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# GENDER-BASED DISCRIMINATION AND LABOUR IN THE WESTERN BALKANS

## SECOND EDITION



Implemented by:



Gender Alliance for Development Center  
Qendra Aleanca Gjimore për Zhvillim



KVINNA  
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WOMEN'S RIGHTS CENTER  
CENTAR ZA ŽENSKA PRAVA



# **GENDER-BASED DISCRIMINATION AND LABOUR IN THE WESTERN BALKANS**

**SECOND EDITION**

2022

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<sup>1</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.



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# ACRONYMS

BiH	Bosnia and Herzegovina
CSO	Civil society organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
CPD	Commissioners for Protection from Discrimination
CŽP	The Centre of Women’s Rights
D4D	Democracy for Development
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
FBiH	Federation of Bosnia and Herzegovina
GAP	EU Gender Action Plan
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILO	International Labour Organisation
KWN	Kosovo Women’s Network
LGBTQIA+	Lesbian, gay, bisexual, trans, queer/questioning, intersex, asexual, and other identities
LGE	Law on gender equality
LL	Law on labour
LPD	Law on protection from discrimination
MLSP	Ministry of Labour and Social Policy
NM	North Macedonia
OI	Ombudsperson Institution
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PWD	Persons with Different Abilities
RS	Republika Srpska
TEN	Think for Europe Network
TUMM	Trade Union of Media of Montenegro
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UN	United Nations
WB	Western Balkan



# EXECUTIVE SUMMARY

This report examines gender-based discrimination and labour, as part of a regional initiative to address such discrimination in six Western Balkan (WB) countries, financially supported by the European Union (EU) with co-funding from Swedish Development Cooperation. The research aimed to identify shortcomings in the relevant legal framework; awareness and prevalence of gender-based discrimination related to labour; the extent to which people have filed claims; and how institutions have treated such cases. Conducted in 2018 and repeated in 2021, the research involved mixed methods, including a desk review, online surveys, and interviews.

WB countries have ratified a broad range of international instruments related to gender-based discrimination. The constitutions of all WB countries explicitly prohibit discrimination based on sex or gender. All have included as protected grounds disability, sexual orientation, and ethnicity, among others. While definitions relating to discrimination generally are compliant with the EU gender equality acquis, clarifying phrasing could improve application. Approximation issues still exist with protection of self-employed persons, protection from victimisation, leave rights particularly related to paternity, parental, and carers' leave, adequate sharing of the burden of proof, and exceptions. Meanwhile, legal fragmentation contributes to confusion with different standards of protection, procedures, and sanctions applicable under various overlapping laws. Sanctions seem low to be considered "effective, proportionate and dissuasive". Moreover, approximation requires implementation of the existing legal framework, which remains a key challenge for all WB countries.

Most of the respondents surveyed knew that gender-based discrimination is illegal in their country. While several said that such discrimination should be reported to the employer or Labour Inspectorate, few knew of other institutions dealing with such cases. Low awareness likely contributes to the currently minimal reporting of gender-based discrimination cases to relevant institutions. Other contributing factors include workers' concerns over anonymity, fear of job loss, bureaucratic and costly procedures, and distrust in institutions.

Very few WB institutions responsible for addressing labour-related gender-based discrimination maintain clear data about its prevalence. Yet, survey data and interviews evidence that gender-based discrimination is widespread, particularly in hiring, promotion, maternity leave, and sexual harassment at work. Such discrimination particularly affects women. While limited, evidence suggests gender-based discrimination also affects protected groups' labour rights, such as persons with different abilities, minority ethnic groups, and persons with various gender identities and sexual orientations.

While a few more cases have been reported in recent years, gender-based discrimination remains rarely reported. Therefore, the responsible institutions lack practical experience. Criminal and civil court judges have little judicial practice, and few judges seemed knowledgeable regarding the relevant legal framework. Labour inspectors tended to know about labour violations, but not about gender-based discrimination. They had few such cases and did not seem to consider these a priority. Ombudsperson Institution and Commissioner for Equality representatives seemed very knowledgeable about the relevant legal framework and have assisted slightly more cases over time. Non-governmental actors like unions and organisations have assisted more women in claiming their rights, though legal frameworks remain incomplete for enabling their work. Labour union representatives still tended to have limited knowledge about gender-based discrimination.

Overall, there has been only slight progress in awareness and institutional response among a few institutions since 2018; transforming awareness, attitudes, and institutional approaches is a long-term process that will require more time.

# INTRODUCTION

Gender-based discrimination can be defined as discrimination that affects a person because of her or his gender. Thus, gender-based discrimination can affect both women and men. However, as evidence in this report and elsewhere suggests, it tends to affect women more than men.

Gender equality, including equal opportunities, equal treatment, and equal pay for equal work, is among the foundational principles of the EU. In signing stabilisation and association agreements with the EU, each WB country has committed to approximating its domestic legislation with the EU acquis, towards eventual EU membership. However, as annual EU country reports attest, the required reforms have been slow and incomplete. Beyond rights violations, failures to implement these provisions likely has contributed to women's worryingly low employment rates in WB countries (see Table 1).

Meanwhile, within both EU Gender Action Plan (GAP) II and III, the EU has firmly committed to furthering women's social and economic rights.<sup>2</sup> The EU accession process provides a unique opportunity for the EU to

## 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.

**Table 1. Employment Rates in the WB among Persons Ages 15+ in 2021<sup>1</sup>**

	Women	Men
Albania	46%	60%
Bosnia and Herzegovina	29%	51%
Kosovo	16%	43%
Montenegro	37%	48%
North Macedonia	38%	56%
Serbia	41%	57%

<sup>1</sup> Average employment rate by country for 2021 retrieved from statistical agencies in each country. Albania: Instat, *Labour Force Survey*, Albania, 2021, at: <http://www.instat.gov.al/al/temat/tregu-i-pun%C3%ABs-dhe-arsimi/pun%C3%ABsimi-dhe-papun%C3%ABsia/#tab2>; BiH: Agency for Statistics of BiH, *Demography and Social Statistics*, BiH, 2022, at: [https://bhas.gov.ba/data/Publikacije/Saopštenja/2022/LAB\\_00\\_2021\\_Y1\\_1\\_BS.pdf](https://bhas.gov.ba/data/Publikacije/Saopštenja/2022/LAB_00_2021_Y1_1_BS.pdf); Kosovo: Kosovo Agency of Statistics, *Labour Force Survey Q1 2021*, Kosovo, 2021 (data only available for the first quarter of 2021), at: <https://ask.rks-qov.net/media/6355/lfs-q1-2021.pdf>; Montenegro: Montstat, *Labour Force Survey*, Montenegro, 2022, at: [http://monstat.org/uploads/files/ARS/2021/2021/LFS%20release\\_2021.pdf](http://monstat.org/uploads/files/ARS/2021/2021/LFS%20release_2021.pdf); North Macedonia: State Statistical Office, *Labour Market*, North Macedonia, 2022, at: [https://www.stat.gov.mk/pdf/2022/2.1.22.05\\_mk.pdf](https://www.stat.gov.mk/pdf/2022/2.1.22.05_mk.pdf); and Serbia: Republicki Zavod za Statistiku, *Anketa o Radnoj Snazi*, Serbia, 2022, at: <https://publikacije.stat.gov.rs/G2022/Pdf/G20225682.pdf>.

<sup>2</sup> See: European Commission, High Representative of the Union for Foreign Affairs and Security Policy, "Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020", Joint Staff Working Document, SWD(2015) 182 final, Brussels, 21.9.2015, at: [https://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender2016-2020-20150922\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender2016-2020-20150922_en.pdf); and Gender Action Plan III: European Commission, High Representative of the Union for Foreign Affairs and Security Policy, "Together Towards a Gender Equal World: An Ambitious Agenda for Gender Equality and

encourage and support WB governments in taking steps to ensure access to decent work for all women of all ages, among other objectives foreseen in the EU GAPs.<sup>3</sup> This gender analysis sought to inform areas that the EU could consider supporting through its cooperation and political engagement, towards implementing the GAPs.

The Kosovo Women's Network (KWN), Gender Alliance for Development Centre (GADC) (Albania), Women's Rights Centre (Montenegro), Kvinna till Kvinna Foundation (Kvinna till Kvinna) (Serbia/Sweden), Helsinki Citizens' Assembly Banja Luka (Bosnia and Herzegovina, BiH) and Reactor-Research in Action (North Macedonia, NM) have collaborated towards furthering women's labour rights in their respective countries since 2018, focusing on addressing gender-based discrimination related to labour. This cooperation has included conducting joint research to inform this report as part of their joint action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights".

The 2018 report that preceded this report was the first comprehensive, comparable regional research on this theme. It served as an essential baseline for informing future advocacy and outreach towards decreasing labour-related gender-based discrimination. The research conducted to inform the first edition of this report sought to establish a baseline regarding the nature of gender-based discrimination related to labour; to identify the extent to which discrimination claims are being filed; and to understand how institutions have treated such cases. This second edition of this report used the same methodology, while seeking to examine any changes since 2018. More specifically, this research aimed to answer the following research questions:

- I. To what extent is the legal framework complete?
- II. How many work-related discrimination cases have been reported to different types of institutions from 2008 to 2020?
- III. For what reasons have few discrimination cases been reported and/or filed?
- IV. How have relevant institutions treated discrimination cases to date?
- V. What changes have occurred since the first edition of this report?

## Methodology

The partners conducted research for the first edition from March to December 2018 and for this edition from March to December 2021, using the same methodology in all six WB countries for both editions. The research involved mixed methods. First, legal analyses were conducted to examine laws and legislation offering protection from discrimination in each WB country. The analyses sought to identify any shortcomings in aligning legislation with the EU acquis, focusing on gender equality, anti-discrimination, and labour. The teams examined relevant international laws, treaties and conventions, constitutions, laws, and secondary legislation in each country. The legal analyses also served to identify relevant institutions, their roles, and responsibilities.

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

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Women's Empowerment in EU External Action", and, Joint Communication to the European Parliament and the Council, JOIN(2020), 17 final, Brussels, 25.11.2020, at: [https://ec.europa.eu/international-partnerships/system/files/join-2020-17-final\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/join-2020-17-final_en.pdf).

<sup>3</sup> Ibid, Objective 14. This also relates to other Gender Action Plan II objectives, such as "equal rights and ability for women to participate in policy and governance processes at all levels" (17) and "challenged and changed discriminatory social norms and gender stereotypes" (19).

Fifth, an anonymous online survey was administered throughout the WB region using Lime Survey. It aimed to collect input from diverse women and men regarding their knowledge of gender-based discrimination and relevant legislation, attitudes towards it, personal experiences with it, whether any such cases were reported, and reasons for not reporting discrimination. Translated and crosschecked in WB languages (e.g., Albanian, Bosnian, Montenegrin, Macedonian, Serbian, and English), the survey was promoted broadly through media, email, government partners, and social media boosting in both 2018 and 2021. In total, in 2018, 4,569 people (77% women and 23% men), completed at least 90% of the survey, while in total 6,948 people partially completed the survey (78% women, 22% men). In 2021, 3,454 people (83% women, 17% men) completed at least 90% of the survey, and 6,237 people completed part of the survey (83% women, 17% men). Respondents were ages 15 and older. Considering that the number of respondents to each question differed, the precise number of respondents for each finding is presented ("n"). 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 rather than random sampling, findings referred to as "statistically significant" should be interpreted as suggestive, but not conclusive nor generalisable. As particular groups were underrepresented in the sample, few analyses were performed regarding the relationship between responses and ethnicity, age, or rural/urban location, respectively.

Sixth, the survey and interviews with institutions supported the identification of individual cases of discrimination. Researchers contacted respondents who were willing to participate in in-depth interviews regarding their experiences. The research also drew from cases documented by civil society organisations (CSOs) providing legal aid and monitoring the institutional response to cases.

The research team sought to enhance the validity of findings through triangulation of researchers, methods, and data sources, coupled with participant checks. The main research limitations relate to the online survey, which was not representative of the population. There was an overrepresentation of women, respondents under age 40, respondents with high levels of education, i.e., Bachelors, Masters, and PhD (77% in 2018, 71% in 2021), and respondents located in cities. Only 2% of respondents in 2018 and 11% in 2021 came from rural areas. The overrepresentation of certain social groups contributes to bias in the findings. The gender disproportion in all of the national samples in both 2018 and 2021 severely constrained the possibility of drawing conclusions regarding gender-based differences. Thus, while the survey data is disaggregated by gender, readers should consult the "n" values for the number of men who responded to each question before drawing conclusions about possible gender differences.

Despite the limitations affiliated with convenience sampling, the research team believes that the online 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. The online survey provided anonymity that enabled people to share their potentially sensitive stories safely. Based on interviews, the team hypothesises that if the situation is as dire as portrayed by the survey respondents, who tended to be in comparatively better social positions, the situation likely is worse for persons in more precarious positions, such as with less education, in rural areas and with worse socioeconomic situations. For further information about the methodology, please see Annex 1.

# LEGAL ANALYSIS

This chapter examines the extent to which the legal frameworks of the WB countries concerning labour-related gender-based discrimination are complete and harmonised with relevant EU directives. This analysis begins with a comparative overview of international agreements and instruments ratified by WB countries and an overview of relevant constitutional protections. The legislation which makes up the anti-discrimination framework and labour law of WB countries is then compared by reference to specific requirements of the EU gender equality *acquis*. Finally, the roles of responsible institutions and procedures in place for filing discrimination cases are discussed, respectively.

## Comparative International and Constitutional Law

WB countries have ratified a broad range of international instruments, as summarized in this section and visually in Table 2. Exceptionally, **Kosovo** does not have the international legal capacity to formally ratify or participate fully in conventions of the United Nations (UN) or the Council of Europe, though various international agreements and instruments are directly applicable by virtue of Kosovo's Constitution. These instruments have priority if conflict arises with other provisions of law. Additionally, the Kosovo Constitution provides that human rights and fundamental freedoms shall be interpreted consistently with decisions of the European Court of Human Rights (ECtHR).

Since the previous edition of this report, the International Labour Organisation (ILO) has adopted the Violence and Harassment Convention (No. 190, 2019) together with the Violence and Harassment Recommendation (No. 206, 2019). Few countries have ratified the Convention to date. However, in accordance with the ILO constitution, **Montenegro** and **Serbia** have submitted the Convention to their national competent authorities to consider ratification.<sup>1</sup> While the Convention addresses a number of areas that are already regulated by EU law (such as non-discrimination and occupational safety), several innovative aspects of the Convention would be valuable additions to the legal frameworks of WB countries. For example, the Convention explicitly states that a single incident may be deemed to be harassment.<sup>2</sup> The Convention also provides a broader scope of protection by capturing, for example, commuting to and from work and work-related communications through technology.<sup>3</sup>

## The European Convention on Human Rights

Apart from **Kosovo**, all WB countries are members of the Council of Europe, so citizens have access to the ECtHR. Article 14 of the European Convention on Human Rights (ECHR) prohibits discrimination. However, this provision is not a freestanding protection from discrimination, as it may only be invoked in combination with another substantive provision of the ECHR or of one of its additional Protocols. In comparison, Article 1 of Protocol 12 to the ECHR contains a free-standing prohibition of discrimination, which is not limited to enjoying only those rights provided by the ECHR. For this reason, it is significant that all WB countries have ratified Protocol 12.

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<sup>1</sup> ILO, Constitution, Article 19.5.

<sup>2</sup> ILO, Violence and Harassment Convention 2019 (No. 190), Article 1.1(a).

<sup>3</sup> Ibid, Article 3.

## Constitutional Law

The constitutions of all WB countries contain an explicit prohibition of discrimination. These prohibitions include the grounds of either sex (**BiH, NM, Serbia**) or gender (**Albania, Kosovo, Montenegro**). The constitutions of **Kosovo, Montenegro**, and **Serbia** specifically recognise positive action measures. All constitutions, except in **BiH**, also include the right to work. Constitutions additionally contain a specific guarantee of gender equality, except in **BiH** and **NM**.

Limitation clauses have been included in all constitutions, except in **BiH**. Such clauses are relatively common in constitutional legal orders; they normally enable certain constitutional rights to be limited or qualified for certain democratically justifiable purposes, such as preventing conflicts with other rights or general interests.<sup>4</sup> Issues reported with these clauses include vagueness in drafting that allows potential for abuse (**Montenegro**) and restrictions being potentially too broad (**Serbia**).

**Table 2. International Instruments Ratified by WB Countries**

International Instrument	Albania	BiH	Kosovo	Montenegro	NM	Serbia
ECHR	Y	Y	Y	Y	Y	Y
Protocol 12 ECHR	Y	Y	Y	Y	Y	Y
European Social Charter <sup>5</sup>	Y	Y		Y	Y	Y
ICCPR <sup>6</sup>	Y	Y	Y	Y	Y	Y
FCNM <sup>7</sup>	Y	Y	Y	Y	Y	Y
ICESCR <sup>8</sup>	Y	Y		Y	Y	Y
ICERD <sup>9</sup>	Y	Y	Y	Y	Y	Y
CEDAW <sup>10</sup>	Y	Y	Y	Y	Y	Y
ILO Convention No 111 on Discrimination <sup>11</sup>	Y	Y		Y	Y	Y
CRPD <sup>12</sup>	Y	Y		Y	Y	Y
ILO Convention No 190 on Violence and Harassment <sup>13</sup>	N	N		P	N	P

<sup>4</sup> Ahmed, D. and Bulmer, E. for International IDEA, Limitation Clauses, Strömsborg, [2017](#), p. 3.

<sup>5</sup> A Council of Europe treaty aiming to guarantee social rights without discrimination, with a strong focus on the right to work.

<sup>6</sup> The UN International Covenant on Civil and Political Rights.

<sup>7</sup> The Council of Europe Framework Convention for the Protection of National Minorities, aiming to promote equality of persons belonging to minorities in all areas of economic, social, political, public, and cultural life.

<sup>8</sup> The UN International Covenant on Economic, Social and Cultural Rights.

<sup>9</sup> The UN International Convention on the Elimination of All Forms of Racial Discrimination, prohibiting racial discrimination in all its forms and seeking to guarantee equality before the law for all persons, without distinction as to race, colour, or national or ethnic origin, including the right to work.

<sup>10</sup> The UN Convention on the Elimination of All Forms of Discrimination against Women contains rights related to labour, including equal employment opportunities, equal remuneration, the right to social security, the protection of health and the right to safe working conditions, maternity leave rights, and a prohibition of dismissal on the grounds of pregnancy, maternity leave, or marital status.

<sup>11</sup> An ILO convention prohibiting discrimination and exclusion on any basis including of race or colour, sex, religion, political opinion, national or social origin in employment.

<sup>12</sup> The UN Convention on the Rights of Persons with Disabilities, including the right of persons with disabilities to work on an equal basis with others.

<sup>13</sup> An ILO convention seeking to eliminate violence against and harassment of workers in the labour force. The Convention spans all sectors, private and public, tackling formal and non-formal economy.



## The Influence of EU Law

Pursuant to the stabilisation and association agreements between the EU and each WB country, each contracting party is obliged to approximate their domestic legislation with the EU *acquis*, with the aim of eventual EU membership. As a result of this process, WB countries share many similarities in their legal frameworks. This section discusses key aspects of the EU gender equality *acquis* and the extent to which WB countries have approximated their domestic legislation accordingly.<sup>14</sup> For convenience, countries' respective laws on labour, protection from discrimination and gender equality are referred to as "Labour Law" ("LL"), "LPD", and "LGE", respectively, though the names of each country's laws vary.

Each sub-section includes a table comparing harmonisation with the EU *acquis* by country. In the tables, "Y" denotes that the provision is clearly established in the law, "N" in a dark grey cell that there is no such provision and "P" in a light grey cell that the provision is partially reflected with some irregularities. In **BiH**, the state structure consists of two entities (the Federation of BiH, FBiH, and Republika Srpska, RS) and one district (Brčko). They have different internal structures. "S" denotes that the provision is regulated on the state level. Where there is no state level regulation, regulation within other units is denoted by "FBiH", "RS" and "BD", respectively. BiH has a state level LPD and LGE. As labour relations are not regulated at the state level, FBiH, RS, and BD have distinct Labour Laws. North Macedonia is abbreviated as "NM" and Montenegro as "M" in the tables.

### Definitions

The Recast Directive defines "direct discrimination" as "where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation". Therefore, a finding of direct discrimination is based on an assessment of the victim's treatment with a potential comparator. This is premised on the notion that the complainant was treated differently than a similarly situated hypothetical comparator and that the basis for the differential treatment was a prohibited ground.<sup>15</sup> Generally, definitions in all WB countries are compliant (Table 3). It should be noted that "comparability" does not require that the situations be identical. Further, the assessment of comparability must not be carried out "in a global and abstract manner, but in a specific and concrete manner in the light of the benefit concerned".<sup>16</sup>

"Indirect discrimination" is defined as "where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary". All WB countries are compliant with this definition, although some issues are reported in relation to the "objective justification" defence found in this definition (discussed below). Since the previous edition of this report, **Serbia's** definition has been harmonised.<sup>17</sup>

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<sup>14</sup> Aspects of the relevant directives have been omitted to focus on principle issues relevant to this Action. The full names of the directives have been abbreviated and are referred to as follows: "Employment Equality Directive" (Directive 2000/43/EC), "Gender Goods and Services Directive" (Directive 2004/113/EC), "Gender Social Security Directive" (Directive 79/7/EEC), "Parental Leave Directive" (Directive 2010/18/EU) (repealed by the Work-Life Balance Directive with effect from 2 August 2022), "Part-time Work Directive" (Directive 97/81/EC), "Pregnancy Directive" (Directive 92/85/EEC), "Racial Equality Directive" (Directive 2000/78/EC), "Recast" (Directive 2006/54/EC), "Self-employment Directive" (Directive 2010/41/EU) and "Work-Life Balance Directive" (Directive 2019/1158).

<sup>15</sup> Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, Fifth ed., 2011, 869.

<sup>16</sup> ECJ, C-147/08 *Römer*, 42.

<sup>17</sup> Previously, there was a concern that the Serbian definition could have been interpreted as being limited to the actual occurrence of disadvantage, "making it impossible to challenge apparently neutral provisions before they incur disadvantages for actual victims" (Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 22).

Table 3. Harmonisation with EU Definitions in Gender Equality Acquis						
	Albania	BiH	Kosovo	NM	M	Serbia
Direct discrimination (Recast, Art. 2.1[a])	Y	Y(S)	Y	Y	Y	Y
Indirect discrimination (Recast, Art. 2.1[b])	Y	Y(S)	Y	Y	Y	Y
Harassment (Recast, Art. 2.1[c])	Y	Y(S)	Y	Y	Y	Y
Sexual harassment (Recast, Art. 2.1[d])	Y	Y(S)	Y	Y	Y	Y

"Harassment" is defined as "where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment". In contrast, "sexual harassment" is defined as "where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment". All WB countries are compliant with these definitions. Finally, "instruction to discriminate" is prohibited by the EU Equal Treatment Directives. Although no definition is given in EU law, the EU Agency for Fundamental Rights and the Council of Europe have given useful guidance: instruction to discrimination "ought not to be confined to merely dealing with instructions that are mandatory in nature, but should extend to catch situations where there is an expressed preference or an encouragement to treat individuals less favourably due to one of the protected grounds".<sup>18</sup> All WB countries have included instruction to discriminate in their anti-discrimination frameworks.

### Prohibition of Discrimination

The principle of equal pay for equal work is a foundational principle of EU anti-discrimination law. "Pay" is defined broadly to include considerations beyond basic salary.<sup>19</sup> The law of all WB countries is compliant with this principle. EU law also prohibits discrimination in relation to employment conditions. Generally, all direct and indirect discrimination on the grounds of sex is prohibited in access to employment (including related to selection criteria, recruitment conditions, and promotion in all levels of the professional hierarchy), vocational training, working conditions (including dismissals and pay) and involvement in workers' organisations. "Discrimination" includes harassment, sexual harassment, instruction to discriminate, or any less favourable treatment of a woman related to pregnancy or maternity leave. All WB countries are generally compliant with this prohibition (Table 4).<sup>20</sup>

A crucial aspect of EU anti-discrimination law is the prohibition of "victimisation". This refers to measures to protect employees against dismissal or other adverse treatment by employers in reaction to a complaint or legal proceedings aimed at enforcing compliance with the principle of equal treatment. Such measures can be invaluable to victims in granting protection against job loss or retaliation and, consequently, security in making a claim. Compliance with this concept has been achieved by **Albania, Kosovo, and NM**. Similar issues are identifiable in **BiH and Montenegro**: while each of these countries has included the

<sup>18</sup> EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law (2018 Edition)* p. 67.

<sup>19</sup> Recast, Art. 2[e]; TFEU Art. 157.2. The European Commission has proposed a new directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women. The proposal seeks to establish pay transparency within organisations, facilitate the application of key concepts relating to equal pay (including 'pay' and 'work of equal value'), and strengthen enforcement mechanisms.

<sup>20</sup> Pregnancy discrimination was previously not explicitly prohibited in the Serbian framework (Krstic, I., *Serbia Country report: Gender equality*, 2021, p. 14). The new LGE now explicitly prohibits discrimination based on pregnancy as well as parental leave. Note that the Albanian LPD now includes various additional forms of discrimination, including sexual harassment. Sexual harassment was previously already covered by the Albanian LGE.



concept in their law, the relevant provisions are drafted narrowly and should be expanded to cover all types of adverse treatment or consequences emanating from such procedures, as stated in the EU Equal Treatment Directives.<sup>21</sup> In **Serbia**, the LPD and LGE provisions on victimisation confuse this concept with that of discrimination, and need to be amended to be more consistent with the EU Equal Treatment Directives.<sup>22</sup>

A common issue in compliance concerns transposing the prohibition of discrimination related to self-employment. Only **Albania** and **BiH** are fully compliant with the Self-employment Directive. In **Serbia**, although the LPD does not address self-employment, other laws do to some extent and the government introduced various measures to promote self-employment in 2020.<sup>23</sup> **Montenegro** has not transposed this principle,<sup>24</sup> and issues exist with the limits of the law in **Kosovo**,<sup>25</sup> and **NM**.<sup>26</sup> Table 4 summarises harmonisation of WB legislation with the EU acquis regarding the prohibition of discrimination.

