any severance payment that the employee was entitled to at the time of dismissal); or, if deemed unlawful due to discrimination, the employee may be reinstated in her/his previous position with all lost salary and benefits compensated.

2. Alternatively, disputes may be resolved through **mediation**.¹⁷⁷ This procedure is governed by the Law on Mediation.¹⁷⁸ Note that the LPD states that mediation or reconciliation may only be used on the request of the applicant.¹⁷⁹ Thus, mandatory mediation is prohibited. The Law on Mediation provides that where one party requests the other to engage in mediation proceedings, and does not receive a response within 15 days, it is considered refusal to begin the mediation procedure.¹⁸⁰
3. At any time after a request has been submitted, an appeal may be submitted to the **Labour Inspectorate** for issues within the Inspectorate's competence.¹⁸¹ These competences include ensuring implementation of the LL.¹⁸² Therefore, issues such as failure to implement equal pay or maternity leave provisions would be grounds for appeal. A decision on the appeal must be issued within 30 days. The LL states that the Labour Inspectorate issues disciplinary measures arising from LL violations, according to the Law on Labour Inspectorate.¹⁸³ These disciplinary measures presumably refer to the fines outlined in the LL. However, far more relevant to victims is the Inspectorate's additional power to issue written notice about irregularities found and to set a time limit within which they must be eliminated.¹⁸⁴ Notably, the Inspectorate has wide powers of investigation.¹⁸⁵

Figure 1. Process of Filing a Claim under the LL



employee who does not receive an answer within the timeframe of paragraph 2 (15 days), or who is dissatisfied with the response, may initiate a work dispute in the competent court within 30 days. The provision seems to suggest that an employee may initiate proceedings before they receive a written response. As the time limit to initiate proceedings is short, this uncertainty is significant.

¹⁷⁶ LL, Art. 80.

¹⁷⁷ LL, Art. 81.

¹⁷⁸ Law on Mediation No. 06/L-009, at: <https://md.rks-qov.net/desk/inc/media/078A2A69-F572-4826-AC2061937AADD2FA.pdf>.

¹⁷⁹ LPD, Art. 21.

¹⁸⁰ Law on Mediation, Art. 9.3.

¹⁸¹ LL, Art. 82.

¹⁸² Law on Labour Inspectorate No. 2002/9, Art. 2(a), at:

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

¹⁸³ LL, Art. 83.

¹⁸⁴ Law on Labour Inspectorate, Art. 5.5(b).

¹⁸⁵ These include freely entering any workplace without prior notification, as well as inspecting and taking extracts of books and documents that must be kept by the employer as prescribed by the LL (Ibid, 5.2[c]).

Law on the Protection from Discrimination and Law on Gender Equality

Under the LPD or the LGE, an applicant may submit a claim to either the **OI** or **courts**. It is important to note that submitting a complaint to the OI is not a condition for bringing a claim to court.¹⁸⁶

An individual or a group of persons may make a complaint to the **OI**.¹⁸⁷ However, in order to make a complaint, "regular" remedies must be exhausted, subject to certain exceptions.¹⁸⁸ In the employment context, this suggests that the LL request procedure, or any other internal procedure provided by the employer, must have been attempted first (see Figure 2). There is an exception if the OI "estimates that the persons have endured severe damage or in a meantime the persons may suffer huge damage which might not be repairable".¹⁸⁹ The services of the OI are free.¹⁹⁰ The formal requirements of the application and the relevant procedures are detailed in the Law on Ombudsperson and the Regulation on Rules of Procedure of the OI.¹⁹¹

Under the LPD, a person or group of persons may bring complaints to **courts**.¹⁹² There is a five-year limitation period for a claim to be brought to court, starting from the day when the complainant became aware of the violation.¹⁹³ The applicable procedural protections are outlined in the next section. The LGE provides that proceedings can be initiated in the competent court in accordance with LPD provisions.¹⁹⁴ Thus, the same time limit and protections apply.

This procedure creates an anomaly in the law; if the issue falls within either the LPD or the LGE, claimants are entitled to "leapfrog" internal procedures, going straight to court; however, if the issue falls solely under the LL, claimants ordinarily must follow an internal request procedure first before accessing courts.¹⁹⁵ While the laws overlap in relation to employment, they also have significant differences,¹⁹⁶ which may affect the legal basis for a claim and thus access to courts.

The LPD provides that cases of discrimination should be dealt with urgently,¹⁹⁷ and employment cases are similarly prioritised in law. However, in practice, not every work-related case receives priority, and court delays are well-documented.¹⁹⁸ Thus, it may be more time and cost effective to resolve issues through non-judicial means, such as the Labour

¹⁸⁶ LPD, Art. 12.3.

¹⁸⁷ LPD Art. 12; LGE Art. 13.

¹⁸⁸ Law on Ombudsperson, Art. 22.1.4. The Ombudsperson may disapply the requirement for all remedies to be exhausted where they consider it "useless for the complainant to initiate or continue proceedings, or if he/she estimates that the persons have endured severe damage or in a meantime the persons may suffer huge damage which might not be repairable."

¹⁸⁹ Ibid, Art. 22.1.4.

¹⁹⁰ Ibid, Art. 16.12.

¹⁹¹ Regulation on Rules of Procedure of the Ombudsperson, No. 02/2016, articles 33-66, at:

<https://oikrks.org/en/2018/08/20/regulation-no-02-2016-on-rules-of-procedure-of-the-ombudsperson-institution/>.

¹⁹² LPD, Art. 13.

¹⁹³ LPD, Art. 14.3.

¹⁹⁴ LGE, Art. 22.1.

¹⁹⁵ Note that LL Art. 79 provides "Every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court [*sic*]." This may provide employees with the right to take proceedings in court directly without following the internal request procedure.

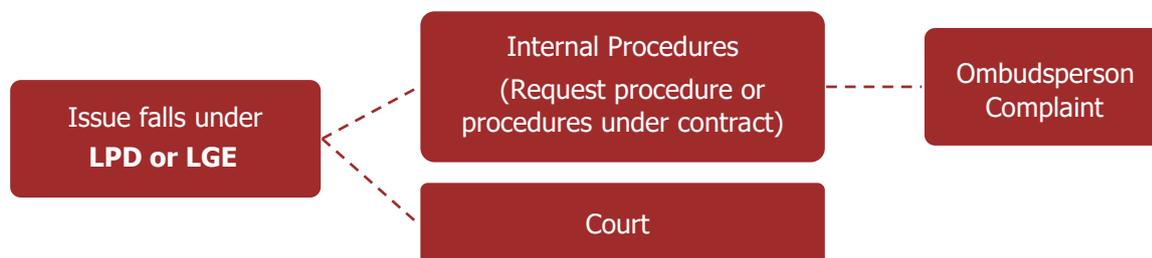
¹⁹⁶ For example, as noted, the LL is far more specialised on maternity leave and equal pay rights, while sexual harassment is only dealt with under the LGE and (to some extent) under the LPD.

¹⁹⁷ Art. 16.9.

¹⁹⁸ "Cases [...] are numerous where employees have to wait for years for a final decision. Expenditures incurred to employees, as well as expenditures incurred to public institutions or private companies due to delays of the Court are often ignored from the latter" (Kosovo Democratic Institute, Employees who have (no) Rights, Pristina: 2017, p. 27, at: <http://kdi-kosova.org/wp-content/uploads/2017/11/Punetoret-qe-s-kane-te-drejta-ENGFINAL.pdf>).

Inspectorate, mediation, or the OI.¹⁹⁹ All of these would require internal procedures to be undertaken first.

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



Procedural Protections and Remedies

Procedural protections under the LPD apply equally to claims brought to courts under the LGE or the LL.²⁰⁰ These protections represent valuable tools which support and facilitate complaints for persons who have suffered gender-based discrimination.

First, the LPD provides for the reversal of the burden of proof in discrimination cases.²⁰¹ This rule has its basis in EU law.²⁰² This entails the claimant establishing sufficient evidence to suggest that discriminatory treatment may have occurred, which raises a presumption of discrimination that the respondent must rebut. The rule is based on recognition of the fact that it can be particularly difficult for claimants to prove differential treatment based on a particular protected characteristic. The rationale for the rule is that the respondent is in possession of the necessary information to (dis)prove the claim.²⁰³ An important limitation to the rule in EU law is that the reversal of the burden of proof is not mandated in the criminal law context,²⁰⁴ due to the higher standard of proof needed to establish criminal liability, unless otherwise provided by the Member States. Member States are permitted to introduce more favourable rules for plaintiffs.

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

- Prohibit the performance of activities which violate the right of the applicant, or compel the elimination of all discriminatory actions;
- Compensate material or non-material damage;
- Order temporary measures in accordance with the Law on Contested Procedure (if deemed necessary to eliminate the risk of irreparable damages, especially for severe violations of the right on equal treatment, or with the aim of preventing violence);

¹⁹⁹ In doing so, the plaintiff should bear in mind the five-year legal time limit during which the case should be addressed to the court, if the plaintiff wants to use courts.

²⁰⁰ LL Art. 5.5 provides that the Law Against Discrimination No. 2004/3 (replaced by the LPD) is directly applicable within employment relationships. As noted, LGE Art. 22.1 provides that proceedings can be instituted to the competent court in accordance with the provisions of the LPD.

²⁰¹ LPD, Art. 20.

²⁰² Racial Equality Directive (Art. 8), Employment Equality Directive (Art. 10), Gender Equality Directive (Recast) (Art. 19), Gender Goods and Services Directive (Art. 9), Work-Life Balance Directive (Art. 12.1). This principle is equally well entrenched in the case law of the ECtHR, which has invoked the principle more generally in proving human rights violations.

²⁰³ European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, "Handbook on European Non-Discrimination Law", 2018, p. 232.

²⁰⁴ Ibid, p. 236.

- Order a shorter deadline of execution than defined in the Law on Enforcement Procedure; or
- Publish the decision in the media.²⁰⁵

“Compensation” includes correcting legal violations and their consequences, through a return to the previous situation, appropriate compensation for material and immaterial damages or other appropriate measures.²⁰⁶ Deliberation on damages should consider if the case involved serious forms of discrimination. Appeals may be made to the Court of Appeal within seven days of a first instance judgment, in accordance with the Law on Contested Procedure.²⁰⁷

Legal Standing of Associations Applicable to Court Proceedings

Associations, organisations and other legal entities may support complaints on behalf of applicants in either court proceedings or in bringing a complaint to the OI, but only with the applicant’s consent.²⁰⁸ Where discrimination is affecting a group of people, a different procedure exists for a group action, which a non-governmental organisation or the OI may take on the group’s behalf.²⁰⁹ Interestingly, the consent of the members of the group is not necessary for this procedure.

Conclusion

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

More specifically, the LL does not offer adequate protections related to: the period for receiving a permanent contract; the assignment of tasks for pregnant women; and discrimination in employment. Moreover, the LL’s focus on maternity leave may reinforce existing gender norms, undermine women’s participation in the labour force and serve as a form of legal discrimination against men, considering their presently unequal rights to paternity or parental leave. Significant amendment will be needed to harmonise the LL with the Work-Life Balance Directive, particularly relating to paternity, parental, and carers’ leave, as well as the right to request flexible working arrangements. Reform must adequately acknowledge and protect equivalent second parents, single parents, adoptive parents, and parents and children with disabilities. The LPD lacks: harmonization of its definitions related to fines for offences; a clear definition of sexual harassment as per the Recast Directive; stipulations that severe forms of discrimination shall receive higher fines; and clarity regarding the violation procedure for imposing sanctions. The LGE does not clearly prohibit various forms of gender-based discrimination or impose sanctions sufficient for prohibiting individuals or employers from engaging in gender-based discrimination.

Little case law related to gender-based discrimination and labour could be found in Kosovo, which explains the omission of any discussion of case law in this section. Thus, the

²⁰⁵ LPD, Art. 16.

²⁰⁶ LPD, Art. 16.6.

²⁰⁷ LPD, Art. 16.3.

²⁰⁸ LPD, Arts. 12.4 and 13.2.

²⁰⁹ LPD, Art. 18.

function and implementation of the law in practice is difficult to assess. Nevertheless, justice institutions can draw on the functioning of the EU legal order to facilitate understanding of the legislative intentions underpinning how the law should function in Kosovo.

PEOPLE'S AWARENESS AND REPORTING OF GENDER-BASED DISCRIMINATION

This chapter examines people's awareness of gender-based discrimination. It also seeks to understand the reasons why people may or may not report gender-based discrimination in relation to labour. Findings in this and the following chapter draw from online surveys conducted in 2018 and 2021, respectively. As mentioned in the methodology, survey participants were self-selected. This enabled access to persons who may have experienced gender-based discrimination, as they could come forward and anonymously provide information about their experiences; such information may not have been as easily accessible through a door-to-door household survey as many households may not have had employed persons or persons who would want to speak about their experiences. Therefore, the online survey was a relatively inexpensive way to collect useful information about people's experiences with discrimination. However, the fact that such convenience, non-probability sampling was used means that the survey findings are not necessarily representative of the general population in Kosovo. Additionally, any increases or decreases in awareness since 2018 do not necessarily reflect changes in knowledge or experiences within the overall population.

In both 2018 and 2021 men have remained underrepresented among survey participants (33% in 2018 and 25% in 2021). In addition to the non-probability sampling used, men's minimal participation in the survey further limits comparisons between women and men's knowledge and experiences. Survey responses are disaggregated by gender, and potential relationships between gender and knowledge or experience are discussed, but these differences are not necessarily generalisable to the general population.

Additionally, readers should consider that in both surveys, women and men with higher levels of educational attainment, full-time employment, and from urban areas are over-represented. Persons from minority ethnic groups are under-represented. Small sample sizes restricted further analysis of relationships between gender, socio-demographic differences, and knowledge or experience. Annex 1 contains further information regarding the social and demographic distributions of the two survey samples.

Despite the aforementioned limitations, findings do shed light on people's knowledge of and experiences with gender-based discrimination in Kosovo, offering meaningful qualitative indications of its continued existence.

People's Awareness about Gender-based Discrimination

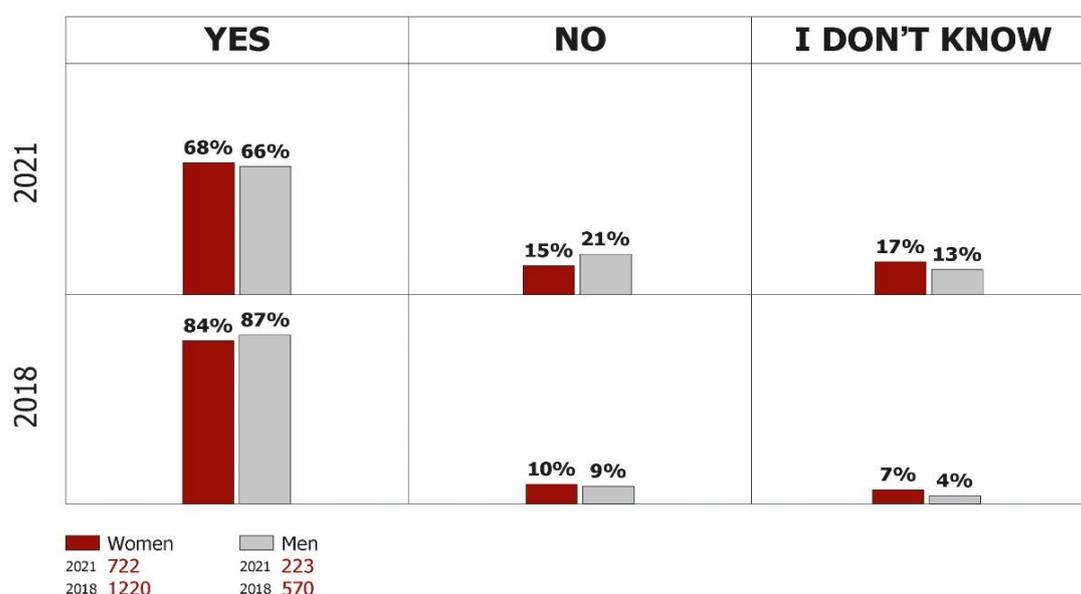
The online surveys conducted in 2018 and 2021 sought to measure people's awareness of the relevant legal framework, procedures, and remedies, described in the last chapter. Overall, 85% of the survey respondents in 2018 and 67% in 2021 agreed that 'discriminating against someone at work because they are a woman or a man is illegal'.¹ Thus, most survey respondents knew that Kosovo's legal framework regulates this. As this was not a representative sample of the population, as explained in the introduction, several reasons may exist for the seemingly lower levels of knowledge in 2021, including the sample size, the

¹ N = 1,790, 2018; N = 945, 2021.

possibility of a different sample (e.g., different respondents), and slightly different question phrasing in the two surveys, which may have affected responses.²

Little difference existed between the responses of women and men. In 2018, slightly more men knew that gender-based discrimination is illegal, while in 2021 slightly more women did (see Graph 1). Even so, roughly one in ten respondents in 2018 and 16% in 2021, women and men, thought discrimination was legal. Moreover, 7% of women and 4% of men did not know in 2018, and still 13% of men and 17% of women did not know in 2021. The relationship between knowing that discrimination is illegal and age was statistically significant, with more older respondents being knowledgeable than younger respondents; in 2018, fewer youth ages 18 to 29 knew discrimination was illegal (79%) than persons older than them. However, in 2021 respondents who were 50+ years of age were less likely to know that gender-based discrimination is illegal. Persons with lower levels of education were less likely to know that gender-based discrimination is illegal, in both editions of the survey.³

Graph 1. Respondents’ Knowledge If “Discriminating against Someone at Work Because They Are a Woman or a Man is Illegal”, by Gender



A recent survey conducted by the European Center for Minority Issues in Kosovo (ECMI) has shown that both men and women believe that women are more discriminated against than men in the labour market.⁴ The respondents also acknowledged that Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and differently identifying (LGBTIQ+) persons face marginalisation. Interestingly, 55% of survey participants believed that the public sector uses positive discrimination in employing people from minority ethnic groups.⁵

An analysis of qualitative survey responses suggests insufficient, albeit potentially improved knowledge regarding what specifically may constitute gender-based discrimination.

² In 2021, the statement was phrased as: “Discriminating against someone at work because they are a woman or a man is illegal”, whereas in 2018 it was “Is discriminating against someone at work based on gender illegal in your country?”

³ N = 1,832, 2018; N = 972, 2021. Notably the sample sizes for persons from rural areas and from minority ethnic groups were too small to make conclusions.

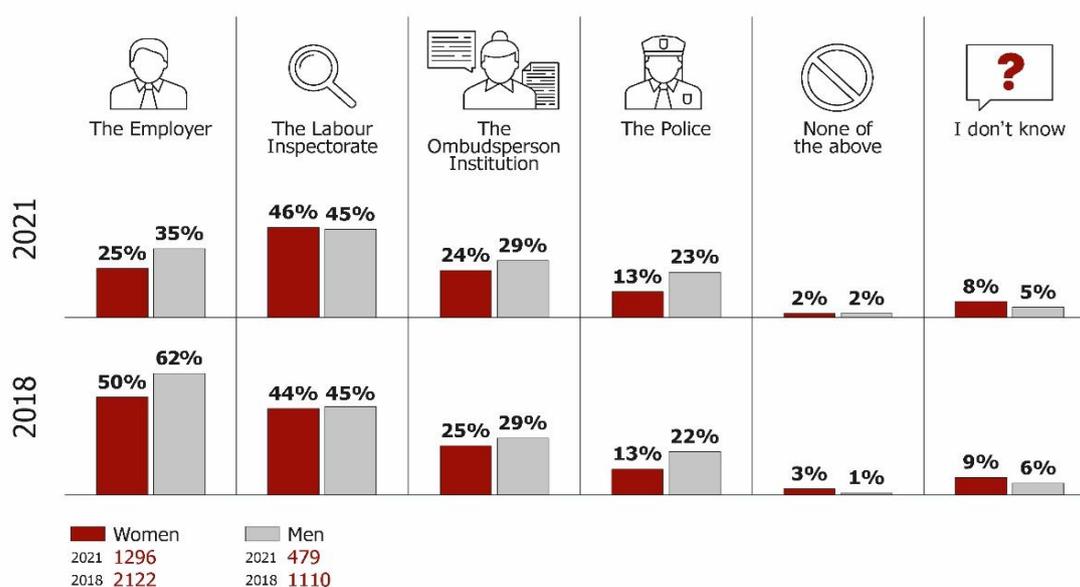
⁴ N = 800, sampling used: multi-stage random probability sampling.

⁵ ECMI Kosovo, *Perceptions of citizens on discrimination in the workplace or labour market in Kosovo*, 2019. They did not differentiate in the question among ethnic groups.

Participants who indicated that they had experienced gender-based discrimination at work provided detailed accounts of their experiences. In 2018, most accounts dealt with labour rights violations that did not necessarily involve strong grounds for claims of gender-based discrimination. However, in 2021, some case descriptions clearly indicated gender-based discrimination, including sexual harassment, suggesting an increase in awareness on the topic.

Regarding people’s knowledge of relevant institutions, if gender-based discrimination occurs at work, most survey respondents in 2018 thought it should be reported to the employer (50% of women and 62% of men).⁶ In 2021, fewer women (25%) and men (35%) mentioned their employer. In both years, approximately 45% of women and men said that discrimination at work should be reported to the Labour Inspectorate (see Graph 2). Approximately one-fourth of respondents said it should be reported to the OI, with slightly more men than women consistently stating this. While gender-based discrimination perhaps may be reported to police on rare occasions, as per Kosovo’s legal framework, such as in cases of sexual harassment, women (13%) have continued to be less likely to know that they can report discrimination to the police than have men (22%/23%). Generally, knowledge of where persons can report gender-based discrimination has remained low in 2021.⁷

Graph 2. To Which Institutions Should Gender-based Discrimination Be Reported, by Respondents’ Gender



Similarly, in another survey conducted by ECMI, respondents tended to mention the Kosovo Police and courts, but rarely identified institutions like the OI or mechanisms at their employers; 87% of respondents said they would report a case of discrimination to the police, 23% would report it to courts, and a mere 7% would report it to the Labour Inspectorate.⁸

These findings suggest continuing, insufficient awareness regarding what constitutes gender-based discrimination and to which institutions people can report such violations. This lack of awareness among both women and men likely continues to contribute to low reporting.

⁶ N = 2,151, 2018; N = 1,775, 2021.

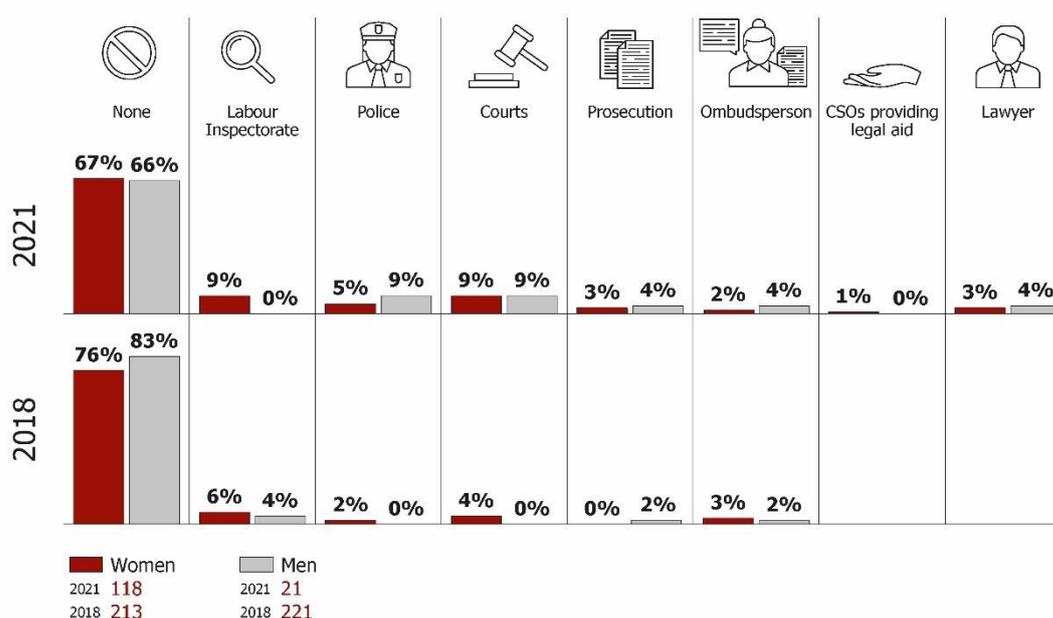
⁷ N = 1855 (1,296 women, 559 men).

⁸ ECMI Kosovo, *Perceptions of citizens on discrimination in the workplace or labour market in Kosovo, 2019*.

Reporting Gender-based Discrimination

The online survey sought to estimate the extent to which people may report gender-based discrimination in relation to labour, as well as to analyse why people may or may not report it. Of the survey respondents who said they had experienced gender-based discrimination at work, most women (76% in 2018, 68% in 2021) and men (83%, 67%) said that they did not report it to any institution (Graph 3).¹

Graph 3. To Which Institutions Did Respondents Report Gender-based Discrimination, by Respondents' Gender

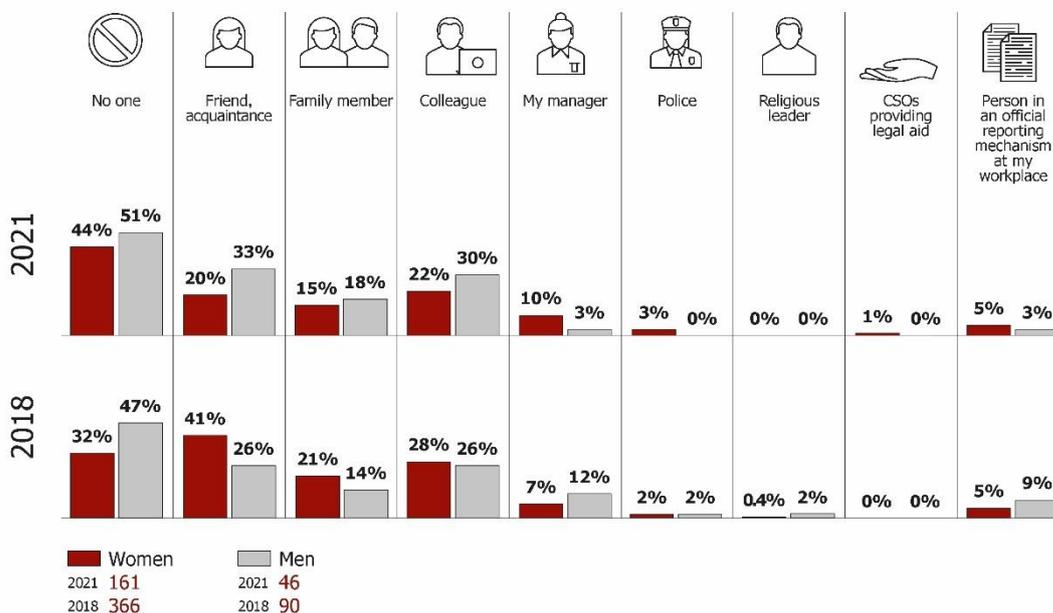


Of those who did report it, most women (14 in 2018 and 11 in 2021) and men (two in 2018 and 11 in 2021) contacted the Labour Inspectorate. Perhaps this is unsurprising considering the aforementioned findings that more respondents knew about the Labour Inspectorate's role than other institutions' roles in addressing gender-based discrimination at work. Among survey respondents, only nine women in 2018 and 11 in 2021, and only two men in 2021 brought cases to court. As a specific form of gender-based discrimination, several survey respondents said they experienced sexual harassment at work: 337 in 2018 and 164 in 2021. As Graph 4 illustrates, most women and men survey respondents who had experienced sexual harassment told a friend, colleague, or family member.²

“ People are not aware enough of their rights to file cases in court.
 - Woman judge, Gjakovë/Đakovica, 2018

¹ N = 456, 2018. Interview respondents, particularly judges and labour union representatives, confirmed the finding that employees hesitate to report gender-based discrimination (KWN interviews, 2018); N = 139, 2021
² Women N = 366, Men N = 90, 2018; Women N = 161, Men N = 46, 2021.

Graph 4. To Whom Did Respondents Report Sexual Harassment, by Gender



For the few women who reported sexual harassment, they informed their manager (7% in 2018, 10% in 2021), a person in an official reporting mechanism at their workplace (5%, 5%) or police (2%, 4%). Similarly, a few men survey respondents told their managers (12%, 3%) or persons in official reporting mechanisms at their workplaces (9%, 3%). Approximately one-third of the women in 2018 and 44% in 2021, and half of the men did not tell anyone about the sexual harassment they experienced.

Similarly, KWN's 2016 research found that only 4% of all persons who had experienced sexual harassment ever reported it to the authorities.³ This is worrying as it suggests that unreported sexual harassment at work may be rather widespread.

When asked why they did not report sexual harassment to institutions, men tended to respond that they "did not want to" (45% in 2018 and 47% in 2021); fewer women (26%, 31%) said this (see Graph 5).⁴ Both women (58%, 35%) and men (42%, 41%) felt they "have to take care of it" themselves. Consistently, approximately one in five women and men did not report

“ I have seen several cases when my superior sexually harassed workers. I am aware of all cases, but they are reluctant to tell because they are married, and they are afraid that it will get worse.

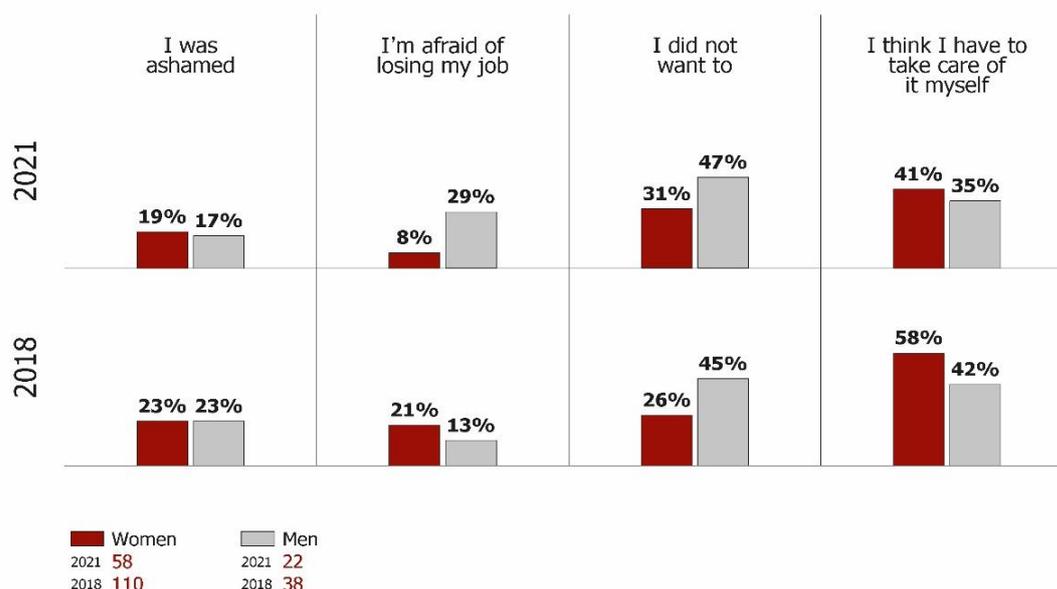
- Man, Gjilan/Gnjilane, 2021

³ KWN, *Sexual Harassment in Kosovo*, Pristina: KWN, 2016, p. 4, at: <https://womensnetwork.org/wpcontent/uploads/2018/10/20160223185243349.pdf>.

⁴ N = 148, 2018; N = 80, 2021.

harassment because “they felt ashamed”. Women (21%, 8%) and men (13%, 29%) also did not report this phenomenon for fear of losing their jobs.

Graph 5. Reasons Why Sexual Harassment at Work Was Not Reported, by Gender



In a different survey published in 2021 by the Kosovo Stability Initiative (IKS), approximately 30% of the women that had experienced gender-based discrimination experienced some form of sexual harassment at work.⁵ Over 80% of the women responded that they did not file a report, mostly because they thought the case would not be solved and the harassment would continue. The respondents thought that the perpetrator, usually in a higher position, would be believed over them. Underreporting may be attributed in part to Kosovo’s fragile economic situation; people who fear losing their jobs may endure discriminatory working conditions.⁶ Moreover, in 2021 a representative of a chamber of commerce stated that when sexual harassment happens in the workplace women instead of reporting it, tend to hide it because they do not know how to prove it, and they usually end up resigning from that workplace. “Cases I know have never reported sexual harassment because they didn’t know how to prove it. Usually is the word against the word. When harassment happens, it has yet to be reported because there is no solution and, in some cases, people leave the job”.

The representatives of different institutions interviewed through this research tended to agree consistently over time that few people report gender-based discrimination to institutions for fear of losing their jobs;⁷ due to insufficient awareness regarding discrimination and labour rights; general discouragement over long bureaucratic

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

- Woman police officer, Ferizaj/Uroševac, 2018

⁵ Shaipi, K., for IKS, *Being a woman in the labor market*, 2021, N = 500, random sample.

⁶ This was a recurring response from the interviewed police officers (KWN interviews, 2018).

⁷ This was a recurring theme among diverse respondents from institutions (KWN interviews, 2018 and 2021).

procedures in relevant institutions; difficulty documenting discrimination cases; and a fear that anonymity will be breached.

Conclusion

Generally, most women and men respondents seemed aware that gender-based discrimination is illegal in Kosovo. Most believed that such discrimination should be reported to the employer in 2018, whereas more stated it should be reported to the Labour Inspectorate in 2021. Overall, no substantial differences seemed to exist in awareness in 2021 compared to 2018, except that more people identified the Labour Inspectorate as a relevant mechanism for reporting gender-based discrimination in 2021 than previously. Awareness has remained minimal regarding which institutions deal with gender-based discrimination cases. Low awareness may be a factor contributing to minimal reporting to relevant institutions. Other persisting factors may include concern over anonymity, fear of job loss, long bureaucratic procedures and difficulties documenting cases.

PREVALENCE OF AND EXPERIENCES WITH DISCRIMINATION

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

General Findings related to Gender-based Discrimination

In 2017, research by the Riinvest Institute found that more than one in ten surveyed employed women had experienced gender-based discrimination at work.¹ KWN's 2018 research provided further evidence that such discrimination exists. Among the online survey respondents, 28% of women in 2018 and 23% in 2021, as well as 11% of men in 2018 and 12% in 2021 said that they had experienced gender-based discrimination at work. The strongest predictor of the probability of being discriminated against is gender.² The odds of experiencing gender-based discrimination at work were 2.8 times greater for women than for men in 2018. In 2021, women remained two times more likely than men to experience gender-based discrimination. Another survey seemed to corroborate KWN's survey findings, with 60% of respondents stating their perception that women face more discrimination than men in the labour market.³

While the chances of experiencing gender-based discrimination were two times higher for workers in the private sector than for those working in the public sector in 2018, in 2021 that difference seemingly decreased to merely 3%. Thus, evidence exists that discrimination has occurred in both the private sector and in the public administration or government. Persons ages 40 to 49 and individuals receiving less than €300 monthly salary also seemed to be more at risk of such discrimination in 2018. Meanwhile, in 2021 people with a net salary between €300 and €500 were the most likely to experience gender-based discrimination, and women were more likely than men to have earnings in this wage category. The probability of experiencing gender-based discrimination at work seemed higher for persons with higher education, such as a Master's degree or PHD in 2018. However, this may have been attributable to more educated respondents being better able

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

https://riinvestinstitute.org/uploads/files/2017/November/10/Women_in_the_workforce1510308291.pdf.

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

³ Abazi Morina, L., & Delibashzade, R., for Democracy for Development, *Women's inactivity in the labor market. Factors hindering women's participation in the labor market*, 2017.

to recognise different forms of sexual harassment. Interestingly, in 2021 the survey showed that people with a secondary school or vocational degree were more likely to experience gender-based discrimination.⁴

Regarding geographic location, gender-based discrimination in 2018, seemed more prevalent in the capital city, Prishtinë/Priština, than in other cities. Every fourth respondent (25%) living in Prishtinë/Priština experienced gender-based discrimination at work, compared to 18% of those living in other cities. While the sample of respondents living in rural areas was inconclusively small, one-third of them reported experiencing gender-based discrimination at work. In contrast, in 2021, a slightly higher percentage of people living in rural areas (22%) indicated to have experienced gender-based discrimination than did people from urban areas (20%).

Again, these findings are not based on a random sample and thus cannot be generalised as representative of the population. However, qualitatively, they indicate that gender-based discrimination has continued in Kosovo. Moreover, if the surveyed women who generally were more highly educated, urban and employed than women in the general population experienced gender-based discrimination to this extent, one can only imagine the extent to which women in more precarious positions (e.g., working informally, less educated) may have faced gender-based discrimination but not known where or how to report it and may not have responded to this online survey. That is, gender-based discrimination may very well be more widely spread than this modest survey has indicated.

Institutional Data

KWN also sent official data requests to the OI, Union of Independent Unions in Kosovo, Labour Inspectorate, police, and courts. In 2018, none of them seemed to maintain relevant data.

At that time, police sent overall statistics on sexual harassment and sexual assault cases from 2008 to 2018. However, the police did not have the location where these cases occurred readily available, so it was unclear if they involved harassment at work. When the same data was requested for the period of 2018-2020, data maintenance had improved. Police reported that they had three cases of women suffering sexual harassment at work in 2018, one case in 2019, and three cases in 2020. The police also had one case of discrimination related to promotion, in which a woman was a victim in 2020. According to police, no other types of discrimination were reported to them during this period. As clear data was not collected previously, conclusions cannot be drawn regarding changes in the prevalence of reporting such cases to police. However, the police's improvements to collecting and maintaining this data can facilitate monitoring changes in reporting that may occur in the future. The fact that only women have reported these crimes also can be observed.

The OI, Union of Independent Unions in Kosovo and Labour Inspectorate did not possess data disaggregated by gender and the legal articles relevant to gender-based discrimination as of 2017. When requested again in 2021, the OI's database still did not enable processing of such specific data, though officials said that an EU-funded project was assisting them with updating their database. At present, they could only provide the total number of discrimination-related complaints received, divided by gender,⁵ but not the content of the complaints or how many complaints involved gender-based discrimination.

The prosecution had started using the System of Informative Management of Cases (SMIL) back in 2018, but in 2021 it still did not have gender-disaggregated data or the

⁴ N = 743 (110 Secondary or Vocational, of which 28 answered with yes; 288 Bachelor degree, of which 65 said yes; 345 Master's degree or PhD of which 77 said yes)

⁵ In total, in 2018, the OI received complaints from 1459 men and 527 women; in 2019, 1464 from men and 550 from women; and in 2020, 1016 from men and 403 from women.

location where the crime occurred, such as the workplace. Nor did the courts have such data yet.

Although these institutions that have a legal responsibility to address gender-based discrimination at work may have encountered such cases, qualitative interviews with representatives of these institutions suggested that still very few had encountered such cases.⁶ Of the few cases they had seen, these tended to involve women.

Discrimination Based on Specific Protected Grounds

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

Gender-based Discrimination against Persons with Different Abilities

Kosovo law includes affirmative measures for the employment of persons with different abilities; state institutions, private sector employers, and civil society organisations (CSOs) must employ at least one person with different abilities for every 50 employees that they have.⁷ However, the fact that this Law is not implemented in practice was a recurring theme among CSO representatives working with people with different abilities in 2018 and 2021. A CSO representative said that employers know this Law very well, but do not make efforts to implement it. "Especially in the private sector, there should be special measures, for example, to release from taxes those who respect this Law", she said.⁸

CSO representatives consistently stated that very few people with different abilities are employed, particularly women. For example, in 2018, in the Gjakovë/Đakovica region, among the 668 known persons with different abilities who are of working age, only 14 (two women) are employed in municipal public institutions, whereas four (one woman and three men) were employed in CSOs, primarily in organisations working with people with different abilities.⁹ Very few worked in private businesses, and these tended to be owned by their families. In Gjilan/Gnjilane, from roughly 1,160 known persons with different abilities of working age, only approximately 20 were employed in 2018, primarily men working in the private sector.¹⁰

“*Most persons with different abilities that are employed in the Municipality of Ferizaj are men.*

- Woman representative of HandiKOS, Ferizaj/Uroševac, 2018

Considering the low employment rates of persons with different abilities, and the limited number of survey responses received, it was difficult to assess the extent to which they have faced discrimination at work.¹¹ However, discrimination, including based on

⁶ This was a recurring trend among interview respondents across different institutions (KWN interviews, 2018 and 2021). For further information from the institutions, please see the next chapter.

⁷ Assembly of the Republic of Kosovo, Law on Vocational Ability, Rehabilitation and Employment of People with Disabilities, No. 03/L-019, Art. 12, at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2620>.

⁸ KWN interview with CSO representing people with different abilities, Prishtinë/Priština, February 2021.

⁹ Research by HandiKOS in Gjakovë/Đakovica (KWN interview, October 2018).

¹⁰ KWN interview with CSO representing people with different abilities, Gjilan/Gnjilane, November 2018.

¹¹ Of the survey respondents, 10% indicated that they consider themselves as persons with different abilities in 2018, and 6% in 2021.

gender, may prevent them from securing work.¹² CSOs working with people with different abilities said that most of the cases they hear involve discrimination in hiring, despite applicants having the appropriate qualifications, as well as discrimination in promotion. Respondents had few specific examples of discrimination based explicitly on gender; instead, they tended to speak more generally about discrimination against persons with different abilities due to their ability. However, respondents consistently observed that women with different abilities have faced discrimination due to their gender and ability. For example, a person with different abilities shared her personal experience of not being hired in different positions. Moreover, she said that few job advertisements encourage women with different abilities to apply.¹³

In 2021, some officials in institutions said that they had seen improvements but that concerns remained. A recurring theme among multiple representatives of different institutions was that their institution has not implemented the aforementioned Law regarding persons with disabilities because no persons with visible disabilities currently worked at their workplaces.¹⁴ According to the law, for every 50 employees at a workplace, there should be at least one person with disabilities, but this has not been the practice. CSO representatives also stated that public institutions do not implement the existing laws.

Meanwhile, a CSO representative observed in 2021 that she had witnessed multiple discrimination: "I see people who have been discriminated against twice: because they are people with different abilities and because they belong to the LGBTIQ+ community", she said.¹⁵ However, such cases have not been reported to relevant institutions, she said, primarily due to fear of prejudice from society. Similarly, she said, when people with different abilities lost their jobs during the COVID-19 pandemic, they did not report it for fear of potential consequences and/or lack of knowledge as to where they could report such cases.

Moreover, a specific case of blatant discrimination was mentioned by a CSO representative, saying that "at a private company [the employer] said that he would give [the employee with disabilities] a full pay check, just not to come and work because they would damage the image [of the company]."¹⁶

“ A private company told us that they would pay [a person with disabilities] a wage, but to not show up because it would ruin the image of the company.

- CSO representative, 2021

The CSO representative did not mention

what happened with the case. Still in 2021, institutions could not refer to any single experience treating a case of multiple discrimination involving persons with different abilities facing gender-based discrimination related to labour.

In summary, qualitative evidence and individual experiences observed by CSOs suggest that gender-based discrimination likely affects persons with different abilities, and that women with different abilities may be more susceptible to such discrimination. However, insufficient knowledge about gender-based discrimination and how to report it,

¹² Interviews and focus groups conducted with people with different abilities confirm these findings, suggesting that employment for people with different abilities remains challenging. Findings suggested that companies in Kosovo do not provide people with different abilities appropriate environments in which they can work, though any gender differences are not discussed (IMPAQ International for USAID Kosovo, Gender, LGBTI, and Persons with Disabilities Assessment, Pristina: 2018, p. 52, at: <https://www.edulinks.org/sites/default/files/media/file/Gender-LGBTI-PWD%20assessment%20Kosovo%202018.pdf>).

¹³ KWN interview with a woman representative of HandiKOS, Prishtinë/Priština, October 2018.

¹⁴ Law No. 03/L-019, Article 12.2. KWN interviews, 2021.

¹⁵ KWN interview with woman representative, Gjakovë/Đakovica, February 2021.

¹⁶ KWN interview with an CSO representative, woman, Gjilan/Ginjlane, 2021.

coupled with a fear of reporting mean that no known cases have been reported to institutions.

Gender-based Discrimination against LGBTI Persons

According to The Headhunter Kosovo, in 2018, 95% of the 65 companies participating in their research stated that they have a policy for non-discrimination and equal opportunities.¹⁷ However, when asked if these policies were specific to 'LGBTIQ and related status', 43% of companies stated that their policies included only gender identity, 32% had no such relevant terms, and only 22% had policies including language related to LGBTI and related status.¹⁸ Moreover, only 6% of the companies reported that they train their human resource managers or other similar persons on non-discrimination and equal opportunities, towards implementing their policies.¹⁹ This suggests that while such policies may exist, people may lack the knowledge and capacities to implement them in practice.

In a 2015 LGBTI Public Opinion Poll, LGBTI-identifying persons were asked, "in which area are LGBTI people most frequently exposed to discrimination?". Most mentioned employment, education, and professional development.²⁰ KWN's interviews in 2018 and 2021 confirmed that discrimination based on gender identity and sexual orientation occurs in the labour market.²¹ LGBTI activists said they encounter a few such cases each year, involving firing and sexual harassment, primarily within the service sector. For example, in one case recorded by IMPAQ, a private sector employer immediately terminated an employment contract upon learning that an employee was gay.²² Meanwhile, gay men stated that they faced discrimination in hiring, struggling to get jobs as waiters because "people who look more feminine do not fit the stereotypically 'masculine' image of a waiter".²³ This discrimination based on gender stereotypes affects men more than women, LGBTI respondents said, because "lesbians who look more 'masculine' can be hired as waitresses more easily than gay men, because people perceive them as 'cool' and 'tough'".¹⁸ Meanwhile, among the KWN online survey respondents in 2018, 18 persons (16 women and two men) said employers did not promote them because of their sexual orientation. Representatives of CSOs working on LGBTI²⁴ rights in Kosovo said that no concrete actions have been taken to address gender-based discrimination against LGBTI persons. This is due in part to LGBTI persons not reporting gender-based discrimination when it occurs. "People do not report it because the discrimination is very

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

- Cited by IMPAQ, 2018

¹⁷ The Headhunter, *LGBTIQ Employment Equality Index: 2018 Annual Report Findings*, Kosovo: 2018, p. 15, at:

http://headhunter.al/uploads/files/2018/June/11/LGBTIQ_Index_Report_Kosovo_2018_English_version15287229_89.pdf.

¹⁸ Ibid., p. 16.

¹⁹ Ibid., p. 19.

²⁰ National Democratic Institute et. al., *LGBTI Public Opinion Poll Western Balkans*, 2015, p. 14, at:

<https://www.lgbtiera.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf>.

²¹ KWN interviews with two representatives of CSOs working with the LGBTQIA community, Prishtinë/Priština, October 2018 and April 2021; and by IMPAQ International for USAID Kosovo, 2018.

²² This case was filed at the Labour Inspectorate and OI (in IMPAQ International for USAID *Kosovo, Gender, LGBTI, and Persons with Disabilities Assessment*, p. 39).

²³ Ibid.

²⁴ KWN uses this acronym as it is most commonly used among organisations to describe with whom they work in Kosovo. This term does not deny that other people may identify differently than LGBTI; they still deserve the same rights.

sophisticated, so they are not aware that they are being discriminated against because of their gender identity or sexual orientation”, a CSO representative said.²⁵

In 2021, LGBTI CSO representatives said that few LGBTI persons are employed. Moreover, a LGBTI organisation representative said that employers have become more aware about discrimination, so they hide their actions better. “It is very problematic to prove that you have been discriminated against. You feel it. You see it. You notice it, but there are no ways to prove it,” he said. “Especially now that employers know how to avoid direct discrimination.”²⁶ Few people ever take employers to court, considering the long procedures. One representative explained:

A large part [of the community] isn’t aware. One person was told, “You are a *peder*.”²⁷ We don’t employ *pedera*. Go away from here.” [...] we brought this case to the OI. We wanted to continue with the court proceedings, but he [the affected party] didn’t want to. This is something that happens often because people get fed up with the long court procedures. Sometimes it takes a year, two years, or three years, and people just don’t want to pursue it.²⁸

During the COVID-19 pandemic, a respondent also said that employers have used economic hardship to justify firing LGBTIQ+ workers. “They had the opportunity to get rid of [LGBTIQ+] workers through staff reductions,”²⁹ he said. However, these cases remain unreported; no institutions stated to have handled such cases.