Table 4. Harmonisation with EU Acquis Regarding Prohibition of Discrimination						
	Albania	BiH	Kosovo	NM	M	Serbia
Prohibition of direct and indirect <b>pay</b> discrimination based on sex for the same work, or for work to which equal value is attributed (Recast, Art. 4; TFEU Art. 157.1)	Y	Y(S)	Y	Y	Y	Y
Prohibition of direct and indirect discrimination on grounds of <b>sex</b> in access to employment, vocational training, working conditions, and membership/involvement in workers' organisations (Recast, Art. 14.1)	Y	Y(S)	Y	Y	Y	Y
- Above prohibition includes harassment, sexual harassment, instruction to discriminate, or any less favourable treatment of a woman related to pregnancy or maternity leave (Recast, Art. 2.2)	Y	Y(S)	Y	Y	Y	Y
Prohibition of <b>victimisation</b> in matters of employment and occupation (Recast, Art. 24)	Y	P(S)	Y	Y	P	P
Prohibition of direct and indirect discrimination on grounds of sex, in matters such as <b>setting up a business</b> or any other form of <b>self-employed</b> activity (Self-employment Directive, Art. 4)	Y	Y(S)	P	P	N	P

<sup>21</sup> OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, 2014, p. 16-17; Kostić-Mandić, M., *Montenegro Country report: Non-discrimination*, 2021, p. 75.

<sup>22</sup> Krstić, I., *Serbia Country report: Non-discrimination*, 2021, p. 68.

<sup>23</sup> The measures included favourable loans, grants, professional advice, and favourable tax rates (Krstić, I., *Serbia Country report: Non-discrimination*, 2021, p. 34).

<sup>24</sup> Simović-Zvicer, V., *Montenegro Country report: Gender equality*, 2021, p. 66.

<sup>25</sup> The LPD and LGE include self-employment within their scope. However, the concept of self-employed capacity is not correctly transposed into Kosovar law (Cleff le Divillec, S. and Miller, K. for KWN, *Kosovo's Progress in Aligning Its Laws with the European Union Gender Equality Acquis*, KWN, 2017, p. 27.

<sup>26</sup> Self-employment is not explicitly mentioned in the Labour Law or anti-discrimination legislation, but "the principle of equal treatment per se is included in these three laws; hence, theoretically speaking, any sex discrimination could be challenged" (Kotevska, B., *North Macedonia Country report: Gender equality*, 2021, p. 56).

Table 4. Harmonisation with EU Acquis Regarding Prohibition of Discrimination						
	Albania	BiH	Kosovo	NM	M	Serbia
Prohibition of discrimination on the grounds of <b>religion</b> or <b>belief</b> , <b>disability</b> , <b>age</b> , <b>sexual orientation</b> (Employment Equality Directive, Arts. 1-7), <b>racial</b> , or <b>ethnic origin</b> (Racial Equality Directive, Arts. 1-5) in employment and occupation	Y	Y(S)	Y	Y	Y	Y
Prohibition of discrimination on the grounds of "sex" includes <b>gender identity</b> (see cases C-13/94, C-117/01, and C-423/04)	Y	Y (FBiH, RS, BD)	Y	Y	Y	Y
Prohibition of <b>part-time workers</b> being treated less favourably than comparable full-time workers in respect of employment conditions (Part-time Work Directive, Clause 4)	Y	Y (FBiH, RS, BD)	Y	Y	Y	Y

While this report focuses on gender-based discrimination, EU law equally prohibits discrimination in employment and occupation on the grounds of religion, belief, disability, age, sexual orientation, and racial or ethnic origin. Generally, all WB countries have included these as protected grounds in their LPDs.<sup>27</sup> While discrimination based on gender identity is not explicitly prohibited in the EU Equal Treatment Directives, Recital 3 of the Recast Directive, and case law of the European Court of Justice (ECJ)<sup>28</sup> have established that the prohibition of discrimination on the grounds of "sex" includes gender reassignment. The law of each WB country adequately reflects this.<sup>29</sup> All WB countries additionally prohibit "multiple discrimination" (i.e., discrimination against a person on the basis of more than one protected ground). EU law does not currently foresee multiple discrimination, although an intersectional approach is encouraged in the EU GAP III.

## Positive Action and Exceptions

EU law provides several justifications for discriminatory treatment. An indirectly discriminatory measure may be upheld if an "objective justification" is established. EU law does not specifically define what may constitute an objective justification. The ECJ has given some guidance by forming a test in its ruling in *Bilka*<sup>30</sup>: (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. In the context of sex discrimination, an 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 women and men for governments, economies, or private enterprises.<sup>31</sup> All WB countries have transposed

<sup>27</sup> The notion of discrimination based on sexual orientation in the Serbian LPD only covers the declaration of sexual orientation and not equal treatment regardless of presumed sexual orientation, or its public expression. However, since the last edition of this report, discrimination based on sexual orientation has been recognised as a severe form of discrimination, and employers are now obliged to take measures, if necessary, to provide access, participation, professional development, and advancement for employees who are "in an unequal position" because of sexual orientation. In NM, the new LPD has explicitly included sexual orientation (and gender identity) as a protected characteristic. In Montenegro, the position of same sex couples has been strengthened through the adoption of the Law on Life Partnership of Persons of the Same Sex, which was adopted in 2020.

<sup>28</sup> See: C-13/94 *P v S and Cornwall County*; C-117/01 *K.B. v N.H.S.*; C-423/04 *Sarah Margaret Richards v Secretary of State for Work and Pensions*.

<sup>29</sup> Note that since the previous edition of this report, amendments to the Albanian LPD have introduced new protected grounds (such as living with HIV/AIDS and citizenship).

<sup>30</sup> C-170/84 *Bilka-Kaufhaus GmbH v Weber von Hartz* (1986).

<sup>31</sup> C-43/75 *Defrenne*.

this justification correctly (Table 5), except **Albania** and **BiH**, where the exceptions are drafted too broadly, as general exceptions applicable to all forms of discrimination.

A discriminatory measure also may be justified based on a “genuine and determining occupational requirement”. This means that 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. While generally the WB countries have adequately transposed this justification, in **Montenegro** and **Serbia** the law does not explicitly state that genuine occupational requirements should conform with the principle of proportionality, thereby making the test less rigorous.<sup>32</sup>

<b>Table 5. Positive Action and Exceptions</b>						
	<b>Albania</b>	<b>BiH</b>	<b>Kosovo</b>	<b>NM</b>	<b>M</b>	<b>Serbia</b>
Provision for <b>positive action</b> to allow for full equality between women and men in working life (Recast, Art. 3)	Y	P(S)	Y	Y	Y	Y
Objective justification exception for <b>indirect discrimination</b> in matters of employment and occupation (Recast, Art. 2.1[b])	P	P(S)	Y	Y	Y	Y
Genuine occupational requirement exception for <b>discrimination</b> in terms of <b>access to employment</b> (Recast, Art. 14.2)	Y	Y(S)	Y	Y	P	P

Positive action measures (also known as “affirmative action”) seek to eliminate discriminatory barriers and thereby to improve the position of social groups that have suffered systemic discrimination. EU law permits, but does not mandate, such measures. All WB countries foresee positive action in their legal frameworks, although the details differ widely.<sup>33</sup> In **BiH** the law reportedly is inconsistent with the Recast Directive and requires further clarity regarding under which conditions positive action measures can be utilised.<sup>34</sup>

## **Maternity Related Rights and Leave Rights for Parents and Carers**

The EU gender equality *acquis* provides several protections related to pregnancy and maternity. Rather than an exception to equal treatment, these protections are seen as a means to ensure implementation of the principle of equal treatment for women and men regarding access to employment and working conditions.<sup>35</sup> Guidance from the European Network of Legal Experts in Gender Equality and Non-Discrimination should be noted:

...a very long maternity leave might hamper a balanced division of family responsibilities and possibilities on the labour market. A combination of a maternity

<sup>32</sup> On Montenegro, see: Kostić-Mandić, M., *Montenegro Country report: Non-discrimination*, 2020, p. 55. Kostić-Mandić suggests that the concept is still aligned with the EU Equal Treatment Directives despite the absence of the proportionality principle as “it may be construed that the legislator had in mind the proportionality principle”. Whether this would be sufficient to ensure that proportionality is adequately considered in practice is unclear. On Serbia, see: Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 47.

<sup>33</sup> Since the previous edition of this report, NM has reformed the positive action provision of its LPD, together with its previously criticised extensive list of exceptions, thereby improving harmonisation (Kotevska, B., *New Law on Prevention and Protection against Discrimination adopted*, 2019).

<sup>34</sup> Šimonović Einwalter, T. and Selanec, G., *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, 2015.

<sup>35</sup> Chopin, I. and Germaine, C., *A comparative analysis of non-discrimination law in Europe 2017*, European Commission, 2017, p. 32.

leave that is not excessively long, paternity leave, parental leave, and childcare leave might prevent such drawbacks.<sup>36</sup>

Pursuant to the Pregnancy Directive, the entitlement for maternity leave is a minimum of 14 weeks, including a compulsory period of at least two weeks.<sup>37</sup> As displayed in Table 6, the compulsory minimum requirements of WB countries average at 10 weeks (ranging from 28 days to 98 days). Exceptionally, **Kosovo** does not have any compulsory period.<sup>38</sup> The maximum period allowed in each WB country is 12 months, except in **NM**, where the maximum is nine months. Some countries foresee additional leave when a mother gives birth to more than one child at the same time. When more than one child is born in **Albania**, the maximum leave period of 12 months increases to 390 days. The maximum leave in **NM** increases from nine to 15 months. In **BiH**, the state level maximum does not increase if more children are born, but in **RS** an employee is entitled to an additional six months of leave if she has twins, as well as for every additional child born, starting with her third child. The law in **Serbia** foresees an increase from one to two years in a variety of circumstances: if a woman has given birth before and in a subsequent delivery gives birth to twins or more children; if a woman gives birth to three or more children in her first delivery; if a woman gives birth to her third child (not necessarily including twins or triplets) and for every subsequent new-born child after that. There is no increase in **Kosovo** or **Montenegro**.<sup>39</sup>

Parental leave is leave from work for parents related to the birth or adoption of a child to care for that child.<sup>40</sup> The Work-Life Balance Directive requires parental leave to be granted as an individual right of both parents for a period of at least four months following the birth or adoption of a child. At least two of the four months must be non-transferable to the other parent. Parental leave may be taken before a child reaches a specified age, up to eight. Parents are entitled to request to take parental leave in flexible ways (for example, “on a 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”).<sup>41</sup> Parental leave must be paid at a level at least equivalent to that which the worker concerned would receive in the event of a break in the worker’s activities on grounds connected with health, subject to any ceiling laid down in law. Remuneration during leave may depend on a minimum service period, but that may not exceed six months immediately prior to the expected date of the birth of the child. This standard has not been met by any WB country.

Since the last edition of this report, **Montenegro** has taken a novel approach to maternity and parental leave. Following a compulsory 98 days of maternity leave for mothers, both parents share a parental leave period of up to one year. Both parents are entitled to use parental leave in equal parts; however, only 30 days are non-transferable.<sup>42</sup> Compensation while on parental leave is equal to pay while absent from work owing to temporary incapacity. The new arrangements are generally compliant with the Pregnancy Directive but fall short of the Work-Life Balance Directive as the non-transferable period is insufficient. The new arrangements require parental leave to be taken in the year immediately following the birth of the child. In principle, this does not conflict with the Work-Life Balance Directive, as states are entitled to determine the age of a child up to which parents may take parental leave

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<sup>36</sup> Böök, B., Burri, S., Senden, L. and Timmer, A., *A comparative analysis of gender equality law in Europe*, 2020, p. 77.

<sup>37</sup> Pregnancy Directive, Article 8.

<sup>38</sup> Although no mandatory minimum is included in the LL, an equivalent provision within a regulation applicable to civil servants only appears to suggest a mandatory minimum of 28 prenatal days.

<sup>39</sup> The Montenegrin LL does however allow *both* parents to use 70 days of post-natal maternity leave where two or more children are born.

<sup>40</sup> Work-Life Balance Directive, Article 3.1(b).

<sup>41</sup> Work-Life Balance Directive, Recital 23.

<sup>42</sup> One month being transferrable is compatible with the predecessor of the Work-Life Balance Directive, the Parental Leave Directive.

provided that the age is determined “with a view to ensuring that each parent is able to exercise their right to parental leave effectively and on an equal basis.” However, the new arrangements offer a restrictive interpretation of this principle and arguably fail to reflect the flexibility envisioned by the Work-Life Balance Directive.<sup>43</sup> Within the **Albanian** framework, the right to use parental leave is in principle non-transferable between parents for at least one of four months. However, leave is unpaid, and that parent must have worked for 12 months prior to the birth of the child.<sup>44</sup>

In **BiH**, leave rights in **RS** and **FBiH** can be transferred to the other parent for a certain period, but this is called “maternal” instead of “parental” leave. Moreover, the right of fathers to use parental leave in both entities is not regulated as a non-transferable right, but rather as a matter of the parents’ agreement. In **Kosovo**, a father may only exercise the right to parental leave if the mother “dies or abandons the child before the end of the maternity leave”, or if the mother agrees to convey the rights to the father. Similarly, in **Serbia**, the law provides that a father may only exercise the right to parental leave if the mother “deserts the child, dies or is prevented from caring for the child due to other justified reasons (serving a prison sentence, being severely ill, etc.)”. In **NM**, only the mother has the right to parental leave; a father is only entitled to take parental leave if the mother is not using it.

WB entitlements to paternity leave also fall short in meeting the minimum 10 days required by the Work-Life Balance Directive. In **Albania**, fathers are only entitled to three days of paid leave. In **Kosovo**, the period is two or three days paid,<sup>45</sup> with up to two weeks unpaid.<sup>46</sup> In **BiH**, fathers have five working days. In **Montenegro**, the duration of paid paternity leave is regulated by collective agreement but is usually five working days.<sup>47</sup> In both **NM** and **Serbia**, fathers may take up to seven days of paid leave.

The law in all WB countries prohibits less favourable treatment or dismissal following an application for, or the taking of, parental leave or paternity leave, as required by the Work-Life Balance Directive. The Pregnancy Directive provides the same protection from dismissal during pregnancy and maternity leave, and this has been implemented by all WB countries.

The Recast Directive provides that at the end of maternity leave, workers have the right to return to their job or to an equivalent post on conditions no less favourable, and to benefit from any improvement in working conditions to which they would have been entitled during their absence. The law in **Albania**, **BiH**, **Kosovo**, **Montenegro**, and **Serbia** is compliant with this provision (Table 6).<sup>48</sup> In **NM**, there is no provision on benefiting from improvements in working conditions.<sup>49</sup>

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<sup>43</sup> Note that the LL allows one parent to be absent from work without compensation up to the child turning three (Article 138).

<sup>44</sup> The law in Albania is compliant with the corresponding provisions under the Parental Leave Directive, which has only recently been repealed by the Work-Life Balance Directive (with effect from 2 August 2022).

<sup>45</sup> The Kosovo LL (No. 03/L-212) provides that fathers may take two days’ paid leave at the birth or adoption of a child, whereas another article provides for three days’ paid leave for all employees following the birth of their child (see articles 50.2.1 and 39.1.3).

<sup>46</sup> Ibid, Article 50.2.2.

<sup>47</sup> Simovic-Zvicer, V., *Montenegro Country report: Gender equality*, 2021, p. 57.

<sup>48</sup> The Serbian LGE previously provided that absence from work because of pregnancy and parenthood could not be a reason for assigning a person an inadequate job or terminating their contract. The updated LGE has been harmonised with the Recast Directive.

<sup>49</sup> Kotevska, B., *North Macedonia Country report: Gender equality*, 2021, p. 39. Kotevska suggests that the law theoretically could allow for such an interpretation. However, the omission of this explicit right is likely to make it significantly more difficult for workers to obtain such benefits.

**Table 6. Parental, Maternity, Paternity and Adoption Leave Rights**

	<b>Albania</b>	<b>BiH</b>	<b>Kosovo</b>	<b>NM</b>	<b>M</b>	<b>Serbia</b>
Entitlement to minimum 14 weeks' <b>maternity</b> leave, including compulsory period of at least two weeks (Pregnancy Directive, Art. 8)	Compulsory 98 days, max. 12 months	Compulsory 28 days, max. 12 months (RS; FBiH)	No compulsory period, max. 12 months.	Compulsory 73 days, max. 9 months	Compulsory 98 days, max. 12 months	Compulsory 3 months, max. 12 months
Paid <b>parental</b> leave granted as an individual right of both parents for four months, and non-transferable for two of the four months (Work-Life Balance Directive, Arts. 5 and 8)	P	N	N	N	P	N
Right to 10 days' paid <b>paternity</b> leave (Work-Life Balance Directive, Arts. 4 and 8)	N	N	N	N	N	N
Provision to protect against less favourable treatment or dismissal in application for, or taking of, <b>parental</b> or <b>paternity</b> leave (Work-Life Balance Directive, Arts. 11 and 12)	Y	Y	Y	Y	Y	Y
Prohibition of <b>dismissal</b> from the beginning of pregnancy until the end of maternity leave, save in exceptional circumstances (Pregnancy Directive, Art. 10)	Y	Y	Y	Y	Y	Y
Right to return to job at the end of <b>maternity</b> leave, or to an equivalent post on conditions no less favourable, and to benefit from any improvement in working conditions that would have been entitled to during absence (Recast, Art. 15)	Y	Y	Y	P	Y	Y
Same rights to return to job at the end of <b>parental</b> or <b>paternity</b> leave as above (Work-Life Balance Directive, Arts. 10.2)	Y	Y	Y	Y	Y	Y
Where distinct rights exist for <b>adoption</b> leave, same entitlements on return to work and protection from dismissal as above (Recast, Art. 16)	Y	Y	Y	Y	Y	Y
Right to 5 days' <b>carers' leave</b> (Work-Life Balance Directive, Art. 6)	30 days (unpaid)	5 days (BD; RS); 7 days (FBiH)	N	N	P	7 days

The Work-Life Balance Directive provides for the same rights to return to a job at the end of parental or paternity leave as above. WB countries are generally compliant with this provision.<sup>50</sup> Where distinct rights are created for adoption leave, the Recast Directive requires the same entitlements upon return to work and protection from dismissal to apply. The law in all WB countries complies with this requirement.<sup>51</sup>

The Pregnancy Directive outlines a procedure for identifying risks related to health and safety of workers who are pregnant, are breastfeeding, or have recently given birth. First, provision should be made for an assessment of risks related to the health and safety of such workers. Where a risk is found, employers should take appropriate action by temporarily adjusting working hours or conditions, moving the person to another job, or granting leave. Workers are not obliged to perform night work and should have the possibility to transfer to daytime work or to take leave. All WB countries are generally compliant with these rights. However, although a risk assessment provision is included under the Law on Safety and Health at Work in **Kosovo**, it is broadly phrased and non-specific to pregnant and breastfeeding workers. Pregnant and breastfeeding workers are only specifically mentioned in the notification requirements. Where risks are found, the Labour Law currently only establishes a prohibition on working. The provision should be amended to ensure the employee is given a different task.

A common issue identified is with the provision to take time off to attend antenatal examinations if such examinations must take place during working hours. Previously, only **Albania** and **Serbia** had included this in their frameworks. Since the last edition of this report, **Montenegro** has amended its framework to provide pregnant workers with one day of paid leave per month to attend antenatal examinations.

The Work-Life Balance Directive provides for five days of “carers’ leave” per year for workers, meaning leave from work “in order to provide personal care or support to a relative, or to 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, as defined by each Member State.”<sup>52</sup> While there is no obligation for carers’ leave to be paid, states are “encouraged to introduce such a payment or an allowance in order to guarantee the effective take-up of the right by carers, in particular by men.”<sup>53</sup>

**NM**<sup>54</sup> and **Kosovo**<sup>55</sup> are not yet compliant with this aspect of the Work-Life Balance Directive. The law in **Serbia** correctly reflects the requirements of the Work-Life Balance Directive and provides seven days of paid carers’ leave to workers. The law in **BiH** is generally compliant. **BD** provides up to five days of paid carers’ leave, **RS** provides up to five days of paid carers’ leave with the option for this to be extended by the employer for “justifiable reasons”, and **FBiH** provides up to seven days of paid carers’ leave.

**Albania** provides workers with 30 days of unpaid leave where a family member, cohabitant, direct predecessor, or descendant has a “serious sickness”. This leave period is significantly more generous than the Work-Life Balance Directive. However, it is unfortunate that the leave is unpaid because, as noted by COFACE:

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<sup>50</sup> This protection was previously not explicitly mentioned in the Serbian law. The updated LGE has expressly extended the same rights to workers who return to work from any childcare leave.

<sup>51</sup> Adoptive parents were previously not explicitly protected in the Serbian or Montenegrin laws. Updates to the respective frameworks since the previous edition of this report have expressly extended the same rights to adoptive parents (Serbia, LGE, Art. 33; Montenegro, LL, Article 130).

<sup>52</sup> Work-Life Balance Directive, Art. 3.1(c).

<sup>53</sup> Work-Life Balance Directive, Recital 32. Note that the European Commission initially sought for carers’ leave to be compensated at least at the level of sick pay (European Commission Proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (COM(2017) 253 final) p. 10).

<sup>54</sup> Kotevska, B., *North Macedonia Country report: Gender equality*, 2021, p. 46.

<sup>55</sup> Ryan, D. for KWN, *Expanding Choices through Family-Friendly Policies: Kosovo Analytical Report*, 2021, p. 9.

Where leaves are not paid, only those who can afford it will take them or, in a family economy, the person who earns less will take up the leave to minimise income loss. Due to structural problems of the labour market, like gender segregation and the gender pay gap, and a traditional separation of roles between men and women, the latter are those who earn less and therefore those who take the leave in most cases.<sup>56</sup>

In **Montenegro**, carers' leave may be taken when an immediate family member (spouses, children, siblings, and parents) has a serious illness (defined as a disease for which health care is provided in full from compulsory health insurance funds). This current definition of immediate family member is too restrictive and should be amended. The inclusion of "persons who lives in the same household" is particularly important for same-sex couples,<sup>57</sup> but also may be important to account for instances in which multiple or extended families live together.<sup>58</sup> Carers' leave is paid, and the duration is defined by collective agreement or employment contract. The General Collective Agreement establishes seven days of carers' leave.

<b>Table 7. Maternity-related Rights<sup>59</sup></b>						
	<b>Albania</b>	<b>BiH</b>	<b>Kosovo</b>	<b>NM</b>	<b>M</b>	<b>Serbia</b>
Provision for <b>assessment of risks</b> related to health and safety of workers (Pregnancy Directive, Art. 4)	Y	Y	P	Y	Y	Y
Where risk is found, provision to take <b>appropriate action</b> by temporarily adjusting working hours or conditions, moving to another job, or granting leave (Pregnancy Directive, Art. 5)	Y	Y (RS; FBiH)	P	Y	Y	Y
Provision to ensure pregnant and breastfeeding workers are under no circumstances <b>obliged to perform duties for which there is a risk to health or safety</b> (Pregnancy Directive, Art. 6)	Y	Y	Y	Y	Y	Y
Provision to ensure workers are <b>not obliged to perform night work</b> , but can transfer to daytime work or leave (Pregnancy Directive, Art. 7)	Y	P	Y	Y	Y	Y
Provision for time off to attend <b>antenatal examinations</b> , if such examinations must take place during working hours (Pregnancy Directive, Art. 9)	Y	N	N	N	Y	Y

## Criminal Provisions

Criminal liability may arise in the context of discrimination in all WB countries. The means by which such liability may arise varies (see Table 8). The criminal codes of all WB countries prohibit either discrimination (**NM, Serbia**), violation, or infringement of equality (**Albania, BiH, Montenegro, Serbia**) or violating equal status (**Kosovo**).

Additionally, some WB countries have included criminal charges in anti-discrimination legislation. The LGE in **BiH** allows for criminal proceedings to be issued for violations of the rights contained therein. Criminal prosecution for discrimination is possible in **Albania** under the LPD. In **Kosovo**, provisions of the LPD and LGE may lead to a criminal charge. An identified issue with the inclusion of criminal provisions in this form is that the conditions are vague as to what may constitute an offence and in which cases a discrimination lawsuit can

<sup>56</sup> COFACE, *Assessment of the European Commission Work-Life Balance package*, 2017, p. 16.

<sup>57</sup> Winter, B., *The Political Economy of Same-Sex Marriage: A Feminist Critique* (Routledge, 2021), Part III.

<sup>58</sup> Ryan, D. for KWN, *Expanding Choices through Family-Friendly Policies: Kosovo Analytical Report*, 2021, p. 10.

<sup>59</sup> "Workers" in this table refers to workers who are pregnant, breastfeeding, or have recently given birth, unless otherwise specified.



be criminally prosecuted. Some WB countries also have included relevant labour related offences in their criminal codes. The criminal codes of **Kosovo** and **Montenegro** prohibit unequal conditions in employment. Some codes include more specific prohibitions on “violating labour rights”, including termination, salary, leave rights, and women’s rights (**Kosovo, NM**). **Serbia** has a general prohibition on violating labour rights in its criminal code. The penalties for all the above offences are a fine or imprisonment of one or two years.

All WB countries prohibit sexual harassment in the employment context. It is interesting to note, however, that some have attached criminal sanctions to sexual harassment more broadly. In **BiH**, this is included under the LGE. **Albania, Kosovo, and Serbia** all have included sexual harassment in their criminal codes. Each of these also includes aggravating factors, which increase the sentence. These are instances where the offence is committed by a person in a position of authority over the victim (**Kosovo**), where the victim is a minor (**Albania, Serbia**), or if the offence is committed against multiple people or more than once (**Albania**).

**Table 8. Criminal Liability for Discrimination**

	<b>Albania</b>	<b>BiH</b>	<b>Kosovo</b>	<b>NM</b>	<b>M</b>	<b>Serbia</b>
Criminal liability for discrimination	Y	Y	Y	Y	Y	Y
Criminal liability for sexual harassment	Y	Y	Y	N	N	Y

## Enforcement

In civil cases, an important procedural protection in EU law is the sharing of the burden of proof.<sup>60</sup> This requires that once a complainant establishes, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that there has been no breach of the principle of equal treatment. The rule is based on recognition of the fact that it can be difficult for claimants to prove that differential treatment occurred based on a specific protected characteristic (e.g., gender, sexual orientation). The rationale for the rule is that the respondent is in possession of the necessary information to (dis)prove the claim.<sup>61</sup>

The law of **Kosovo, NM**, and **Montenegro** adequately transposes this protection.<sup>62</sup> However, various issues have been reported in other WB countries. In **Albania**, the plaintiff is obliged to “provide evidence to support the claim, using any legitimate evidence that can prove discriminatory behaviour”.<sup>63</sup> Such an obligation may go beyond simply establishing the facts.<sup>64</sup> Albania lacks case law and needs means for strengthening enforcement. In **BiH**, the phrasing of the LPD gives courts too much discretion regarding reversal of the burden of proof.<sup>65</sup> In **Serbia**, the textual interpretation of relevant articles reportedly leads to this rule only applying to direct and indirect discrimination, while it also should apply to harassment

<sup>60</sup> This principle is central to EU anti-discrimination law: Racial Equality Directive (Art. 8), Employment Equality Directive (Art. 10), Gender Equality Directive (Recast) (Art. 19), Gender Goods and Services Directive (Art. 9). The principle is equally well entrenched in the case law of the ECtHR, where it has been invoked more generally in proving human rights violations.

<sup>61</sup> European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, op. cit., 232.

<sup>62</sup> The new LL in Montenegro now contains the shifting of the burden of proof. The concept was already transposed in the LPD. The new LPD in NM has amended the provision on the shifting of the burden of proof, improving compliance.

<sup>63</sup> Albanian LPD, Article 36(5). Note that Article 9(10) of the Labour Code has correctly transposed the principle and recent amendments to the LPD have clarified that the principle applies during administrative procedures before the Albanian equality body, the Commissioner for Protection from Discrimination.

<sup>64</sup> OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, 2014, p. 26.

<sup>65</sup> Šimonović Einwalter, Tena and Selanec, Goran, *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, 2015, p. 27.

and victimisation.<sup>66</sup> An important enforcement tool for victims is ensuring legal standing of associations, organisations, or other legal entities in judicial and administrative discrimination procedures, as required by the EU Equal Treatment Directives. While all WB countries allow for such standing (Table 9), **Kosovo's** law appears to only allow third-party intervention on behalf of complainants, but not in support of them.<sup>67</sup> The wording in this law should be revised to reflect more adequately the principle of third-party standing outlined in the EU Equal Treatment Directives.<sup>68</sup>

As foreseen in the Recast Directive, all WB countries have established equality bodies mandated by law for the promotion, analysis, monitoring, and support of equal treatment of all persons without discrimination on grounds of sex.<sup>69</sup> Equality bodies vary substantially across WB countries in their organisational structure, competences, and mandates, posing challenges to undertaking a comparative analysis. For further information, please see the chapter on [Institutional Response](#) to discrimination.

<b>Table 9. Procedures for Bringing a Claim</b>						
	<b>Albania</b>	<b>BiH</b>	<b>Kosovo</b>	<b>NM</b>	<b>M</b>	<b>Serbia</b>
Legal standing of associations, organisations, or other legal entities in judicial and administrative discrimination procedures (Recast, Art. 17.2)	Y	Y(S)	Y	Y	Y	Y
Burden of proof shared in discrimination cases related to matters of employment and occupation (Recast, Art. 19)	P	P(S)	Y	Y	Y	P
<b>Equality Bodies and Dialogue</b>						
Equality bodies mandated by law are established for the promotion, analysis, monitoring, and support of equal treatment of all persons without discrimination on grounds of sex (Recast, Art. 20.1)	Y	Y	Y	Y	Y	Y

## Common Issues Identified

This section discusses common issues identified with the legal frameworks of WB countries in terms of offering protection from gender-based discrimination.

### Framework Fragmentation

The legal frameworks of each country broadly follow the same structure. These include a general labour law ("Labour Law"), a general law on protection from discrimination ("LPD") and a general law on gender equality ("LGE").<sup>70</sup> The structures of the legal frameworks in **NM** and **Montenegro** broadly share the same style of division between these laws, in that discrimination provisions of the Labour Law are intended to cover discrimination in the labour context, the LPD primarily covers discrimination in non-labour contexts, and the LGE seeks to further gender equality through institutional reforms on quotas, gender mainstreaming, action plans, and so on. The anti-discrimination frameworks of the other

<sup>66</sup> Krstic, I., *Serbia Country report: Gender equality*, 2021, p. 83.

<sup>67</sup> While the respective LPDs in Serbia and Montenegro do not explicitly provide an entitlement for third-party intervention, such an entitlement is found in the Civil Procedure Codes (Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 66; Kostić-Mandić, M., *Montenegro Country report: Non-discrimination*", 2021, p. 74). Since the previous edition of this report, the legal standing of NGOs in Albania has been improved through amendments to the LPD.

<sup>68</sup> OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, 2014, p. 25.

<sup>69</sup> For further information, see the Institutional Response chapter.

<sup>70</sup> As noted previously, the precise names of the laws vary, but these abbreviations are used for simplicity.

countries are less clear, more complex, and often inconsistent. The primary issue is that the various statutes introduced overlap in their scopes or offences, or disperse and cross reference procedural protections, making the frameworks fragmented.

For example, issues of fragmentation in **Kosovo** stem primarily from the blurring of the scopes of relevant laws. The Labour Law only minimally regulates discrimination and fails to mention various forms of discrimination such as harassment, sexual harassment, and instruction to discriminate. The distinction between direct and indirect discrimination is not defined and is not applied to the listed grounds other than disability. The Labour Law remedies this to some extent by cross referencing the LPD and stating that it is directly applicable to employment relationships. The LPD transposes the scope of the Recast Directive related to employment and more comprehensively deals with all forms of discrimination. It also includes relevant procedural protections such as the sharing of the burden of proof. The LGE also contains a chapter on discrimination in employment, which includes the exact same provision as the LPD related to employment. Each law has significant overlap, but also significant differences. They have separate overlapping offences but with varying fines, making the framework tangled and unclear. Little case law exists in Kosovo to understand how institutions have dealt with these issues in practice.

While significant progress has been made in **Serbia** since the previous edition of this report, particularly through the adoption of a comprehensive new LGE together with amendments to the LPD, similar issues of fragmentation remain identifiable. Fragmentation has reportedly led to a number of practical issues in the application of the laws: it is not always clear to judges that in a case of discrimination, even if the procedure was initiated under the Labour Law, the more favourable provisions enshrined in the LPD should be applied (for example, that the procedure is urgent).<sup>71</sup> Moreover, courts reportedly have had difficulties applying the sharing of the burden of proof (although some progress has been reported since the previous edition of this report),<sup>72</sup> identifying the right comparator group, using the proportionality test, or even identifying the correct grounds for discrimination.

Similar practical issues are reported in **BiH**, as “most court proceedings in this field are conducted in accordance with entity labour laws, which suggests insufficient understanding and implementation of the Law on Prohibition of Discrimination or distrust in the judiciary to implement these laws fully”.<sup>73</sup> BiH’s legal framework faces additional issues of fragmentation primarily due to its complicated system of jurisdiction and significant number of laws at different levels. This has led to misunderstandings regarding jurisdiction over proceedings in accordance with certain laws, complicating access to justice.

While **NM** may have clearer delineation between the relevant laws, issues of fragmentation are still evident. Encouragingly, internal harmonisation of legislation was identified as a strategic goal in the National Strategy on Equality and Non-discrimination 2016 – 2020 (as well as its predecessor), though evidence of progress is not forthcoming.<sup>74</sup> The new LPD in NM includes a provision requiring all other laws containing anti-discrimination provisions to be harmonised with the LPD.<sup>75</sup> This is an example of best practice that should be considered by all WB countries.

The common issues of dispersion, duplication, and overlap of provisions has led to confusion in the legal frameworks, with different standards of protection, different procedures, and different sanctions being applicable under the various overlapping laws in WB countries. This suggests a lack of harmonious drafting; additions or amendments to the legal framework have not always ensured that the laws complement each other in a logical

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<sup>71</sup> Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 63.

<sup>72</sup> Ibid.

<sup>73</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly Banja Luka, Banja Luka, 2019, p. 7.

<sup>74</sup> Kotevska, B., *North Macedonia Country report: Non-discrimination*, 2021, p. 72.

<sup>75</sup> North Macedonia, LPD, Art. 51.

format. Thus, while technically the requirements of transposition may be met, the poor transposition of substantive issues in the legal frameworks causes incoherencies in the law.

The introduction of anti-discrimination legislation in the WB countries was an outcome of the visa liberalisation process,<sup>76</sup> under which a framework law on discrimination was a requirement. Issues with these laws may be explained partially by the fact that, beyond formal compliance, the European Commission placed minor importance on anti-discrimination efforts;<sup>77</sup> it was applied inconsistently during visa liberalisation dialogues. For example, **NM** and **Montenegro** were granted visa liberalisation prior to adopting anti-discrimination legislation, while **Albania** and **BiH** were granted visa liberalisation despite major gaps in their anti-discrimination frameworks and issues with implementation. The low level of importance given to substantive compliance and only limited EU monitoring allowed progress to be partial, "primarily focusing on formal measures such as adopting legislation and setting up institutions",<sup>78</sup> and accompanied with problems in terms of legal clarity.<sup>79</sup> The integration process "was never halted or delayed because of inappropriate progress in the area of anti-discrimination".<sup>80</sup> Little attention was paid to implementation, showing that while such benchmarks were part of the visa liberalisation conditionality, "they were not applied as an overriding policy because of the domination of security related goals".<sup>81</sup> Unsurprisingly in a post-conflict environment, the EU human rights agenda was shaped by security and stability. Thus, "while the EU heavily invested in the promotion of a few human rights issues, the assessment of other human rights areas remained mostly a façade, a legitimizing device of the general policy framework".<sup>82</sup>

## Sanctions and Victim Compensation

Encouragingly, each country has a range of sanctions available. The legal frameworks commonly go beyond awarding damages by also including the possibility of temporary measures to prevent discrimination or eliminate irreparable damage (e.g., in **BiH**, **Montenegro**, **Kosovo**, and **Serbia**). The publication of court decisions is also commonly available (e.g., in **Albania**, **Kosovo**, and **Serbia**). Reportedly, this has been a particularly efficient measure in **Serbia**.<sup>83</sup> However, in all countries, sanctions do not reach the required standard of "effective, proportionate and dissuasive". These criteria in EU law are still vague notions.<sup>84</sup> The Council of Europe has given general guidance, which may have some application in the EU context:

Whether a sanctions regime can be considered "effective, proportionate and dissuasive" depends not only on what is stated on the face of the statute, but also actual practice within the jurisdiction in terms of enforcement activity by the investigative authorities; prosecutorial policy and the type, severity and consistency of sanctions handed down by the courts.<sup>85</sup>

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<sup>76</sup> Fraczek, S., Huszka, B. and Körtvélyesi, Z., *The role of human rights in the EU's external action in the Western Balkans and Turkey*, European Commission, 2016, p. 93.

<sup>77</sup> Simonida Kacarska, "Losing the Rights along the Way: The EU-Western Balkans Visa Liberalisation", in Jelena Džankić et al., *The Europeanisation of Citizenship Governance in South-East Europe*, Routledge, 2016.

<sup>78</sup> Fraczek, S., Huszka, B. and Körtvélyesi, Z., *The role of human rights in the EU's external action in the Western Balkans and Turkey*, European Commission, 2016, p. 288.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid, p. 285.

<sup>81</sup> Ibid, p. 288.

<sup>82</sup> Ibid, p. 284.

<sup>83</sup> Krstić, I., *Serbia Country report: Gender equality*, 2021, p. 85.

<sup>84</sup> Lev Ivanov et. al., "Effectiveness, Proportionality and Dissuasiveness", 2012, E. & Central Eur. J. on Envtl. L. 11.

<sup>85</sup> Council of Europe, Cybercrime Convention Committee, *Implementation of Article 13 Budapest Convention by Parties and Observers: A Comparative Study*, Strasbourg, 2016, p. 17.

In **Kosovo**, it would be difficult to characterise the sanctions against violators of the law as “effective, proportionate and dissuasive”, owing to several peculiarities in the drafting of offences and a poorly drafted fines system. In **Albania**, it has similarly been reported that the dissuasiveness of financial sanctions is questionable.<sup>86</sup> In **Montenegro**, fines reportedly remain “inappropriately low compared to the fact that proceedings are long, uncertain and often ineffective”.<sup>87</sup> Increasing sanctions to meet their purpose was suggested to the drafters of amendments to Montenegro’s LPD.<sup>88</sup>

In **NM**, issues have arisen related to the application of anti-discrimination sanctions, which were drafted ambiguously.<sup>89</sup> In comparison with other misdemeanour offences, the anti-discrimination sanctions reportedly are insufficient; in some cases, a discriminatory act attracts the same sanction as throwing a cigarette butt on the ground.<sup>90</sup> Similarly, in **Serbia** in comparison with sanctions under other laws, the fines for discrimination are merely symbolic.<sup>91</sup> However, since the previous edition of this report, progress has been made in this context within the new Serbian LGE, where the penalty scales have been increased.<sup>92</sup> However, it has been reported that judges in practice impose fines on the lower end of the available scale, even in very serious cases of discrimination.<sup>93</sup> It therefore remains to be seen whether the new LGE fines will lead to higher sanctions being imposed in practice. Other practical difficulties which influence the effectiveness and proportionality of sanctions also remain identifiable, such as delays.<sup>94</sup> Similar issues are reported in **BiH**, in that “[s]anctions are not as effective as they should be, primarily stemming from the relevant procedures not being managed in line with the principle of urgency”.<sup>95</sup>

EU law requires a system of victim compensation to be in place for discrimination on the grounds of sex in matters of employment and occupation. As Table 10 illustrates, there is a system of victim compensation in place in all WB countries, though the quality of its implementation varies.

Table 10. Compensation						
	Albania	BiH	Kosovo	NM	M	Serbia
System of <b>victim compensation</b> in place for discrimination on the grounds of sex in matters of employment and occupation (Recast, Art. 18)	Y	Y (FBIH, RS, BD)	Y	Y	Y	Y

## The Gap Between Approximation and Implementation

The most pertinent issue related to the legal frameworks of the WB countries is implementation. This refers to the processes through which European legal norms are not just transposed, but also adhered to and enforced.<sup>96</sup>

<sup>86</sup> Qirushi, K., “The Principle of Non-Discrimination on Grounds of Gender in the Workplace – Assessing Albanian Law through EU Standards”, [2018] 5 Albanian Law Journal 4.

<sup>87</sup> Simovic-Zvicer, V., *Montenegro Country report: Gender equality*, 2021, p. 84.

<sup>88</sup> Ibid.

<sup>89</sup> Kotevska, B., *North Macedonia Country report: Gender equality*, 2021, p. 74.

<sup>90</sup> Ibid, p. 75.

<sup>91</sup> Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 70.

<sup>92</sup> The new penal provisions have significantly raised the potential minimum and maximum fines in various circumstances. For example, while previously an employer may have been liable for between 10,000 RDS and 100,000 RDS for a violation of the LGE, the new scale is 50,000 RDS and 2,000,000 RDS (Art. 67).

<sup>93</sup> Ibid.

<sup>94</sup> Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 70. See also, the chapter on Institutional Response.

<sup>95</sup> Colaković, M., et al. *Legal Protection Against Discrimination in Bosnia and Herzegovina in Legal Protection Against Discrimination in South East Europe: Regional Study*, Centre for SEELS, 2016, p. 153.

<sup>96</sup> Sverdrup, U., “Implementation” in Graziano, P. and Vink, M. (eds), *Europeanization: New Research Agendas*, Palgrave, 2008.

A 2018 European Commission communication on EU enlargement observed that this is a common issue across the WB: although fundamental rights are largely enshrined in the relevant legislation, “more needs to be done to ensure they are fully implemented in practice”.<sup>97</sup> The 2020 and 2021 European Commission communications on EU enlargement highlighted that effective implementation has remained a challenge.<sup>98</sup> In the 2021 country reports, the recurring theme of the gap between approximation and implementation has remained evident, particularly related to the effective implementation and enforcement of discrimination law. This issue applies to all WB countries.<sup>99</sup> The fragmented frameworks and lack of case law suggest 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.

One measure to improve implementation in this regard is specialised training of judges and prosecutors in anti-discrimination.<sup>100</sup> Others have argued that specialised training in a broader context may improve implementation. For example, certain groups 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); they often are in a position to communicate or expose violations.<sup>101</sup> These groups may also pressure governments to observe international standards.<sup>102</sup>

Another measure to strengthen implementation is improvement of data collection procedures. For example, **Serbia** has reported a need to enhance the statistical parameters and a database for monitoring court proceedings concerning discrimination cases.<sup>103</sup> This observation is equally applicable to other WB countries, as generally little case law is available. To address this, **BiH** has adopted Rules of Procedure on Collecting Data in the Cases of Discrimination, which will lead to the adoption of a central database; all competent institutions will be obliged to keep records of reported discrimination. However, the database is yet to be established. Data has the additional use of improving policy development and implementation, as well as facilitating judicial proceedings.<sup>104</sup>

Better data would likely improve the deficit of public awareness in the region,<sup>105</sup> facilitate reporting of discrimination and support enforcement of the legal framework. Indeed, another recurring recommendation in the European Commission Country Reports deals with raising public awareness, towards improving implementation, and, in 2015, the **Montenegrin** Ombudsman highlighted:

...to achieve better results and support for the struggle for gender equality, ongoing education and directing public awareness towards the values of equal treatment and equal opportunities for members of both sexes are essential. It seems that there is a certain lack of detailed statistical analysis and scientific research, as well as other

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<sup>97</sup> European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, 2018, p. 4.

<sup>98</sup> European Commission, Communication on EU enlargement policy, 2020, p. 6; European Commission, Communication on EU enlargement policy, 2021, p. 7.

<sup>99</sup> See, Hille P. and Knill, C., “It’s the Bureaucracy, Stupid: The Implementation of the Acquis Communautaire in the EU Candidate Countries, 1999-2003”, 2006, 7(4) European Union Politics 531; they argue that bureaucratic problems are a defining and common issue for candidate countries in implementing the EU *acquis*.

<sup>100</sup> This recommendation has particularly been raised by the European Commission in the Country reports on Albania (2019, 2020, and 2021) but is generally relevant to other WB countries also.

<sup>101</sup> English, K. and Stapleton A., *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*, 1995, 90.

<sup>102</sup> Ibid.

<sup>103</sup> Krstic, I., *Serbia Country report: Non-discrimination*, 2021, p. 92.

<sup>104</sup> Makkonen, T., *European handbook on equality data*, 2016, p. 19.

<sup>105</sup> See the next chapter on [Awareness](#).

strategic acts aimed at fostering gender equality, including a gender-sensitive approach to budget planning.<sup>106</sup>

This observation remains relevant today. Thus, continued training, improved data collection, and ongoing outreach to inform people about anti-discrimination protections have been recommended as key actions to take towards improving implementation of the legal frameworks addressing discrimination in the WB.

The European Commission country reports issued since the previous edition of this report have placed a continued emphasis on the need to adopt or strengthen strategic documents or policies. This correlates with the widely acknowledged point that, while legal prohibitions on discrimination are important and necessary, legislative measures alone are not enough.<sup>107</sup> The legal framework can be greatly complemented by “more proactive or positive strategies to influence practice and processes in the labour market, such as affirmative action and equal employment policies.”<sup>108</sup>

## Conclusion

WB countries have ratified a broad range of international instruments. Exceptionally, **Kosovo** does not have the international legal capacity to formally ratify or participate fully in conventions of the UN or the Council of Europe, though various international agreements and instruments are directly applicable by virtue of Kosovo’s Constitution. WB countries should now seek to ratify the ILO Violence and Harassment Convention, adopted in 2019. The constitutions of all WB countries contain an explicit prohibition of discrimination based on sex or gender.

Since the previous edition of this report, important progress has been made by most WB countries (see Table 11).

Table 11. Key Legislative Updates since 2018	
<b>Albania</b>	LPD no. 221/2010 was supplemented with Law no. 124/2020
<b>BiH</b>	<b>RS</b> introduced Law no. 90/21 on Harassment at Work
	<b>BD</b> consolidated its Labour Law in 2019 and adopted two minor supplemental amendments in 2021
<b>Montenegro</b>	A new Labour Law was adopted (Law no. 74/19 as amended by Law no. 52/2021)
<b>NM</b>	LPD no. 915/2019 was adopted but later annulled by the Constitutional Court. LPD No. 258/2020 was adopted in October 2020
<b>Serbia</b>	LGE no. 52/2021 was adopted
	LPD no. 22/2009 was supplemented by LPD no. 52/2021

However, the extent of this progress is mixed. Significant progress has been achieved in **Serbia** through the adoption of a new LGE and amendments to the LPD. Various definitions have been harmonised with the EU *acquis*; discrimination based on pregnancy and paternity has been explicitly prohibited; sexual orientation has been recognised as a severe form of discrimination; and various amendments have improved harmonisation with the Recast Directive, including the position of adoptive parents and rights arising on return to work after maternity leave. Sanctions also have been strengthened to some extent. However, the practical implications of this remain to be seen.

<sup>106</sup> European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2017*, European Commission, 2017, pp. 30-31.

<sup>107</sup> McGinnity, F. et. al., *Measures to Combat Racial Discrimination and Promote Diversity in the Labour Market: A Review of Evidence*, 2021, p. 10.

<sup>108</sup> Ibid, p. 35.

The position of adoptive parents also has been clarified in **Montenegro**. Legal protection of same-sex couples has improved. Montenegro has improved parental leave and now joins Albania as partially compliant with the Work-Life Balance Directive in this regard. However, all WB countries require significant amendments to their legal frameworks to achieve full compliance with the Work-Life Balance Directive.

Amendments to the LPD in **Albania** have improved legal standing for NGOs in discrimination cases. The amendments also have clarified the application of the sharing of the burden of proof in administrative procedures before the Commissioner for Protection from Discrimination. However, issues remain with the transposition of this principle despite amendments.

The new LPD in **NM** explicitly recognises sexual orientation and gender identity as protected characteristics. Compliance with the EU *acquis* also has been improved through reform of the exceptions under the LPD, a new provision on positive action and an improved provision on the sharing of the burden of proof. Only modest progress is identifiable in **BiH** and there have been no relevant legislative updates in **Kosovo**.

In summary, across the WB countries, the following challenges remain:

- No country is fully compliant with the Work-Life Balance Directive. Various issues are identifiable in connection with leave rights.
- Sanctions seem too low to be considered “effective, proportionate and dissuasive”.
- The burden of proof is not adequately understood or prescribed in most countries.
- Approximation issues also exist with protection of self-employed persons (**Montenegro, Kosovo, NM, Serbia**) and exceptions or defences.
- While definitions relating to discrimination generally are compliant with the EU *acquis*, clarifying phrasing could improve application.
- Several countries do not sufficiently protect victims from victimisation (**BiH, Montenegro, Serbia**).

Overall, the legal frameworks pertaining to discrimination are fragmented and often inconsistent. Dispersion, multiplication, and overlap of provisions has led to confusion, with different standards of protection, different procedures, and different sanctions applicable under the various overlapping laws. This can be attributed partially to insufficient pressure and prioritisation from the European Commission in ensuring consistent application of anti-discrimination legislation as part of the conditionalities of the visa liberalisation process. The new LPD in NM includes a provision requiring all other laws containing anti-discrimination provisions to be harmonized with the LPD. All WB countries should consider following this practice to reduce fragmentation and inconsistency. Approximation also requires implementation of the legal framework, and this remains a key challenge for all WB countries.



# AWARENESS

Implementation of the legal framework pertaining to labour-related gender-based discrimination depends in part on whether people report gender-based discrimination when it occurs. An important precondition for seeking support from institutions is knowledge of existing legal protections and how to report discrimination. This chapter examines people's awareness of labour-related gender-based discrimination and how to report it, drawing from quantitative and qualitative data collected to inform this publication. It considers how awareness may influence reporting of gender-based discrimination.

The chapter draws from the results of online surveys conducted in the WB region in 2018 and 2021, respectively. As explained in the Introduction, the survey participants were self-selected, including persons who had experienced gender-based discrimination. Given the convenience, non-probability sampling used, the survey findings are not generalisable for the general population of the WB region. For example, changes in awareness since the first survey in 2018 do not necessarily reflect an increase or decrease in knowledge in the entire population. A further limitation is that in both years, men remained underrepresented (23% in 2018, 17% in 2021).<sup>1</sup> This limits the comparisons that can be made between men and women in knowledge and experiences. Survey results are disaggregated by gender, but these findings also are not generalisable across the general population of the WB. Moreover, both years, people with higher levels of education, from urban areas, and that are employed full-time were overrepresented in the sample. The relatively small sub-sample sizes also have limited analysis by gender, knowledge, experience, and socio-demographic differences. Nevertheless, survey findings are indicative of the respondents' experiences and knowledge on gender-based discrimination and of existing qualitative trends.

## Awareness about Gender-based Discrimination

Generally, survey respondents tended to know that gender-based discrimination is illegal. In 2018 a higher percentage of respondents from **Serbia, Montenegro, BiH, and Kosovo** had this knowledge than those from **Albania** and **NM**. In **Albania**, comparatively more women (78%) than men (69%) knew that gender-based discrimination is illegal.<sup>2</sup> Similarly, slightly more women (96%) than men (93%) in **Serbia** had this knowledge.<sup>3</sup> In contrast, in **Kosovo**, slightly more men (86%) than women (84%) respondents had this knowledge.<sup>4</sup> In 2021, although not statistically significant and generalisable to the general WB population, awareness among survey respondents in all WB countries except **NM** decreased slightly, particularly in **Kosovo** (see Graph 1). Multiple factors may explain this, including that the samples differed and were not representative of the population.