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

- CSO representative, North Mitrovicë/Mitrovica, 2018

Reportedly, insufficient awareness of their rights, fear of losing their jobs and a lack of trust in institutions have continued to contribute to non-reporting among LGBTIQ+ persons.³⁰

Thus, in summary, while evidence exists that LGBTIQ+ persons have continued to face gender-based discrimination related to hiring and employment, such cases of multiple discrimination have remained unreported.

Gender-based Discrimination against Minority Ethnic Groups

Only a few survey respondents (4% of women and 5% of men) said they had been discriminated against based on their ethnicity in 2018. In 2021, of the 49 survey respondents who indicated belonging to a minority ethnic group, approximately 9% of women and 11% of men said they had faced discrimination related to labour.³¹ Interviews with CSO representatives working with minority ethnic groups living in Kosovo also seemed to suggest that minority persons may face discrimination at work, especially women. In 2018, one respondent working with Roma, Ashkali, and Egyptian persons said that discussing gender-based discrimination is a “luxury” because both men and women face discrimination constantly due to their ethnicity. Thus, gender-based discrimination was secondary to ethnic discrimination, in her view. In 2021, CSOs added that most Roma, Ashkali, and Egyptian

²⁵ KWN interview with CSO representative working on LGBTI issues, Prishtinë/Priština, October 2018.

²⁶ KWN interview with a CSO representative, Man, Prishtinë/Priština, February 2021.

²⁷ This is a derogatory term for gay men in the Albanian language.

²⁸ KWN interview with a CSO representative, Man, Prishtinë/Priština, February 2021.

²⁹ KWN interview with a CSO representative, Man, Prishtinë/Priština, February 2021.

³⁰ KWN interviews with representatives of CSOs working with the LGBTQIA+ community, October 2018/April 2021, Prishtinë/Priština.

³¹ N = 686.

persons that they work with are unemployed, so they do not have cases of gender-based discrimination; rather, they face discrimination generally in their day-to-day life. Yet, this may contribute to discrimination in hiring. Indeed, a representative of a CSO offering free legal aid said that minority ethnic groups mostly face discrimination in hiring: "As soon as they [employers] see Roma and Ashkali people, they discriminate against them".³² This could explain in part the low employment rate among Roma, Ashkali, and Egyptian people. Moreover, a survey respondent said she faced discrimination at work based on her ethnicity: "I've been discriminated against based on the clothes I was wearing. Among others, they have called me: "magjupe" or "qergashe"[racist and derogatory terms used for Roma]."

That ethnic-based discrimination took precedence over gender-based discrimination was a recurring theme among respondents from CSOs working with minority ethnic groups in 2018 and 2021. Thus, they had limited information or examples of instances of multiple discrimination based on both gender and ethnicity. While people have shared their experiences with CSOs, they usually have not wanted to report cases to the authorities either because they did not know their rights or they distrusted institutions, CSO representatives said. Therefore, the CSOs interviewed had not assisted any cases. However, it was clear in an interview in 2021 with a lawyer that certain prejudices are still prevalent:

Also, in the context of this kind of discrimination of course there is more discrimination [against Roma, Ashkali, and Egyptians]. Even though they are less educated and poor, they endure the discrimination easier because they have no abilities to acknowledge their rights and just accept the situation as it is.³³

This quote suggests that people who have the duty to represent plaintiffs, such as lawyers, also may have prejudices towards these ethnic groups and thus may not take their complaints seriously.

In summary, evidence suggests that Roma, Ashkali, and Egyptian people may face discrimination based on their ethnicity, potentially coupled with their gender. However, cases have not been reported seemingly due to lack of knowledge and distrust in institutions. Even less information could be secured regarding potential gender-based discrimination against other ethnic groups, such as Serbs, Bosnians, Turks, or Gorani.

Different Forms of Gender-based Discrimination

This section 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. Additionally, it discusses potential gender-based discrimination related specifically to the COVID-19 pandemic.

Discrimination in Hiring

Approximately 32% of women in 2018 and 22% in 2021, as well as 26% of men in 2018 and 18% in 2021 had had a job interview two to five times between 2008 and 2018. Both surveys suggested that, on average, women have had more job interviews than men.³⁴ More men than women had never attended a job interview.³⁵ Considering that most men respondents were employed, this may suggest that more men may be able to secure jobs without interviews than women, and/or that women may have to change jobs more

³² KWN interview with a Free Legal Aid provider, 2021.

³³ KWN interview with a lawyer, man, Gjakovë/Đakovica, 2021.

³⁴ N = 1,632 (1,107 women, 525 men), 2018; N = 422 (336 women, 86 men), 2021.

³⁵ In 2018, 23% of women indicated this and 33% of men; in 2021, 44% of women and 56% of men.

frequently than men. Moreover, women continued to be employed in sectors deemed to be “appropriate” for them according to a study published in 2021. About half of the women who were employed worked in fields like healthcare, retail, or education, simultaneously lower-wage sectors.³⁶ While other factors may exist, stereotypical gender norms and roles may contribute to discrimination against women in hiring.

Indeed, KWN’s 2016 survey of a random sample of employers found that 47% of employers believed that the work they offer was fit only for men, whereas 9% said it was only for women; only 35% thought the work fit for both women and men.³⁷ When asked “if they had to choose between a woman and a man candidate who had the same level of education, same qualifications and same experience in hiring”, 48% said they preferred a man and 23% said they would choose a woman.³⁸ Such attitudes among employers, suggests that gender-based discrimination in hiring is likely widespread in Kosovo. This was reaffirmed by the GAP Institute’s 2017 report on labour market discrimination, which found discrimination in the gender-suggestive language of job advertisements posted by private and public sectors. The textual analysis also evidenced that employers have tended to seek women for lower positions.³⁹

KWN’s 2018 and 2021 online surveys further substantiated the findings of KWN’s and the GAP Institute’s prior research. From the survey respondents who had at least one job interview in their lifetimes, 63% in 2018 and 53% in 2021 said they had interview questions that involved some form of discrimination, though the discrimination perhaps was not always gender-related.⁴⁰ More specifically, among the surveyed women who attended job interviews, one in four (26%, 25%) believed that employers did not hire them because they are woman. In comparison, only 16% of men in 2018 and 21% in 2021 said they were not hired because they were men.

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

- Woman, age 33, Prishtinë/Priština, 2018

For example, one surveyed woman said that she was discriminated against because she was pregnant during the hiring process: “In an interview for a job, I was about six months along in my pregnancy, and they automatically took me off the list of people who they would call in interviews.”⁴¹ Moreover, women tended to be asked about their plans to get married or if they had children. A woman explained, “In a job interview they asked me if I’m married or if I had plans to marry in the near future”.⁴² Several respondents were asked whether they have children (21% of women and 18% men in 2018, 20% of women and 17% of men in 2021).⁴³

While the percentage of people stating that they have been asked questions that might imply discrimination decreased by 10% compared to 2018, this may be attributable to the period of reference, which was 10 years in the prior survey and three years in the 2021 survey, thereby affecting the size of the sub-sample. Moreover, approximately 2% of

³⁶ Shaipi, K., for IKS, *Being a woman in the labor market*, 2021.

³⁷ KWN, *Striking a Balance*, p. 14.

³⁸ *Ibid.*, p. 15.

³⁹ They analysed 562 job vacancies within the period of January 2016 to March 2017 (GAP Institute, *Labour Market Discrimination: How job advertisements create gender inequality*, Pristina: 2017, at: http://www.institutigap.org/documents/20684_LABOUR%20MARKET%20DISCRIMINATION.pdf).

⁴⁰ N = 1,091 (771 women, 320 men), 2018; N = 421 (335 women, 86 men). For example, some mentioned discrimination based on political party affiliation, ethnicity, and age. Notably, eight interviewed representatives of institutions also said they faced work-related gender-based discrimination in hiring (KWN interviews, 2018).

⁴¹ KWN survey response, 2021.

⁴² KWN survey response, 2021.

⁴³ N = 1,380 (1,015 women, 365 men), 2018; N = 378 (299 women, 79 men), 2021.

the women who had job interviews in 2018 were asked for medical proof that they were not pregnant, and 3% in 2021. KWN's 2016 paper corroborates that pregnancy test requirements exist in some workplaces,⁴⁴ and that some employers in Kosovo have openly discriminated against women in hiring processes, based on women's plans to start a family. In fact, 45% of employers surveyed by KWN in 2016 explicitly stated they consider a job applicant's family plans during the hiring process.⁴⁵

These findings suggest that gender-based discrimination often exists in hiring in Kosovo. More women than men seem to be asked about their plans to have children. This could relate to the fact that employers do not want to pay for women's maternity leave as per the requirements in the current LL. Such questions during interviews about any of the protected characteristics under the LPD are potentially discriminatory, subject to limited exceptions where a question is very clearly related to a fundamental aspect of a job. Interview questions relating to, for example, pregnancy, family status, or age may be sufficient to raise a presumption of direct discrimination where a candidate was not hired, which the respondent (i.e., employer) would be required to rebut. Pregnancy testing and any refusal to hire a woman because she is pregnant violate the LPD, which forebays discrimination against women who are pregnant.⁴⁶

Discrimination in Promotion

Regarding promotion, 54% of all survey respondents in 2018 perceived that employers do not provide all employees with equal opportunities for promotion. In 2021, it seems that fewer people experienced discrimination in promotion than in 2018 (45% of women, 40% of men in 2018; 22% of women, 14% of men in 2021).⁴⁷ However, considering the unusual context created by the COVID-19 pandemic, it is also more difficult to assess whether there was a decrease in discrimination in promotion, or that promotions were less accessible because private companies, public institutions and CSOs were adapting to the new conditions. Among respondents ever employed in the last decade, both in 2018 and 2021, women were four times more likely to face discrimination in promotion due to their gender. A comparable number of women and men in 2021 also indicated that they have experienced discrimination on the basis of their ethnicity or age. Interviews with institutions and CSOs reaffirmed that such discrimination exists.⁴⁸

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

- Woman, age 31, Glllogoc/Glogovac,
2018

⁴⁴ KWN, *Striking a Balance*, p. 15.

⁴⁵ Ibid.

⁴⁶ Law No. 05/L-021.

⁴⁷ N = 1,349 (898 women, 451 men), 2018; N = 1,092 (817 women, 275 men), 2021.

⁴⁸ KWN interviews with five different respondents (2018).

Box 2. Discrimination in Demotion

The Kosovo Law Institute (KLI) monitored three cases where women were unlawfully given a lower position. The plaintiffs in all cases sought legal action and their cases remain ongoing. Two cases were in the public sector, and one was in the private sector. In the first case (16-01-2020), the plaintiff was demoted from her job as a budget officer. In the second case (05-02-2020), the plaintiff was demoted from her job as an officer.

The third case (C.nr.678/12) was originally filed nine years ago (27-03-2012); the plaintiff requested to return to her place of work where she was dismissed unlawfully. After she filed the case, the first preparatory session was held five years later (20-03-2017). The court handled the case and ruled in her favour; she was returned to her job in her former position and the employer was ordered to pay her the wages to which she was entitled. However, after some time, she alleged that her employer demoted her again, to work as a cleaner. The plaintiff objected to this and addressed the court once more, requesting to return to her former position. This case remains with the Court of Appeals. While none of the plaintiffs referenced gender-based discrimination when filing their cases, elements of gender-based discrimination potentially existed; meanwhile, these cases seem to have involved violations of women's rights.

Violations of Contracts

Working without a contract can place workers in a precarious position and entail several rights violations. Of the 2018 survey respondents who had worked in the ten years prior to the survey, one in four (25%) had worked without a contract, including for family businesses.¹ In 2021, 14% of respondents who had worked in the last three years still stated that they had worked without a contract.² While one might hope that this suggests that fewer people are working without contracts, it is not representative of the population and the smaller percentage of respondents working without contracts in 2021 may be attributable in part to the shorter period of reference, as the first survey covered a period of ten years and the 2021 survey covered only the last three years. Indeed, among the respondents currently employed, 6% in 2018 and 10% in 2021 did not have an employment contract. Moreover, there were survey respondents who also indicated that their contracts were not renewed because of the pandemic.³

A slightly higher percentage of women (26% in 2018 and 15% in 2021) had experienced working without contracts than men (22%, 12%). In 2018, 7% of women were currently working without a contract at the time of the survey compared to 5% of men, and in 2021, 11% of women compared to 10% of men were working without contracts. Most employees working without contracts have tended to work in the private sector (22% in 2018, 27% in 2021). Only 2% worked in the public sector in 2018 and 5% in 2021.

When asked who they think tends to have longer contracts, most survey respondents (79% in 2018 and 74% in 2021) agreed that it is similar for women and men. However, among the respondents who have had employment contracts at some time since 2008, men tended to have longer employment contracts than women in both 2018 and 2021.⁴ For example, 64% of men respondents had an indefinite contract in 2018 and 66% in 2021, compared to 52% of women in 2018 and 48% in 2021.⁵ Indefinite contracts can provide greater protections for workers. However, without further information for comparison or

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

² N = 681 (511 women, 170 men).

³ For more information see the later section of this report on "Violations amid COVID-19 pandemic".

⁴ N = 1,288 (855 women, 433 men), 2018; N = 760 (552 women, 208 men), 2021.

⁵ While more than half of the employed survey respondents had indefinite contracts, on average, employed persons in Pristina had shorter contracts than workers living in other cities in 2018.

additional research, it is difficult to conclude if gender-based discrimination exists related to contracts, due to the aforementioned limitations with the non-probability sample.

Meanwhile, in 2018, 13% of the women survey respondents employed since 2008 indicated that at least once an employer had asked them to sign an employment contract without being allowed to read and understand the terms of the contract, and 9% of women employed in the last three years said the same in 2021. In comparison, 11% of men in 2018 and 5% in 2021 indicated the same. Women survey respondents also reported violations to the content of their contracts, in terms of their roles and responsibilities within private companies. For example, a surveyed woman described contract violations in the company where she worked:

They told me that women are not capable to do [computer] programming. Me and another colleague [a woman] did not receive any pay. He [the Director] gave us his kids to look after in the software company. He obligated us to do the dishes of the men [that worked in the company] because we are women, and we should keep the space clean.⁶

This suggests that contract violations in the private sector also have affected women's responsibilities and pay, as some employers have relegated women to performing traditional gender roles as responsibilities that were not clearly stated in their contracts.

Regarding working hours, more than half of the employed survey respondents (63% in 2018, 62% in 2021) worked between 21 and 40 hours per week, on average, with little difference between women and men.⁷ Meanwhile, slightly more women reported working part-time, between one and 20 hours per week on average (5% in 2018, 7% in 2021), compared to men (2%, 1%). Without further information as to whether employees selected to work part-time, no conclusions can be drawn as to whether any discrimination may exist in full- or part-time hiring; indeed, some women may prefer working part-time to balance work and private responsibilities that they may have due to traditional gender norms. Meanwhile, one-third of the respondents, in both surveys, said that, on average, they work more than 40 hours per week (overtime). Slightly more men (6%, 4%) said they worked more than 61 hours per week than women (3%). More people working in the private sector tended to work overtime: 60% of private sector employees in 2018 and 47% in 2021 said they work more than 40 hours per week. In comparison, only one-fourth of the employees in the public sector (25%, 28%), and 42% of persons in the civil society sector in 2018, 31% in 2021, worked more than 40 hours per week. Moreover, persons working without a contract were more likely to work overtime with nearly half reporting that they work overtime.

Kosovo law foresees that overtime work shall be compensated either monetarily or by time off.⁸ However, approximately half of the survey respondents who had worked overtime (47%, 51%) did not receive compensation for their overtime work. A recent report by the Kosovo Law Institute (KLI) corroborates that many employees work overtime or on official holidays without proper compensation. The report also suggested that employees do not ask for compensation because they fear repercussions, such as losing their job.⁹ More men in KWN's survey had time off as compensation for overtime (25%, 15%) than did women (19%, 15%) in 2018, but time off was similar in 2021. A higher percentage of men received financial compensation for overtime (6%, 9%) than did women (3%, 4%). Again, further research

⁶ KWN survey response, 2021.

⁷ N = 1,178, 2018; N = 765, 2021.

⁸ LL, Art. 56. Employees must be notified in their contracts or in the employer's internal procedures that time off will be granted in lieu of compensation for overtime work. Time off in lieu of compensation is otherwise only permissible on the request of the employee.

⁹ G. Hashani & Reznici, A. for Kosovo Law Institute (KLI), *(In)Justice and gender-based discrimination in labour relations*, 2021 [in Albanian only: *(Pa)drejtësia dhe diskriminimi me bazë gjinore në marrëdhëniet e punës*].

would be needed to provide a clearer basis for comparison to understand whether receiving overtime compensation may involve gender-based discrimination or not.

Violations of the Right to Equal Pay for Equal Work

As stated, equal pay for equal work is a fundamental value of the EU. Prior research has found that on average men have higher wages than women do in Kosovo.¹⁰ A report published by AGE in 2020 showed that on average men earn approximately €34 net more than women a month. On average, women earned €312 net, while men earned €346 net a month.¹¹ Qualitative data from KWN's 2018 survey provided further evidence that differences in salaries could involve gender-based discrimination against women, as women respondents explained how they received lower salaries than their men colleagues, even though they performed the same work.

When asked whether their employers purposefully have made false declarations of employees' salaries to the relevant authorities, such as to avoid paying taxes or pensions, most survey respondents (86%, 89%) stated that their employer correctly declares their salary.¹² In one interview, a woman respondent explained how the company in which she worked paid half of her salary through the bank and half in cash to avoid paying higher taxes. "We had "internal contracts" for the real salary, so I only declared €350 as my salary at the bank", she said.¹³ A 2016 policy brief similarly suggested that so-called "hidden salaries", that is income partially or completely undeclared, is prevalent in Kosovo, reported by 37% of employees.¹⁴ In KWN's research, a larger percentage of surveyed women (12%, 11%) than men (9%, 6%) did not know if their employer declares the actual salary that they receive or not. While reported elsewhere in Western Balkan countries, seemingly few employers in Kosovo require workers to return parts of their salaries. Even so, some survey responses suggest that this may occur. Of the ever-employed survey respondents, 4% in 2018 and 3% in 2021 of women and 2% of men in both surveys stated that this had happened to them.¹⁵

Despite these findings of general violations of the law related to "hidden salaries", it is difficult to conclude whether such phenomena involve any gender-based discrimination; further research would be needed. Nevertheless, these qualitative examples illustrate that some violations of labour rights have continued to occur in Kosovo, and that instances of unequal pay amid equal work still exist in Kosovo.

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

- Woman, age 33, Prizren/Prizren, 2018

Albanian women at an international school were paid less than Albanian men and international employees.

- Woman, Prishtinë/Priština, 2021

¹⁰ Millennium Challenge Corporation, Kosovo - Labor Force & Time Use Survey, 2017, at: <https://data.mcc.gov/evaluations/index.php/catalog/205>. They found on average women receive €289 per month compared to men receiving €353.

¹¹ AGE, *Gender pay gap in Kosovo*, 2020.

¹² N = 1,144 (733 women, 411 men), 2018; N = 731 (526 women, 205 men), 2021.

¹³ KWN interview with a woman, age 31, Glogoc/Glogovac, December 2018.

¹⁴ Center for Research and Policy Making, Institute for Democracy and Mediation and Democracy for Development, *The Shadow Worker – Hidden Economy and Undeclared Labor in Macedonia, Albania and Kosovo*, 2016, p. 1, at: <http://www.crpm.org.mk/wp-content/uploads/2016/11/23.-PB1-RHEM-07.11.2016-Final.pdf>.

¹⁵ N = 1,137 (727 women, 410 men); N = 727 (522 women, 205 men).

Working Conditions, Right to Leave and Equal Treatment

In 2018, health and safety at work, under the general umbrella of working conditions, dominated public debate in Kosovo. Several deaths in the construction industry sparked questions about working conditions in the private sector.¹ The fact that men tend to be overrepresented in this sector, and therefore more at risk of these safety violations, cannot be characterised as gender-based discrimination, per se, given the lack of comparison of similar work. No known analyses have assessed potential gender-based discrimination related to infringements on workers' rights related to health and safety at work.

The online survey deployed for this research in 2018 found that every third (34%) person ever employed in the last ten years perceived that their health or safety has been at risk because of their work. In 2021, 39% of persons ever employed in the last three years felt similarly. While a higher percentage of women survey respondents (37%) felt at risk than men (29%) in 2018, in 2021 a slightly higher percentage of men (40%) than women (38%) felt at risk. The slight difference between women and men over time may be attributable to different survey samples and does not necessarily indicate changes in the population. However, it does clearly indicate that many women and men do not feel safe at their workplace. Qualitative survey responses indicated that women may face additional difficulties in their working conditions and rights *because* they are women, as indicated in the quote box.

“ In 2019, I worked at a call centre in Pristina. We were obliged to work 20 minutes standing up, for every hour we worked. One of the days I had my period, and I was experiencing cramps, so I didn't stand up when the others did. My boss told me to stand up because it was not respectful towards the other workers. I explained that my stomach hurt, and I needed to stay seated because of it. However, he told me again to stand up. I told him that I can't stand up for that amount of time and that I actually should be lying down. The next day they fired me.

- Woman, Prishtinë/Priština, 2021

Approximately 28% of ever-employed survey respondents in 2018 said they had been denied their rights to sick leave or days off on national holidays at least once.² Of those who had experienced such rights violations, 17% had worked in the public sector and 62% worked in the private sector. Significantly more surveyed women (35%) than men (15%) experienced such labour rights violations. Perhaps this may suggest that women are at greater risk of having their rights to leave violated than are men, which potentially could involve gender-based discrimination.

In 2021, several respondents indicated that they faced additional violations of their rights to leave since the beginning of the COVID-19 pandemic (42% of women and 30% of men). This related to annual leave, sick leave, national holidays, and other personal reasons (e.g., death of a family member). Noticeably, more women than men indicated that their right to take a sick day or a personal day was denied. However, respondents did indicate that they were allowed to take paid sick-leave when they were infected with COVID-19.

Amid the COVID-19 pandemic, more than half of the survey respondents had to adapt to working from home. The most common challenges that they reported facing related to care work at home and stress related to working from home. Meanwhile, 66% of women and 47% of men indicated experiencing difficulties in caring for children while working from home. As both women and men tended to work from home during this time, and given women's traditional care roles, this difference signals that more women than men tended to face added household burdens. Working from home also has affected the extent to which people can

¹ Fazliu, E., "KDI Condemns Safety Conditions for Private Sector Employees", Prishtina Insight, accessed 16/02/2019, at: <https://prishtinainsight.com/kdi-condemns-safety-conditions-for-private-sector-employees/>.

² These questions were not asked in the 2021 survey.

disconnect from their job; they have been more reachable through electronical devices and sometimes even have been expected to work outside of their normal working hours. The burden of taking care of household work, including increased care and reproductive duties for women in particular, also contributed to longer and more difficult paid and unpaid working hours, particularly for women given traditional social norms and gender roles.

Regarding equal treatment at work, according to Riinvest's 2017 survey, 30% of employed women believed that "their supervisor discriminates against them based on their gender when delegating work", and 20% thought that "their gender impacts their profession".³ Moreover, "20% believe their colleagues treat them differently because of their gender".

In summary, a rather high percentage of both women and men have reported poor working conditions. In some instances, working conditions have affected women and men differently, and even involved gender-based discrimination against women. Violations of the right to legally allowable leaves also has remained widespread for women and men and has even been exacerbated amid COVID-19. Working from home amid the pandemic has affected women and men differently, given women's traditional social roles as caregivers. Gender-based discrimination in relation to equal treatment at work also has been reported.

Violations of Pregnancy and Maternity Leave Rights

KWN's prior research has documented violations of women's rights during pregnancy. It found that only 15% of employers had policies identifying risks to pregnant persons, as determined by Kosovo law.⁴ One in five surveyed women said their work placed them and their unborn children at risk:

31% of women employed while pregnant said they had to lift, carry, push, or pull loads; 80% had long periods of sitting or standing at work; nearly one-fourth were exposed to biological, chemical, or physical agents; 54% were exposed to extreme temperatures (hot or cold) or vibrations; 8% had to do night work (defined as at least two hours between 22:00 and 05:00); and 53% had to work extended hours or overtime while pregnant.⁵

These represent breaches of the LL.

In KWN's 2018 and 2021 surveys, interview respondents said that violations of legal rights to pregnancy and maternity leave are among the most common forms of gender-based discrimination at work.⁶ In 2018, they described 12 specific cases involving breaches of maternity leave rights, while in 2021 respondents of interviews spoke more generally of this issue rather than specifying cases. In most of these cases, employers terminated the contracts of women employees during their pregnancies or while they were on maternity leave, without prior notification. In one case,

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

- Woman, private sector, age 33,
Prishtinë/Priština, 2018

³ Riinvest Institute, *Women in the Workforce*, p. 9.

⁴ KWN, *Striking a Balance*, p. 17.

⁵ Ibid.

⁶ KWN interviews with institutional and civil society representatives.

a pregnant woman was fired from the board of a public enterprise, though her contract was valid until 2021.⁷ As mentioned, qualitative evidence suggests that some employers have continued to use short-term contracts to avoid paying for maternity leave. A respondent in 2021 mentioned that she had “heard about a lot of cases where women had to return to their job sooner than it is foreseen by law or who were fired, because it is very easy to find a way to fire women in a legal manner just because they became a mother.”⁸ Additional woman shared their personal experiences with discrimination, as indicated in the quote boxes.

Of the women surveyed in 2018, 28% were pregnant at some point while employed in the last decade, and in 2021, 13% were pregnant while employed during the last three years. Of them, 26% in 2018 and 14% in 2021 said that they were denied their right to paid maternity leave; they were neither paid, nor received government compensation.⁹ The probability of not receiving any compensation during maternity leave seems higher for women working in the private sector. Concerningly, in the 2018 survey, 62% of the women respondents who took maternity leave while employed in the private sector were neither paid, nor received government compensation.¹⁰ Labour inspectors confirmed that they have

dealt with several instances of violations of maternity leave rights, particularly in the private sector.¹¹ In comparison, 15% of women employed in the public sector, 29% of those in local CSOs and 17% of women working in international bodies did not receive compensation.¹²

In the 2018 survey, of the 245 women who took maternity leave at least once, 83% returned to their previous place of employment after their leave; whereas in the 2021 survey 78% of the 58 women who took leave since 2018 returned to the same workplace. However, 21% of these women in 2018 and 26% in 2021 indicated that they were pressured to return to work earlier than planned.

Some women (15% in 2018 and 24% in 2021) felt they were treated differently by their peers or bosses upon returning from maternity leave. When asked specifically about the “before and after treatment”, 5% in 2018 and 4% in 2021 said they had fewer responsibilities when they returned; and 11% in 2018 and 16% in 2021 said they had more responsibilities.

“

Yes, when I worked in the market as a secretary, if the boss found out that one of the woman employees was pregnant, then she was fired immediately and was not paid for the work she did for the rest of that month. If you worked part-time, during that time, you were not paid a single cent anymore. I remember a case when a colleague found out she was pregnant and in collaboration with the manager kept her pregnancy a secret until the end of the month in order to get her full salary because she knew she would have to leave immediately if the boss found out and would not be paid. Workers in general who work in markets constantly encounter such horrible discrimination.

- Woman, Ferizaj/Uroševac, 2021

Box 3. Dismissal Due to Pregnancy

KLI monitored three cases related to wrongful termination. At the time they were pregnant or on maternity leave, and therefore the plaintiffs alleged that they were fired for that reason. The cases were filed in a span of two months, on 11-02, 03-03, and 10-03 of 2020. The cases have no outcome yet and are still in court.

⁷ This case is being treated in the Appeal Court (KWN interview with a man judge, Mitrovicë/Mitrovica, November 2018).

⁸ KWN interview with a representative of a Chamber of Commerce in Kosovo, woman, Prishtinë/Pristina, 2021.

⁹ N = 245, 2018; N = 58, 2021.

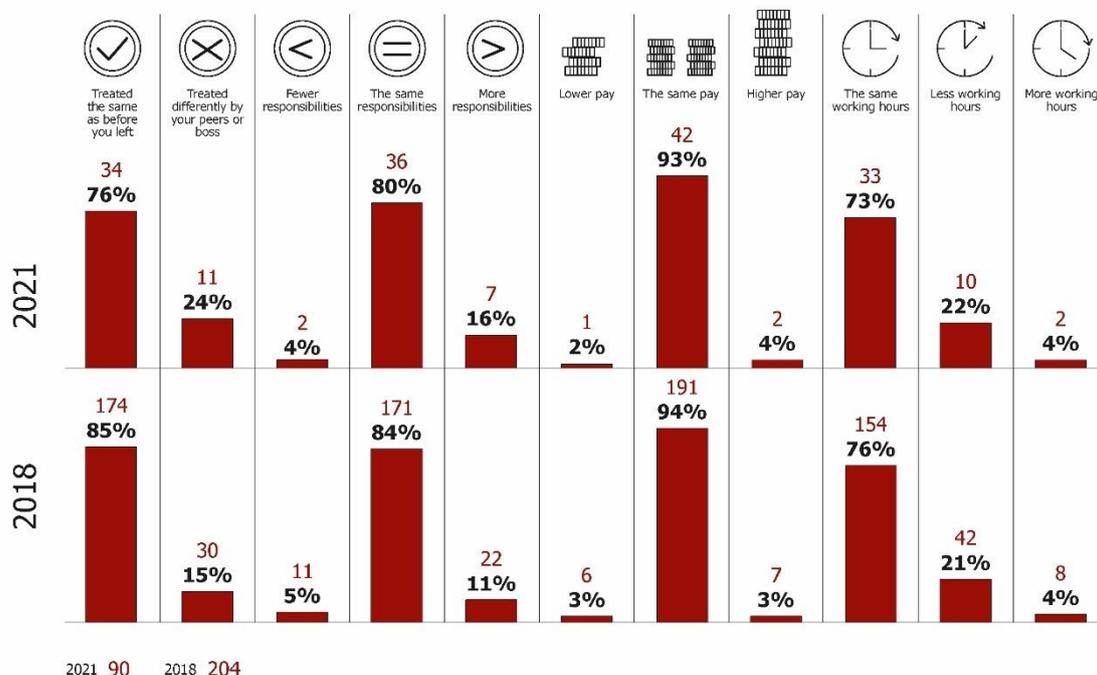
¹⁰ In 2021, the sample size was too small to conclude whether any such relationship existed.

¹¹ KWN interviews, 2018.

¹² Examples of international bodies included: the EU, United Nations (UN), UN agencies and foreign embassies.

Meanwhile 3% in 2018 and 2% in 2021 said they had lower pay after they took their leave. Every fifth woman (21% in 2018 and 22% in 2021) said she had fewer working hours when she returned from maternity leave, while 4% (in both 2018 and 2021) said that they had more working hours (Graph 6).

Graph 6. Different Types of Treatment Women Faced after Returning from Maternity Leave (By Number and Percentage of Women Who Took Maternity Leave)



In summary, evidence suggests that violations of women’s rights to maternity leave and equal treatment upon return from maternity leave have continued in Kosovo. Treating a person differently after maternity leave, if not explicitly requested by the woman employee, could indicate a violation of her rights and could involve gender-based discrimination.

Violations of Rights to Paternity Leave

Of the men survey respondents, approximately one-third of those employed between 2008 and 2018, and 14% of those employed between 2018 and 2021, had a new-born child.¹³ Of them, 59% in 2018 and 65% in 2021 said that their employer allowed them to take one to three days off, while 25% had four to ten days off.¹⁴ Very few men reported that they were treated differently upon returning from this leave (only 2% in 2018 and no respondents in 2021). In the 2018 survey, approximately 11% of new fathers had not received any days off. In the 2021 survey, this increased to 19% of employed fathers. This constitutes a violation of their paternity leave rights under the LL, which foresees at least two or three days leave for new fathers.

Men’s comparatively shorter paternity leave could be interpreted as a form of gender-based discrimination against men. Meanwhile, public debate has surrounded whether forthcoming amendments to the LL should extend paid paternity leave in Kosovo. Research by Democracy for Development (D4D) in 2017 suggested that fathers want to have the ability to spend more time with their new-borns, “but the societal pressure to conform to traditional gender roles and the perceived impact on their careers, means fathers simply don’t have

¹³ N = 436, 2018; N = 182, 2021.

¹⁴ N = 149, 2018; N = 26, 2021.

enough incentives to take more than two weeks of paternity leave”.¹⁵ D4D’s survey results showed that 42% of men respondents said they would definitely consider sharing parental leave with their partner.¹⁶ Moreover, six public consultations that D4D organized in different regions of Kosovo found that “fathers are ready to take at least a month up to three months of leave”.¹⁷ These findings have been substantiated by men respondents to KWN’s 2018 and 2021 online surveys; 64% of men consistently said that men should have more paid time off for paternity leave. Meanwhile, 20% were against increasing this leave and 16% did not know.

In summary, evidence exists of violations of men’s right to paternity leave under the current LL. Meanwhile, significant evidence from various sources points to men’s general support for amending the LL so that fathers can take longer paternity leave. Paternity and parental leave rights would be significantly strengthened through the transposition of the Work-Life Balance Directive, as discussed in the Legal Analysis.

Sexual Harassment at Work

As explained in the Legal Analysis, sexual harassment is a form of gender-based discrimination at work. The online surveys have reaffirmed KWN’s prior research findings that significantly more women than men have experienced sexual harassment at work.¹⁸ Compared to 15% of surveyed men in 2018 and 18% in 2021, 30% of surveyed women in 2018 and 24% in 2021 indicated that they had experienced at least one form of sexual harassment during the period of inquiry.¹⁹ Meanwhile, 12% of women in 2018 and 16% in 2021 were subjected to sexual harassment more than once, compared to 8% and 13% of men, respectively.

More women than men experienced every different form of sexual harassment examined in the survey (see Graph 7). Compared to 12%/14% of men, 24%/20% of women were subjected to sexual gestures, jokes or sounds. Three times as many surveyed women (9%/8%) as men (3% in both years) received emails or text messages of a sexual nature. Concerningly, 13%/11% of the women and 5%/9% of the men were touched physically in situations when touching was unnecessary. Meanwhile, 9%/7% of women and 5%/8% of men had a colleague or superior propose to have sex with her/him. Moreover, 2% of both women and men in 2018, and 3% of women and 2% of men in 2021, had a colleague or superior force them to have sex. Several women shared concerning stories of their experiences with sexual harassment, as illustrated in the quote boxes.

“ About five or six years ago I was interested in an internship in one of the then ministries and the person in charge with whom I talked sat me on his lap without asking me. I just decided to give up that internship, and I have not thought about that case anymore.

- Woman, Prishtinë/Priština, 2021

¹⁵ D4D, *Shifting paradigms: Equity through Parental Leave*, Pristina: 2017, p. 7, at: https://d4d-ks.org/wpcontent/uploads/2017/12/D4D_PI_13_ENG_WEB.pdf.

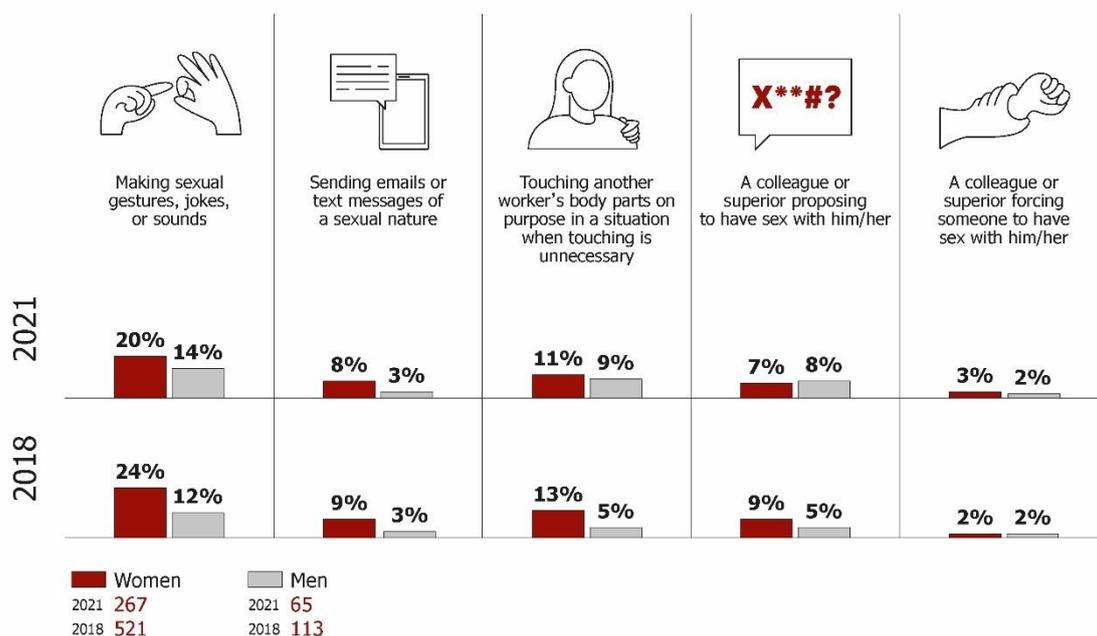
¹⁶ *Ibid.*, p. 37.

¹⁷ *Ibid.*, p. 34.

¹⁸ KWN, *Sexual Harassment in Kosovo*, 2016.

¹⁹ N = 1,346 (915 women, 431 men). Interview respondents also detailed seven accounts of sexual harassment at work, all but one involving women (KWN interviews with representatives of institutions, 2018); N = 732 (552 women, 180 men), 2021. The period of inquiry in 2018 was the last 10 years, whereas the 2021 survey asked about harassment occurring since 2018.

Graph 7. Survey Respondents' Experiences with Different Forms of Sexual Harassment at Work, by Gender



Statistically, the odds of being sexually harassed have been higher for women and for persons working in the private or civil society sector (compared to the public sector). This continued to be the case in 2021.²⁰ Regarding age, the 2018 and 2021 surveys showed that

people older than 50 are least likely to face sexual harassment. The odds of being sexually harassed are higher for those with a master's degree or PhD, compared to those with secondary or vocational education. However, in 2021 the odds of experiencing sexual harassment were higher for those with a secondary or vocational education. These differences may be attributable to the probability that survey participants with more education may recognise different forms of sexual harassment more easily. The 2021 survey suggested that the probability of experiencing sexual harassment is higher amongst workers with an

“ I had to go on an official trip outside of Kosovo, and the Director [of former workplace] sent me a message that in the hotel where we will be staying there are no separate rooms available. According to him there was a suite with two rooms, and he asked me if he should book this suite. If I wouldn't agree to this, he said he could book me a room in another hotel. However, this one was a 15-minute walk from the other hotel where the meetings would be held. I messaged him back saying that I have no problem staying in the hotel that was farther away because I always walk in the morning, and it is good for my health. At the end of the month, I was fired.

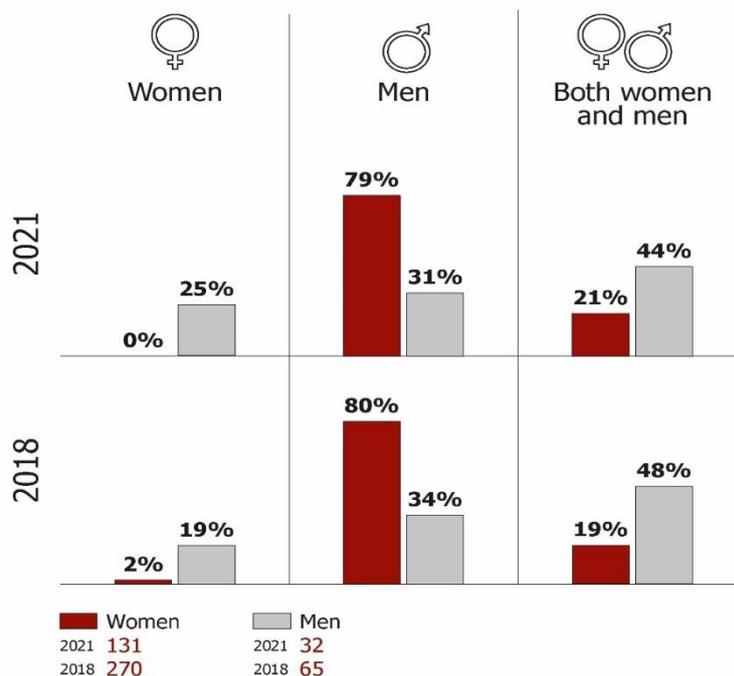
- Woman survey respondent, 2021

²⁰ Researchers used logistic regression to test whether the probability of experiencing sexual harassment is determined by gender, age category, educational level, current employment position and monthly salary. The model is significant $\chi^2(12) = 100.218, p = .000$, and explains between 9 (Cox & Snell $R^2 = .093$) и 14 (Nagelkerke $R^2 = .145$) percentage of the variance. The Hosmer and Lemeshow Test is insignificant $\chi^2(8) = 14.224, p = .076$, confirming the fit of the model.

average monthly salary of less than €300, with one in three reporting at least one form of sexual harassment.

Regarding the gender of perpetrators (Graph 8), according to 80% of women survey respondents who had suffered sexual harassment at work in 2018 and 79% in 2021, men had perpetrated the harassment.²¹ However, 19%/21% said both men and women perpetrated sexual harassment. Fewer than 2%/1% of women said that the perpetrator was a woman. While the sample of men subjected to sexual harassment at work was comparatively smaller, nearly half (48%/44%) stated that perpetrators have been both women and men. Meanwhile 19%/25% said women perpetrated sexual harassment against them.

Graph 8 . Gender of Perpetrators of Sexual Harassment, by Respondents' Gender



Examining the perpetrator's position within the workplace can reveal whether a relationship exists between gender, power dynamics, and sexual harassment at work.

Moreover, as discussed in the Legal Analysis, the Criminal Code now foresees a heavier sentence when persons in positions of power misuse that power by sexually harassing others. Indeed, most survey respondents in 2018 who had suffered harassment said that persons in higher positions had harassed them sexually (75% of women and 56% of men).²² In 2021, most respondents similarly were harassed by persons in higher positions (72% of women and 61% of men). In 2018, for every third man, the harasser was in a lower position (compared with 46% in 2021), whereas this was the case for only 16% of women. Women's stories further illustrated these power dynamics at play.

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

- Woman, teacher, age 36, Prizren/Prizren, 2018

²¹ N = 335 (270 women and 65men), 2018; N = 163 (113 women, 41 men), 2021.

²² N = 240 (203 women, 37 men).

The survey findings were corroborated by institutional experience. For example, in 2019, the OI received three complaints regarding sexual harassment at work. One case was followed by wrongful termination after the victim had reported the harassment. This constitutes the additional offence of victimisation (meaning adverse consequences in response to a complaint), as discussed in the Legal Analysis. The victims in each case were women.²³

In summary, findings illustrate that sexual harassment has continued to occur in Kosovo workplaces and that more women tend to be subjected to sexual harassment than men. Perpetrators have tended to be men in positions of power who have misused this power.

Violations of Rights Amid COVID-19

In the 2021 survey, respondents were asked about their experiences with rights violations amid the COVID-19 pandemic. Several questions regarding taking time off, experiences with being fired and government measures were answered. Approximately 35% of women respondents and 30% of men respondents experienced rights violations regarding time off. These violations mostly related to annual leave or vacation, or when they were ill with illnesses other than COVID-19. Around 5% of the survey respondents were not allowed to take time off when they were ill with COVID-19.²⁴ Regarding job loss, 6% of the respondents said that this occurred as a direct result of the COVID-19 pandemic. More women than men said they had lost their jobs. Some women (12%) also indicated that they were pressured to quit or were fired because they had to take care of their children and/or other household responsibilities; none of the men in the survey indicated this. Moreover, 14% of women who lost their jobs believed that it was because they were a woman.

During the COVID-19 pandemic, a third of the survey respondents indicated that they lost their jobs because of general layoffs (33% of women and 36% of men).²⁵ From the people who lost their jobs, 45% of women and 64% of men lost their job because their employment contract was not renewed. Moreover, some workplaces were forced to close temporarily due to public health restrictions in 2020. More women (43%) indicated that their place of employment had to close due to COVID-19 than did men (35%).²⁶ During this closure period, nearly a fifth were not paid a salary at all (18% of women, 16% of men); 9% of surveyed women and 11% of men were paid at a reduced salary.²⁷ Moreover, 14% of women respondents and 13% of men respondents said that they had a salary decrease as a direct result of COVID-19. Over the course of the pandemic, during state-obliged isolation measures, some employers asked workers to work from home. Survey respondents were asked whether they were allowed to work from home during these periods. Fewer men (44%) were allowed to work from home than women (34%).²⁸ Half of the people denied the right to work from home worked in the private sector (49%), and 37% worked in public institutions or government bodies at the time.²⁹

“ At the time of the pandemic, even though I was working, and I was at risk from the virus, they only paid half of my salary just for fun... since the company where I work has not had a budget decline due to the pandemic.

- Woman, Prishtinë/Priština, 2021

During lockdowns, women also lost their jobs because they had to care for children when kindergartens and schools closed. “During the pandemic, in the first closure, kindergartens and schools were closed, and the burden fell on women. There have been

²³ Ombudsperson Institution Kosovo, *Annual Report 2019*, No. 19, 2020.

²⁴ N = 1,020 (773 women, 287 men).

²⁵ N = 64 (52 women, 12 men).

²⁶ N = 885 (659 women, 226 men).

²⁷ N = 362 (282 women, 80 men).

²⁸ N = 881 (655 women, 226 men).

²⁹ N = 324 (225 women, 99 men).

women who have lost their jobs because they had no other choice,” a representative of a chamber of commerce said.³⁰ Survey data similarly suggested that significant challenges during the lockdown related to caring for children or other family members; both men and women indicated this. However, more women (66%) than men (47%) reported having childcare responsibilities.³¹ Additionally, more women (44%) indicated experiencing stress during lockdown than did men (39%).

Working from home can provide several benefits in balancing work and homelife, as well as saving time and costs that would usually be spent on commuting to work. However, working from home involves multiple other issues, as well. There may be issues with respecting working hours, which can make it harder to disconnect from the work environment. Challenges relating to disconnecting from work were more indicated by surveyed women (13%) than by men (7%).³² Employers also may infringe more on employees’ privacy through electronic monitoring and contacting them outside of working hours. Moreover, Labour Inspectorates’ fieldwork was halted, and they do not have the same level of access to homes as they do to workplaces in order to monitor workers’ rights. Psychological consequences also may result from long-term isolation, which can involve safety and health issues, as well, such as fatigue and other strains.³³ Women seem to have been affected by these issues more, since they faced the disproportionately larger burden of unpaid domestic work.³⁴

In 2019, the EU Work-Life Balance Directive entered into force, paving the way for more flexible working arrangements for different situations. The circumstances created by the COVID-19 pandemic has prompted the European Parliament to call on the European Commission to create a law that would ensure a person’s ability to digitally disconnect from their workplace.³⁵ This in turn may mitigate some psychological and health issues that are correlated with the situation created by the pandemic. These discussions on work-life balance, wellbeing, the right to disconnect and ensuring workers’ rights when working from home have yet to enter discussion and receive adequate legal protections in Kosovo.

Conclusion

Relevant institutions lacked data about the prevalence of gender-based discrimination related to labour. Yet, significant evidence has suggested that gender-based discrimination exists. Survey findings have suggested that such discrimination particularly affects women in the private sector, those receiving lower salaries and persons ages 40 to 49. Meanwhile, qualitative data and other research have evidenced gender-based discrimination occurring in the public sector and affecting other people, as well. Persons with different abilities, minority ethnic groups and LGBTIQ+ persons have hesitated to report discrimination, so minimal information has existed about their experiences.