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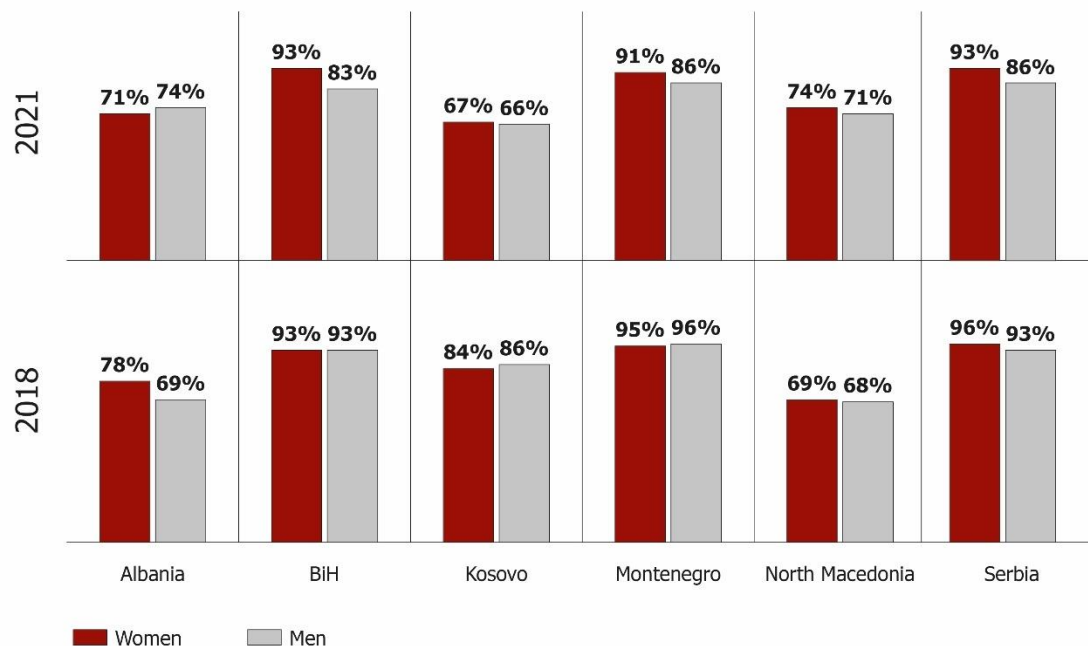
<sup>1</sup> For further details, see Annex 2.

<sup>2</sup> N = 1,087.

<sup>3</sup> N = 688.

<sup>4</sup> N = 1,790.

**Graph 1.** Aware that Gender-based Discrimination is Illegal



The relationship between knowing that discrimination is illegal and respondent age was significant in 2018. Across the WB,<sup>5</sup> fewer youth aged 18 to 29 knew discrimination was illegal than persons in older age groups. Respondents from urban areas tended to be more aware than those from rural areas.<sup>6</sup> However, the skewed sample of mostly urban respondents may mean that the level of knowledge of persons in rural areas may be misrepresented. Evidence of similar relationships did not exist in the 2021 data.

Regarding people's knowledge of institutions responsible for treating labour-related gender-based discrimination, more than half of the survey respondents thought discrimination should be reported to the employer in 2018 (Graph 2).<sup>7</sup> Slightly more respondents from **Kosovo** than from other countries believed discrimination should be reported to the employer (64% of women, 75% of men).<sup>8</sup> However, across the region, fewer respondents believed discrimination should be reported to employers in 2021 (36% women, 37% men) with substantially fewer people in **Kosovo** indicating that discrimination should be reported to the employer (24% of women and 29% of men).<sup>9</sup> Meanwhile, in all countries except **Albania** and **Kosovo** more than or approximately half of the respondents in 2018 thought discrimination should be reported to the Labour Inspectorate. Similarly in 2021, most respondents named the Labour Inspectorate as an institution where discrimination can be reported.<sup>10</sup> In 2018, approximately a third of the respondents knew discrimination could be reported to the Ombudsperson Institution. More people seemingly possess knowledge about

<sup>5</sup> N = 6,040.

<sup>6</sup> N = 6,028.

<sup>7</sup> Percentages in this graph were calculated based on the total sample of participants (n = 6,948), including: Albania (n = 1,194), BiH (n = 784), Kosovo (n = 2,151), Montenegro (n = 1,030), NM (n = 1,050), and Serbia (n = 739), 2018; in 2021, (n = 6,364), Albania (n = 754), BiH (n = 1,713), Kosovo (n = 1,775), Montenegro (n = 1,003), NM (n = 1,708), and Serbia (n = 1,130).

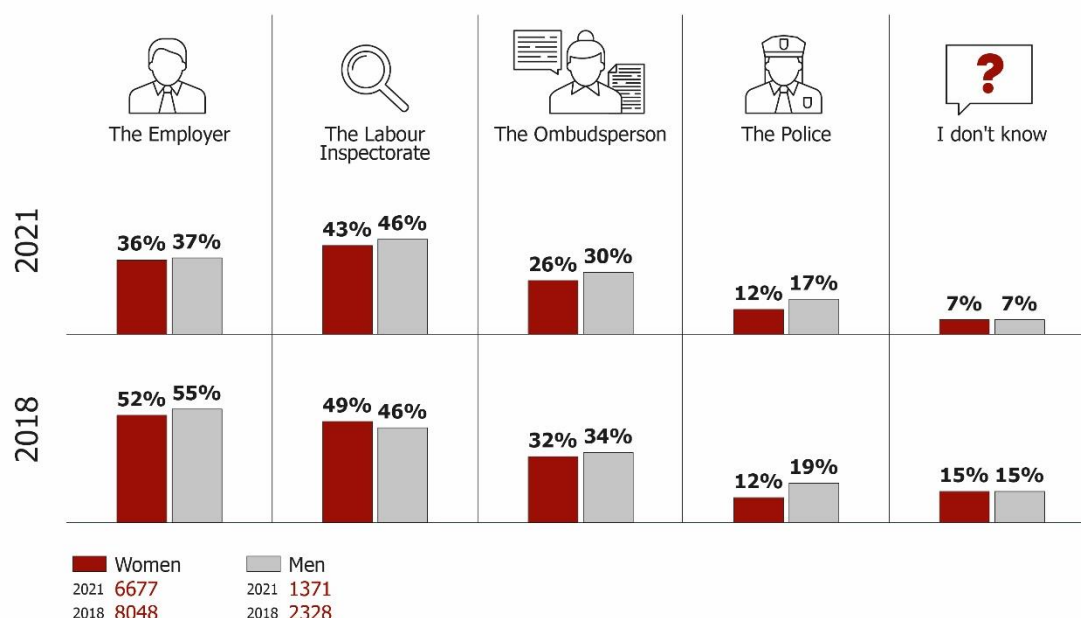
<sup>8</sup> N = 1,279.

<sup>9</sup> N = 1,775.

<sup>10</sup> N = 2,747.

the Ombudsperson in **BiH** and **Montenegro** than in other countries, though this knowledge increased slightly in **Albania** since 2018. Consistently few respondents knew discrimination could be reported to police.

**Graph 2.** Percentage of All Respondents Who Identified Where Gender-Based Discrimination Can Be Reported



Meanwhile, the percentage of respondents who did not know where to report discrimination or thought that they should not report it decreased from 15% in 2018 to 7% in 2021.<sup>11</sup> This might indicate an increase in awareness. Substantially more respondents from **Albania** in 2018 (26% of women, 29% of men) than from other countries said they did not know where to report discrimination or that it should not be reported.<sup>12</sup> In 2021, **NM** had a comparatively higher percentage of respondents that did not know where to report discrimination (30% of women, 41% of men).<sup>13</sup>

Overall, findings suggest that fewer people may completely lack knowledge as to where they can report gender-based discrimination. However, limited knowledge in all countries regarding where gender-based discrimination can be reported may contribute to under-reporting.

## Reporting Gender-based Discrimination

The online survey sought to estimate the extent to which people may report labour-related gender-based discrimination, as well as to analyse why people may or may not report it. Of the survey respondents who said that they had experienced some form of labour-related gender-based discrimination, most women (more than 76% in 2018 and 68% in 2021) and men (more than 71% in 2018 and 69% in 2021) did not report it to any institution (Graph 3).<sup>14</sup> Fewer than 4% in 2018 and 10% in 2021 had contacted the police, fewer than 3%/13% the prosecution, fewer than 5%/10% the courts, and fewer than 7%/19% the Ombudsperson

<sup>11</sup> N = 6,948, 2018; n = 6,364, 2021.

<sup>12</sup> N = 1,194.

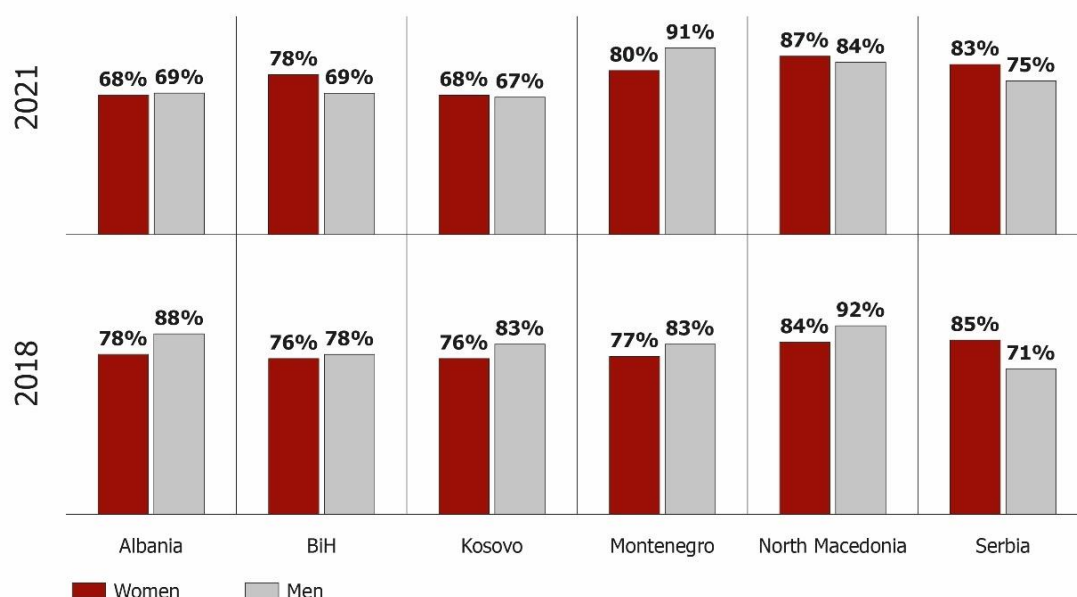
<sup>13</sup> N = 148.

<sup>14</sup> N = 1,350, 2018; n = 1,134, 2021.

Institution. While few respondents contacted relevant institutions regarding their cases, the percentage of those that did has increased slightly since 2018.



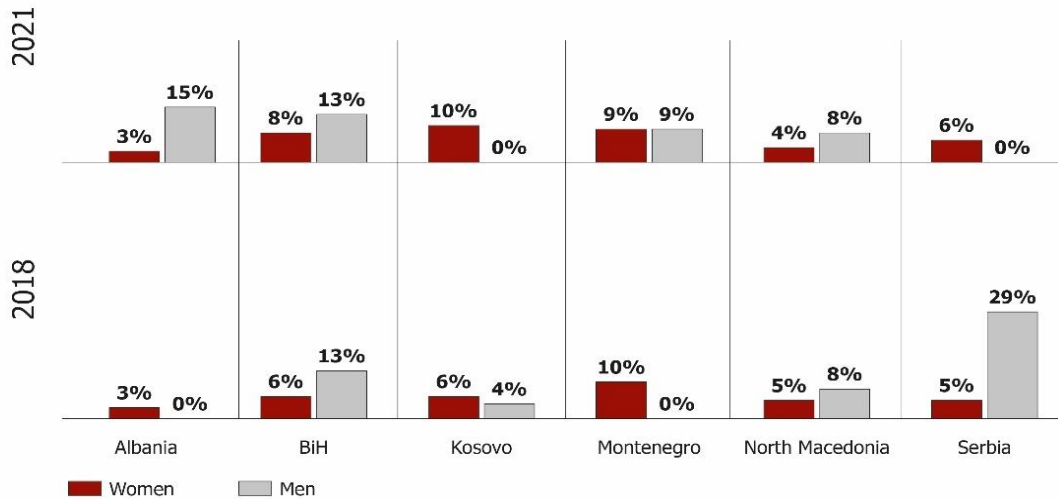
**Graph 3.** Percentage of Respondents Who Have Experienced Gender-based Discrimination that Did Not Report It, by Gender



Of those who did report discrimination, most respondents contacted the Labour Inspectorate in both 2018 and 2021. Perhaps this is unsurprising considering the aforementioned finding that more respondents knew about the Labour Inspectorate's role than other institutions' roles in addressing labour-related gender-based discrimination. Even so, they comprised less than 10% of women both years and 29%/15% of men who said they had experienced gender-based discrimination (Graph 4).



**Graph 4.** Percentage of Respondents Who Experienced Gender-based Discrimination, Who Reported It to the Labour Inspectorate



Representatives of the diverse institutions interviewed for this research tended to agree that few people report gender-based discrimination due to insufficient knowledge about discrimination and their labour rights. As a prosecutor in **NM** reflected in 2018, “People are not reporting cases as they do not know that they are experiencing discrimination, they do not know where to report it”.<sup>15</sup> Other recurrently cited reasons for not reporting gender-based discrimination included victims’ fear of losing their jobs; general discouragement over long, potentially expensive procedures; and distrust in institutions. For example, a police officer in **Kosovo** stated in 2018, “Discrimination is happening everywhere, but people do not report it. They sacrifice everything for their jobs”. These challenges, including fear of job loss, remained recurring themes in 2021. A labour union representative in **Montenegro** said, “They are afraid of retaliation from the employer when they start such actions, so they probably believe that they will be additionally discriminated against, that is, put in an additional unfavourable position in relation to other employees because they dared to initiate procedures”.<sup>16</sup> Such retaliation is specifically prohibited by provisions against “victimisation”. Nevertheless, fear of victimisation still hinders reporting.

“ I don’t want to lose my job. That is why I endure.

- Woman, age 47, Montenegro, 2018

Another repeatedly stated reason for underreporting was difficulty documenting discrimination cases; this could reflect a lack of awareness regarding the sharing of the burden of proof in discrimination cases, or poor application of the principle in practice.<sup>17</sup> As in 2018, lack of trust in institutions was also mentioned by victims of gender-based discrimination in 2021:

I have lost trust in institutions. Many times, I wanted to turn to someone at the federal level [FBiH] because at the cantonal level I obviously could not have done anything,

<sup>15</sup> Interview with woman prosecutor in NM, November 2018.

<sup>16</sup> Interview with a union representative in Montenegro, 2021.

<sup>17</sup> For further information, please see the [Legal Analysis](#).

and then I told myself: “you have no money for that, you have no connections, your father can be fired, and then I gave up”.<sup>18</sup>

These findings suggest that barriers to reporting, particularly fear of further victimisation and distrust in institutions, persist.

## **Conclusion**

The research suggests that most women and men in the WB tend to know that labour-related gender-based discrimination is illegal. Although people lack awareness regarding where they can report such discrimination, this seems to have slightly increased since the first edition of this report. Lack of awareness of reporting procedures likely contributes to underreporting. Low awareness coupled with fear of job loss, long procedures, distrust of institutions, and poor understanding of how to “document” such cases may dissuade people from reporting discrimination and seeking justice.

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<sup>18</sup> Interview with a woman from Orašje, BiH, 2021.

# PREVALENCE

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. It first presents general findings related to the prevalence of labour-related gender-based discrimination and its various forms. Then, it examines discrimination against people based on the protected grounds outlined in the Legal Analysis. Considering that few cases of labour-related gender-based discrimination have been reported and this research used convenience sampling, its overall prevalence within the population cannot be determined.

## General Findings Related to Gender-based Discrimination

Overall, 30% of survey respondents in 2018 and 33% in 2021 said they had experienced some form of labour-related gender-based discrimination in their lifetimes (34%/36% of women and 13%/18% of men).<sup>1</sup> However, when asked about specific acts that could constitute gender-based discrimination (i.e., inappropriate questions in interviews, maternity leave violations or sexual harassment), additional respondents reported that they had experienced such discrimination. The fact that several respondents did not know which acts may constitute gender-based discrimination suggests that discrimination may be more widespread than respondents reported. Also, persons whom the research team hypothesises may be more vulnerable and at risk of such discrimination were underrepresented in the survey sample. Therefore, labour-related gender-based discrimination may be more widespread than this survey suggests.

*“ I absolutely think I was discriminated against because I am a woman. It was expected that I am always good-looking and dressed up, that my job always comes first, that I do not plan on having children. After I got married, the employer also made a number of inappropriate and provocative comments about it.*

- Woman, Serbia, 2021

## Discrimination in Hiring

Research findings suggest that gender-based discrimination in hiring is widespread. In all WB countries, more than 49% in 2018 and 67% in 2021 of the survey respondents said they had experienced discrimination in hiring (Graph 5).<sup>2</sup>

*“ At a job interview I was asked whether I was planning to be a mother. Thereafter it was emphasised that 'the company's unwritten rule' was no children for at least three years after signing the contract. Currently, the manager calls women in the collective 'morons', 'provincials' and other inappropriate names unrelated to their qualifications.*

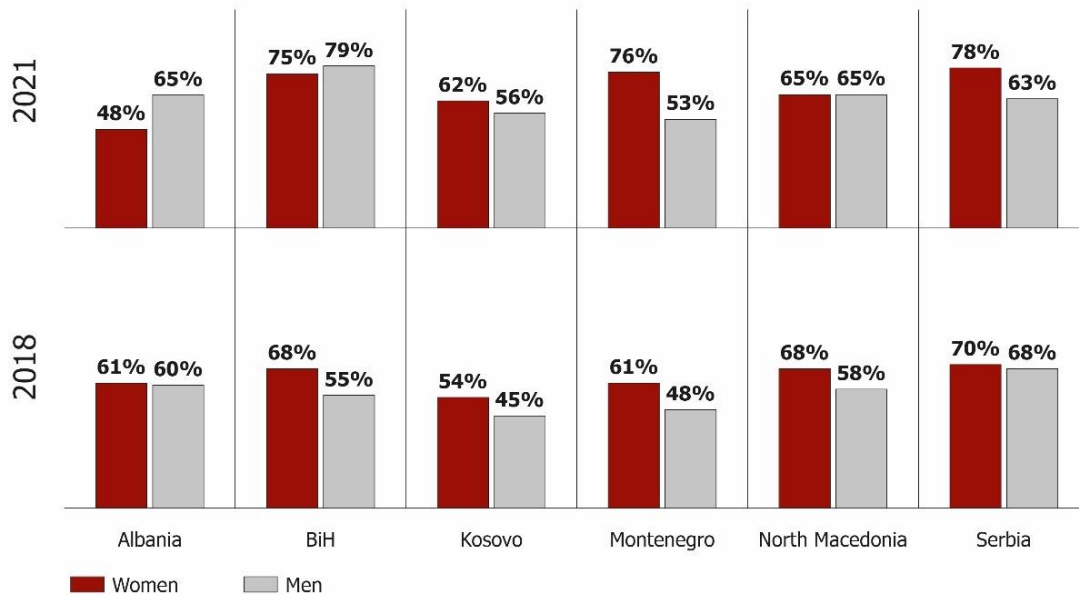
- Woman, age 40-49, BiH, 2018

<sup>1</sup> More specifically, 1,210 women and 140 men (n = 4,569), 2018; 1,027 women and 107 men (n = 3,454), 2021.

<sup>2</sup> N = 3,524, 2018; n = 2,016, 2021. It should be observed that the reference period in 2018 was “the last ten years”, while in 2021 it was “the last three years”, which could affect the percentage of sampled experiences.



**Graph 5.** Experience with Discrimination in Hiring by Gender



In all countries, more than half of the respondents in 2018 and over 60% in 2021 had been asked at least one potentially discriminatory question during a job interview.<sup>3</sup> Illustratively, a Montenegrin woman said, “I was asked about my private life during a job interview. It was a decisive factor. It was very important for the employer to know whether my relationship was serious. He assumed it would affect my commitment to work”.

In both 2018 and 2021, comparatively higher percentages of women than men said they were asked discriminatory questions in all countries except **Kosovo**, where a slightly higher percentage of men (56%) than women (53%) respondents indicated to have been asked at least one potentially discriminatory question during an interview in 2021 (Graph 6). However, as noted, these differences cannot necessarily be considered representative of the population. Overall, except in **BiH**, a lower percentage of respondents said they were asked discriminatory questions during interviews than in 2018; however, differences may be attributable to the period of reference, which was shorter in the 2021 survey (e.g., the last three years) compared to the 2018 survey (since 2008).

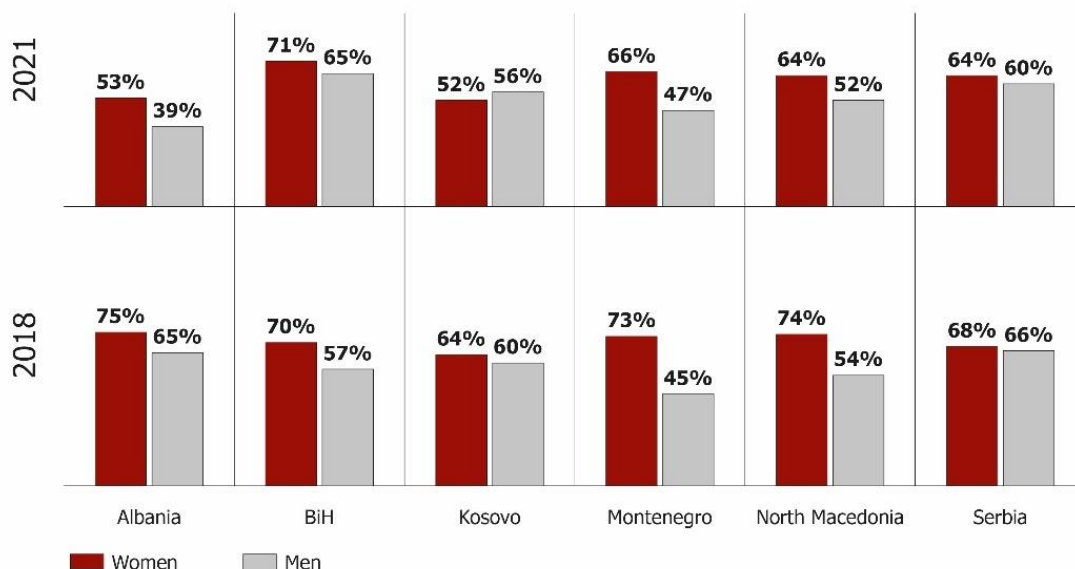
Such questions concerned job applicants’ marital status, number of children, plans to have children or to marry. In 2018 and 2021, during job interviews, more women than men were asked questions concerning their marital status or plans to marry in all WB countries, with the exception of **Kosovo** (47% of women, 48% of men).

<sup>3</sup> N = 3,562, 2018; n = 2,029, 2021.





**Graph 6.** Percent of Women and Men Asked at Least One Potentially Discriminatory Interview Question



A higher percentage of women respondents from **BiH** (79%/49%), **Montenegro** (78% in 2018), **NM** (79%/56%), and **Serbia** (44% in 2021) than from other countries were asked how many children they had or planned to have in the future. A Kosovar woman shared in 2018, “In a lot of interviews [for a job at a supermarket], I was asked if I had children or planned to have them”.<sup>4</sup> Women who did not have children reportedly also experienced discrimination if they indicated they wished to have them in the future.

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

- Woman, age 36, NM, 2018

As a woman in Serbia shared, “Each time I had an interview for a job as an architect, they asked me if I planned to have children. I always answered honestly: that I would love to have children. No one wanted to hire me. I was working all of the time under the table [illegally] with no contract in order to make ends meet”.<sup>5</sup> Literature in **Serbia** confirms that women seeking employment often are questioned about their private life, such as about their current or planned marital and family status.<sup>6</sup> In **BiH**, a woman described feeling confused as to why she was asked so many questions regarding her personal life:

I went to a job interview, and although I expected that this conversation would be focused on my previous work experience, I realised that it all went in another direction. As I was presenting and talking about some of my achievements, the director asked me if I was in a relationship, is it serious, and whether I will marry soon ... when do I plan to have children, ... which confused me in the beginning because I had not

<sup>4</sup> Woman, age 36, Kosovo, 2018.

<sup>5</sup> Woman, age 45, Serbia, 2018.

<sup>6</sup> Nikolić-Ristanović, V., Čopić, S., Nikolić, J., Šaćiri, B., *Discrimination against women at the labour market in Serbia*, Belgrade, Serbia: Victimology Society of Serbia, 2012.

expected it. Only when the interview for the job ended did I realise what he actually asked me.<sup>7</sup>

This and similar experiences reported in all WB countries, as illustrated in the pulled quote boxes, suggest that inappropriate questioning about job applicants' personal lives has continued.

In all WB countries in 2018 and 2021, except **Serbia** in 2018, findings suggest that more women than men respondents believed that employers did not hire them because of their gender. For example, in **Montenegro**,

a woman shared her experience of discrimination based on occupational gender stereotypes regarding the types of jobs that women can perform: "[In the] job interview, they commented, 'This job is not for women' (to be a driver). I answered, 'Every job is for a woman, and I did not come here for someone to tell me if it is or is not a job for a woman. I came here to get or not get the job'".<sup>8</sup> The use of gender stereotypes and gender-specific language in public postings for job openings also was a recurring theme across the countries. These findings suggest that gender-based discrimination in hiring clearly affects many women in the WB.

“ I was supposed to replace a girl who was on maternity leave. They planned to fire her after. They told me that I was not allowed to get pregnant for two years.

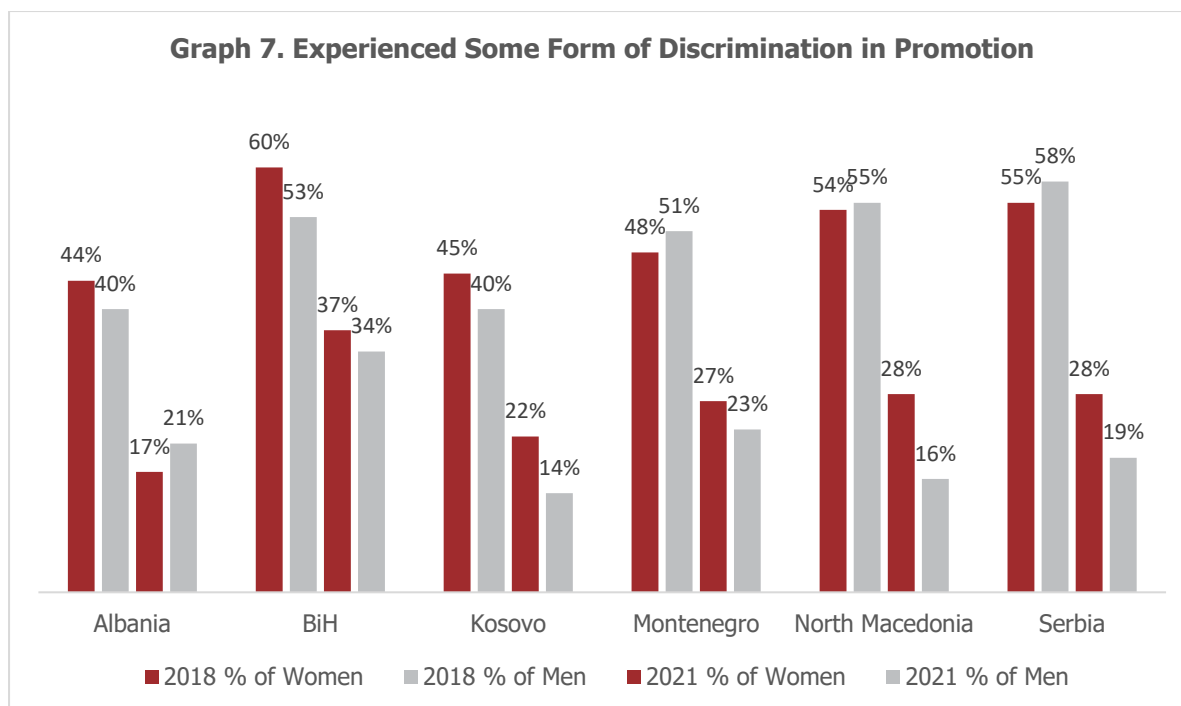
- Woman, age 37, Montenegro, 2018

### Discrimination in Promotion

In 2018, a higher percentage of men than women said they experienced some form of discrimination in promotion in **Serbia**, **NM**, and **Montenegro** (Graph 7), albeit not necessarily gender-based discrimination. Meanwhile, in **BiH**, **Kosovo**, and **Albania** a higher percentage of women than men said they faced discrimination in promotion. In 2021, more women than men in all WB countries except **Albania** said they faced discrimination in promotion. The overall decrease in the percentage of survey respondents who reported facing discrimination in promotion in 2021 compared to 2018 can be interpreted in context of the fact that “personal preference of the employer” was omitted as a possible type of discrimination in the 2021 survey due to its vagueness. This may have contributed to fewer respondents stating that they experienced a form of discrimination.

<sup>7</sup> Woman, age 27, BiH, 2021.

<sup>8</sup> Woman, age 37, cited in Komar, O., Šćepanović, A., Glomazić M., Šuković, D., *Gender-based Discrimination and Labour in Montenegro*, Montenegro, Women's Rights Centre, 2019, p. 26.



While men respondents tended to say that they did not get promoted because of their ethnicity, sexual orientation, or place of residence, women respondents tended to attribute discrimination in promotion to their gender. For example, a woman in **Kosovo** said, "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".<sup>9</sup>

In **Serbia**, women shared stories in which sexual harassment and unequal opportunities for promotion were interrelated. Women said they were not promoted because they refused to have dinner with, kiss, or sleep with their employers. As one woman said, "When an employer offered for me to be promoted to the position of manager, he also asked me to go with him to dinner. When I refused, he did not allow my promotion and not long after that incident I quit".<sup>10</sup> In 2021, a woman in **Kosovo** also reported that she was asked for sexual favours:

*"The head of the company wanted to sleep with me for me to be promoted."*

- Woman, age 30, Serbia, 2018

When I was applying for this position, one of the authorities told me: "If you want to continue with this [application] let me tell you where my villa is. I'll be waiting for you there tonight." I decided I did not want to give in to the blackmail, and I wrote a complaint to the Cabinet of Ministers, but a representative asked me why I was complaining, because "You look so good", after which he touched me. After that, I moved and left immediately.<sup>11</sup>

In this case, the woman experienced both discrimination in promotion and sexual harassment, worryingly on two occasions within the public administration.

In conclusion, both quantitative and qualitative data suggest that gender-based discrimination in promotion remains widespread in all WB countries, particularly affecting women.

<sup>9</sup> Woman, age 31, Kosovo, 2018.

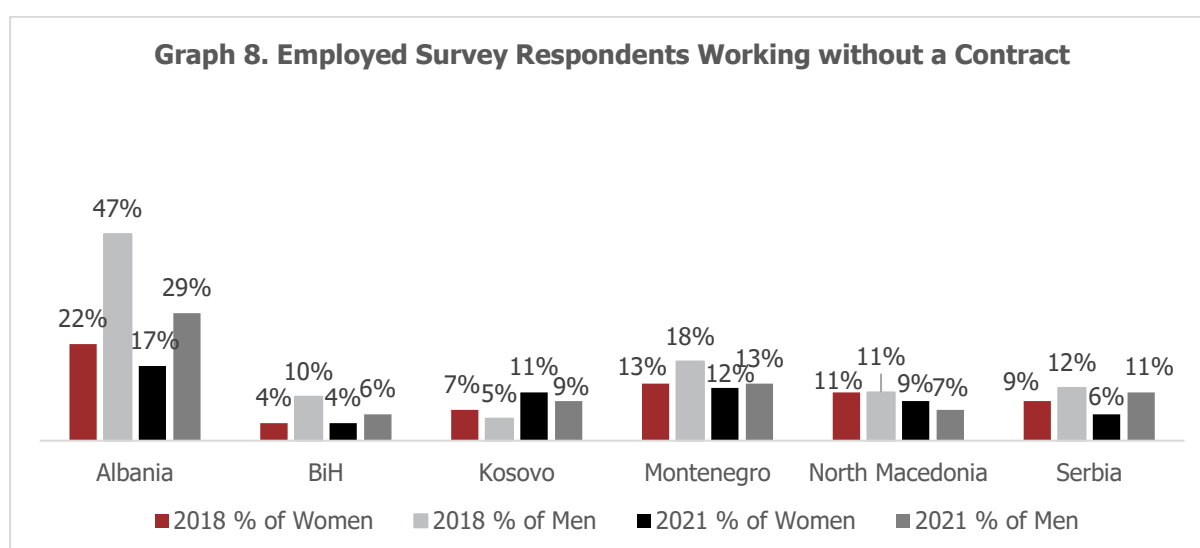
<sup>10</sup> Woman, age 47, Serbia, 2018.

<sup>11</sup> Woman, age 46, Kosovo, 2021.

## Discrimination in Contracts

Working without a contract can place workers in a precarious position and entail several rights violations. During the period 2008 to 2018, a higher percentage of surveyed women than men had been asked to work without a contract in **Albania** (43%), **NM** (36%), and **Kosovo** (26%). In contrast, a higher percentage of men than women had been asked to work without contracts in **Montenegro** (55%), **Serbia** (48%), and **BiH** (36%). The same question was asked in 2021 for the period of 2018 to 2021. A higher percentage of women than men were asked to work without a contract in **Kosovo** (15%), **Serbia** (17%), and **NM** (16%), while in **Albania** (27%), **BiH** (24%), and **Montenegro** (41%) more men had been asked to do so.

A slightly higher percentage of women respondents currently were working without contracts in **Albania** (22% in 2018 and 17% in 2021) than in other countries (Graph 8). A higher percentage of men than women respondents currently were working without a contract in **Albania** (47%/29%),<sup>12</sup> **Montenegro** (18%/13%), **Serbia** (12%/11%), and **BiH** (10%/6%). Only in **Kosovo** (7%/11%) and in **NM** (9%) in 2021 did more women than men report working without a contract.



Working without a contract may be attributable to factors other than gender, such as the sector in which a person works. Without further information, it is difficult to conclude whether gender-based discrimination has existed in relation to having or not having a contract. Nevertheless, findings illustrate that numerous people throughout the WB are working without contracts. This can place them in a vulnerable position in which they lack access to legal protections for workers' rights. This lack of legal protection may affect women and men differently. For example, women without contracts may not be able to realise rights related to maternity leave.

Regarding contract length, most respondents perceived that contracts tend to be the same in duration for women and men. Among the survey respondents who had contracts, most had indefinite contracts. A slightly higher percentage of men than women had indefinite contracts in **Kosovo** (64% in 2018 and 66% in 2021), **Serbia** (53%/63%), **Montenegro** in 2018 (50%), and **NM** in 2021 (61%). In contrast, in **Albania** in 2021 (57%), **NM** in 2018 (49%), **BiH** (64%/63%) consistently, and **Montenegro** in 2021 (58%), a slightly higher percentage of women than men had indefinite contracts. Some employers reportedly have

<sup>12</sup> In the 2018 sample of Albania, men with lower education were overrepresented; 37.9% of the men had only primary or incomplete primary education compared to 9.6% of women. The rate of workers without employment contracts was highest among participants with only primary or incomplete primary education.

used short-term contracts to avoid responsibilities affiliated with maternity leave, as discussed in the forthcoming section on Maternity Leave. In **Kosovo** (13%/9%), **NM** in 2021 (19%), and in **Montenegro** (31%) in 2018, a higher percentage of women than men respondents said they had signed an employment contract without reading or understanding it. In contrast, in **Serbia** (44%/32%), **NM** in 2018 (42%), **BiH** (31%/34%) and **Albania** (20%/19%), a higher percentage of men respondents had done so. Again, this may not necessarily have involved gender-based discrimination. However, in **Serbia**, respondents consistently shared cases of an “unwritten rule” according to which contracts may contain an additional annex with an undated notice of employment termination (*blanco* termination). Some employers reportedly ask employees to sign this annex without allowing them to read it.<sup>13</sup> The annex makes it easier for the employer to discontinue employment if, for example, a woman becomes pregnant while employed. This and short-length contracts suggest that some women in the WB may face gender-based discrimination related to contracts.

“

*In the beginning, I received a contract for a definite period. This contract was changed to a year, six months, three months. Finally, I was offered a contract for the supply of services even though I was already employed at that company for three years. I noticed that my male colleagues did not have the same experience.*

- Woman, age 30, Serbia, 2018

“

*It is a common practice for both women and men to sign a blanco firing unemployment notice together with a contract for a definite period of time. However, for women, there is one clause which says that women are not allowed to get pregnant throughout the duration of the contract.*

- CSO representative, Serbia, 2018

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

Equal pay for equal work is a fundamental value of the EU. Yet, evidence suggests that a gender pay gap exists in most countries, with women earning less than men. In **Serbia**, the 2018 Gender Equality Index found that a wage gap exists between women’s and men’s wages. In 2021, the Gender Equality Index showed that there was a decrease in the gender wage gap in Serbia, but the gap has remained larger than the European average.<sup>14</sup> On average, women earned less than men in almost every sector, according to official statistics.<sup>15</sup>

The gender wage gap in **Albania** was an estimated 6.6% in 2020.<sup>16</sup> In **Montenegro**, the gender pay gap was reported at 13.9% in 2015, closing slightly to 13.2% in 2019.<sup>17</sup> In

<sup>13</sup> This continued to occur in 2021 (see Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022, p. 57, at: [https://kvinnatillkvinna.org/wp-content/uploads/2022/02/EU\\_Gender\\_Labour\\_2022\\_ENG.pdf](https://kvinnatillkvinna.org/wp-content/uploads/2022/02/EU_Gender_Labour_2022_ENG.pdf)).

<sup>14</sup> Babović, M., *Gender equality index for the Republic of Serbia*, Social Inclusion and Poverty Reduction Unit, Government of the Republic of Serbia, 2018; Babović, M., & Petrović, M., *Gender equality index for the Republic of Serbia 2021*, Social Inclusion and Poverty Reduction Unit, Government of the Republic of Serbia, 2021.

<sup>15</sup> The Statistical Office of the Republic of Serbia, “Gender statistics”, n.d., at: <https://www.stat.gov.rs/en-us/oblasti/stanovnistvo/statistika-polova/20210129-zene-i-muskarci/>.

<sup>16</sup> INSTAT, UN Women, Women Count, *Women and Men in Albania 2021*, 2021, at:

<https://www2.unwomen.org/-/media/field%20office%20albania/attachments/publications/2021/06/women%20and%20men%20in%20albania%202021.pdf?la=en&vs=2434>.

<sup>17</sup> Ministry for Human and Minority Rights, *Second report on the implementation of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 2015; Komar, O., *Gender Equality Index Montenegro –*

**Kosovo**, a 2017 survey similarly found that women tend to earn less than men.<sup>18</sup> This continued in 2020, with the Agency for Gender Equality estimating the adjusted gender pay gap at 9.3%.<sup>19</sup> According to the Agency for Gender Equality in **BiH** in 2018, there were “visible gender differences in hourly rates in favour of men in all age groups, levels of education, occupations and industries”.<sup>20</sup> In November 2021, the gender wage gap in **BiH** was estimated to be 13.4%.<sup>21</sup> In 2019, the gender pay gap in **NM** was an average of 17.3%.<sup>22</sup>

Qualitative data similarly suggest that women may face gender-based discrimination in salaries. Women respondents explained how they received lower salaries than men colleagues, even though they performed the same work. For example, a woman working in a bank in Kosovo, stated in 2018: “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”.

Overall, qualitative and quantitative evidence suggests that gender-based discrimination against women in salaries existed in 2018 and continues to exist in 2021 in all WB countries.

## Poor Working Conditions

No clear conclusion can be drawn from this research as to whether women or men may be more inclined to face gender-based discrimination related to working conditions.<sup>23</sup> Yet, qualitative evidence suggests that in some situations women have continued to face poor working conditions and unequal treatment.

In **Serbia**, research by the Clean Clothes Campaign has discussed the poor working conditions in the textile and shoe industry, as a sector in which women represent a majority.<sup>24</sup> The research found that employers disrespected employees; required them to use diapers to avoid time loss affiliated with going to the toilet; and

“While I was employed in that factory, only men had regular check-ups due to unhealthy working conditions. The manager said that women do not need the check-ups. Throughout the 17-year period of working in that factory I had only one visit to the doctor, in spite of the fact that we all work with acetone and diluent. One worker complained to the Labour Inspectorate, but they said that we were not working with poisonous chemicals.

- Woman, age 48, Serbia, 2018

2019, MONSTAT, 2019, at: [https://eurogender.eige.europa.eu/system/files/events-files/gender\\_equality\\_index\\_2019\\_report\\_final.pdf](https://eurogender.eige.europa.eu/system/files/events-files/gender_equality_index_2019_report_final.pdf).

<sup>18</sup> Millennium Challenge Corporation, *Kosovo - Labor Force & Time Use Survey*, 2017, at: <https://millenniumkosovo.org/wp-content/uploads/2018/11/MCC-Kosovo-Labor-Force-and-Time-Use-Study-FinalResearch-Report-1.pdf>. They found on average women receive €289 per month compared to men receiving €353.

<sup>19</sup> Agency for Gender Equality, *Gender Pay Gap in Kosovo*, 2020, at: [https://abgj.rks-gov.net/assets/cms/uploads/files/AGE%20Gender%20Pay%20Gap%20RKS%20\\_compressed.pdf](https://abgj.rks-gov.net/assets/cms/uploads/files/AGE%20Gender%20Pay%20Gap%20RKS%20_compressed.pdf).

<sup>20</sup> Agency for Gender Equality, BiH, *CEDAW Periodic Report for BiH*, 2018, at: [https://arsbih.gov.ba/wpcontent/uploads/2017/12/170823\\_VI-periodicni-CEDAW-Izvjestaj-za-BiH\\_Nacrt.pdf](https://arsbih.gov.ba/wpcontent/uploads/2017/12/170823_VI-periodicni-CEDAW-Izvjestaj-za-BiH_Nacrt.pdf), p. 34.

<sup>21</sup> Plata.ba, *Salaries in Bosnia and Hercegovina*, 2021, at: <https://www.plata.ba/en/plate-u-zemlji>.

<sup>22</sup> Nikolski, D., *The gender pay gap in Macedonia: Assessing the difference between low-paid and highly-paid employees*, 2019, at:

[https://www.researchgate.net/publication/335560236\\_The\\_gender\\_pay\\_gap\\_in\\_North\\_Macedonia\\_Assessing\\_the\\_difference\\_between\\_low-paid\\_and\\_high-paid\\_employees](https://www.researchgate.net/publication/335560236_The_gender_pay_gap_in_North_Macedonia_Assessing_the_difference_between_low-paid_and_high-paid_employees).

<sup>23</sup> The substantial disproportion between the number of women and men respondents meant that the data would not allow for statistically significant conclusions relating to gender.

<sup>24</sup> Tamindžija B., Aleksić S., Musiolek B. *Country profile: Serbia. Clean Clothes Campaign*, 2017, at: <https://cleanclothes.org/livingwage/europe/country-profiles/serbia>. Field research was conducted between June and September 2017. The methodology involved 48 interviews with textile workers across the country.



made them work in poor air quality, which led women to faint, especially in summer.<sup>25</sup> A woman interviewed for this research also observed that women and men are treated differently in terms of health in the workplace in the clothes industry (see the quotation box above). These issues continued in 2021, when online survey respondents from Serbia reported “terrible working conditions” and mobbing. One respondent reported that her workplace had no toilet or water available.

Similarly, in **BiH**, media have reported that working conditions in newsstands, where mostly women are employed, seemingly involve double shifts, no toilet and no protection from robbery, violence, and exposure to sexual harassment.<sup>26</sup> Such poor and dehumanising working conditions represent human rights abuses that undermine women’s dignity and integrity. Evidence suggests that within women-dominated industries like textile and shoe sectors, women and men may not be treated equally at work, which may constitute gender-based discrimination.

Survey participants also reported suffering violence from superiors or co-workers. In **Montenegro**, a woman described being assaulted at work: “I have suffered mobbing, psychological [violence] and physical violence from my superiors for six years. I am a person with a disability”.<sup>27</sup> Reports such as this suggest that women’s health and safety have continued to be at risk in the workplace.

“ 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, Kosovo, 2021

### Case Box 1. Poor Working Conditions in Albania

The Albanian Women’s Empowerment Network (AWEN) provided a woman working at a private company with legal aid in 2020. She had been subjected to verbal abuse from her managers and physical exhaustion due to poor working conditions. People were made to stand for 10 hours a day, and the team-coordinator made derogatory remarks, saying that “women like you are replaceable. We can find [replacement workers] in less than a minute, so you best just lower your head and work”. The firm benefitted financially from women employees during the pandemic. This case remained ongoing in 2021 and was presented to the Commissioner for Protection from Discrimination.

Meanwhile, aside from reports of poor working conditions, there also have been some developments in the WB since 2018 with regard to positive working conditions. For example, CSOs, including business associations, supported by the United Nations Population Fund (UNFPA) and the Austrian Development Agency, have worked with employers to establish family-friendly workplaces in Albania, Kosovo, and Moldova. These seek to provide better working conditions for diverse women and men, such as flexible working hours, part-time work, carers’ leave, parental leave, and other benefits that enable women and men to balance their family and professional lives. These pilot initiatives are in line with the intentions of the

<sup>25</sup> Ibid.

<sup>26</sup> Zavitani M., “Working conditions in kiosks”, Bosnia and Herzegovina, Karike, 2018, at: <http://karike.ba/uslovi-rada-u-trafikama-znala-sam-se-vratiti-s-kraja-ulice-kako-bih-otisla-u-toalet>.

<sup>27</sup> Woman, age 60, Montenegro, 2021.

EU Work-Life Balance Directive and provide a positive example of how employers can work proactively to improve working conditions while contributing to gender equality.

Notably, the Organisation for Economic Cooperation and Development also published an article in 2018, which stated that women are more inclined to work for public institutions in the WB. The reason was that public institutions offer better working conditions, more family-friendly policies, and more stability.<sup>28</sup> Indeed, growing evidence suggests that establishing family-friendly workplaces can contribute to women's increased employment rates, gender equality, but also, for the private sector, to increased profits.<sup>29</sup>

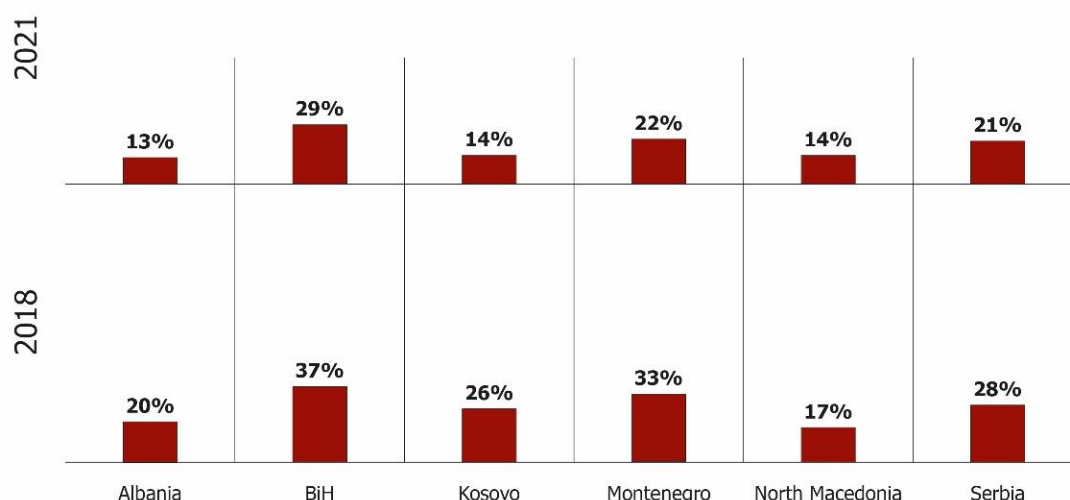
In summary, insufficient evidence exists to arrive at overarching conclusions regarding working conditions for women and men. While some examples exist of continued poor conditions particularly in textile industries where women tend to be overrepresented, some positive examples of improvements in a few piloted workplaces also exist, which can provide examples for other workplaces.

## Violations of Pregnancy and Maternity Leave Rights

Violations of a woman's right to maternity leave or treating a woman differently after maternity leave, if not explicitly requested by the woman employee, can constitute a violation of her rights and a form of gender-based discrimination. Violations of maternity leave rights may be among the most prevalent forms of labour-related gender-based discrimination in the WB.



**Graph 9.** Percentage of Women Respondents Who Were Neither Paid nor Received a Government Benefit During Maternity Leave



Among the women survey respondents who were working when they became pregnant, 37% in 2018 and 29% in 2021 in **BiH**, 33%/22% in **Montenegro**, 28%/21% in **Serbia**, 26%/14%

<sup>28</sup> Organisation for Economic Cooperation and Development (OECD), *Gender equality in public sector employment*, 2020, at: <https://www.oecd-ilibrary.org/sites/07811cb6-en/index.html?itemId=/content/component/07811cb6-en>.

<sup>29</sup> OECD, *Is the Last Mile the Longest? Economic Gains from Gender Equality in Nordic Countries*, at: <https://www.oecd.org/employment/is-the-last-mile-the-longest-economic-gains-from-gender-equality-in-nordic-countries-9789264300040-en.htm>.



in **Kosovo**, 20%/13% in **Albania**, and 17%/14% in **NM** said that they did not receive any payment during their maternity leave from their employer or from the government. As is evident from Graph 9, a slightly lower percentage of survey respondents reported violations of their maternity leave rights in 2021 than in 2018. Nevertheless, this could be attributable to differences in the sample and the change in the reference period from “the last ten years” in 2018 to “the last three years” in 2021. As the survey is not representative of the entire population, the most important finding is that such violations clearly continue to occur across the WB, affecting multiple women.

Several surveyed women from **Montenegro** (39%/27%), **BiH** (27%/36%), **Albania** (24%/5%), **Serbia** (24%/33%), **NM** (22%/19%), and **Kosovo** (15%/12%) reported that they did not return to their place of employment following maternity leave. That employers terminated their contracts was a recurring theme. Interview respondents observed that employers terminated women’s contracts during their pregnancies or while they were on maternity leave, without prior notification. This is despite the fact that all WB countries legally prohibit dismissal from the beginning of the pregnancy through the end of maternity leave, save in exceptional circumstances that are not connected to pregnancy.

“ 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, age 33, Kosovo, 2018

“ My friend had a high managerial position in a big company. After she left for maternity leave, another person replaced her. When she returned, they fired her by saying that her position is no longer needed. In order to hire someone for the same position, they created a new position with similar tasks and that is how they bypass the law. They immediately employed another person for that position, which was practically hers. She has been suing the company for gender-based discrimination and unlawful termination of contract. She is still in that process, which already lasted more than four years.