Evidence suggests that gender-based discrimination has continued to affect women in hiring and promotion in Kosovo. More women than men seemingly have faced labour rights violations related to their contracts, overtime compensation, work conditions and rights to paid leave. However, further research would be needed to assess if this has constituted gender-based discrimination. Violations of maternity leave rights have continued and seem widespread. Some violations of paternity leave also have occurred. Evidence suggests that men generally would support amending the LL so that fathers may have more paternity leave,

³⁰ KWN interview with a chamber of commerce representative, woman, Prishtinë/Priština, 2021.

³¹ N = 689 (505 women, 184 men).

³² N = 1,941 (1,474 women, 467 men).

³³ Montenegro report, 2021.

³⁴ Farnsworth, N., Guri, N., Selimaj, K., Dushica, E., Maxharraj, A., Hanna, L., *"The Pandemic Knows No Gender"? A Gender Fiscal Budget Analysis: The Government of Kosovo's Response to the COVID-19 Pandemic from a Gender Perspective*, 2020.

³⁵ Ryan, D.JJ. for KWN, *Expanding Choices through Family-Friendly Policies. Kosovo Analytical Report*, 2021.

towards addressing this currently gender-discriminatory law. Sexual harassment at work has remained widespread, particularly affecting women. The COVID-19 pandemic has exacerbated labour rights violations and affected women in particular. More women than men have lost their jobs during the pandemic, and difficult working conditions have affected women, given their traditional gender role as carers, as they have struggled to juggle work and care responsibilities. Thus, gender-based discrimination has remained an issue in Kosovo.

THE INSTITUTIONAL RESPONSE TO GENDER-BASED DISCRIMINATION IN LABOUR

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

The Police

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

Police officers continuously have stated that they have undergone training on human rights and gender equality as part of Kosovo Police training programs.² Thus, they were inclined to be rather knowledgeable about the legal framework related to gender-based discrimination. The police officers interviewed tended to indicate that there are gaps in the legal framework but could not identify what these are. Moreover, the police officers interviewed in 2021 seemed only partially knowledgeable about the legal framework, and their knowledge on gender-based discrimination seemed lacking. A police officer mentioned that they had received trainings: "I was against the training on human rights because a [specific] problem should be identified, and people should be trained based on that and not just superficially."³ The themes for trainings for police officers are based on the needs of the officers, therefore it might be that the need for a training specifically on gender-based discrimination was not identified, to date. It seems that human rights issues have been treated somewhat superficially in trainings. Officers tended to be able to identify different situations that constituted gender-based discrimination at work in 2018, knowing their investigative responsibilities. They declared their determination to investigate any reported case of gender-based discrimination. However, in 2021 sexual harassment was not identified by the interviewed police officers as a form of gender-based discrimination at work. This could mean that police officers may not be recognising cases of sexual harassment as such. As officers observed, discrimination cases usually fall outside their competences. Thus, the officers interviewed in 2018 and 2021 had encountered few to no cases of gender-based discrimination at work. In 2018, an officer referred a person to receive assistance from the appropriate institution, the Labour

¹ Assembly of the Republic of Kosovo, Law on Police No. 04/L-076, Art. 10, at: http://www.kosovopolice.com/repository/docs/law_on_police.pdf.

² KWN interviews, 2018 and 2021.

³ KWN interview with a police officer, Man, Pejë/Peć, 2021.

Inspectorate. The only five identified cases treated by police primarily involved sexual harassment reported by women working in the private sector. In these cases, police tended to open investigations, and cases were passed on to the prosecution. In 2021, none of the interviewed police officers indicated that they had treated a case or referred a case to the competent institution. Officers further stated that there was no increase in cases during the COVID-19 pandemic. However, when asked if they had ever encountered gender-based discrimination in the labour force in an informal way, police officers recurrently had anecdotal evidence of gender-based violations. They either “just knew” that gender-based violations of rights occurred in the private sector, or they had a “friend” that had been violated in one way or another. Officers did not know what happened with such cases.

The fact that very few cases of gender-based discrimination in labour were reported to police in 2018 or 2021 made it difficult to assess their capacities for addressing this issue. Meanwhile, prior research by KWN has suggested that some police officers may lack knowledge or have attitudes that hinder their treatment of some forms of gender-based discrimination, such as sexual harassment.⁴ In 2018, one CSO respondent working with LGBTIQ+ persons expressed concern that police may not always treat cases quickly or without discrimination.

Overall, little seems to have changed since 2018. Police officers have received training on human rights and gender equality, but it has not always necessarily related to gender-based discrimination. While police officers reported handling only a small number of cases in 2018, no police officer indicated that they had dealt with a case of gender-based discrimination between 2018 and 2021. Police officers were somewhat knowledgeable regarding their responsibilities relating to gender-based discrimination. However, no police officer in 2021 identified sexual harassment as a form of discrimination.

The Prosecution

The State Prosecutor can initiate criminal proceedings where they establish a reasonable suspicion that a criminal offence has been committed.⁵ The police, a public institution, a private institution, media, or a citizen can inform the prosecution if they believe a crime has been committed.⁶

Although the prosecutors interviewed in 2018 and 2021 had considerable knowledge regarding the legal framework in general, they tended to lack detailed knowledge about laws protecting people from gender-based discrimination. “I am not very familiar with this issue”, a prosecutor said in 2018, illustrative of this recurring trend.⁷ One prosecutor could not explain or identify any act of gender-based discrimination. Findings in 2021 corroborated this trend. One prosecutor even said: “the labour law [offers protection] I believe, but the one on discrimination I haven't even read, and I wouldn't know how much protection it offers.”⁸ This indicates that the relevant legal framework may not be fully known to all prosecutors. Even so, prosecutors tended to feel very competent. “We are 100% competent and capable to deal with such cases, professionally, and to close

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

- Man, prosecutor,
Mitrovicë/Mitrovica

⁴ KWN, *Sexual Harassment in Kosovo*, pp. 39-42; and Banjska, E., Breznica, B., Ryan, D., & Farnsworth, N., for KWN, *From laws to action, Monitoring the Institutional Response to Gender-based Violence in Kosovo*, 2021.

⁵ Assembly of Republic of Kosovo, Criminal Procedure Code No. 04/L-123, at: <https://qzk.rks-gov.net/ActDetail.aspx?ActID=2861>. As discussed in the Legal Analysis, criminal acts are enlisted in chapter XIX on Criminal Offenses against Labour Relations Rights, and Chapter XX on Criminal Offenses against Sexual Integrity (Criminal Code No. 04/L-082).

⁶ *Ibid.*, Art. 6.3.

⁷ KWN interview with man prosecutor, Prishtinë/Priština, December 2018.

⁸ KWN interview with a prosecutor, woman, Ferizaj/Uroševac, 2021.

them in reasonable time”, a prosecutor said in 2018.⁹ Prosecutors in 2021 echoed the same. However, when probed with further questions, they seemed to lack knowledge about their responsibilities. During an interview, one prosecutor needed to look up the law on sexual harassment to find out that it fell within their department and competences as a prosecutor to handle such cases. The prosecutors interviewed in seven Basic Prosecution offices stated in 2018 and 2021 said that they had not encountered any cases of work-related gender-based discrimination. In 2018, some prosecutors believed that “there is no gender discrimination in Kosovo. I did not hear, nor have my colleagues told me about any case [...] so this is why there are no such cases”.¹⁰ In contrast, other prosecutors acknowledged that gender-based discrimination exists, though they have not had any such cases.

In 2021, prosecutors recognised that discrimination is an important issue that needs to be addressed. Only one prosecutor mentioned a case where a man had filed a discrimination suit against a woman; this was still being handled by the prosecutor. The interviewed prosecutors stated that there was no increase in gender-based discrimination since the pandemic. Other than the above-mentioned case, no prosecutor had any case involving discrimination, including sexual harassment. One prosecutor mentioned:

During the interview we write the declaration, and we look if there is any inconsistency in her declaration. There we will notice if she lied. Maybe she has some different interest. Maybe he didn't increase her pay and for revenge she will report him. Or maybe he owes her something, but this is a thin line in her declaration. With evidence we should be able to find the truth.¹¹

As found in other research,¹² this suggests that prosecutors may blame the victim for the crime they have suffered, dismissing the victim's statement. Moreover, they may not understand the gravity of sexual harassment and the effect it can have on victims. Victims of sexual harassment can be under a lot of distress or suffer from trauma induced depression, PTSD, anxiety and loss of concentration.¹³ All of these factors can contribute to a distorted memory and thus they may provide testimonies that seem inconsistent to prosecutors.

In 2018, one prosecutor mentioned a case involving the criminal act of a man employer harassing a woman employee, which was still under review.¹⁴ However, the prosecutor emphasized that this case involved harassment as defined in the Criminal Code, and not sexual harassment. In another case described by a police officer, two brothers who owned a shop sexually assaulted a woman at work.¹⁵ However, the case was resolved by a private mediator, and the prosecutor terminated the case. Considering that criminal offences should be prosecuted *ex officio* (i.e., automatically),¹⁶ this may suggest improper treatment of this case by the prosecution.

Generally, some prosecutors in 2018 stated that having more prosecutors would help reduce the backlog of cases. Moreover, some said that ensuring the specialisation of prosecutors would enhance performance.

In 2021 prosecutors still seemed uninformed about gender-based discrimination or their own responsibilities in this regard. No specialized prosecutors deal with cases involving

⁹ KWN interview with man prosecutor, Gjilan/Gnjilane, November 2018.

¹⁰ KWN interview with a woman prosecutor, Ferizaj/Uroševac, December 2018.

¹¹ Interview with a prosecutor, man, Mitrovicë/Mitrovica, 2021.

¹² KWN, *Sexual Harassment in Kosovo*, pp. 39-42; and Banjska et al. for KWN, *From Laws to Action, Monitoring the Institutional Response to Gender-based Violence in Kosovo*, 2021.

¹³ The consequences of sexual harassment are found on three different websites, one of [ILO](#), which discusses sexual harassment at work, and two of which are of organizations dealing with this issue, [RAINN](#) and [REACHout](#), accessed in 2022.

¹⁴ KWN interview with a man prosecutor, Gjilan/Gnjilane, November 2018.

¹⁵ KWN interview with a man police officer, Ferizaj/Uroševac, November 2018.

¹⁶ Law on Courts No. 06/L-054, Art. 9.2, at: <https://qzk.rks-gov.net/ActDetail.aspx?ActID=18302>.

gender-based discrimination, such as sexual harassment at work. Prosecutors still have treated next to no cases of gender-based discrimination, which means that their experience with such cases is limited.

Courts

According to the Law on Courts, Basic Courts are generally competent to adjudicate all cases in the first instance.¹⁷ The General Department adjudicates all first instance cases, subject to some exceptions.¹⁸ Basic courts deal with both criminal and civil cases. The Serious Crimes Department adjudicates offenses punishable by more than 10 years or which are defined as “serious” by law.¹⁹

Courts still do not collect and maintain data disaggregated by the gender of the plaintiff or the defendant.²⁰ In 2021, while judges recognised the need to update the current system, it was a recurring theme amongst judges that dividing plaintiffs and defendants by gender is unnecessary. In contrast, one judge did support the collection of gender-disaggregated data, stating: “I would want to be able to back statements up with statistics.”²¹

As cases are logged by the type of criminal offence based on definitions in the Criminal Code, no offenses specifically related to gender-based discrimination have been recorded, considering that it is not explicitly defined as a crime. Nor is the location where a crime occurred logged electronically, which makes it difficult to quantify the number of court cases that have treated gender-based discrimination specifically at work. Court representatives in both 2018 and 2021 said that they received very few cases involving gender-based discrimination at work.²² Both civil and criminal division judges tended to state that they have not dealt with such cases. Nor did they know of other judges having such cases. In 2018, the few civil court judges who had seen very few such cases, said that plaintiffs tended to be women and perpetrators tended to be men employers. The cases related to violations of women’s right to maternity leave, gender-based dismissals from work, and sexual harassment.

“

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

- Woman judge, Gjakovë/Đakovica, 2018

Survey data also suggest that very few discrimination cases have been filed with courts. Only 21 respondents in 2018 and 15 in 2021, or 8% and 11% respectively, of those who had said they had experienced gender-based discrimination at work were involved in some form of court action related to their case. The percentage of men (18%) was significantly higher than that of women (6%) in 2018, whilst in 2021 more women (10%) were involved in court actions than men (1%). As the sample was not representative of the population, and was rather small, no conclusions can be drawn as to whether women or men are generally more likely to take cases to court. Nevertheless, the differing social positions of women and men, their family conditions, need for work, knowledge of their rights, financial conditions (e.g., to pay court fees), access to courts and trust in courts all may have affected their individual decisions to file cases or not, as discussed in the earlier chapter on awareness.

Meanwhile, drawing from court monitoring, a recent KLI report logged several civil court cases that involved labour disputes and alleged labour rights violations; not all explicitly

¹⁷ Law on Courts No. 06/L-054, Art. 12, at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18302>.

¹⁸ Ibid., Art. 20.

¹⁹ Ibid., Art. 19.

²⁰ Ibid. KWN email correspondence with officials responding to KWN information requests for statistics (2018); and KWN interviews, 2021.

²¹ KWN interview with a woman judge, Prizren/Prizren, 2021.

²² KWN interviews with diverse judges, 2018-2021.

involved discrimination or gender-based discrimination, but the findings remain interesting for a broader discussion on courts' treatment of such cases. How courts treat such cases may affect trust in courts and the likeliness that diverse women and men may thus seek justice for rights violations. KLI found that cases involving labour relations primarily concerned material awards (4,967 cases), disputes about returning to work after being let go (601 cases), disputes about leave from work (109 cases), and "other" disputes surrounding the labour market (903 cases).²³ The report found that labour-related discrimination cases usually only went to court when employees were let go from their workplace. The same report involved findings from KLI's monitoring of 200 court cases, in which 30 women were suing their (former) workplaces for labour-related issues. Notably, none of these plaintiffs raised issues of gender-based discrimination in their submissions, despite elements of discrimination being identifiable in their allegations. Since KLI began providing free legal aid in March 2019, they only had two cases specifically involving gender-based discrimination, namely violations of women's rights to maternity leave (see Box 4).

Box 4. KLI Cases Involving Maternity Leave Violations

In one case, the employer dismissed the employee upon learning of her pregnancy but attributed it to other internal issues.²⁴ In this regard, KLI's Legal Aid Centre lawyers drafted a lawsuit requiring the court to find gender-based discrimination and that her contract was terminated due to pregnancy; they also requested to return her to prior work position in accordance with the law. KLI sent the case to court on 20 November 2020. As of the writing of this report in February 2022, KLI still had no response from the court regarding the case.

The second, similar case involved a woman working in a private company who was dismissed due to pregnancy. KLI's lawyers drafted a lawsuit requesting that the court find that gender-based discrimination had occurred and that her contract was terminated due to pregnancy; they also requested to return her to her prior work position. KLI sent the case to court on 4 April 2021 and still has not received any response from the court.

Regarding judges' knowledge of gender-based discrimination, judges had general information about the legal framework. For example, a judge interviewed by KWN said, "The fact that there are no reported cases means that there is no discrimination in the workplace."²⁵ This suggests that some judges may have a lack of awareness regarding the extent of gender-based discrimination and its forms in Kosovo. In 2021, some of the judges interviewed appeared unable to determine whether particular cases involved elements of discrimination or not.

Even though few judges indicated to have treated cases, KLI monitoring suggested that some labour-related cases in courts may have involved gender-based discrimination, even though filings did not include gender-based discrimination.²⁶ For example, there was a case brought to court where there were elements of harassment.²⁷ The plaintiff alleged that her employers bullied her to quit her job; since the plaintiff had a permanent contract, they could not just let her go. There were threats, as well; the plaintiff alleged that she was told to quit her job, or they would ruin her career. When the case was first brought to court in 2013, the initial hearing took place two months after the incident. However, as of 2022, the case has

²³ G. Hashani & Reznqi, A. for Kosovo Law Institute (KLI), *(In)Justice and gender-based discrimination in labour relations*, 2021 [in Albanian only: *(Pa)drejtësia dhe diskriminimi me bazë gjinore në marrëdhëniet e punës*].

²⁴ This case was addressed the television show, "*Betimi per Drejtes!*" entitled "Protection of Women from Discrimination at Work", on 6 March 2021, at: <https://betimiperdrejtesi.com/mbrojtitja-e-grave-nga-diskriminimi-ne-pune/>. This and other information in this box from KLI, email correspondence, February 2022.

²⁵ KWN interview with man judge, Mitrovicë/Mitrovica, April 2021

²⁶ KLI, *(In)Justice and gender-based discrimination in labour relations*, 2021.

²⁷ C.nr.814/13, filed on 28 March 2013.

remained in an early phase and has not been resolved. This and the cases described in Box 4 illustrate the slow response by courts, indicative of the broader, recurrently mentioned trend.²⁸ Notably, such slow access to justice may contribute to under-reporting of discrimination when it occurs.

Another case before the basic court of Pristina was one presented by a woman who was wrongfully terminated.²⁹ The reason given by the institution for terminating her employment was that she wore a headscarf on duty. The court ruled to put her case under review again within her institution. Her claim was again rejected by the institution. The plaintiff addressed the court again, requesting a ruling based on merit, alleging that she experienced discrimination and that should be taken into account. The court annulled the institutions' decision to terminate her contract, obliged the institution to return her to her former position and required compensation for the period of time during which she did not receive her wage. The case remains pending before the Court of Appeals. Interestingly, the woman did not file for gender-based discrimination but only for discrimination on the basis of religion. This presents an interesting example of a case in which intersectional discrimination, that is multiple discrimination in accordance with the appropriate legal definition, perhaps could have been claimed on the basis that she was a woman wearing a headscarf, which is specific to women in the Islamic religion.

In the first edition of this report, the few judges who had treated cases of gender-based discrimination claimed that they responded to the cases correctly. Prosecutors and police officers generally agreed and confirmed that courts tend to treat such cases correctly. In one example, a judge mentioned a case of a public company firing a pregnant woman, though she had a contract until 2021.³⁰ This act violated the LL. Therefore, the judge fined the company and required the company to compensate the woman her unpaid salary from the moment they terminated her contract. However, the defendant filed an appeal which has remained pending. Generally, to date, this example suggested that the court properly treated this case, as per the LL.

In contrast, interview respondents from unions and CSOs had other opinions about the performance of courts. For example, a Labour Union representative said, "the court favours men more than women".³¹ Both Legal Aid providers and CSO representatives have said that courts continue to prolong cases of this nature and that cases "are not taken seriously".³² For example, a labour union representative mentioned a case in which a woman who applied to become a school principal took her case to court, saying that she was not promoted because she is a woman. "She is still in court. The court has not yet responded. [The courts] ignore so much such cases... This case has existed since 2018," she added. In 2021, representatives of multiple institutions similarly stated that cases of gender-based discrimination have continued to be prolonged in courts. For example, a representative said that

We still haven't seen a case that is completed. Just to give you an idea of how much cases are dragged on, after two years there is still no final verdict for cases. The slow response to cases in court is a very big blow to [the people who file them]. Currently, in civil courts, cases are being treated that were filed three years ago. This means that about two to three years pass just to start treating a case in court. Add to this the fact that labour dispute cases should be treated as a priority, so cases that have priority have to wait in line for two to three years.³³

²⁸ For another case involving allegations of discrimination related to demotion, which also involved long court proceedings, see "Box 2. Discrimination in Demotion" (C.nr.678/12, filed on 27 March 2012).

²⁹ A.nr.1892/18.

³⁰ KWN interview with man judge, Mitrovicë/Mitrovica, November 2018.

³¹ KWN interview with man labour union representative, Prishtinë/Priština, October 2018.

³² KWN interview with woman representative, Gjakovë/Đakovica, November 2018.

³³ KWN interview with a representative of a CSO that offers free legal aid, woman, Prishtinë/Priština, 2021.

A representative of a chamber of commerce concurred that cases are prolonged in court, observing that is the reason, in combination with victim-blaming, that so few cases of gender-based discrimination are reported, because it is discouraging.³⁴

Box 5. Slow Treatment of Court Cases

A recurring theme among respondents from multiple institutions was that delays in treating court cases discouraged women from filing their gender-based discrimination cases. Even though cases of labour disputes should be treated with priority, monitoring suggested that cases can drag on for years. For example, on 19 February 2014, a woman filed a case against her former place of employment (C.nr.527/14). She alleged that she was fired from her job unlawfully, while having a permanent contract with her former employer. There were no elements of gender-based discrimination in this case that were presented in court. The plaintiff requested to be reinstated at her former job and to be compensated for her unpaid wages. However, the court took exactly 2,038 days, approximately five years, to start the case. The initial hearing took place on 25 October 2019, which the plaintiff did not attend; her lawyer also was not authorised to represent her. The court considered the case to be withdrawn by the plaintiff and thus dismissed the case.

Courts' slow treatment of cases may be a reason why women are discouraged from filing cases, including related to gender-based discrimination, because cases may take several years to have an initial hearing.

In addition to slow processes, some respondents indicated that gender stereotypes may also influence court rulings. A CSO representative stated: "If the judge says that you are wearing provocative clothes, there was no way the employer could not sexually harass you. At the first opportunity, the victim withdraws the case and does not take it further."³⁵ Such statements by courts in sexual harassment cases, as reported by CSOs, may indicate why women may be discouraged from reporting cases of gender-based discrimination, particularly sexual harassment.

Similarly, representatives of other institutions stated that judges can have prejudices towards women who are victims of gender-based discrimination. A representative of the OI said the following about a court hearing in which he participated: "The judge asked how they hired her when she was pregnant; such people don't deserve to be part of institutions".³⁶ This comment suggests poor understanding of women's maternity leave rights and the LPD.

Some judges also believed that the low number of judges hindered their performance. Indeed, it could contribute to the aforementioned slow processing of cases. They and others believed that it is important for judges to be specialised. When asked about systemic flaws in treating cases, judges mentioned that the electronic system used to randomly assign cases to judges sometimes has contributed to inadequate treatment of gender-based discrimination cases. Some judges thought that cases should not be randomly assigned to any judge. "They [judges] blame the victim," one judge said. "There needs to be an evaluation to see what cases should be sent to which judge; the [judge's] mindset plays a tremendous role when giving the verdict."³⁷ This indicates that cases may be assigned to judges who may not be impartial and who may have a patriarchal view that impedes fair judgement in accordance with the legal framework in such cases.

³⁴ KWN interview, 2021.

³⁵ KWN interview with CSO representative, Pejė/Peć, March 2021.

³⁶ KWN interview with an OI representative, man, Gjakovė/Dakovica, 2021.

³⁷ KWN interview with a judge, 2021.

One judge in 2018 stated that the practice of victim-blaming continues in the judicial system.³⁸ For example, during a court hearing on a sexual harassment case, the perpetrator's lawyer made sexist and insulting comments, stating that the victim "asked for it". However, the judge fined the alleged perpetrator, the head of a public company, only €600. The judge's colleague, interviewed by KWN, believed the verdict inappropriate and that there was a legal basis for a higher sentence. She believed that the fact that the judge was a man contributed to this incorrect decision. The prosecution has appealed the case with the Appeals Court. Thus, evidence exists that some judges may "blame the victim" for sexual harassment at work and may lack knowledge related to the LPD, suggesting that some judges may need further training on the legal framework, gender power relations and women's rights.

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

- Woman, OI representative, Pejë/Peć, 2018

In conclusion, after three years, the situation with courts and judges is generally the same as in 2018. In general, judges have known their responsibilities and competences, but they possessed only very general knowledge about the legal framework protecting women and men from gender-based discrimination at work. Even so, judges generally felt competent and stated that they would treat cases of labour-related gender-based discrimination with priority. More judges in 2021 than in 2018 tended to agree that hiring more judges and specialisation could help expedite the treatment of cases. Meanwhile, very few cases of gender-based discrimination in labour have been filed since 2018, contributing to the continued general lack of judicial practice that has continued to affect judges' level of experience in treating such cases. Some actors presented examples in which they felt judges may have been impartial, due in part to patriarchal norms. Although KWN and its partners struggled to identify cases involving gender-based discrimination for further analysis and discussion, the ways in which courts have treated some of the other cases outlined in this section suggest that slow access to justice in general may potentially prevent persons facing gender-based discrimination from coming forward to seek justice, as well.

Labour Inspectorate

The Labour Inspectorate should supervise implementation of the LL. It must address any employee's request concerning potential violations of labour rights. In cases when a violation is verified, the Labour Inspectorate must initiate administrative measures.³⁹ According to the LL, complaints submitted to the Labour Inspectorate must remain confidential to protect employees.⁴⁰ Labour Inspectors also are authorised to inspect any workplace and employers' headquarters without prior notice and to document any infringement of the LL. If labour inspectors assess that working conditions pose a danger to the security, health, and dignity of employees, they can issue written notice about the irregularities found and set a time limit for addressing these.

³⁸ KWN interview with woman judge, October 2018. KWN also found evidence of victim-blaming in its other research: *Sexual Harassment in Kosovo* (2016) and *From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo* (Pristina: KWN, 2017, at:

<https://womensnetwork.org/wpcontent/uploads/2018/10/20180312142859762.pdf>).

³⁹ Law on Labour Inspectorate, No. 2002/9, Art. 5.

⁴⁰ LL, Art. 5.8. It should be noted that Appeals to the LI under LL Art. 82 are distinct. In such appeals, the complaint is not confidential and is sent to the employer, providing the employer with relevant information and the opportunity to defend its appeal. At this point, the employer already would have been informed of the complainant's identity.

Labour inspectors seemed somewhat knowledgeable about the legal provisions pertaining to gender-based discrimination at work, particularly gender-related LL provisions. However, they knew less about the LGE and LPD. Some inspectors' responses suggested that they may not be able to identify gender-based discrimination. For example, an inspector in 2021 stated that he does not believe that there is gender-based discrimination in the labour market in Kosovo as he has not received any such cases. In some instances, inspectors stated that sometimes women's clothing may be a reason for sexual harassment to occur. "Women's clothing may be a sexual provocation to male colleagues", an inspector said.⁴¹ When discussing discrimination in promotion, a labour inspector shared that, through informal channels, he knows that men are more discriminated against than women because women get promoted by offering sexual favours to their supervisors who most of the time are male. "Because unfortunately females find alternative ways and seduce [employers] in order to enjoy a right,"⁴² said one labour inspector. He later mentioned that his office had received one complaint from a woman who said her employer requested sexual favours and promoted another worker when she refused, but he referred her to police and did not investigate the case further. These examples suggest that some inspectors may blame the victim, which may undermine their ability to treat cases.

One representative of another institution mentioned that inspectors do not have enough knowledge on gender-based discrimination to be able to identify it. In contrast, however, some inspectors were very knowledgeable, identifying all the work-related situations that could constitute gender-based discrimination. Inspectors generally seemed sensitive to situations that may constitute gender-based discrimination at work, declaring that they are dedicated to addressing any reported case of discrimination.

The Labour Inspectorate still does not possess an electric data system that would enable the classification of cases based on specific violations. Thus, no consolidated information exists regarding cases reported to the Labour Inspectorate, including related to gender-based discrimination. Rather, inspectors merely save individual case files on their computers without any specific classification system. This makes it very difficult to track how many and which types of cases treated by the Labour Inspectorate have involved gender-based discrimination. Worryingly, inspectors stated that the lack of a permanent database, coupled with outdated equipment, sometimes leads to case files being lost. An inspector stated in 2021 that "the computers are virus-infected with malware... I have made a request for new ones since the old computers are causing us to lose data."⁴³

Prior desk research similarly has shown that the inspectorate did not have any cases of gender-based discrimination in 2020. As for the reason, the head of the labour inspectorate said that it was because people themselves are unaware of different forms of discrimination or the fact that they can report this at the inspectorate.⁴⁴ Some inspectors attributed underreporting of gender-based discrimination cases to social attitudes, lack of trust in institutions and a lack of persistence amongst workers in seeking their rights. "We only complain in cafés and to our family, but not in the right places. Anytime a case comes I encourage them to seek justice, but as soon as I ask them to write officially their complaint they back down".⁴⁵

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

⁴¹ KWN interview with a male Labour Inspector, Gjilan/Gnjilane, November 2018.

⁴² KWN interview with labour inspector, 2021.

⁴³ KWN interview with labour inspector, 2021.

⁴⁴ G. Hashani & Rezniqui, A. for KLI, *(In)Justice and gender-based discrimination in labour relations*, 2021 [in Albanian only: *(Pa)drejtësia dhe diskriminimi me bazë gjinore në marrëdhëniet e punës*]

⁴⁵ KWN interview with labour inspector, 2021.

employees and discrimination in hiring to avoid maternity leave costs. In 2021, one inspector said that “women were targeted for dismissal from work if they became or were pregnant during COVID-19, and employers justified this with staff reductions.”⁴⁶

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

Another inspector in 2018 said that sometimes women inspectors refuse to inspect workplaces considered degrading for women, such as massage centres suspected of prostitution; the inspectors are afraid that persons in their social circles may judge them for entering such places, he said. These examples suggest that social norms may hinder some inspectors from performing their duties.

Dissatisfaction with the performance of the Labour Inspectorate was a recurring theme among prosecutors, judges, and OI representatives in 2018. For example, they noted the inadequate inspection of discrimination cases, breaches of confidentiality and vague reporting on inspected cases. “Their reports are vague, leaving room for interpretation”, a prosecutor stated. This makes “it difficult for other institutions to give a verdict”.⁴⁷ Officials from different institutions expressed concern that the Labour Inspectorate does not always identify cases of discrimination correctly, which may contribute to few cases reaching courts. This theme arose, albeit less frequently, in 2021. A few representatives mentioned that the Labour Inspectorate did not carry out inspections as it should but attributed this to the fact that there were not enough labour inspectors.

Similarly, of the few survey respondents who did report gender-based discrimination at work in 2018, most sought support from the Labour Inspectorate. They described what they perceived as misconduct in handling their cases. Respondents attributed this to a lack of power, corruption and political nepotism among inspectors.

Labour inspectors showed some knowledge on legal provisions regarding gender-based discrimination both in 2018 and 2021 but faced some difficulties in identifying it. Some Inspectors made statements that indicated victim blaming or denial of the existence of gender-based discrimination in Kosovo. Desk research has shown that in the past two years Labour Inspectorates have not treated cases and that the Institution attributes this to lack of awareness of people on gender-based discrimination. However, as survey results show, both in 2018 and 2021, when people experienced gender-based discrimination, most of them filed their case with the Labour Inspectorate. Other institutions in 2018 mentioned that the performance of the Labour Inspectorate is lacking, stating their inspections are inadequate and their reporting is vague. In 2021, Inspectors’ poor performance was attributed to a lack of capacity.

“

I was wearing a dress that was below my knees, with a turtleneck and long sleeves as per the dress code, when the Director said that I can't dress that way because it's 'too sexy' and continued to make gestures that resembled a womanly figure. After a month, he fired me without any reasons given. I complained to the Labour Inspectorate, but I haven't heard back from them, let alone that they solved it. I was unemployed for eight months after this incident.

- Woman, Pristinë/Priština, 2021

⁴⁶ KWN interview with labour inspector, 2021.

⁴⁷ KWN interview with a male prosecutor, Pejë/Peć, December 2018.

The Ombudspersons Institution

As an independent body, the OI supervises and promotes respect for fundamental human rights and liberties. In accordance with the LGE and LPD, it is responsible for addressing any complaints of unequal and discriminatory treatment.⁴⁸ In alleged cases of gender-based discrimination at work, the OI can investigate violations and make recommendations for ending discriminatory practices. The OI has offices in each of Kosovo's five regions.

In its annual reports, the OI incorporates all findings on gender-based discrimination in labour. Complaints submitted to the OI did not always incorporate discrimination on the bases of gender. However, the OI identified "illegal dismissals of women from work, lack of vocational training opportunities at work and obstructions related to advancement in work."⁴⁹ Since 2018, the OI had two cases of gender-based discrimination; both complainants were women. One complaint was regarding recruitment, where a woman was executing duties that exceeded those of her position but was not hired when she applied for the position when it was opened for internal recruitment. The second complaint concerned unequal treatment; a woman was held back while all other staff advanced in their position.⁵⁰ In 2019 the OI established, based on the complaints received, that women had difficulties competing in the labour market. Women were more likely to be rejected for higher positions whilst having the right credentials. As mentioned, the OI also has dealt with cases of sexual harassment at work.⁵¹

Generally, OI representatives consistently seemed very knowledgeable about the legal framework related to gender-based discrimination. They could refer to and comment on the LPD and LGE. They knew their legal responsibilities for addressing complaints and could mention a variety of situations that may constitute gender-based discrimination at work. OI representatives tended to consistently assess that they have adequate professional capacities for dealing with such cases. Some noted that they lacked infrastructure in 2018, such as sufficient office space for confidentiality and physical access for people with different abilities. As of 2021, most OI offices were nearing the end of repairs. However, most offices had stairs, and as one OI representative said, "a person with disabilities cannot even reach my office since [...]. This problem can be fixed with only one bag of cement."⁵² Involving more women employees at OI regional offices also may make some women more comfortable in discussing discrimination experiences, an OI representative said.

The OI has an electronic database where received complaints are filed. However, gender-based discrimination does not figure as a category or filter. In 2021 the OI stated that they are working to further advance their database so gender-based discrimination is a separated category, towards maintaining more detailed data. It is thus still difficult to estimate the number of gender-based discrimination cases at work addressed by the OI. However, interviews and their annual reports⁵³ suggest that the OI has treated very few cases of gender-based discrimination.⁵⁴ The complaints received mainly dealt with unfair hiring, promotion, firing or maternity leave violations. Most cases occurred in the banking sector and public health institutions. In one case, the OI recommendations and court decision resulted in a woman employee returning to work after her contract had been unlawfully terminated during her maternity leave. However, with the unusual circumstances that were created due to the COVID-19 pandemic, OI representatives confirmed in interviews to have dealt with gender-based discrimination. During the beginning of the pandemic the government decided that

⁴⁸ Law on Ombudsperson, No. 03/L-195.

⁴⁹ Ombudsperson Institution Kosovo, *Annual report 2018*, 2019, p. 106.

⁵⁰ Ibid.

⁵¹ Ombudsperson Institution Kosovo, *Annual report 2019*, No. 19, 2020.

⁵² KWN interview with a OI representative, 2021.

⁵³ Ombudsperson Institution Kosovo, Annual report 2018, 2019; Ombudsperson Institution Kosovo, *Annual report 2019*, No. 19, 2020.

⁵⁴ KWN interviews with OI representatives in each region, 2018.

pregnant women and people with chronic diseases could be relieved from work. According to the OI, this resulted in some cases of firing, one of these cases returned to work with the help of the OI. "We had a case where the complainant did not take into account the government decision and she lost her job and returned to work after 6 months".⁵⁵

Other officials interviewed in 2018 stated that the OI has some influence when it comes to addressing gender-based discrimination at work, highlighting the importance of the OI's recommendations.⁵⁶ Judges seemed to think that this institution has a lot of influence related to gender-based discrimination in labour. In contrast, a prosecutor observed, the Ombudsperson's "power is only recommending, not binding".⁵⁷ Similarly, some other respondents considered that this institution has minimal influence because its recommendations are not binding.

Both in 2018 and 2021, OI representatives were very knowledgeable on issues relating to the legal framework surrounding gender-based discrimination and their responsibilities. They felt capable to address gender-based discrimination cases. Since 2018, the OI has had only two cases of gender-based discrimination.

Agency for Free Legal Aid

The Agency for Free Legal Aid offers and ensures equal access to justice for citizens. In accordance with the Constitution and the Law on Free Legal Aid,⁵⁸ it is responsible for providing free legal aid to those who do not have sufficient financial means if such assistance is necessary to ensure effective access to justice. In alleged cases of gender-based discrimination at work, the Agency for Free Legal Aid can offer free legal aid through professional legal services, such as information, legal counselling, drafting submissions, and representation before courts and other authorities. The Agency for Free Legal Aid has 14 offices in different regions of Kosovo.

In total, 498 cases involving labour disputes were reported to this Agency from 2019 to 2021. Very few of them were reported to involve discrimination on the basis of gender. Agency representatives stated that even when the parties come to report their cases, they do not know when their cases involve grounds for discrimination on the basis of gender. Consequently, the reported cases have not always incorporated discrimination on the basis of gender.

Although the data collection system in this institution has a gender filter related to the registration of cases, the system does not separate the type of violation alleged by the applicant. Therefore, each physical case file would have to be checked across regional offices to extract accurate case data on reported cases that involved gender-based discrimination in labour. Therefore, such data was too time consuming for the agency to collect.

Agency representatives were very knowledgeable on issues relating to the legal framework surrounding gender-based discrimination and their responsibilities. They felt capable to address gender-based discrimination cases should they receive them. However, they had handled very few cases, especially those involving sexual harassment at work. One of the representatives stated that even the parties find it difficult to report such cases as they consider that such cases cannot be easily proven in court.⁵⁹ The fact that few cases have been reported to this Agency has contributed to limited experience in treating such cases.

⁵⁵ KWN interview with a OI representative, 2021.

⁵⁶ KWN interviews with 27 representatives of different institutions, 2018.

⁵⁷ KWN interview with a woman prosecutor, Gjakovë/Đakovica, November, 2018.

⁵⁸ Official Gazette of the Republic of Kosovo, LAW No. 04/L-017 ON FREE LEGAL AID, Art. 1, at: <https://anjf.rks-gov.net/desk/inc/media/2E863E34-6579-4986-AB93-5D279A98FAC0.pdf>.

⁵⁹ KWN interview with a woman Agency representative, Prishtinë/Priština, February 2018.

Labour Unions

As defined by law, unions are “independent organizations that are created as a voluntary union of employees whose aim is the representation and protection of the legal rights and interests of economic, social and professional to their members [sic]”.⁶⁰ They can support employees in filing claims of gender-based discrimination at work, as well as improve employees’ awareness of their rights through general awareness-raising and outreach.

The labour union representatives interviewed for this research in 2018 and 2021 knew their role as key actors working towards the advancement of employees’ rights. They accept complaints from their members regarding work-related concerns. Labour union representatives claimed that they aim to achieve gender equality in the labour force. In general, unions feel capable of addressing gender-based discrimination. Union representatives said that employees should be more active in using the channels provided by labour unions for addressing their concerns in 2018, though this was not mentioned in 2021. In this regard, the Women’s Network that operates within the Union of Independent Unions of Kosovo was mentioned as an internal body committed to addressing gender sensitive issues in both 2018 and 2021. This Network has organized trainings and campaigns on addressing sexual harassment at work and disseminated questionnaires to measure its prevalence.

Meanwhile, some statements suggested that some union representatives may not understand what gender-based discrimination entails. For example, in 2018, a union representative said, “in the educational system, there is no gender-based discrimination”.⁶¹ When probed for clarity, it became clear that the respondent was referring to unequal representation in a sector but implying that a higher percentage of women employed in the education sector is an indicator of equal treatment. A similar sentiment was echoed in 2021. However, this is not necessarily true, as an OI representative observed in 2021: “Sexual harassment is very present, especially in schools, where principals are men and have power and privileges over their female workers”. Similarly, a different union representative stated that “in health institutions, women are positively discriminated against when it comes to hiring because the nature of this vocation is sensitive” in 2018. These statements suggest that gender norms and stereotypes may undermine some union representatives’ knowledge and understanding of what constitutes gender-based discrimination. This may interfere with their ability to appropriately assist with instances of gender-based discrimination at work. However, in 2021 one of the representatives commented on the fact that women are not even considered for some vacancies because these are considered to be jobs for men. This suggest that in 2021 there is an increase in awareness amongst labour union representatives since these biases are recognised.

Another union representative in 2021 spoke about a meeting they organised with the aim to talk about sexual harassment at work, for which she had received a lot of phone calls from people who said this topic should not be discussed in public because it’s shameful.

Still, few work-related gender-based discrimination cases or complaints seem to have reached unions. Union representatives tended to believe that such discrimination exists, but that employees do not report it, primarily due to a lack of awareness among employees on what constitutes gender-based discrimination, they said. In addition, one representative said that employees “are afraid to report because they fear that they can lose their jobs”.⁶² However, one union representative in 2021 indicated that women do not seek justice due to “their soft nature”, labelling women as softer in nature: “perhaps us women, as the soft gender,

⁶⁰ Assembly of the Republic of Kosovo, Law No. 04/L-011 For Organizing Trade Union in Kosovo, Art. 1.1, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20organizing%20trade%20union.pdf>.

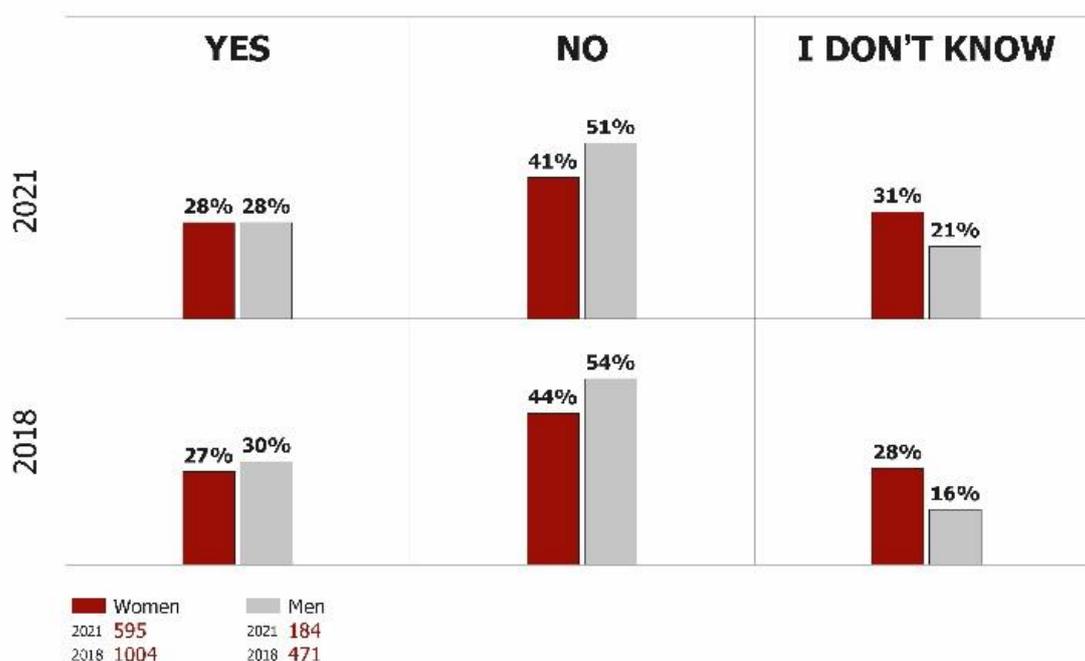
⁶¹ KWN interview with woman labour union representative, Prishtinë/Priština, October 2018.

⁶² KWN interview with man labour union representative, Prishtinë/Priština, October 2018.

do not go all the way through with the legal process. But I am a persistent person and always go through the whole process.”⁶³

Low reporting of gender-based discrimination to unions may be due in part to employees’ generally limited engagement in unions. While precise union membership is difficult to assess, estimates suggest that approximately 60,000 people are members of trade unions in Kosovo, including roughly 80% of persons working in the public sector and less than one percent of private sector employees.⁶⁴

Graph 9. Do Any Workers’ Unions Exist, which Could Represent Your Interests, by Gender



As Graph 9 illustrates, in 2018 24% of the respondents to KWN’s online survey did not know if any union exists in Kosovo that could represent their interests, this percentage has increased to nearly 30% in 2021 (28%/31% of women and 16%/21% of men).⁶⁵ Meanwhile, 28% of respondents, in both 2018 and 2021, said that no labour union can represent their interests (27%/28% of women and 30%/28% of men). A larger percentage of men (54%/51%) than women (44%/41%) said labour unions exist that could represent their interests. Of the respondents that said a union did exist in Kosovo, which could represent their interests, 36%/53% said that they were members of a union.⁶⁶ This may be reflective of the fact that a large proportion of respondents in both surveys worked in the public sector, where union membership tends to be more common. More men (41%/55%) than women (33%/51%) respondents were members of unions. Of the respondents who are union members,⁶⁷ half in 2018 and approximately one third respondents in 2021 think that their unions somewhat represent their interests (Graph 10). Approximately 21%/42% of women and 19%/40% of men said that unions are good or very good at representing their interests. However, 33% of

⁶³ KWN interview with labour union representative, Prishtinë/Priština, April 2021.

⁶⁴ Friedrich Ebert Stiftung, 2016 Annual Review of Labour Relations and Social Dialogue Kosovo, 2017, pp. 10-11, at: <https://library.fes.de/pdf-files/bueros/bratislava/13231.pdf>.

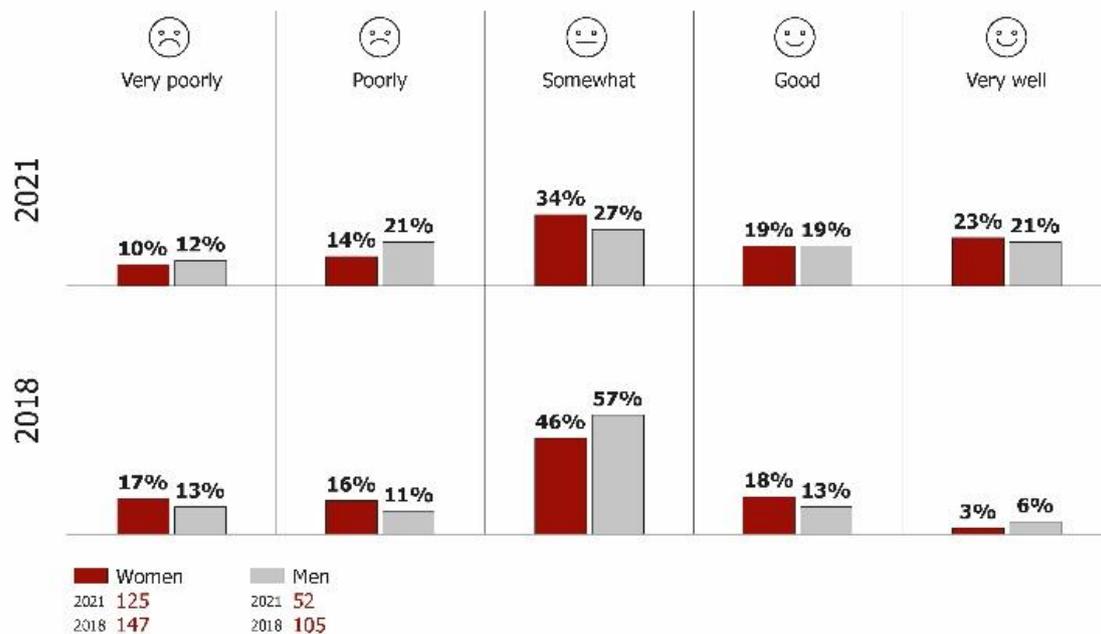
⁶⁵ N = 1,475 (1004 women and 471 men) in 2018; N = 779 (595 women and 184 men).

⁶⁶ N = 700 (446 women and 254 men), 2018; N = 337 (243 women and 94 men), 2021.

⁶⁷ N = 252 (147 women, 105 men), 2018; N = 177 (125 women, 52 men).

women and 24% of men respondents believed that unions are poor or very poor at representing employees' interests in 2018. In 2021 this percentage was significantly lower for women than for men, with 24% of women and 33% of men believing that unions represent their interests (very) poorly. These findings suggest that poor knowledge about unions among workers, particularly women, coupled with distrust in unions' ability to represent workers' rights may contribute to the low number of cases reported to unions.