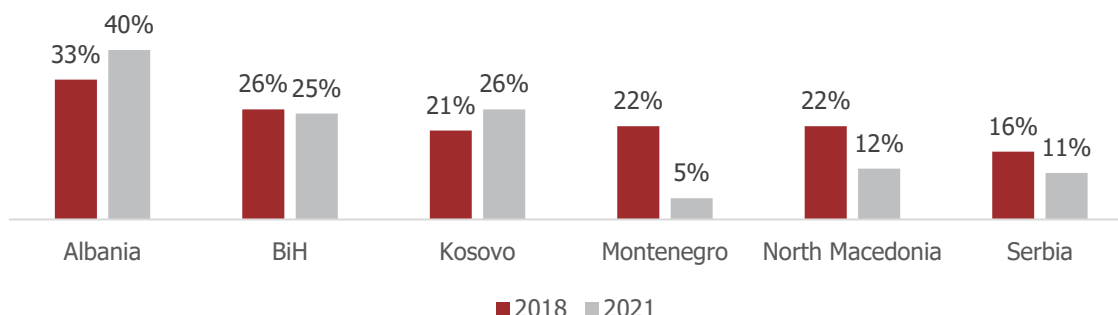
- Woman, CSO representative, Serbia, 2018

In 2018, in **Montenegro**, **NM**, **Albania**, and **BiH**, several women reported that their contract ended during their maternity leave and was not renewed.<sup>30</sup> A recurring theme in WB states was that maternity leave rights are violated either directly because employers terminate women’s employment when they become pregnant or indirectly because employers do not renew expiring fixed-term employment contracts when they learn that employees are pregnant.

Numerous surveyed women in **Albania** (33%/40%), **BiH** (26%/25%), **Kosovo** (21%/26%), **Montenegro** (22%/5%), **NM** (22%/12%), and **Serbia** (16%/11%) said that employers pressured them to return to work earlier than planned (Graph 10).

<sup>30</sup> This was also a recurring theme in interviews.

**Graph 10. Percentage of Surveyed Pregnant Women Workers Whose Employer Pressured Them to Return to Work Earlier Than Planned after Maternity Leave**



Some women survey respondents also felt they were treated differently by their peers or bosses when returning from maternity leave. When asked specifically about the “before and after treatment”, they mentioned having more responsibilities, more working hours, lower pay, or a lower position. While women who took maternity leave generally reported that they had the same pay before and after maternity leave (87%/84%), some women said that employers decreased their salaries after they returned from maternity leave: in 2018 in **Serbia** (15%/4%), **Montenegro** (13%/19%), and **BiH** (11%/11%). Interviews conducted for this research similarly suggested that some women who took maternity leave had lower

positions when they returned to work. For example, in Montenegro a woman stated, “I was offered a lower position. They explained that I needed to start over since I was away for almost two years, and I did not have a contract”.<sup>31</sup> Cases assisted by CSOs since 2018 have provided further evidence of maternity rights violations as illustrated in the following cases.<sup>32</sup>

“ The same day I returned to work I was given a new contract with a lower salary [...] My colleague became my superior while I was on maternity leave. When I returned, he told me, ‘You haven’t been here for two years. You must start over again. You have to prove yourself’. He was aware of the whole situation: ‘You can sue me, but you can’t prove anything’. He knew it was hard to prove because he could always say I wasn’t a good employee.

- Woman, age 40, Montenegro, 2018

<sup>31</sup> Komar, O. et al., *Gender Based Discrimination and Labour in Montenegro*, 2022, p. 32.

<sup>32</sup> These cases have been assisted through the Action “Empowering CSOs in Combatting Discrimination and Furthering Women’s Labour Rights”, supported by the EU and Sida.

### Case Box 2. Non-recognition of Work Experience following Maternity Leave

In Serbia, a woman complainant stated that she had been employed as a stenographer in the First Basic Court in Belgrade from November 2012 to June 2017 with a temporary employment contract, which had been renewed every few months. When she became pregnant in June 2017, she took her pregnancy and maternity leave, which lasted until the beginning of 2020 due to her subsequent pregnancy. In December of 2019, while she was still on maternity leave, her employer posted an internal call for a permanent stenographer, a position for which she applied. The Selection Committee rejected her application on the grounds that she had not been employed in this position for a minimum of two years in continuity, thus not meeting the requirements of the Law on Public Administration Employees. Given that the Commissioner cannot act upon anonymous complaints, the procedure was ceased in this individual case. Given the scope and seriousness of the problem, however, this anonymous complaint prompted the Commissioner to issue an official Recommendation to the High Court Council, an independent judiciary body entrusted with the task of securing judicial autonomy, on the interpretation and implementation of relevant provisions of the Law on Public Administration Employees in a manner that does not hinder the equality of women employed in courts who have taken maternity leave.<sup>33</sup>

### Case Box 3. Discontinuation of Contracts for Women on Maternity Leave in NM

A woman in Skopje worked with a bank for several years under successive fixed-term contracts. The woman informed her employer when she became pregnant. The employer informed the worker that her contract would not be renewed shortly after. Before the worker's contract expired, the employer began publishing job vacancy advertisements for the worker's position. Following delays in justice relating to COVID-19, the case remained ongoing as of April 2022. This case illustrates that women who are pregnant or have plans to start a family are at risk of losing their jobs. During 2020 and January 2021, there were six other cases in NM of women who were fired as a direct result of their pregnancy. Most dismissals occurred directly after the women announced that they were pregnant. Some were dismissed immediately, and some contracts were not renewed. One of the women was told that her contract would not be renewed when she came back from maternity leave. Research suggests that there are more cases than are actually reported. However, the reported cases illustrate that this remains a prevalent problem.<sup>34</sup>

### Case Box 4. Violations of Sick Leave Rights Related to Pregnancy in NM

A woman had a high-risk pregnancy and had to take sick leave due to her condition. She had an indefinite employment contract with her employer that was terminated when she took up this sick leave. The employer argued that her absence was unjustified, even though she had taken up the sick leave in conformity with the rules of her employer. This case was filed with the Labour Inspectorate, which found that the employer had violated provisions of the Law on Labour Relations and ordered the employer to take back the pregnant worker to her workplace and to re-register her as employed in the Employment Agency and Compulsory Social Insurance.<sup>35</sup>

<sup>33</sup> Commissioner for the Protection of Equality, Recommendation No. 07-00-110/2020 from 11 February 2020, cited in Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, 2022, p. 58.

<sup>34</sup> Helsinki Committee for Human Rights, Report to KWN, NM, 2020; and follow-up communication in 2022.

<sup>35</sup> Ibid.

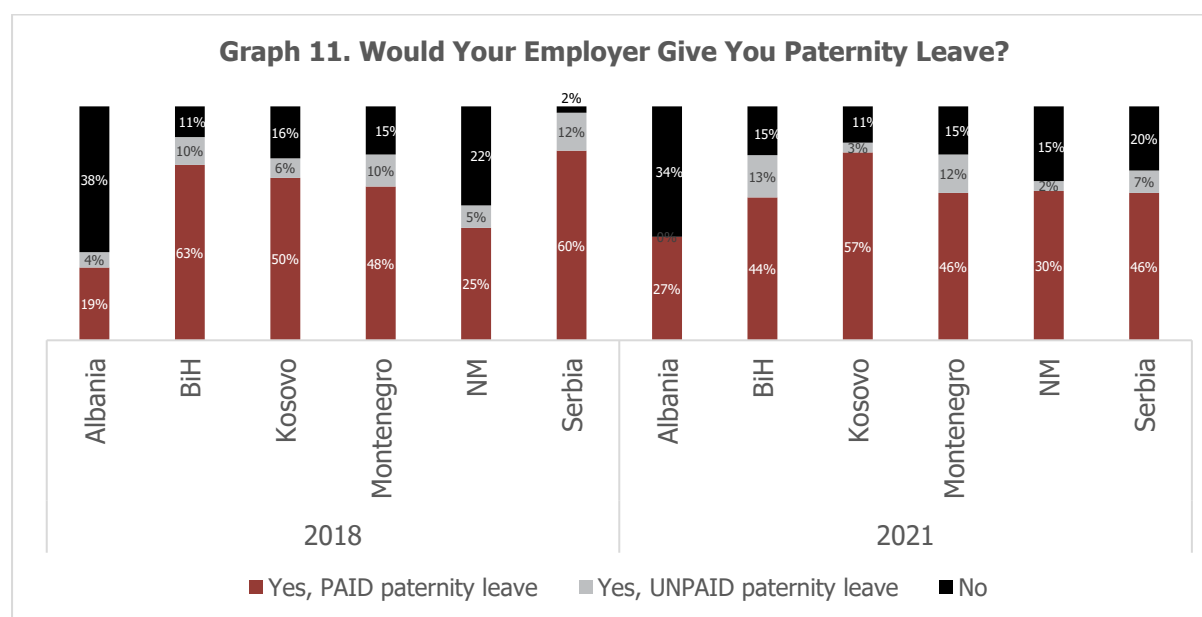
### Case Box 5. Potential Violations of Maternity Leave Rights Due to Fixed-term Contracts and COVID-19 in BiH

A woman was not offered an extension to her fixed-term employment contract after maternity leave. Her contract was regularly extended quarterly before her pregnancy. She was employed for a year and three months in total. During that period, she was on maternity leave for almost nine months due to a high-risk pregnancy. After maternity leave, she received a decision to terminate her employment due to a reduced workload resulting from the COVID-19 pandemic. As her dismissal was explained as a result of COVID-19, it was difficult to prove that the dismissal was a result of her pregnancy.<sup>36</sup>

Overall, qualitative and quantitative evidence suggest that several women in the WB have faced violations of their rights to maternity leave. These reports indicate potential violations of the right to return to the same or an equivalent post at the end of maternity leave, on conditions that are no less favourable, even though this right is reflected in the legal frameworks of all WB countries.

### Paternity Leave

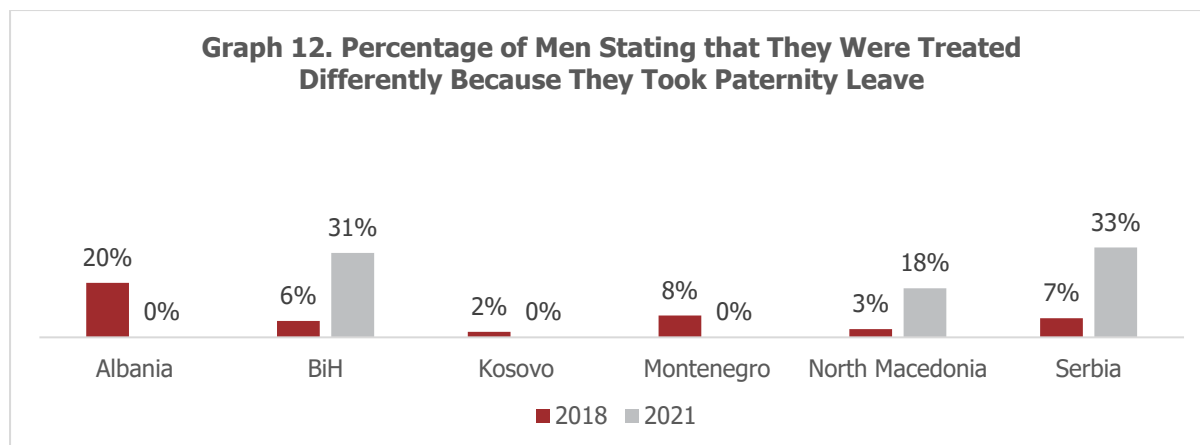
As described in the Legal Analysis, WB states have not yet established the legal right to 10 days paid paternity leave in accordance with the EU Work-Life Balance Directive. Although not yet protected legally, this represents a form of social and economic gender-based discrimination against men. When asked about paid paternity leave (Graph 11),<sup>37</sup> in 2018 most men respondents believed that their employer would give them some paid paternity leave, though the percentage of men respondents believing this decreased in most countries in 2021: **BiH** (63%/42%), **Serbia** (60%/46%), **Kosovo** (50%/57%), **Montenegro** (48%/46%), and **NM** (25%/30%). Only in **Albania** did a higher percentage of men respondents state that their employers would not give them paid or unpaid paternity leave (38%/34%).



<sup>36</sup> Lana Jajčević, Foundation United Women Banja Luka, cited in Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, 2022, p. 77.

<sup>37</sup> The percentages do not total 100% as some respondents said they did not know.

While fathers in most countries said they were treated the same after taking paternity leave, some fathers said they were treated differently by their employers because they took this leave (see Graph 12). As noted, in considering these findings, readers should bear in mind that the sample size of employed men who became fathers was very small.



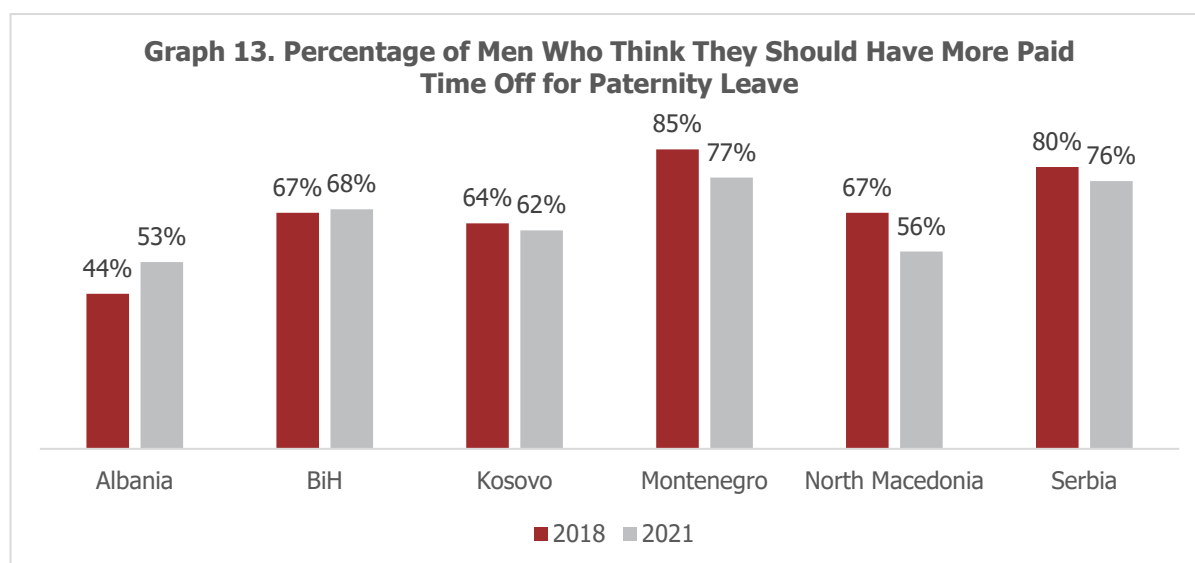
In WB countries, restrictive paternity and parental leave provisions may be interrelated with gender-based discrimination against women at work. For example, KWN's interviews with a random sample of employers in 2016 in **Kosovo** found that many employers discriminate against women in hiring, intentionally or unintentionally, because they do not want to pay for six months of maternity leave in accordance with Kosovo's Labour Law.<sup>38</sup> It makes economic sense for employers to hire men to avoid added costs. Meanwhile, the restrictive legal provisions concerning paternity leave in all WB countries arguably discriminate against men, violating their social rights to spend time with their children. As states like Sweden have illustrated, progressive laws can provide financial incentives for men to take leave, encouraging more equal rights for women and men in raising their children. Improved legal provisions for a gender balance in caring roles at home can contribute to decreasing discrimination against women in hiring.

Historically, hearsay has suggested that due to traditional social roles, men would never agree to paternity or parental leave in the WB. On the contrary, online surveys, among other sources,<sup>39</sup> have evidenced consistently that most men in WB countries would welcome more paid paternity leave (Graph 13): **Montenegro** (85%/77%), **Serbia** (80%/76%), **BiH**

<sup>38</sup> Banjska, I., Rrahmani, G., Farnsworth, N., *Striking a Balance*, Kosovo, KWN, 2016, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160504154201373.pdf>.

<sup>39</sup> In Kosovo, Democracy for Development (D4D), *Shifting paradigms: Equity through Parental Leave, Kosovo*, 2017, p. 7 and KWN, *Striking a Balance*; in North Macedonia, Reactor, *For everyone's sake - new model for parental leave*, 2019, at: <http://reactor.org.mk/CMS/Files/Publications/Documents/Reaktor%20%20Za%20secie%20dobro%20-%20051.pdf>, p. 11.

(67%/68%), **NM** (67%/56%), and **Kosovo** (64%/62%). Comparatively fewer men in **Albania** (44%/53%) believed that fathers should have more time off for paternity leave.



In addition to at least 10 days of paternity leave, the EU Work-Life Balance Directive foresees at least two months of non-transferrable parental leave (meaning leave from work for *all* parents on the birth or adoption of a child to take care of that child). Parental leave can be particularly valuable for fathers while serving as a disincentive for employers to discriminate against women in hiring. As KWN has argued:

Empirical evidence shows that individual, non-transferable entitlements to parental leave, coupled with a high level of compensation, contribute to increased uptake among fathers and the potential for care practices to become more “gender equalizing”. For example, the introduction of non-transferable parental leave in Norway caused the take-up rate amongst fathers to rise from 2.4 per cent in 1992 to over 70 per cent in 1997. Where men are not specifically targeted by parental leave policies, the entitlements are predominantly used by women. ... Increasing the length of the non-transferable period also “has considerable benefits in terms of increased household incomes and individual well-being (for fathers, mothers, and children).”<sup>40</sup>

In conclusion, reportedly some violations of paternity leave rights have occurred in the WB. Moreover, the presently short paternity and parental leave, unharmonized with the EU Work-Life Balance Directive, arguably contribute to discrimination against men in terms of spending time with their children. This and other research suggest that most men would support longer, paid paternity leave.

### Sexual Harassment at Work

Overall, 30% of the survey respondents in 2018 and 34% in 2021 said they had experienced sexual harassment at work: 1,263/1,087 women and 184/162 men.<sup>41</sup> A higher percentage of women respondents (34%/30%) had experienced sexual harassment than men (17%/4%). In **NM**, a higher percentage of women reported experiencing sexual harassment (47%/44%) than in other countries. Nevertheless, as Graph 14 illustrates, many women respondents faced sexual harassment in **Serbia** (40%/36%), **BiH** (38%/40%), **Montenegro**

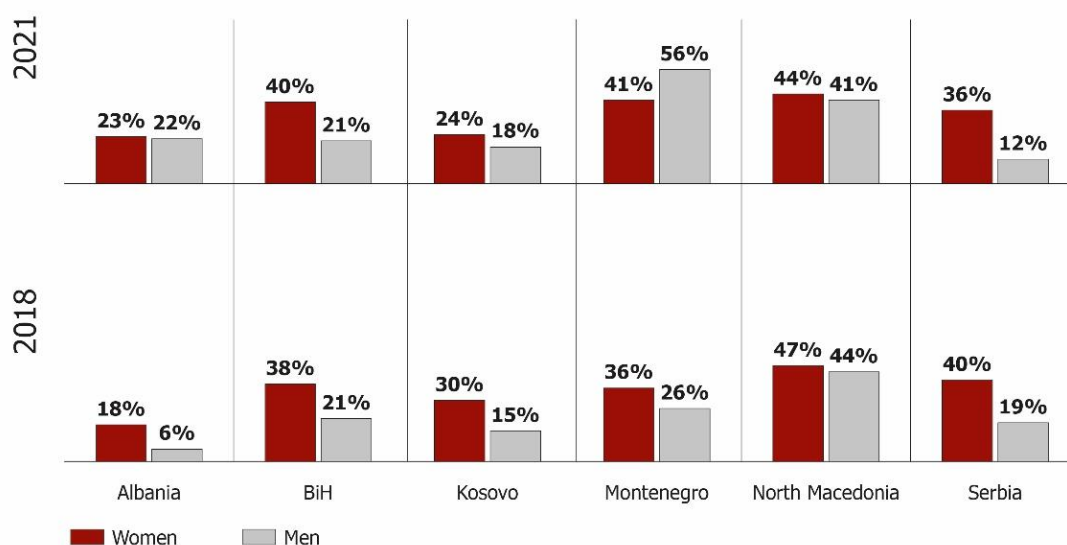
<sup>40</sup> Ryan, D. for KWN, *Expanding Choices through Family-Friendly Policies: Kosovo Analytical Report*, 2021.

<sup>41</sup> N = 4,828, 2018; n = 3665, 2021.

(36%/41%), **Kosovo** (30%/24%), and **Albania** (18%/23%).<sup>42</sup> Several men also reported experiencing sexual harassment in **Montenegro** (26%/56%) and **NM** (44%/41%). It is important to note that a sub-question relating to forms of sexual harassment could have been interpreted as witnessing sexual gestures, jokes, or sounds, rather than experiencing this type of harassment first-hand. Both men and women reported witnessing sexual gestures, jokes, or sounds made by other colleagues.



**Graph 14.** Percentage of Respondents that Experienced Sexual Harassment at Work, by Gender



Of all surveyed respondents across the WB, up to 41% in 2018 and 44% in 2021 reported sexual gestures, jokes, or sounds at work. A higher percentage of women than men experienced this form of sexual harassment in all countries (29%/31% women, 19%/24% of men). For example, in one case in **Montenegro**, a woman shared that her colleague made sexual gestures in reference to the size of her breasts, while another woman said that her colleague asked if he could show her “his tool”.<sup>43</sup> In 2021, a woman in **Kosovo** explained how her supervisor made gestures about her body, telling her she was “too sexy” and that she could not dress the way she did, even though she was following the company’s dress code. She was fired from her job soon after the incident without any explanation.<sup>44</sup>

Of the respondents in the WB who said they had experienced sexual harassment, up to 12%/17% reported receiving emails or text messages of a sexual nature, up to 15%/15% reported being touched when touching was unnecessary, up to 14%/22% reported a colleague or superior proposing to have sex with them, and up to 6%/8% said that a colleague or superior forced them to have sex.

Overall, a higher percentage of women than men respondents said they faced sexual gestures, emails of a sexual nature, unnecessary touching of their bodies and propositions to have sex with a superior. In Serbia, a woman explained, “while I was sitting at my workplace, a colleague was touching my back, partially tucking his hand under my shirt in the neck area.

<sup>42</sup> N = 3,759 women, n = 1,189 men, 2018; n = 3,061 women, n = 604 men, 2021.

<sup>43</sup> Komar, O. et al., *Gender Based Discrimination and Labour in Montenegro*, 2019, p. 32.

<sup>44</sup> Woman, age 33, Kosovo, 2021.



As we sat in the meeting next to each other he would put his hand over the back of my chair and touch me on the back in front of my colleagues.”<sup>45</sup>

Meanwhile, in 2018, a higher percentage of men than women respondents reported being forced to have sex in all countries except **Kosovo** where this percentage was equal for both genders (2%). In 2021, only in **Albania** did more men than women indicate that they were forced to engage in sexual activities. In **NM** the percentage was equal, while in the other WB countries more women than men indicated this. In **Montenegro**, 5% of respondents to a separate survey said they had been forced to have sexual intercourse with a colleague or supervisor.<sup>46</sup>

Overall, from the respondents who stated that they experienced sexual harassment, more than 75%/82% of women said the perpetrators were men. Meanwhile, the percentage of men respondents who had experienced sexual harassment from women ranged from 17% in **Serbia** to 50% in **BiH** both years. Up to 67%/44% of respondents who had experienced sexual harassment across the countries said the perpetrators were both women and men.

Examining the perpetrator's position within the workplace can reveal whether a relationship exists between gender, power dynamics, and sexual harassment at work. Moreover, in countries like **Kosovo**, criminal provisions foresee a heavier sentence when persons in positions of power misuse their power by sexually harassing others. Overall, of men respondents across the WB who had experienced at least one form of sexual harassment in 2018, from 56% in **Kosovo** and up to 75% in **Serbia**, said persons in higher positions had harassed them sexually. In 2021, this figure was between 65% in **Serbia** and 74% in **NM** and **BiH**. Meanwhile, from the respondents who had experienced at least one form of sexual harassment, more than 66%/65% of women said persons in higher positions had harassed them sexually. For example, in Serbia, a woman said she was criticised and made to stay after working hours because she refused an employer's invitation to go to the cinema.<sup>47</sup>

“ We had to go on an official trip, outside of Kosovo; [before the trip] the director sends me a message. He told me that the hotel where we will stay has no single rooms free in the time that we are there. According to him, there was a two-room suite, he asked me if he should make the reservation for this suite. If I didn't agree to this, the only other option was a hotel 15 minutes away from the place where the meetings will be held. I replied that it does not bother me that I am 15 minutes away, because I also walked in the morning, and it is good for my health. At the end of that month, I lost my job.

- Woman, age 54, Kosovo, 2021

“ The Dean of the Faculty sexually harassed me and made conditions regarding an extension of my contract. My contract was not extended.

- Woman, age 30-39, BiH, 2018

“ 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, Kosovo, 2018

<sup>45</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022, p. 27.

<sup>46</sup> Ibid, p. 33.

<sup>47</sup> Woman, age 39, Serbia.



Despite the prevalence of sexual harassment, only 5% of persons in both 2018 and 2021 (87/80 women, 11/10 men) who suffered harassment took steps to report it to the police and/or through a workplace mechanism.<sup>48</sup> Of those who experienced sexual harassment but did not tell anyone, approximately half said they wanted to take care of the harassment themselves, rather than report it. Other reasons for not reporting sexual harassment included that they did not want to, or they were ashamed or afraid of losing their job. Generally, more women than men told a friend, colleague, or family member when they experienced sexual harassment at work.

“ *Instead of reporting sexual harassment, I quit the job. I am certain that none of the institutions will respond to my complaint, and I have no trust in them.*

- Woman, age 29, Serbia, 2018

### Case Box 6. Example of Sexual Harassment at Work in NM

After returning to work from maternity leave, a woman's supervisors started making comments about her appearance. They told her that she was too overweight, and she needed to lose weight if she wanted to keep her position at the company. Following continuous harassment, she quit her job. She notified her employer about the harassment, but she did not have the will to pursue it in court.<sup>49</sup>

Overall, this research suggests that sexual harassment at work has remained widespread in the WB, affecting both women and men, but particularly women.