Graph 10. How Well Do You Feel that Your Workers' Union Represents Your Interests, by Gender



Among the very few cases reported to unions, all involved women experiencing gender-based discrimination. Cases occurred more in the banking sector, but also in the civil society sector, according to union respondents. The cases involved discrimination in hiring, promotion, firing, treatment, working conditions and violations of maternity leave provisions, they said. "There was a case when a woman was fired from a bank because of her age, which was sent to the Labour Inspectorate", a union representative said.⁶⁸ Reportedly, according to respondents, within unions themselves. "If there is a meeting with the Prime Minister, the delegation is comprised of men [...] because "men are more intelligent"", a woman union representative said.⁶⁹

Since 2018, it seems that Labour Union representatives have become a bit more aware on what gender-based discriminations entails. Still, some prejudices existed, which might indicate that Labour Union representatives need more training on gender equality. Labour Unions remain well-positioned to inform their membership about gender-based discrimination and workers' rights as well as to support their members in accessing justice, though they have rarely played this role in the past. Enhancing knowledge about their services and trust in union representatives could enable them to further support workers in seeking justice.

⁶⁸ KWN interview with a woman labour union representative, Prishtinë/Priština, October 2018.

⁶⁹ KWN interview with a woman labour union representative, Prishtinë/Priština, October 2018.

Civil Society Organisations

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

Most of the CSO representatives interviewed in 2018 and 2021 knew about the relevant legal framework and what gender-based discrimination entails. CSOs' knowledge of the legal framework may be attributed to the fact that many of the interviewed CSOs advocated for aspects of the LGE and LPD. Most indicated that they feel somewhat to very capable to address this issue. However, historically, very few CSOs operating in Kosovo have directly assisted persons affected by gender-based discrimination at work. Rather, CSOs have tended to provide space for people who have suffered discrimination to talk about the problems they face and receive advice on what steps they should take. Meanwhile, organisations working with people with different abilities emphasised that they continuously grapple with insufficient funding, which hinders their work.

Although discrimination clearly affects minority ethnic groups, LGBTIQ+ persons, and people with disabilities, as discussed in the prior chapter, few of them seek redress. Thus, as in the years preceding 2018, the CSOs interviewed still had not assisted many cases of gender-based discrimination since 2018. However, CSOs have engaged in awareness-raising, monitoring of court cases, and training of key actors in the fight against gender-based discrimination. In 2021, KWN organised a workshop on the legal framework to help inform CSOs on how to use it. Moreover, KWN together with KLI have organized a training with Trade Union representatives on the subject of gender-based discrimination. This training included information on the legal framework and existing mechanisms for reporting cases of gender-based discrimination.

During and immediately following information campaigns on gender-based discrimination in labour, particularly campaigns related to sexual harassment at work, many women contacted KWN, seeking assistance in reporting their cases. KWN referred these cases to its partner, KLI, for further legal assistance. Women emphasised their trust in CSOs assisting them in reporting their cases to relevant institutions, underlining that they did not feel that institutions would take their cases as seriously if they approached institutions on their own. Thus, WCSOs played an important role in supporting and empowering more women to come forward and to seek justice.

Meanwhile, KLI launched an online platform where victims of gender-related crimes, and thus gender-based discrimination, can report their case and receive free legal aid. This platform enables marginalised groups, including women in rural areas, to access free legal aid easier. KLI also has monitored cases of labour disputes in court where elements of gender-based discrimination were present. Apart from this, KLI has offered free legal aid to victims of gender-based discrimination who sought help. At the end of this monitoring period, they published a report with their findings.⁷⁰ The Kosovar Gender Studies Center also published a report that analyses the current legal and institutional framework to address sexual harassment in Kosovo's public administration.⁷¹

Amid the pandemic, CSOs showed resilience and solidarity when it comes to offering help and raising awareness. CSOs carried out awareness-raising, continued monitoring cases, and provided free legal aid amid rights violations related to the pandemic. The additional

⁷⁰ KLI, *(In)Justice and gender-based discrimination in labour relations*, 2021.

⁷¹ Sylva, M., *Sexual Harassment in the Public Administration in Kosovo, Visible to Victims, Invisible to the System*, 2021.

resources provided by the European Union and Sida since 2018, and their adaptability and flexibility as funders amid the pandemic to meeting needs, enabled WCSOs to increase and improve their efforts towards raising awareness about rights violations and to empower more women to seek justice for rights.⁷²

Although CSOs sometimes struggle to secure funding to carry out their activities, the fact that some CSOs, particularly WCSOs, have missions that involve supporting women in realising their rights means that they will continue to support persons who have suffered gender-based discrimination in the future. Since 2018, they have further developed their knowledge, capacities, systems, and partnerships with institutions and other CSOs for supporting women who have suffered gender-based discrimination at work and labour rights violations. CSOs expressed determination for continuing to build on these developments in sustaining their support services in the future, in accordance with their missions.

Chambers of Commerce

Chambers of commerce seek to bring companies based in Kosovo together for networking with foreign companies. They offer their members information and aim to contribute to bringing Kosovo businesses closer to European values by supporting cooperation with European businesses.⁷³ In the second edition of this report, a chamber was interviewed as a representative of the voices of different businesses in Kosovo. Business chambers protect and promote business interests. Therefore, the chamber was less interested in workers' rights and had not dealt directly with gender-based discrimination. The chamber of commerce had substantial information, generally informal, about labour rights violations and gender-based discrimination. Although aware of and able to identify gender-based discrimination, the representative had less information regarding the relevant legal framework. Nor did the chamber know which institutions deal with reports of gender-based discrimination. The representative expressed scepticism that businesses would be interested in learning more about gender-based discrimination at work, particularly amid larger challenges businesses faced amid COVID-19.

In summary, the representative of the chamber of commerce did show knowledge on issues relating to gender-based discrimination, however she had less knowledge on the relevant legal or institutional framework. She did not have any experience with cases of gender-based discrimination.

Conclusion

While police seemed generally knowledgeable about their responsibilities to investigate criminal acts involving gender-based discrimination at work, very few such cases have been reported to police, so it is difficult to assess how they have treated such cases. Police seemed less clear about gender-based discrimination in labour more broadly and the legal framework related to civil law. Also, although it is a criminal offense, they did not consider sexual harassment as a form of gender-based discrimination.

Prosecutors tended to know the relevant legal framework but lacked practical experience. In the last three years, they did not handle any known cases of gender-based discrimination and they still lacked knowledge on gender-based discrimination. Courts also have very little judicial practice, and very few judges seemed to have knowledge regarding the relevant legal framework. While labour inspectors tended to be knowledgeable about gender-

⁷² These efforts were supported through the EU-funded and Sida co-funded regional Action, "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights".

⁷³ See: Chamber of Commerce of Kosovo, "About Us" at: <https://www.oek-kcc.org/Al/rreth-nesh/>, <https://oegjk.org/anetaresia/al-perfitimet-e-anetareve/>, and American Chamber of Commerce of Kosovo, at: <https://www.amchamksv.org/>.

related provisions in the LL, they had few cases and seemingly did not consider treating gender-based discrimination a priority; reportedly they treated some cases inappropriately due to social norms, among other factors. While OI representatives seemed very knowledgeable about the relevant legal framework, they too have had few cases and may have limited impact in such cases given their mandate.

Labour unions seek to represent workers' rights, but some union representatives have limited knowledge about gender-based discrimination. This and citizens' minimal knowledge about and trust in unions likely has limited unions' support of workers in addressing gender-based discrimination. Persons working in CSOs tended to be knowledgeable about the relevant legal framework and more experienced in using it than in 2018 but have assisted few cases directly given people's continued hesitancy to report cases. The chamber of commerce representative was generally knowledgeable about the relevant legal framework and what constitutes gender-based discrimination at work. However, since they prioritise protecting and promoting business's interests, and not those of workers, they had not dealt first-hand with gender-based discrimination cases.

Generally, in 2018 as well as in 2021, no compelling differences seemed to exist based on gender or geographic location among the representatives of institutions, regarding their knowledge, perceptions, and performance in treating gender-based discrimination.⁷⁴ Overall, in 2018 and 2021, representatives of all interviewed institutions, aside from labour inspectors, emphasised the generally poor implementation of the legal framework relevant to gender-based discrimination at work.

⁷⁴ KWN used variation sampling to select respondents from relevant institutions, including women and men working in rural and urban areas (see Annex 1 for details).

RECOMMENDATIONS

For the Legal Framework

- Consider establishing a more logical division of the legal framework, towards addressing the presently inharmonious legal framework's overlapping and differing definitions and sanctions, which, at present, may contribute to confusion and legal uncertainty. For example, consider amending the LL to specifically address discrimination in the employment context and the LPD to address discrimination in the non-employment context. Then, the LGE would not necessarily need to serve as a basis for a discrimination claim, as this would be covered adequately in the LL and LPD. At minimum, revisions should harmonise definitions and sanctions, as well as clarify the procedures through which claims are filed under the different relevant laws.
- Ensure that amendments to the LL include the following:
 - Regarding fixed-term contracts:
 - Reduce the fixed period for becoming a permanent employee from 10 years to three years, which may prevent employers from using short-term contracts to avoid having to implement maternity, paternity, and parental leave provisions.
 - Introduce an explicit statement that temporary incapacity, risk during pregnancy, maternity leave, adoption, custody for adoption, foster care, risk during breastfeeding, and paternity leave will not interrupt the calculation of this fixed period to receive a permanent contract.
 - In accordance with the EU Work-Life Balance Directive require that, in the case of successive fixed-term contracts with the same employer, the sum of those contracts must be considered for the purpose of calculating the qualifying period for parental leave. Extend this requirement to maternity leave also.
 - Require objective reasons for any fixed-term appointment.
 - Clarify the meaning of "successive" contracts to prevent short gaps between fixed-term appointments being used to circumvent employees becoming permanent.
 - Extend the term "maternity leave" in Article 12 to include also that paternity leave and parental leave shall not interrupt or affect the employment contract.
 - Amend Article 15 to *explicitly* state that the termination of a probationary period due to pregnancy is direct discrimination.
 - Amend the provision on "special protection" for pregnant and breastfeeding women (Article 46) to ensure that the employer gives the employee another task in instances when regular labour responsibilities may be harmful to the health of the mother or child. Introduce an assessment and information provision similar to articles 4 and 5 of the EU Pregnancy Directive to ensure that sufficient consideration is given to the nature, degree, and exposure of risk before exclusionary action is taken.
 - Amend legal provisions to meet the minimal requirements of the EU Directive 2019/1158 on work-life balance for parents and carers by:
 - providing for at least 10 days paid leave for fathers and equivalent second parents on the birth or adoption of their child. Retain full pay for the extended 10-day paternity leave period;
 - providing parental leave as an individual right of both parents for at least four months. Provide that the entire period of parental leave is non-transferrable.

- Provide for full compensation while on parental leave to facilitate the take-up of leave by both parents;
 - defining “equivalent second parent” inclusively to explicitly extend paternity and parental leave entitlements to persons who are in partnerships and recomposed families where such workers exercise parental responsibilities;
 - clarifying the position of adoptive parents by ensuring equal access to family leave entitlements;
 - introducing an entitlement to carers’ leave for all workers. Consider providing full pay for carers’ leave;
 - expanding *force majeure* leave entitlements to include time off for urgent family reasons in the case of illness or accident; and
 - introducing a right of all parents and carers to request flexible working arrangements. Provide requisite detail on request procedures and grounds for refusal.
- Transpose correctly the concept of self-employed capacity into Kosovo law. Self-employed parents should receive maternity and parental rights equal to those of parents who are employees, and self-employed women should be registered officially as such. If they work for their husbands or other family members, they should be able to access social protection and maternity benefits based exclusively on this familial relationship.
- Further develop and elaborate protection from discrimination specifically in the employment context, including by mentioning other forms of discrimination, such as harassment, sexual harassment, and instruction to discriminate; distinguish between direct and indirect discrimination; and apply other listed grounds for discrimination.
- Amend the Law on Breastfeeding to provide protection for women to breastfeed during the first six months following the birth of a child. Ensure harmonisation of this allowable leave with the LL.
- Review and amend the LPD to ensure that all definitions are harmonised, including related to fines for offences. Ensure a separate definition of sexual harassment in accordance with the Recast Directive. Clarify whether multiple discrimination and discrimination found to be severe shall receive higher fines. Clarify articles 15 and 24 regarding the responsibility of individuals, employers, and state institutions for discriminatory actions.
- Amend the LGE to improve and clarify it. Expand the protections related to gender-based discrimination in relation to occupational social security schemes to protect against the risk of unemployment and to prohibit explicitly discrimination in public social security schemes related to work. Clarify provisions for gender-based discrimination, harassment, sexual harassment, and other forms of unequal treatment, stating these explicitly as offences. Establish a clear violation procedure for imposing sanctions within the Law. Clarify specific sanctions for different forms of discrimination prohibited within the Law, and not for violations of definitions of discrimination. Increase sanctions towards preventing individuals and companies from engaging in gender-based discrimination.

For the Kosovo Police

- Improve data collection and management by ensuring that all electronically managed data is disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).

- As part of the regular training for police, ensure inclusion of information on the legal framework pertaining to gender-based discrimination at work, focusing on sexual harassment at work according to the new definition in the Criminal Code.

For the Prosecution

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

For the Kosovo Judicial Council

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

For the Labour Inspectorate

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

For the Ombudsperson Institution

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

For the Agency for Free Legal Aid

- Revise the Agency's database to specify gender-disaggregated data and marking of cases as to whether they have involved gender-based discrimination at work, facilitating future monitoring and reporting of this information.
- In close cooperation with CSOs organise 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 Agency for Free Legal can provide.

For Labour Unions

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

For Civil Society Organisations

- Continue to collaborate through a diverse network of CSOs involved in anti-discrimination activities to coordinate efforts, towards efficiency, effectiveness, and wise use of limited resources; set a joint strategy for shared future work against gender-based discrimination in labour; share information regularly; and exchange best practices.
- Continue to organise awareness-raising campaigns to increase women's and men's knowledge about gender-based discrimination in the labour market, as well as relevant institutions and procedures for seeking recourse for rights violations.
- Specifically target people from minority ethnic groups, LGBTIQ+ persons, and persons with different abilities with information about their rights; support them in reporting and seeking justice for gender-based discrimination.
- Continue to contribute to the establishment of case law on gender-based discrimination at work by providing legal aid for such cases and strategic litigation.
- File more official complaints with the Agency for Gender Equality, OI, and labour inspectors, as relevant.
- Consider researching, documenting, and bringing cases on behalf of groups of persons who have suffered discrimination, according to the LPD, such as to:
 - Decide that such behaviour has violated the right to equal treatment;
 - End activities that violate or may violate the right to equal treatment; and

- Bring court cases, as well as request the publishing of any resulting decisions in media, with expenses paid by the respondent, towards preventing future discriminatory behaviour.
- Further research multiple discriminations related to labour, such as based on gender and ethnicity, ability, sexuality, age, and other differences; and support strategic litigation that would bring public attention to multiple discrimination.

For Employers in Private and Public Sectors

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

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ANNEXES

Annex 1. Methodology

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

Key Terms and Delimitation

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

Legal Analysis

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

Literature Review

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

Data Collection

The research team sought to collect data related to discrimination cases at work for the period of 2008-2017 in the first edition, and for the second edition the time period was 2018-2020. Data was requested disaggregated by gender from: the Kosovo Police, the Prosecution, the Kosovo Judicial Council, the Ombudsperson's Institution, the Labour

Inspectorate, labour unions, and legal aid providers (state and non-state). This involved sending official data requests to these institutions.

The Survey

The research team sought to collect input from diverse women and men regarding their knowledge of anti-discrimination legislation, personal experiences with discrimination, whether such cases were reported, and why they did not report discrimination if it occurred. KWN collaborated with its partner organisations in the region, particularly Reactor Research in Action (North Macedonia), to create the online survey in three languages (Albanian, Serbian, and English), using Lime Survey. The survey was promoted broadly, including through social media, boosting on Facebook and email, including an email circulated to public servants and government officials by the Agency for Gender Equality, requesting their participation. For the first edition, the survey was open from 1 November through 3 December 2018; for the second edition, the survey was open from 29 March through 11 May 2021. For demographic information about respondents, see Annex 2 and for the survey tool, see Annex 3.

Interviews

In total, KWN conducted 101 interviews in 2018 and 94 in 2021. Of these, KWN interviewed 95/64 representatives from six institutions responsible for implementing the relevant legal framework, regarding their knowledge, attitudes, and experiences in treating discrimination cases to date. KWN interviewed police officers, prosecutors, civil court judges, criminal court judges, labour inspectors, and OI representatives. KWN used variation sampling to select a diverse range of interview respondents of different genders, ethnicities, and geographic locations.

With assistance from the Kosovo Police headquarters, 32 police officers in 2018, and 25 in 2021 were selected by region. Sixteen/fourteen women and 16/11 men were interviewed in urban and rural areas in Prishtinë/Priština, Lipjan/Lipljan, Ferizaj/Uroševac, Shtime/Štimlje, Gjakovë/Đakovica, Malishevë/Mališevo, Prizren/Prizren, Mamushë/Mamuša/Mamuša, Gjilan/Gnjilane, and Mitrovicë/Mitrovica (south and north, while in 2021 no police officer in the north was interviewed due to unavailability). In Gjilan/Gnjilane and Mitrovicë/Mitrovica, police officers were from stations located in urban areas. The police officers appointed by police headquarters to participate in interviews generally came from the Domestic Violence Investigation Units. Police officers serving in these Units have undergone more training related to gender-based violence than other police officers. Therefore, one may hypothesise that their level of knowledge may be more advanced than that of the general police force allowing for some “positive bias” in the sample regarding the level of knowledge of police pertaining to gender-based discrimination, though further research would be needed.

In total, 13 prosecutors in 2018 and eight prosecutors in 2021 were interviewed, including six/six women and seven/two men. Researchers faced several difficulties securing these interviews, but eventually all interviews were scheduled except one in 2018. However, in 2021 multiple prosecutors did not want to be interviewed. Difficulties planning interviews live and online amid the COVID-19 pandemic contributed to this. While KWN aimed to have equal gender representation, no women prosecutors in the Gjakovë/Đakovica Basic Court in 2018 and 2021, and in 2021 no prosecutors from Gjilan/Gnjilane Basic Court were willing to participate.

KWN also faced some difficulties in adhering to the planned variation sampling when scheduling interviews with judges. The 26/19 judges interviewed included 12/10 women and 14/nine men. Of them, five/four women and eight/six men were from the Criminal Division. This was because in Mitrovicë/Mitrovica, no Albanian women judges worked in the Criminal Division. Despite several attempts, the Serbian judges from the Criminal Court there refused to participate in the research in 2018, while in 2021 two judges of Albanian ethnicity from the

North Mitrovica courts participated. In the Basic Court of Gjilan/Gnjilane, the head of the Court appointed two men judges from the Criminal Division and two women judges from the Civil Division, despite KWN's request to have equal gender representation from both divisions in 2018. In Pejë/Peć in 2018, the three interviewed judges were from the Civil Division (two women and one man). Thus, the knowledge, attitudes, and experiences of some judges may be under-reflected in findings. Courts appointed the judges, and KWN's researchers conducted interviews with them. In 2021, it also was difficult to arrange interviews with judges. The reason why was unclear, but the pandemic may have influenced the willingness of judges to be interviewed live. KWN's researchers also informed them about the option to be interviewed online, but this was declined by most judges citing technical difficulties. KWN interviewed seven labour inspectors in both editions. KWN could not interview an equal number of women and men labour inspectors because from the seven regional offices, only one woman inspector was employed in this institution. For the OI, one representative was interviewed in each region in 2018, totalling seven respondents, while in 2021 only four representatives were interviewed.

Three labour union representatives were interviewed in both editions (one man and two women in 2018, three women in 2021), all located in Prishtinë/Priština. KWN also interviewed representatives of CSOs hypothesised to have encountered and/or supported persons who had experienced discrimination, including CSOs working with LGBTIQ+ persons, persons with different abilities, and ethnic minorities. Fourteen representatives of CSOs participated in the research (10/10 women and four/three men) from Prishtinë/Priština, Prizren/Prizren, Gjakovë/Đakovica, Ferizaj/Uroševac, and Pejë/Peć.

Interviews also were conducted with six women who said they had experienced gender-based discrimination in 2018. None of the instances of discrimination reported by men in the survey involved gender-based discrimination explicitly. Nor could KWN identify any persons with different abilities, LGBTIQ+ persons, or persons from minority ethnic groups who had experienced gender-based discrimination who were willing to be interviewed, so researchers could not conduct the interviews planned with such respondents. Overall, low reporting of gender-based discrimination, coupled with low knowledge of what acts may involve such discrimination constituted barriers to identifying potential respondents for in-depth interviews.

Data Analysis

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

Limitations

The team considered that the costs of surveying a nationally representative sample outweighed the benefits that this kind of sample offers in terms of generalisability of the findings. Therefore, the research team had to find a balance between cost and quality, selecting to use an online survey involving convenience sampling instead. If well-advertised, online surveys can be a very efficient means for understanding qualitatively the challenges affiliated with discrimination cases. The research team considered that identifying and understanding qualitatively discrimination cases would be more important than finding the

actual “extent” of discrimination. Moreover, the team thought that underreporting of discrimination likely would be widespread in a household survey, given the general population’s hypothesised low level of knowledge regarding which acts could constitute gender-based discrimination. Further, the research team considered that the complete anonymity allowed by online surveys may enhance the willingness of people to report their experiences without fear of repercussions, given the sensitivity of the topic. Even so, these methodological choices contribute to some limitations regarding the research findings.

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

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

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

Reflexivity

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

accompany these legal changes for them to be implemented properly. KWN's recommendations result from this particular position and approach to social change.

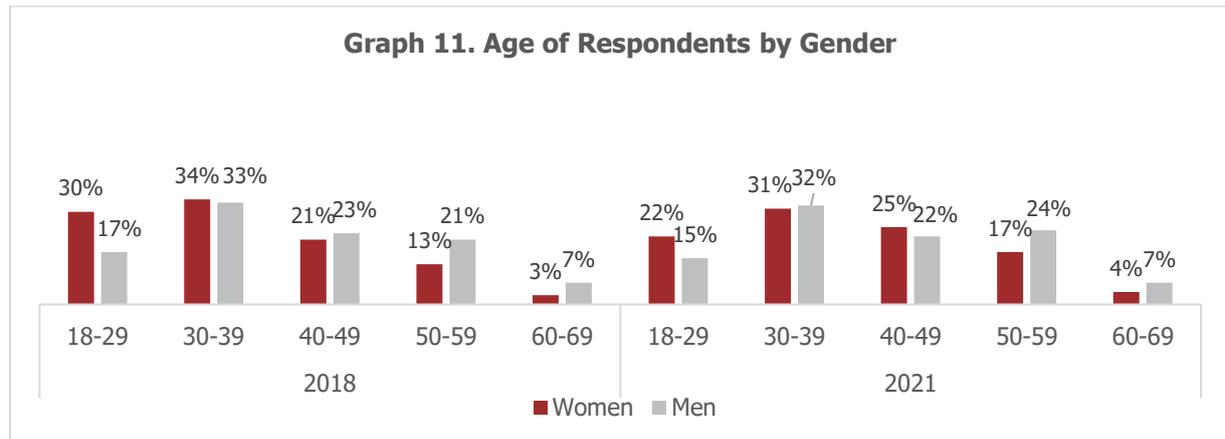
Also pertaining to reflexivity, the research team was instructed to take note of how their presence and approach during interviews may have influenced the research findings and to estimate any potential resulting error. In some instances, the fact that the researchers were young women may have meant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

Validity

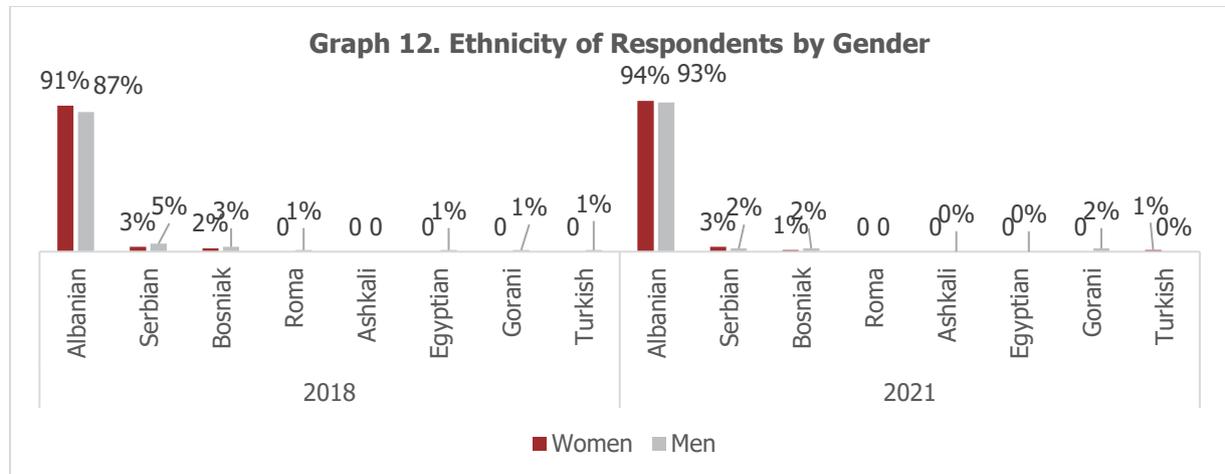
The research team sought to enhance the validity of the findings through triangulation of data sources (e.g., citizens, institutions, CSOs, statistics), methods and researchers. Peer review and participant checks of findings by diverse experts and research participants also sought to identify any potential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

Annex 2. Demographic Information about the Sample

Of the respondents that completed 90% of the questionnaire, 67%/75% were women and 33%/25% were men.¹ As Graph 11 illustrates, most respondents were ages 30-39 (34%/31%).² In 2018, many women respondents were ages 18-29 (30%), while in 2021 most women respondents tended to be 30-49 (56%). Meanwhile, most men in 2018 were 30-49 (56%); while in 2021 most men tended to be between 30-39 (32%) and 50-59 (24%).



Concerning ethnicity, 91%/94% of women and 87%/93% of men respondents identified as Albanians; 3%/3% of women and 5%/2% of men as Serbs; 2%/1% of women and 3%/2% of men as Bosnians; and 3%/3% of women and 5%/3% of men as Roma, Ashkali, Egyptian or Turkish (Graph 12).³



Ten percent in 2018 and six percent in 2021 (123 participants/43 participants) of respondents considered themselves persons with disabilities (14% of men and 7% of women).⁴ As Graph

¹ N = 1,279, 2018; N = 671, 2021.

² N = 1,249, 2018; N = 671, 2021.

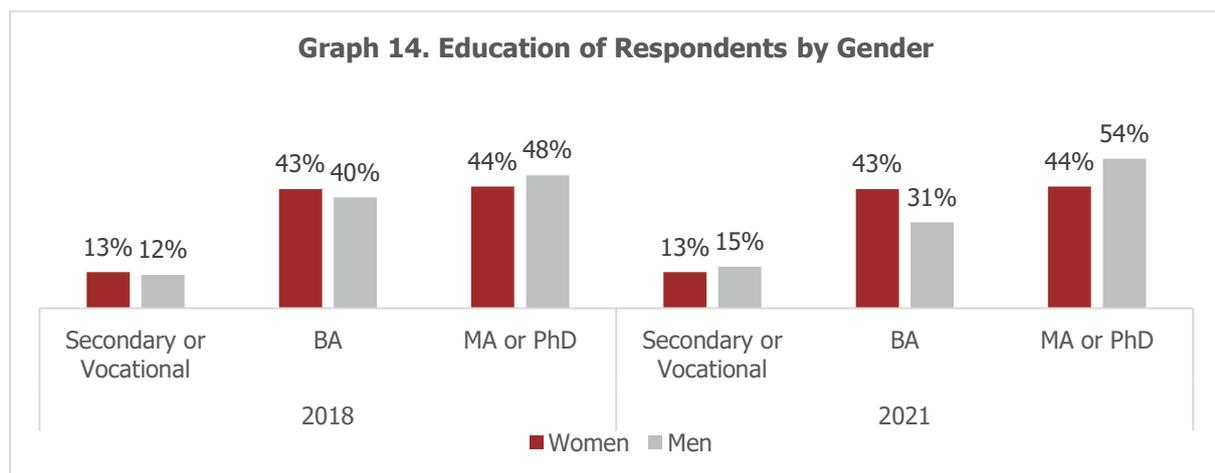
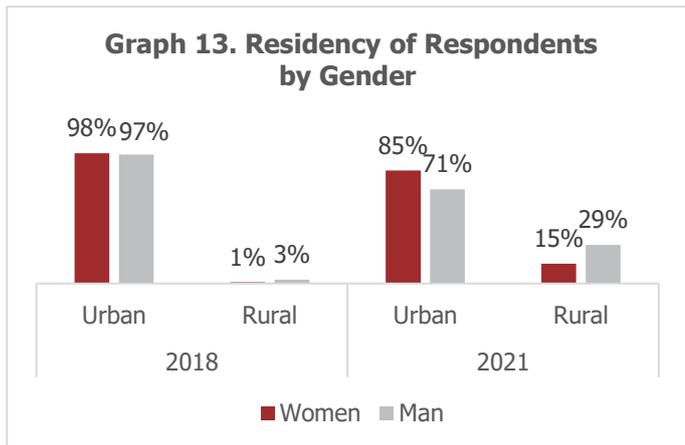
³ N = 1,283, 2018; N = 686, 2021.

⁴ N = 1,279, 2018; N = 681, 2021.

13 illustrates, almost all of the respondents were from urban areas (98%/82%).⁵ Interestingly, a higher percentage of men respondents were from rural areas (3%/29%) than women (1%/15%).

Among respondents, 26%/24% were single and 64%/63% were married. Additionally, 3%/5% were engaged, 3%/4% co-habiting, and 3%/2% were divorced.⁶

Most respondents in 2018 held a bachelor's degree (42%/40%), Master's degree, and/or PhD (46% in both years).⁷ More specifically, 87%/89% of women and 88%/85% of men respondents had these higher levels of education, while only 13% of women and 12%/15% of men had secondary or vocational education (Graph 14). Thus, most respondents were highly educated. Educational level and age category significantly determined the probability of completing the questionnaire. Participants with lower levels of education (secondary or vocational school) and those under 30 years old were more likely to discontinue before the survey was finished.



Most respondents were employed (82%/87% of women and 95% of men in both years).⁸ Of them, 67%/83% were employed full-time, 8%/3% part-time, and 6%/3% were self-employed.⁹ Respondents who were unemployed and looking for a job comprised 10%/7% of the sample, whereas 1%/2% were unemployed and not seeking work. Students are 3%/2% and 0.2%/0.4% are pensioners. An additional 0.3%/0.6% of the sample reported performing unpaid work (unemployed officially). On average, the employed respondents tended to work in mid-level positions (41%/36%).¹⁰ However, most women respondents worked in mid-level positions (44%/35%) and most men respondents worked in senior-level positions (44% in both years).

⁵ N = 1,267, 2018; N = 681, 2021.

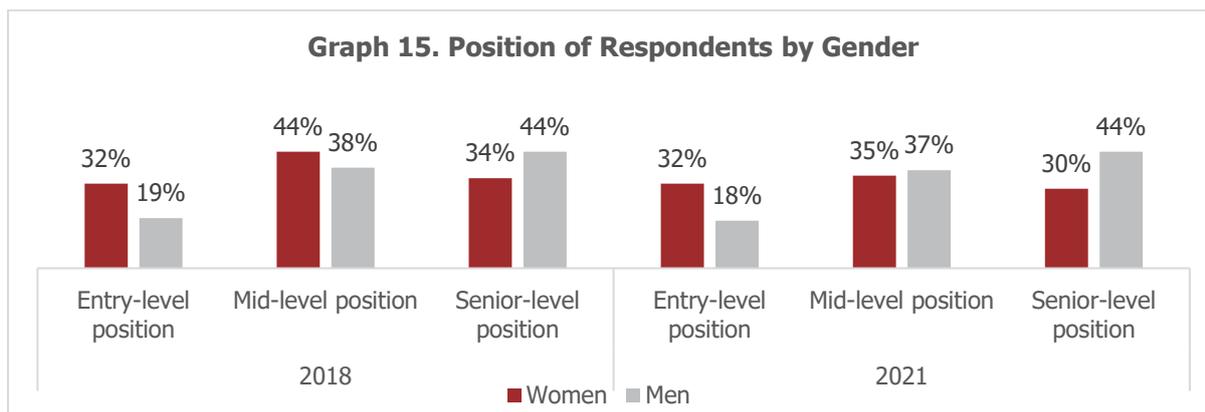
⁶ N = 1,267, 2018; N = 681, 2021.

⁷ N = 1,274, 2018; N = 681, 2021.

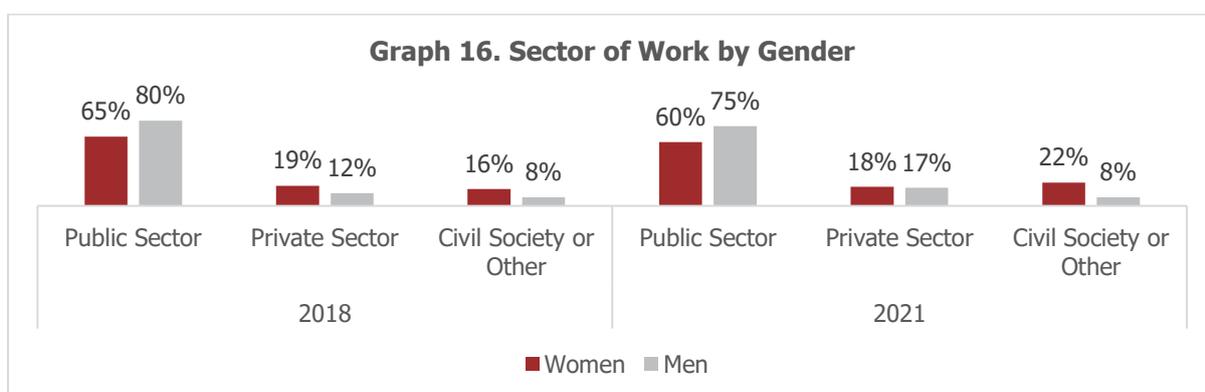
⁸ N = 1,267, 2018; N = 673, 2021.

⁹ N = 1,096, 2018; N = 673, 2021.

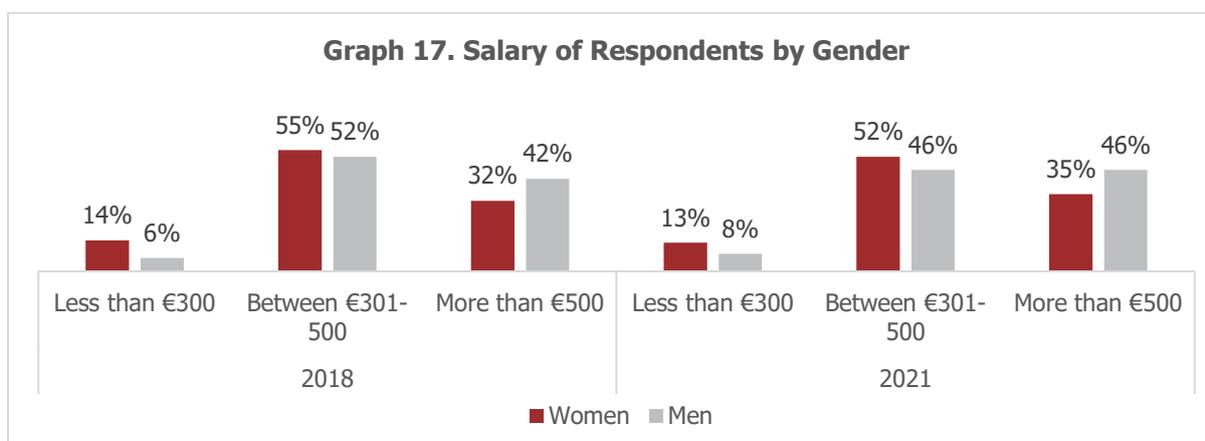
¹⁰ N = 1,027, 2018; N = 568, 2021.



As Graph 16 illustrates, most respondents worked in the public sector (65%/60% of women and 80%/75% of men).¹¹ Only 16%/22% of women and 8% of men respondents in both years worked in civil society or other international bodies (e.g., EU, UN, UN agency, foreign embassy, etc.).



As Graph 17 illustrates, more than half of the respondents received €301-500 net per month (55%/52% of women and 52%/46% of men).¹² Approximately 11%/12% of the respondents received less than €300 including a higher percentage of women (14%/13%) than men (6%/8%). A higher percentage of men (42%/46%) than women (32%/35%) received salaries amounting to more than €500.



¹¹ N = 1,061, 2018; N = 575, 2021.

¹² N = 1,091, 2018; N = 599, 2021.

Annex 3. Survey Instrument

The survey instrument below shows the questions that were used in both editions of this report. Since there were changes in living conditions in the last three years due to the COVID-19 pandemic, there were questions included to reflect that. The questions that were included only in the survey of 2018 are **grey**; questions that were included only in the survey of 2021 are **red**; the questions that were the same for both surveys are **black**. The structure of the 2021 survey has been maintained in this annex.

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 10/15 minutes. Be assured that all of your answers will be kept strictly confidential. No one will know who you are.

If you have any questions or concerns about this survey, please contact: info@womensnetwork.org. By clicking "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

Where do you live?

Kosovo

Abroad

If abroad · Thank you for your interest, this questionnaire is for people living and working in Kosovo

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

Do you live in urban or rural area?

Urban

Rural

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

Turkish

Other (please write)

Serbian

Roma

Hungarian

Bosniak

Ashkali

Slovak

Montenegrin

Egyptian

Vlach

Croat

Gorani

Greek

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

Vocational higher education

Bachelor degree

Master's degree

PhD

What is your current marital status?

Single
Engaged

Married
Divorced

Co-habiting
Widowed

How many children do you have under age 10?

Do you consider yourself to have a disability?

EMPLOYMENT INFORMATION

Are you currently:

Employed full-time
Employed part-time
Self-employed

Unpaid family worker (working on a farm or small family business)

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.

Other (please write)

[If unemployed/family worker are you]

Registered as unemployed with the employment agency, and looking for work

Not registered in the employment agency, but looking for work

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.

[If not looking for work]

What is the main reason that you did not look for employment?

You are waiting to be invited to your previous employment

Seasonal type of work

Illness (your personal)

Disability (your personal)

Takin care of children

Taking care of adult disabled person

Other personal or family obligations

School education or training

Retired person

You think that there is no available job

Other reason (specify)

In the last three years (so since 2018), 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.)
- Local civil society organization
- International civil society organization
- Other international body (EU, UN, UN agency, foreign embassy, etc.)

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)

Since 2018, have you ever been denied the right to take off work for any of the following reasons (please select all that apply)?

- When I was sick with COVID-19
- When a fellow household member was sick with COVID-19
- When I was sick for another reason
- For personal leave (e.g., death in family)
- For national holidays
- For vacation/ annual leave?

COVID-19

Now we have some questions about COVID-19 and how it has affected you and your work.

During COVID-19, for how long were you not working at home or your workplace because your workplace was closed due to isolation or other measures?

- | | | |
|---------------------------------|------------|----------------------|
| 0 days (workplace never closed) | 8-15 days | 30+ days |
| 1-7 days | 16-30 days | Not applicable to me |

During this period, how were you compensated if at all?

- | | |
|------------------------------|-----------------------------|
| I was not paid | I was paid at actual salary |
| I was paid at reduced salary | Not applicable to me |

Since the COVID-19 outbreak, has your employer allowed you to work from home?

During COVID-19, what challenges did you face in balancing your personal and work life, if any? (Please check all that apply)

- Caring for persons who had COVID-19 or other illnesses in my family
- Caring for children (e.g., during the lockdown of schools and kindergartens)
- Caring for persons with disabilities
- Caring for elderly persons
- Living and working in a small space with others
- Not having enough electronic devices in my household for everyone's needs
- Not having strong enough internet for everyone's needs
- Difficulties concentrating
- Psychological violence at home
- Physical violence at home
- Difficulties going offline and disconnecting (such as due to work pressure)
- Stress
- Accessing safe transportation to get to/from work
- Other (please write)
- I did not face any challenges

Have you had COVID-19?

Were you allowed to take off work when you had COVID-19?

How many days did you take off? _____

How did your employer treat your leave related to COVID-19? (please select all that apply)

Fully paid medical leave

Unpaid medical leave

Other (please write)

Partially paid medical leave

Annual vacation days

I don't know

Did your employer provide a mask, gloves, hand sanitizers and other protection measures against COVID-19?

Yes, always

Yes, sometimes

Not applicable as I was not

No

working

As a result of COVID-19, did your employer decrease your salary?

As a result of COVID-19 have you lost your job?

For what reason(s)? Please check all that apply.

General layoffs of all workers

I had no contract so employer said to stop working

My employment contract was not renewed

I had to take care of my children and my employer pressured me to quit/fired me

I was a woman

Other reasons (please write)

Of the Government's relief measures related to COVID-19, have you been DENIED the right to any of the following (meaning you didn't receive the benefit)? Please check all that apply.

Not applicable: I did not qualify for any of benefits

Paid absence from work for parents with children under age 10

Additional salary (e.g., for essential workers)

Unemployment benefits

Other (please write)

Of the Government's relief measures related to COVID-19, have you been DENIED the right to any of the following (meaning you didn't receive the benefit)? Please check all that apply.

Not applicable: I did not qualify for any of benefits

Double payment of the social scheme value for all beneficiaries of social schemes for March, April, and

May Withdrawal of 10% of the funds saved in the Pension Trust for contributors

A salary bonus in the amount of €300 for employees of essential sectors (fieldworkers who are directly exposed to the risk of infection in their line of work) for two months

Extra payment in the amount of €100 for employees of grocery stores, bakeries, and pharmacies in April and May

Monthly assistance amounting to €130 for citizens who lost their jobs due to the public health emergency for April, May, and June

Extra payment in the amount of €30 per month to all beneficiaries of social and pension schemes receiving monthly payments lower than €100 for April, May, and June

Government payment of monthly assistance in the amount of €130 for citizens with severe social conditions, declared as unemployed by the competent institution, who are not beneficiaries of any monthly revenue from the budget of Kosovo for April, May, and June

Other (please write)

CONTRACTS AND PAY

Since 2008/2018, have you ever been asked to work regularly without a contract (including for a family business)?

Do you currently have a **written** contract?

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

Three months or less

4 or more years

4-6 months

Indefinite

7-12 months

I have never had a written contract

More than 1 year, but less than 3 years

In your workplace, who tends to have longer contracts?

Women

Not applicable (only men or only women work here)

Men

I don't know

It's the same for both

Since 2008/2018, 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?

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

1-20

41-60

21-40

More than 61

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

Less than or equal to 129

201-300

501-800

130 – 170

301-400

800 or more

171 - 200

401-500

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

In your job, are you entitled to any of the following benefits? Please select all that apply.

Health insurance

Social security / pension paid by the employer

Neither of these

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

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

Not applicable: I never work overtime

YOUR VIEWS

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

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 appearance

Your gender (for example, I was told this is not a job for women/men)

You were pregnant

You have children or were planning to

Your ethnicity

Your sexual orientation or gender identity

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?

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

For what reasons do you feel at risk? Please check all that apply.

COVID-19

Bad air quality

Dangerous chemicals

Lifting heavy objects

Not being allowed to use the toilet

Other (please write)

PREGNANCY AND MATERNITY LEAVE

Since 2008/2018, have you ever been pregnant when you were employed?

Yes

No

I am currently pregnant but am not yet on maternity leave

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 2008/2018, have you 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

SEXUAL HARASSMENT AT WORK

The following is a list of situations that reflect certain behaviours. Please indicate if you consider them to be sexual harassment when they occur at work. On the second scale please indicate if it ever happened to you at work. Your identity will remain anonymous.

	-Yes, this is sexual harassment. -No it's not. -Depends	-Yes, this happened to me, more than once. -Yes, this happened to me once. -No, this never happened to me.
Making sexual gestures, jokes, or sounds		
Sending emails or text messages of a sexual nature (including after work hours)		
Touching intimate parts of another worker's body (bottom, breasts, etc.)		
Touching body parts on purpose (hand, shoulder, back, etc.) in a situation in 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

Have you talked about this situation to anyone?

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
- CSO that provides legal help
- 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):

UNIONS

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

Yes

No

I don't know

Are you a member of any workers' union?

Yes

No

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

Very well

Good

Somewhat

Poorly

Very poorly

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 2018? 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/entities were you in contact regarding what happened to you?

Please select all that apply.

None

Labour Inspectorate

Prosecution

Lawyer

Police

Ombudsman

Other (please write)

Courts

CSO that provides legal help

What happened when you reported discrimination to the relevant authorities?

They would not hear my case

They listened, but said they could not do anything

They listened and tried to assist me

They were very helpful and helped me file the case

Other (please write)

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

Yes

No

FOLLOW-UP

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

Yes

No

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

Phone:

Email:

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

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

Annex 4. Sample Interview Guide

This annex shows a sample of an interview guide that was used in the interviews conducted in 2018 and 2021. The questions that were only used in 2018 are in **grey**, the questions that were used only in 2021 are in **red**, the questions that remained the same are in **black**.

(For the Labour Inspectorate)

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

Introduction

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

Demographics

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

Knowledge

13. First, please can you tell me how you personally define "discrimination"?
14. What types of acts, for example, would you consider to be "gender-based discrimination"?
15. To what extent does the legal framework offer protection if discrimination occurs because of a person's gender, meaning because they are a woman or a man?
16. Based on your opinion and experience, to what extent is this legal framework related to gender-based discrimination complete or incomplete? Please elaborate.
17. In your view, what impact or influence does the Ombudsperson institution have in relation to discrimination cases at work, based on gender? Please can you elaborate. / **To what extent do you think that knowledge about discrimination as a rights violation has improved in the last three years (so since January 2018), if at all?**

Attitudes and Perceptions

18. Generally speaking, what do your colleagues (including from other institutions that have a mandate to deal with this issue) think about discrimination against women related to labour?
19. **To what extent do you think that attitudes about discrimination as a rights violation have improved in the last three years (so since January 2018), if at all?**
20. If a woman believes that she has been discriminated against at work because she is a woman, what should she do?

Training

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

Laws and Implementation

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

Filter: Gender-based discrimination cases reported

We are looking at different forms of discrimination related to labour. In our research, and in accordance with the legal framework in [country], we are defining discrimination to include: discrimination in hiring, promotion, contracts, sexual harassment, and maternity/paternity leave, working conditions; working conditions during COVID-19, gender pay gap, informal economy, breastfeeding rights (for some countries) violations. Based on this definition:

25. Have you seen any change (increase or decrease) in the number of cases reported since January 2018? For what reason do you think this is?
26. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008?
 - 25.1.1 Yes
 - 25.1.2 No

[If the answer is Yes, ask:]

- Have you witnessed an increase in the number of cases of gender-based discrimination reported to your institution since January 2018?
- Has there been an increase in the number of reports during the pandemic, of gender discrimination in the workplace?

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

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

Gender-based discrimination cases reported

28. Please tell me about the cases you have dealt with?
 - 28.1. If yes, how many approximately?
 - 28.2. What was the gender of persons who suffered discrimination [women, men, both]?
 - 28.3. What was the gender of the alleged perpetrator?
 - 28.4. 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.
 - 28.5. 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?
 - 28.6. What types of discrimination did you encounter?

- 28.7. 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.
29. How many were investigated based on appeals that employees have submitted?
30. What steps have you taken?
31. Were any disciplinary measures taken?
32. If so, which?
33. What was the biggest challenge?
34. 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.
35. What are the strengths and weaknesses of data collection practices related to logging these cases?
36. What are the current practices of collecting and tracking data related to gender-based discrimination in your institution?
37. Does the institution you work in disaggregate cases based on gender (the victim and the perpetrator)?
38. Do you have any other comments or things you'd like to add?
39. [Researcher notes (reflexivity)]

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