## Rights Violations amid COVID-19

The COVID-19 pandemic affected women disproportionately more than men, since women were overrepresented in the sectors most affected by the pandemic (e.g., hospitals) in the WB.<sup>50</sup> Women also experienced an increase in unpaid care work and domestic labour during the pandemic.<sup>51</sup> In **Albania**, measures to protect women during lockdowns and from economic hardships did not manage to prevent the existing gender gaps from widening. Domestic labour increased for women, while paid labour tended to decrease.<sup>52</sup> Similarly, in **Montenegro**, measures did not protect women from increasing inequality in domestic and paid labour during the pandemic.<sup>53</sup> In **BiH**, protective measures were almost entirely gender neutral and had a disproportionately negative effect on vulnerable groups, particularly as they did not consider the needs of diverse women and minorities.<sup>54</sup> Workplaces including some shops and industries (textiles, leather, footwear) where women comprise the majority of workers did not provide sufficient protective equipment, endangering women. **Serbia** was

<sup>48</sup> N = 1,988, 2018; n = 1,768, 2021.

<sup>49</sup> Helsinki Committee for Human Rights, Report to KWN, North Macedonia, 2021.

<sup>50</sup> Think for Europe Network (TEN), *The Western Balkans and COVID-19, Effects on Good Governance, Rule of Law, and Civil Society*, 2020, at: <https://cep.org.rs/wp-content/uploads/2020/07/The-WB-and-the-COVID-19.pdf>.

<sup>51</sup> Ibid. and GAP III.

<sup>52</sup> Arqimandriti, M., Llubani, M., Çoku, O., Hoxha, E., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022, at:

[https://www.gadc.org.al/media/files/upload/GBD%20in%20Labour%20Albania\\_EN\\_15.03.2022.pdf](https://www.gadc.org.al/media/files/upload/GBD%20in%20Labour%20Albania_EN_15.03.2022.pdf).

<sup>53</sup> Komar, O., Mihailović, I., Raičević, M., Pejović Eraković, M., Mašanović, B., *Gender-based Discrimination and Labour in Montenegro*, 2022, at: [https://womensrightscenter.org/wp-content/uploads/2022/04/GBD\\_in\\_Labour\\_in\\_Montenegro.pdf](https://womensrightscenter.org/wp-content/uploads/2022/04/GBD_in_Labour_in_Montenegro.pdf).

<sup>54</sup> Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, 2022, p. 27.

the only country in the region that did not introduce measures to protect marginalised groups during the pandemic. Primary care in the household fell on women, and fields of labour where women are overrepresented were affected the most.<sup>55</sup> In **Kosovo**, women had to quit their jobs to care for children amid childcare closures and isolation measures.<sup>56</sup>

Questions regarding violations of workers' rights amid the COVID-19 pandemic were included in the online survey. Respondents in **Albania** (33%), **Serbia** (28%), and **NM** (40%) indicated that they were paid a reduced salary during the pandemic.<sup>57</sup> More women (43%) than men (35%) in **Kosovo** indicated that their place of employment was closed during isolation measures.<sup>58</sup> In all WB countries, respondents indicated losing their jobs as a direct result of the COVID-19 pandemic. An increase in stress was also indicated by respondents in all countries.

### Case Box 7. Multiple Pandemic-related Cases in NM

To compensate for the closures of kindergartens and schools in NM, release from work obligations was granted to parents of children up to age ten. Although the measure was designed to be gender-transformative, it was used almost exclusively by women. Meanwhile, employers pressured women workers, especially in the private sector and the precarious industries, to return to work when they had no one to care for their children or they were "sanctioned" with payments below the minimum wage, dismissals, or threats of dismissal. Traditional gender roles remained omnipresent; when one of the parents had to "give up" access to paid employment, "naturally" it was the mother.

In June 2020, a woman worker employed in the textile industry informed the Helsinki Committee for Human Rights of North Macedonia, that as a mother of children under 10 years of age, in accordance with the Governmental measure, she had been released from work. However, because she was using the governmental measure, the employer reduced her salary in April and May to only 50% of the total salary. Therefore, she was paid only 7,500 denars (approximately 120 euros), which is below the minimum wage and far from sufficient for the worker's everyday costs, considering that she lives in a four-member household with two children. The Helsinki Committee for Human Rights of North Macedonia in July 2020 submitted a complaint to the State Labour Inspectorate. After conducting an inspection, the Inspectorate found irregularities in the employer's work and ordered him to pay the employee the full amount of salary. This was paid to the employee, "With the Helsinki Committee's help the employer paid me the full amount of my salary for the months when I had to stay at home and take care of my child."

This was one of nine gender-based discrimination cases related to the COVID-19 pandemic filed with the Helsinki Committee for Human Rights of North Macedonia. Three were sent to the Labour Inspectorate, and two had their salary returned to its original amount. The organisation also assisted seven cases in which women were told they could not receive relief offered by the government or they would lose their job. Lastly, they assisted a case of a woman placed on unpaid leave since the pandemic.

In conclusion, evidence has shown that the COVID-19 pandemic affected women and men differently. Across the WB, several rights violations were reported in relation to the

<sup>55</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>56</sup> Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, 2022, at: [https://womensnetwork.org/wp-content/uploads/2022/04/GBD-Labour-Kosovo\\_2022\\_FINAL-1.pdf](https://womensnetwork.org/wp-content/uploads/2022/04/GBD-Labour-Kosovo_2022_FINAL-1.pdf).

<sup>57</sup> Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022; Dičić-Kostić, et al., *Gender-Based Discrimination and Labour in Serbia*, 2022; Leshoska et al., *Gender-Based Discrimination and Labour in North-Macedonia*, Reactor – Research in Action, 2022, at: [https://reactor.org.mk/en/wp-content/uploads/sites/4/2022/03/en\\_b5-web.pdf](https://reactor.org.mk/en/wp-content/uploads/sites/4/2022/03/en_b5-web.pdf).

<sup>58</sup> Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, 2022.

pandemic. While some of these have been reported to relevant institutions, few had been addressed as of the end of 2021.

## Discrimination Based on Specific Protected Grounds

The Legal Analysis described various grounds, in addition to gender, on which individuals are protected from discrimination related to labour. This section examines the experiences of protected persons with different abilities; lesbian, gay, bisexual, trans,<sup>59</sup> queer, intersex, asexual and differently identifying persons (LGBTQIA+); and individuals from minority ethnic groups. By examining how other grounds of discrimination intersect with gender, the data can reveal how multiple forms of marginalisation can impact individuals and make them more vulnerable to workplace discrimination.

### Discrimination against Persons with Different Abilities

Data requests to institutions did not reveal any recorded instances of gender-based discrimination affecting persons with different abilities (PWD) in 2018 or 2021. PWD have shared personal stories of discrimination with CSOs. However, they are unlikely to report violations of their rights to relevant institutions. CSO representatives said that most of the cases they have heard related to discrimination in hiring: although PWD applicants reportedly had the requested qualifications, they were not hired. PWD also reported discrimination in promotion. However, few respondents provided examples of discrimination based explicitly on gender. Rather, they spoke generally about discrimination against PWD due to their abilities. Nevertheless, respondents observed that women with different abilities face “double discrimination” due to their gender and ability. As a respondent from **BiH** stated in 2018, “I see that men with disabilities find it easier to fit in, that somehow there is a greater sense of solidarity. [...] It seems that society and the community put more effort into finding them work so that they can fulfil their gender role of breadwinners, and women do not really have to fulfil this role”.<sup>60</sup> This was still the case in BiH in 2021. Respondents mentioned that employers “sympathise” with women with disabilities and look at them with “mercy”. This also indicates gender-based discrimination because it implies that women with disabilities are in a different position than men with disabilities.<sup>61</sup> In **Kosovo**, a CSO representative in 2018 shared her personal experience of not being hired after applying for several different positions. Moreover, she said that few job advertisements encourage women with different abilities to apply.<sup>62</sup> Although the law in Kosovo states that for every 50 people employed, at least one must be a PWD, respondents stated that this has not been implemented in practice.<sup>63</sup> A CSO representative mentioned that one private employer even said “that he would give [employees with disabilities] a full pay check, just not to come and work because they would damage the image [of the company]”.<sup>64</sup>

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<sup>59</sup> An umbrella term that includes people who identify outside of the gender binary as transgender, transsexual, and any other non-binary identity where a person does not identify with the gender they were assigned at birth.

<sup>60</sup> Interview with a CSO representative, BiH, November 2018.

<sup>61</sup> Marković, S., *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, 2022, at: [http://hcabl.org/wp-content/uploads/2022/05/GenderBasedDiscriminationBiH\\_Web.pdf](http://hcabl.org/wp-content/uploads/2022/05/GenderBasedDiscriminationBiH_Web.pdf).

<sup>62</sup> Interview with a woman representative of HandiKOS, Kosovo, October 2018.

<sup>63</sup> Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, 2022.

<sup>64</sup> Ibid.

Respondents in all WB countries noted that discrimination against PWD affects several aspects of their everyday life. For example, the lack of accessibility ramps leading to institutions hampers their physical access to support if discrimination occurs, but also undermines PWD's access to workplaces. In **Serbia**, for example, a respondent observed that an interview may be scheduled in a space that is inaccessible for someone in a wheelchair. Rather than abiding by the law that requires employers with more than 20 employees to hire at least one PWD, employers tended to opt to pay the fine instead.<sup>65</sup> In **NM**, a special fund exists for adjusting the workplace to meet the needs of PWD, but in the past only a small percentage of these funds have been used.<sup>66</sup>

“Persons with disabilities have no access to the court in Bijelo Polje because there is no ramp.

- Judge, Montenegro, 2018

In **Kosovo**, data collected by Handikos in 2018 suggested that women with different abilities likely face more challenges in securing employment than men.<sup>67</sup> For example, in Gjakovë/Đakovica region, among the 668 known PWD of working age, only 14 (two women) were employed in municipal public institutions, whereas four (one woman and three men) were employed in CSOs, primarily working with PWD.<sup>68</sup> In 2021, CSOs working with PWD in Kosovo suggested that slight improvements in the employment of PWD but did not have data to evidence this.

The fact that so few PWD are employed may partially explain why few cases related to gender-based discrimination at work have been filed by PWD. The research did not reveal any cases filed with institutions that involved discrimination based on gender and ability.

## Gender-based Discrimination against LGBTQIA+ Persons

All WB countries have laws that prohibit discrimination based on gender, sex, and sexual orientation. However, generally, little official data exists in the WB regarding work-related discrimination against LGBTQIA+ people. For example, in **Serbia** there was only one court decision related to workplace discrimination based on sexual orientation back in 2009.<sup>69</sup>

Despite the absence of official data, research suggests that widespread discrimination exists against LGBTQIA+ persons within the labour market in WB countries. In **Serbia**, 38% of LGBTQIA+ persons responding to a 2018 survey said that they faced discrimination at work in the previous five years.<sup>70</sup> In a 2015 **Kosovo** poll, LGBTQIA+ identifying persons were asked, “in which area are LGBTI people most frequently exposed to discrimination?”. Most

<sup>65</sup> ILO, *Vodič sa primerama dobre prakse u zapošljavanju osoba sa invaliditetom: Glasovi sa inkluzivnih radnih mesta u Republici Srbiji* [Guide with examples of good practice in the employment of persons with disabilities: Voices from inclusive jobs in the Republic of Serbia], 2019, at: [https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms\\_735180.pdf](https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_735180.pdf) and Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>66</sup> Interview with CSO representative. This was based on a study they did: Kochoska, E., Shavreski, Z., Jovanova, V., and Lazovski, V., *Analysis of the situation of people with physical disabilities in the Republic of Macedonia*, 2017, at: <https://mhc.org.mk/wp-content/uploads/2017/11/Analysis-of-the-situation-of-people-with-physicaldisabilities-in-the-Republic-of-Macedonia.pdf>, p. 46. In 2020, 211 requests were approved for using the special fund (Employment Agency for North Macedonia, *Annual report for 2020*), but the percentage of the fund used could not be identified.

<sup>67</sup> Research by HandiKOS in Gjakovë/Đakovica, Kosovo (KWN interview, October 2018).

<sup>68</sup> Ibid.

<sup>69</sup> Kurtić, V. Džuvljarko: *Roma lesbian existence*, European Roma Rights Centre, Niš, Serbia, 2013.

<sup>70</sup> IDEAS Research and Development Center, “Study findings about the status of LGBT+ person in the labour market”, Factsheet 2018. Stopić, J., Tadžić, J., Petković, N., *Being LGBTI in Eastern Europe: Serbia Country report*, United Nations Development Programme, 2017.

respondents mentioned employment, education, and professional development.<sup>71</sup> In 2021, a CSO representative in Kosovo stated that employers still actively discriminate against LGBTQIA+ persons but have become good at hiding it.<sup>72</sup> Additional interviews with representatives of CSOs and different WB institutions conducted for this research confirmed that discrimination based on gender identity and sexual orientation occur in the labour market.<sup>73</sup>

In **BiH**, 44% of LGBTQIA+ persons participating in a 2021 study were unemployed.<sup>74</sup> Only 23% had work experience in their profession; and 16% worked in the “grey economy”. Moreover, almost half experienced questions regarding their personal life during an interview: questions which they felt they should lie about to get the job for which they applied. LGBTQIA+ persons who discussed their sexuality or gender identity, said that they were susceptible to verbal abuse, blackmail, physical abuse, and sexual harassment.<sup>75</sup>

Reportedly, some employers also used the COVID-19 pandemic as an opportunity to fire LGBTQIA+ employees. In **Kosovo**, for example, a CSO representative mentioned that the pandemic and staff reduction was used as a reason to lay off LGBTQIA+ workers.<sup>76</sup>

CSOs and LGBTQIA+ activists in WB countries said that they encountered a few discrimination cases each year, involving firing and sexual harassment. For example, in one case recorded by IMPAQ in **Kosovo**, a private sector employer immediately terminated an employment contract upon learning that an employee was gay.<sup>77</sup> In **BiH**, a CSO representative said that many people do not disclose their gender identity or sexuality to employers because they fear losing their jobs or facing violence.

“ 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, Kosovo, 2018

Discrimination in employment also occurs when a person decided to come out regarding their sexuality or is outed. As an illustration, a gay man in **BiH** lodged a complaint involving discrimination in the workplace. As a result, he was dismissed and verbally abused.<sup>78</sup> This is an example of “victimisation”, dismissal, or adverse treatment in reaction to a complaint aimed at enforcing compliance with the principle of equal treatment, which is prohibited in all WB countries. LGBTQIA+ persons also face discrimination related to gender stereotypes in the WB. In **Kosovo**, for example, gay men said they face 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”.<sup>79</sup> This discrimination based on gender stereotypes affects men more than women, 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

<sup>71</sup> 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>.

<sup>72</sup> Interview with a CSO representative, Kosovo, March 2021.

<sup>73</sup> Interviews with two representatives of LGBTI groups, Kosovo, October 2018; IMPAQ International for USAID Kosovo, *Gender, LGBTI, and Persons with Disabilities Assessment*, 2018; Đan, A., Vrbaški, S., *Gender-based Discrimination and Labour in Serbia*, Belgrade, Kvinna till Kvinna Foundation, 2019, p. 21; Komar, O., Šćepanović, A., Glomazić, M. and Šuković, D., *Gender-based Discrimination and Labour in Montenegro*, p. 26.

<sup>74</sup> Gačanica, L., *Socio-Economic Position of Lesbians, Gays, Bisexual, Transgender and Intersexual Persons in Bosnia and Herzegovina*, 2021, at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-položaj-LGBTI-osoba-u-BiH-web.pdf>.

<sup>75</sup> Ibid.

<sup>76</sup> Interview with a CSO representative, Kosovo, March 2021.

<sup>77</sup> This case was filed at the Labour Inspectorate and OI (in IMPAQ International for USAID Kosovo, p. 39).

<sup>78</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2022, p. 39.

<sup>79</sup> IMPAQ International for USAID Kosovo, p. 39.



'tough'".<sup>80</sup> In **BiH**, activists similarly observed that people who do not conform to gender stereotypes may be at greater risk of labour violations.

Reportedly, trans people are discriminated against at work and in the process of seeking and applying for jobs. In **Albania**, it was noted that trans people usually face difficulties finding a job, which a CSO representative said directly links to prejudice and gender-based discrimination against transgender persons in Albania.<sup>81</sup> In **Serbia**, transwomen seemingly face added discrimination, as their gender non-conformity can be noticeable and "read" by their physical appearance.<sup>82</sup> Meanwhile, transmen generally can hide their trans identity, and therefore seemingly face less discrimination. Most trans people in Serbia reportedly struggle with job interviews because they must hide their gender identity from potential employers. Further, in Serbia, it was observed:

The basic right to obtaining legal documents remains a barrier for many trans persons in Serbia. The bureaucratic process has not yet streamlined the option for changing gender identity in official documents at any level of government. This is problematic because it is a specific form of gender-based discrimination; if changes to their gender and name are not legally recognised, they do not fit with their perceived gender.

In 2020, Geten published a guide for transitioning in Serbia, including the process for name and gender identity changes in legal documentation. In the guidelines, Geten notes that the process is a complicated and time-consuming one, and that not having legal gender recognition or documentation adequately reflecting gender expression and/or identity contributes to high unemployment rates within trans communities.<sup>83</sup>

Thus, administrative barriers have contributed to challenges for trans persons seeking to secure employment.

As the absence of institutional data suggests, LGBTQIA+ persons do not report gender-based discrimination when it occurs. According to one CSO representative in **Kosovo**, low reporting is partially because LGBTQIA+ people are not always aware that they are being discriminated against because of their gender identity or sexual orientation.<sup>84</sup> In **Montenegro**, interviews suggest that LGBTQIA+ people do not pursue legal actions because of fear and shame.

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*Primarily, people do not want to lose their jobs. Economic independence is important especially for LGBT people.*

- CSO representative, Montenegro 2018

<sup>80</sup> Ibid.

<sup>81</sup> Interview with a CSO representative, Albania, November 2018.

<sup>82</sup> Interview with trans\* LGBTQIA+ CSO representative, Serbia, October 2018.

<sup>83</sup> Todorović, J. & Lazić, S.D., *Vodič kroz tranziciju za trans osobe u Srbiji*, 2020, at: [https://transserbia.org/images/2020/dokumenta/Vodic\\_kroz\\_tranziciju\\_za\\_trans\\_osobe\\_u\\_Srbiji.pdf](https://transserbia.org/images/2020/dokumenta/Vodic_kroz_tranziciju_za_trans_osobe_u_Srbiji.pdf), cited in Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022, pp. 43-44.

<sup>84</sup> Interview with a CSO representative, Kosovo, October 2018.

## Discrimination against Minority Ethnic Groups

Interviews suggested that some minority ethnic groups have continued to face discrimination at work. In 2016, the **Serbian** government published a report which recognised that Roma were the only ethnic minority group that was “almost entirely excluded from the formal labour market”.<sup>85</sup> Meanwhile, Roma women have continued to face double discrimination in **Serbia**; and nearly half were unemployed.<sup>86</sup> In **Albania**, 85% of surveyed Roma

consider employment a significant problem, and informal employment accounted for an estimated 62% of Roma people’s total economic activity.<sup>87</sup> In **BiH**, Roma women reportedly faced discrimination in hiring, which prompted the Council of Ministers to adopt a “Plan on Guidelines for Labour Market Policies and Active Employment Measures in Bosnia and Herzegovina for 2020”; it provides guidelines regarding labour market policies and active employment measures planned by state and entity institutions, which target Roma women as a particularly vulnerable group in the labour market.<sup>88</sup>

In 2018, in **NM**, it was observed that although discrimination towards Roma seems frequent, Roma have been among the least likely to report their experiences. In 2021, a judge in **Montenegro** similarly stated that “[Roma people] literally do not know how to approach the court; much less do they know their rights and how to protect them. These people are probably the most discriminated against.”<sup>89</sup> Limited awareness of their rights may be one reason why people from minority ethnic groups do not report discrimination.

Indeed, few cases were identified through this research that involved discrimination based on both gender and ethnicity as a protected ground. A respondent in **Kosovo** in 2018 said that discussing gender-based discrimination is a “luxury” because both men and women face discrimination constantly due to their ethnicity. Thus, she said that gender-based discrimination becomes secondary to ethnic discrimination. Nevertheless, qualitative evidence suggested that Roma women have continued to face “double discrimination” based on their gender and their ethnicity.

## Conclusion

Still, very few WB institutions responsible for addressing labour-related gender-based discrimination maintain clear data about its prevalence. Survey data and interviews evidence that labour-related gender-based discrimination has remained widespread, particularly in hiring, promotion, maternity leave, and sexual harassment at work. Such discrimination particularly affects women. Moreover, respondents observed that women may be more likely

“ A Roma woman applied for a job in bakery when she saw a job advertisement in which it was written that the bakery was looking for a female worker. When the Roma woman applied for the job, the manager said that they were no longer looking for a worker and that they found one. However, the ad was hanging on the window of the bakery even two weeks after the incident occurred.

- Woman, Roma CSO activist, Serbia, 2018

<sup>85</sup> Government of Serbia, *Employment and Social Reform Programme in the Process of Accession to the European Union*, 2016, p. 24.

<sup>86</sup> European Commission, *Serbia 2019 Report*.

<sup>87</sup> Qejvanaj, G., “Albanian National Action Plan for Roma Inclusion 2016–2020: A Study on the Program Achievements at the Halfway Mark”, 2021, at: <https://journals.sagepub.com/doi/pdf/10.1177/21582440211036107>.

<sup>88</sup> Marković, S., *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly Banja Luka, 2022, pp. 25, 48.

<sup>89</sup> Interview with a judge from a higher court, Montenegro, 2021.

than men to stay in a job without a contract or to continuously sign temporary contracts. The substantial gender pay gap in all WB countries suggests continued gender-based discrimination against women. Violations of maternity leave rights have remained widespread, either because the employer terminated employment or because a fixed-term employment contract expired and was not extended when a woman became pregnant. Men tended to believe that their employers would grant them paid or unpaid paternity leave. Meanwhile, evidence suggests that men generally would welcome longer, paid paternity leave. Persons with different abilities, minority ethnic groups, and LGBTQIA+ persons seemingly hesitate to report discrimination, so minimal information exists about their experiences.



# THE INSTITUTIONAL RESPONSE TO DISCRIMINATION

This chapter examines the knowledge, awareness, and experiences of relevant institutions related to gender-based discrimination at work. It seeks to understand how institutions 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 chapter is organised by institution, including the police, prosecution, courts, Ombudsperson Institution, and Labour Inspectorate. Then, the work of labour unions and CSOs is discussed. Finally, the chapter reflects on the overall institutional response to gender-based discrimination at work as per the relevant legal framework.

## Police

Police should prevent, identify, and investigate criminal acts and individuals suspected of being involved in such acts, in accordance with each state's criminal code and criminal procedure code. Therefore, police have a role in addressing all types of gender-based discrimination at work as they relate to criminal offences, such as sexual abuse at work or violations of equality, including by persons in positions of authority.<sup>1</sup>

Police do not have data regarding the number and types of cases of gender-based discrimination that they have treated. A key challenge is that their data management systems are not established in such a way as to disaggregate data to determine if a crime was based on gender. For example, in 2018 in **Albania**, when police officers were asked why there is no such data, they tended to think that there is no such thing as discrimination and so no cases have been reported. By 2021, police officers in Albania recognised that the lack of data was a continuing challenge; they believed that people do not report sexual harassment, for example, because of stigmatisation. This might indicate that police officers have increased knowledge regarding forms of gender-based discrimination that involve criminal offences. In 2021 in **Kosovo**, officers still believed that gender-based discrimination usually falls outside their competences; therefore, they had not received such cases or recorded them. In **Montenegro**, in 2021, police officers mentioned that there is a lack of trust in their institution and that it needs an improved image, which could increase reporting to their institution.

In general, police officers in **Albania**, **Kosovo**, and **Montenegro** stated that they had completed training on human rights and gender equality.<sup>2</sup> In **Kosovo**, they tended to be rather knowledgeable about the legal framework related to gender-based discrimination at work. They were able to identify different situations that constitute gender-based discrimination and knew their investigative responsibilities. However, in 2021, the interviewed police officers tended not to identify sexual harassment as a form of gender-based discrimination in Kosovo. This could indicate that more training on this topic is necessary. Nonetheless, they declared their determination to investigate any reported cases of gender-based discrimination.

Given the absence of data maintained by police, drawing from interviewed officers' memories, officers recalled encountering very few cases of gender-based discrimination related to labour. In **Kosovo**, in 2018, the police officers interviewed mentioned five cases

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<sup>1</sup> For an explanation of criminal offences in the WB countries, see the [Legal Analysis](#).

<sup>2</sup> Other countries did not interview police in 2018 or 2021.

that primarily involved sexual harassment reported by women working in the private sector. In one such case, two brothers who owned a shop sexually assaulted a woman at work. In the mentioned cases, police tended to open investigations, and cases were passed on to the prosecution.

In summary, while police seem knowledgeable about the legal framework, they may not always consider gender-based discrimination relevant to their responsibilities. Indeed, sexual harassment is among the few criminal offences that would be relevant for police to treat. Yet, the reporting of this form of gender-based discrimination at work remains rare throughout the region, as discussed previously in this report. Thus, it is difficult to assess police treatment of such cases because they have handled so few cases.

## Prosecution

Generally, when discrimination constitutes a crime, the prosecutor can initiate a criminal procedure if any indication exists that a criminal act has been committed. The police, a public institution, a private institution, media, or a citizen can inform the prosecution if they believe a crime has been committed.

Neither in **Albania** nor in **Kosovo** has the prosecution logged any gender-based discrimination case. Again, a key challenge was the fact that data was not disaggregated in such a way as to identify whether the crime was gender-based. Prosecutors interviewed in **Albania** had no experience prosecuting cases related to gender-based discrimination at work. They mentioned that they required more specialised training on gender-based discrimination. The only two potential cases mentioned during interviews with prosecutors in **Kosovo**, in 2018, involved sexual harassment. For example, prosecutors mentioned a case that involved the criminal act of a male employer harassing a female employee.<sup>3</sup>

Prosecutors generally tended to have considerable knowledge regarding the legal framework but lacked detailed knowledge about laws protecting people from gender-based discrimination. "I am not very familiar with this issue", a prosecutor from **Kosovo** said, illustrative of this recurring trend.<sup>4</sup> Some prosecutors did not believe gender-based discrimination could even exist. "I myself did not hear, nor have my colleagues told me about any case [...] so this is why there are no such cases", a prosecutor stated.<sup>5</sup> In contrast, other prosecutors acknowledged that gender-based discrimination exists, though they had not had any cases. In 2021, one of the prosecutors interviewed did not know that one of her responsibilities is to prosecute cases of sexual harassment. She firmly said it was not under her department until she looked it up and discovered that it was.<sup>6</sup>

The general lack of cases reported meant that prosecutors still had very little to no experience with cases involving alleged gender-based discrimination at work. Therefore, their capacities in treating such cases could not be assessed. Neither **Albania** nor **Kosovo** has prosecutors specialised in treating crimes related to gender-based discrimination yet.

## Criminal and Civil Courts

Generally, courts in the WB do not collect and maintain data disaggregated by the gender of the plaintiff and defendant. Related to criminal proceedings, cases tend to be logged by the type of alleged criminal offence, according to criminal code definitions. Considering that gender-based discrimination is not explicitly defined as a specific crime, alleged offenses involving such discrimination have not been recorded explicitly. Nor is the

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<sup>3</sup> Interview with a man prosecutor, Kosovo, November 2018.

<sup>4</sup> Interview with a man prosecutor, Kosovo, December 2018.

<sup>5</sup> Interview with a woman prosecutor, Kosovo, December 2018.

<sup>6</sup> Interview with woman prosecutor, Kosovo, March 2021.

location where a crime occurred logged electronically, which makes it difficult to quantify the number of court cases involving gender-based discrimination at work.

Similar challenges exist in data maintenance related to civil proceedings. Illustratively, in response to a request for official information in **Montenegro**, courts said that to produce such statistics they would need to review court registers, opening each case related to labour disputes and identifying which cases involved lawsuits filed by women.<sup>7</sup> The same was echoed by judges in **Kosovo** in 2021 who indicated that they would have to go through all cases individually to provide data segregated by gender. Considering that courts receive multiple civil cases annually, it was practically impossible for courts to provide the requested information. Similar issues existed in other courts in the WB.

Only some court representatives from **Montenegro** and **BiH** said that they had undergone training on gender-based discrimination. In Montenegro, they believed more such training is needed. In **Serbia**, interviewed judges stated that the judiciary generally lacks proper training on gender-based discrimination. The lack of training also was observed in other WB countries.

“ I have not attended any training related to gender-based discrimination. I would really like to see what the lecturers have to say on this matter. I heard when a judge yells at typists that it should be considered mobbing, or something like that. Hear me: if someone makes a mistake, someone needs to react. Though, it is not of great importance who made a mistake.

- Judge, anonymous, BiH, 2021

Interview and survey data suggest that few discrimination cases have been filed with courts. A review of court decisions in **Serbia** found that only one case of discrimination filed involved elements of gender-based discrimination. In this case, the judge dismissed the claim, not considering that it involved gender-based discrimination.<sup>8</sup>

Among the few cases mentioned across the WB, violations of women's rights to maternity leave and sexual harassment seem among the most common. In **NM** in 2018, only one court case was published in which the court found the employer guilty of discrimination related to pregnancy; the applicant was fired from her job when the employer learned of her pregnancy.<sup>9</sup> In 2021, only one interviewed judge recalled two cases that were treated more than ten years ago, both with a judgement in favour of the defendants.<sup>10</sup> Since few cases are brought to court, it can be discouraging if the few cases that are filed are ruled in favour of the defendant. A judge in **NM** also mentioned that witness testimony contradicting the applicant's evidence may arise from colleagues who are afraid of losing their own jobs, which could pose difficulties in treating cases.<sup>11</sup>

In **Montenegro** in 2021, it was evident that some cases which have clear elements of gender-based discrimination were not tried as such. A judge in a higher court said: "I didn't have a case of discrimination. I had one case when the decision to terminate a work contract was asked to be annulled and the reason was that the plaintiff was on sick leave because of pregnancy." The interviewer replied: "So, the woman was discriminated against because she was pregnant?" The judge answered: "We didn't go in that direction. We were deciding if the decision about termination was legal."<sup>12</sup> In all WB countries there is a legal prohibition on the

<sup>7</sup> Komar, O. et al., *Gender-based Discrimination and Labour in Montenegro*, p. 39.

<sup>8</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>9</sup> Leshoska, V., Ilikj, S., Kotevska, B., Bashevaska, M., Maleski, B., Maleska, T., *Gender-based Discrimination and Labour in North Macedonia*, Skopje, Reactor, 2019.

<sup>10</sup> Leshoska et al., *Gender-Based Discrimination and Labour in North-Macedonia*, Reactor – Research in Action, 2022.

<sup>11</sup> Ibid.

<sup>12</sup> Komar, O., et al., *Gender-based Discrimination and Labour in Montenegro*, 2022.

dismissal of an employee from the beginning of pregnancy until the end of maternity leave, save in exceptional circumstances. It is settled case law of the Court of Justice of the EU that, as the dismissal of a worker because of pregnancy or essentially because of pregnancy can affect only women, such a dismissal constitutes direct discrimination based on sex.<sup>13</sup> It is concerning that the judge appears to have been unable to identify this as an issue in determining whether the termination was legal.

#### Case Box 8. Access to Justice for Gender-based Discrimination in Montenegro

The plaintiff, a woman, alleged that her employer discriminated against her by not offering her an indefinite contract when she returned from maternity leave, and only offering one to her colleague, a man. Further, she stated that she received a lower salary than her male colleague who has the same position. The Basic Court decided in favour of the plaintiff, basing its decision on ILO Convention C183, on the Protection of Maternity. Based on this, the court found that the employer did exactly as the plaintiff alleged; the court found that the plaintiff was treated like a burden by the employer because she was a new parent. The Basic Court ruled that the employer was to hire the plaintiff for an indefinite period of time and pay her compensation for discrimination in pay, and that the judgment would be published in the media.

When the employer appealed to the High Court, the judgment of the Basic Court was overruled. The claim was only partially upheld, and the plaintiff was only granted compensation for unequal pay. Each of the other determinations of the Basic Court were overruled. Thus, the High Court decided that there was no discrimination regarding the contract terms.

After this ruling, the plaintiff filed the case with the Supreme Court. The Supreme Court, in turn, ruled in favour of the plaintiff. The Supreme Court based its ruling on several conventions, including the convention on which the Basic Court had based its decision. The plaintiff again was granted a contract that is indefinite and compensation in pay due to discrimination.<sup>14</sup>

In general, the few judges who had treated cases of gender-based discrimination said they responded to the cases correctly. For example, in 2018, a judge in **Kosovo** mentioned a case of a public company firing a pregnant woman, though she had a contract until 2021.<sup>15</sup> This act violated the Labour Law. Therefore, the judge fined the company and required that it compensate the woman her unpaid salary from the moment they terminated her contract. However, the defendant filed a complaint, and the case remains with the Appeals Court. This example illustrates a recurring trend in the region: court proceedings, including the appeals process, tend to last a long time. Monitoring of several cases in Kosovo has similarly shown major delays in treating cases:

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

<sup>13</sup> Case C-394-96 *Brown v Rentokil Initial UK Limited*; Case C-177/88 *Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJVCentrum) Plus*.

<sup>14</sup> Trade Union of Media of Montenegro, *Equality through Justice: Cases of Discrimination Against Women in Connection with Work*, 2021, at: <https://sindikatomedijska.me/en/publications/equality-through-justice-cases-of-discrimination-against-women-in-connection-with-work/>.

<sup>15</sup> Interview with man, judge, Kosovo, November 2018.

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.<sup>16</sup>

Another monitored case was initially brought to the Basic Court in Pristina in 2012, but the first hearing was not until in 2017.<sup>17</sup> A CSO representative in **Kosovo** said that courts prolong cases of this nature and that cases “are not taken seriously”.<sup>18</sup> Cases of labour disputes should be treated with priority in Kosovo; however, cases seem to drag on for years.

In **BiH**, cases related to labour disputes sometimes lasted more than three years.<sup>19</sup> Similarly, a representative of the Ombudsperson Institution in **NM** said: “The court process for discrimination is lengthy and expensive and they [victims] do not trust the court system and usually do not have the financial means to proceed to court.” That proceedings are too long, lasting several years, was a recurring theme among respondents in BiH.<sup>20</sup> Distrust in the courts also was mentioned in **Albania**: “Some of the main reasons for not reporting cases of discrimination are: lack of trust in the judiciary, public opinion, and lack of information.”<sup>21</sup> Respondents across the WB observed that lengthy and costly proceedings likely deter women from reporting rights violations, particularly as they may struggle to secure a livelihood in the interim until courts treat the cases.

### Case Box 9. Slow Access to Justice in Montenegro

A woman had an indefinite contract. Her superior asked her to accompany him on a date. When she refused, the employer took disciplinary procedures against her, alleging that she had violated her work obligations under articles 13 and 124 of the Labour Law. This decision did not contain any description of the reason for the disciplinary procedure or the timeframe when the alleged violation occurred. No evidence existed that this decision, or the consequent application for a disciplinary hearing, were delivered to the employee, though the employer was obliged to inform the employee of this decision. The authority responsible for conducting the disciplinary hearing also did not notify the applicant. Neither the woman nor her lawyer was allowed to ask the employer questions. The employer’s decision contained illegalities because it stated that it was adopted on the day when the main hearing was held, but the records of the main hearing did not state that the case was concluded. Nevertheless, the beneficiary was found guilty of violating her work obligations; the decision referred to points 1 and 2 of Article 123 of the Labour Law, though the Article does not contain relevant obligations.

As no proof existed that the employee had committed a violation of her duty, her lawyer submitted a complaint, requesting annulment of the decision. The procedure was conducted before the Basic Court and the employee’s claim was adopted. However, the defendant appealed the verdict, and the High Court returned the case to retrial. The Women’s Rights Centre, which has provided legal assistance to the woman, sent a note to the Supreme Court highlighting non-harmonised legal practices in similar cases. Upon rejection of this note, the Women’s Rights Centre filed a Constitutional Appeal. The decision of the Constitutional Court remained pending as of April 2022. The proceedings began on 23 March 2017. This case illustrates the long and complicated procedures that someone may need to undertake to seek access to justice amid labour rights violations.<sup>22</sup>

<sup>16</sup> Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, p. 72, 2022.

<sup>17</sup> G. Hashani & Rezniki, 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*].

<sup>18</sup> Interview with woman, CSO representative, Kosovo, November 2018.

<sup>19</sup> Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly, 2022.

<sup>20</sup> Interview with CSO, Union and Labour Inspectorate representatives, BiH, September – December 2018.

<sup>21</sup> Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022.

<sup>22</sup> Case detailed by the Women’s Rights Centre, correspondence with KWN, May 2022.



The lack of judicial practice seems to have continued to affect judges' knowledge regarding the relevant legal framework. In general, judges know their responsibilities and competencies. However, in **Kosovo**, for example, victim-blaming may hinder access to justice for women. In one case involving sexual harassment, a Kosovar judge recalled how the perpetrator's lawyer made sexist and insulting comments, stating that the victim "asked for it".<sup>23</sup> The judge fined the alleged perpetrator, the head of a public company, only €600. Another judge interviewed about this case believed her colleague's verdict was inappropriate and said there was a legal basis for a higher sentence. The prosecution has re-opened the case with the Appeals Court.

Overall, while judges may know the legal framework, the lack of judicial practice, long procedures, and presence of victim-blaming may hamper access to justice in labour-related gender-based discrimination cases.

## Mediation

Most countries foresee possible mediation, and other forms of alternative dispute resolution (ADR), which offer the possibility of addressing discrimination more efficiently and quickly than through courts.<sup>24</sup> In **NM**, a Board can provide peaceful resolution to collective and individual labour disputes.<sup>25</sup> In individual cases, an arbitrator can issue a decision in cases involving termination of a working contract and unpaid salaries. In collective disputes, the Board issues a recommendation.<sup>26</sup>

Similarly, in **Montenegro** the Agency for Peaceful Settlement of Labour Disputes seeks to resolve labour disputes outside courts. Since it is more flexible, faster, and less expensive, its work can be more efficient than court processes. Since September 2010, it received 36 reports related to the prohibition of abuse at work ("mobbing"), including 14 by women and 22 by men. However, they have not had any cases of gender-based discrimination at work. Agency arbiters received several trainings, but none addressed gender-based discrimination at work.

### Case Box 10. ADR Resolves COVID-19-related Case in Montenegro

A woman's employer fired her by using a text message while she was in isolation after testing positive with COVID-19, which was not in accordance with the Labour Law. She received legal support from the Trade Union of Media of Montenegro (TUMM). Proceedings with the Agency for Peaceful Settlement of Labour Disputes were initiated. When her former employer discovered that the employee was receiving legal support, the employer also instructed legal counsel. It is speculated that in this meeting it was made clear that the former employer should comply with the proceedings because they did not have a legal basis to terminate the employee's contract. The proceedings then occurred expeditiously, and the parties reached an agreement in favour of the former employee.<sup>27</sup>

<sup>23</sup> Interview with woman judge, Kosovo, October 2018. KWN also found evidence of victim-blaming in its other research, particularly related to sexual violence: *Sexual Harassment in Kosovo*, 2016, and Berisha, A., Farnsworth, N., Hoti, D., *From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo*, Pristina, Kosovo Women's Network, 2017, at: <https://womensnetwork.org/wpcontent/uploads/2018/10/20180312142859762.pdf>.

<sup>24</sup> This was not examined in depth in all countries and could be an area for further research.

<sup>25</sup> *Law on Peaceful Settlement of Labor Disputes* (Official Gazette of the Republic of Macedonia, n: 87/2007, 27/2014, 102/2014, 30/2016).

<sup>26</sup> Ibid.

<sup>27</sup> Zaric, D. & I. Mihajlovic for Trade Union of Media of Montenegro, *Equality Through Justice: Cases of Discrimination Against Women in Connection with Work*, 2021.

### Case Box 11. ADR in Montenegro Hindered by Jurisdiction

In March 2020, a woman had an altercation at work. The woman suffered verbal abuse, fear of physical abuse, and humiliation by her employer and was fired on the spot. The employee went to a CSO that provides free legal aid. TUMM assisted her initially by writing letters to her former employer. Multiple institutions stated that they were unable to protect the former employee because she worked for a foreign company. The former employee sought to reach a settlement through the Agency for Peaceful Settlement of Labour Disputes. This procedure was quickly suspended because the employer did not consent to the procedure. While the Montenegrin Labour Law requires employers to participate in the process before the Agency, the issue here appears to have been jurisdiction over the foreign company. The former employee then initiated proceedings before the courts; the case remained ongoing in 2021.<sup>28</sup>

The case has attracted the attention of trade unions and legal experts because institutions ostensibly could not react to protect employees because a foreign company was involved. The employee turned to the Ministry of Foreign Affairs, supported by a legal advisor, but the Ministry did not provide a response even following several letters, including those sent by the Directorate for Inspection Affairs. As the employee could not access justice and protect her rights through the Agency for Peaceful Settlement of Disputes because the procedure was suspended when the employer refused to accept reconciliation, the employee initiated court proceedings before the competent court with a lawyer. While the proceedings before the courts were ongoing, the beneficiary found a new job.<sup>29</sup>

This case has been assisted by TUMM with support from the Action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights".

These two cases explain the role the Agency for Peaceful Settlement of Labour Disputes can have. Both cases related to allegations of unlawful termination of employment.

In **BiH**, in **RS** the Public Institution Agency for Peaceful Settlement of Labour Disputes Banja Luka should peacefully resolve individual and collective labour disputes, including related to various forms discrimination.<sup>30</sup> It takes free of charge executive decisions. Data from 2018-2020 show that the agency received 2,093 complaints; however, none of these cases relate to discrimination. The Agency has stated that it does not disaggregate data by gender or address any form of gender-based discrimination, but rather refers them to court.<sup>31</sup> In **FBiH**, a law foreseeing similar peaceful settlement of disputes was adopted in 2021. The new law provides that parties bear their own costs incurred in the conciliation or arbitration proceedings, except for the costs of the conciliators or arbitrators from a list determined by the Ministry of Labour and Social Policy.<sup>32</sup> **DB** has no such institution.<sup>33</sup>

In **Serbia**, the Republic Agency for Peaceful Settlement of Labour Disputes specialises in settling disputes related to the labour law. The agency engages in amicable settlement between parties which have had labour disputes. Proceedings before the agency depend on the willingness of both parties to engage in settling the dispute. If there are cases of discrimination or (sexual) harassment, then the consent of the alleged perpetrator is not necessary to initiate the procedure. As an Agency representative indicated:

<sup>28</sup> Zaric, D. & I. Mihajlovic for Trade Union of Media of Montenegro, *Equality Through Justice: Cases of Discrimination Against Women in Connection with Work*, 2021.

<sup>29</sup> Komar, O., Mihailović, I., Raičević, M., Pejović Eraković, M., Mašanović, B., *Gender-based Discrimination and Labour in Montenegro*, 2022, p. 69.

<sup>30</sup> *Law on Peaceful Settlement of Disputes and Labour Law of RS* (Official Gazette of Republic of Srpska" No91/2016).

<sup>31</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2019, p. 68.

<sup>32</sup> *Draft Law on Peaceful Settlement of Labour Disputes in the FBiH*, at:

<https://javnarasprava.blob.core.windows.net/content/LawText/FM6E8S89.pdf> last accessed on 14 January 2019.

<sup>33</sup> However, the 2019 amended Labour Law of DB foresees the establishment of a Peace Council with the power to conduct conciliation.

The biggest challenge in discrimination disputes before the Agency, apart from obtaining consent from the employer to accept peaceful resolution, is monitoring whether the employer adheres to the decision not to discriminate in the future. These types of disputes tend to last longer than other, “material” disputes given the sensitive topic, and usually require hearing of witnesses, which takes more time, while material evidence is less common. Discrimination disputes are, however, usually resolved within the allotted 30-day deadline.<sup>34</sup>

Between 2018 and 2020, the Agency handled 3,868 cases, of which 2,066 were filed by women. Moreover, 17 were related to discrimination, of which 10 were filed by women; and 82 were related to mobbing, of which 55 were filed by women.<sup>35</sup>

## State Legal Aid Providers

In addition to the CSOs in the WB that provide legal aid, in some countries institutions also provide legal aid. In **BiH**, several public institutions provide free legal aid, though it is not universally available throughout the country.<sup>36</sup> In 2018, seven such institutions provided data, while in 2021 only five responded, but none had cases related to gender-based discrimination in employment. Nor had Legal Aid Providers treated any such cases in **Kosovo**. As legal aid tends to

“Most of them [cases] were disciplinary actions, which were mostly related to indecent behaviour, such as gossiping in slang or use of inappropriate language. The actions were not against the managers; they were all colleagues. I have not had any complaints of discrimination based on gender or sexual orientation in the last 10-11 years.

- Interview with free legal aid office, BiH, 2021

serve persons qualifying as underprivileged (**BiH, Kosovo**), employed persons cannot receive support.<sup>37</sup> In **Montenegro**, free legal aid providers have not been trained in representing cases of gender-based discrimination.<sup>38</sup> In **BiH**, free legal aid providers noted that they lack capacities in protection from discrimination and they have tended to refer such cases to the Ombudsman.<sup>39</sup>

In **NM**, a new law on free legal aid entered into force in October 2019, enabling financing of authorised associations to provide legal assistance through grants from the Ministry of Justice. While the new law is less restrictive, persons receiving secondary legal aid still must fulfil conditions defined by law, which relate to income and property ownership. The law has been crucial in authorising CSOs that provide legal aid in defending workers’ rights,

<sup>34</sup> Cited in Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>35</sup> Ibid.

<sup>36</sup> These include: RS Centre for Provision of Free Legal Aid, Legal Aid Office of DB, Cantonal Institute for Free Legal Aid Tuzla, Cantonal Institute for Free Legal Aid Zenica, Free Legal Aid Institute of Posavina Canton, regional office in Odžak, Cantonal Institute for Free Legal Aid Široki Brijeg, Free Legal Aid Institute of Sarajevo Canton, Cantonal Institute for Free Legal Aid Bihać and the Cantonal Institute for Free Legal Aid Goražde (Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2018).

<sup>37</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2018, p. 67.

<sup>38</sup> CSOs are not included in the list of free legal aid providers according to the law. Only the Women’s Rights Centre provides free legal aid to persons who suffered gender-based discrimination, but it relies on foreign funding.

<sup>39</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2018, p. 68 and correspondence with HCA, 2022.



especially amid the COVID-19 pandemic.<sup>40</sup> CSOs swiftly adapted to the situation, providing legal assistance amid gross violations of labour rights, especially during the first two weeks following the declared state of emergency. Workers trusted and thus frequently reported violations of their labour rights directly to CSOs providing free legal aid who then assisted them.

In conclusion, legal aid can be essential for supporting victims of gender-based discrimination in accessing justice. However, stringent criteria for qualifying for legal aid in several WB countries prevent vulnerable and marginalised women from accessing this support. Moreover, legal aid providers may not have sufficient knowledge and training on how to treat such cases. Legal aid providers from institutions seemed to have minimal experience providing legal aid in cases involving gender-based discrimination in labour. Meanwhile, as discussed in a later section, CSOs also have provided legal aid and the government contracting of these expert services, such as in **NM**, serves as a best practice that other WB countries can consider following.

## Labour Inspectorate

Labour Inspectorate representatives' knowledge differed across the WB countries. In **BiH**, **Montenegro**, and **Kosovo**, they tended to know less about laws pertaining to gender equality and discrimination. In **BiH**, many labour inspectors refused or did not respond to requests for interviews, so limited information was available upon which to draw conclusions regarding their awareness, attitudes, and experiences in treating cases of gender-based discrimination. The recurring response received from the labour inspectors that responded was that discrimination is outside their jurisdiction, as their work is based on labour laws rather than the LPD.<sup>41</sup> The State Labour Inspectorate in **NM** also voiced concerns regarding the scope of their responsibilities and difficulties in proving gender-based discrimination at work. In 2021, the interviewed labour inspectors were somewhat knowledgeable on the legal framework, though they were largely disregarding of the Anti-Discrimination Law as the governing law on this subject. One inspector even stated that there is no legal framework that specifically protects people from gender-based discrimination. Multiple inspectors said that they have difficulties distinguishing gender-based discrimination from other labour rights violations in general. As in 2018, inspectors also stated that they have difficulties proving gender-based discrimination.<sup>42</sup>

In **Albania**, inspectors seemed more aware of the legal framework, particularly following training provided by the Commissioner for Protection from Discrimination and GADC since 2018. Meanwhile, in 2021, they observed that while the legal framework was complete, implementation was insufficient. Interviews suggested that inspectors would still benefit from further training on gender-based discrimination and the existing legal framework. According to statistics from this institution, inspectors handled nine cases of gender-based discrimination since 2018.<sup>43</sup>

In **Kosovo**, in 2018, labour inspectors tended not to consider gender-based discrimination a priority, noting that they must deal with many other cases. Some inspectors' statements consistently suggested insufficient knowledge of how to treat cases. For example, an inspector stated that sometimes the appearance of women workers may be the reason that sexual harassment occurs. "Women's clothing may be a sexual provocation to male

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<sup>40</sup> Leshoska et al., *Gender-Based Discrimination and Labour in North-Macedonia*, Reactor – Research in Action, 2022.

<sup>41</sup> Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, 2022, p. 69.

<sup>42</sup> Leshoska et al., *Gender-Based Discrimination and Labour in North Macedonia*, Reactor – Research in Action, 2022.

<sup>43</sup> Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022.

colleagues”, he said.<sup>44</sup> Such comments suggest the presence of victim blaming. Moreover, in 2021 an inspector stated that he believes men are more discriminated against than women. “Because unfortunately females find alternative ways and seduce [employers] in order to enjoy a right.”<sup>45</sup> He implied that women seduce their superiors to elicit promotions. When a victim of multiple forms of gender-based discrimination (i.e., sexual harassment, discrimination in promotion) did contact the inspector in question, he merely referred her to the police and prosecutor. This reflects a lack of knowledge and awareness regarding gender-based discrimination and how to handle cases. Other institutions noted the inadequate inspection of discrimination cases, breaches of confidentiality, and vague reporting on inspected cases. “Their reports are vague, leaving room for interpretation”, a prosecutor stated. This makes “it difficult for other institutions to give a verdict”.<sup>46</sup> Moreover, the low number of inspectors has continued to impinge on their performance. Inspectors tended to consider that having more labour inspectors would contribute to more effective inspection of discrimination cases. Some also noted the lack of proper vehicles for inspections and the need for training to better qualify them to inspect specific employment sectors.

In **Serbia** in 2017 and 2018 the Commissioner organised training for Labour Inspectors on the “Application of Anti-Discrimination Regulations”. Even so, interview responses from other institutions in 2018 suggested low capacities within this institution, hindering their effectiveness in protecting workers’ rights. As one CSO representative stated:

Inspectors have their check-up visits to companies, factories, and other workplaces. These visits need to be unannounced. However, this is not the case. Everyone knows when the visit will happen, which allows for the directors and managers to prepare in advance and create working conditions that are aligned to rights of the workers. If someone takes a stand against such a way of acting, that person will suffer consequences usually in terms of losing the job.<sup>47</sup>

In 2021, this institution declined interview requests. Therefore, no statements can be made on their knowledge, awareness, or if these increased after the above-mentioned training. However, their annual reports suggest that there were 40 requests submitted to their institution that were related to harassment at work in 2019.<sup>48</sup>

Official responses to data requests received from approximately half of the municipal Labour Inspectorates suggested that no cases of gender-based discrimination were filed with the Labour Inspectorate between 2018 and 2020.<sup>49</sup> Thus, no conclusions can be made about how the Labour Inspectorate handles these cases. According to an interviewee in 2018, the Labour Inspectorate is active

“ *The situation is not good with the Labour Inspectorate. There is a lot of corruption. What is more, they lack human resource capacity and therefore are not able to do their job properly. People who work there also do not possess sufficient knowledge that is required in order to tackle issues related to gender-based discrimination.*

- Woman CSO representative, Serbia, 2018

<sup>44</sup> Interview with man, Labour Inspector, Kosovo, November 2018.

<sup>45</sup> Interview with a man Labour Inspector, Kosovo, March 2021.

<sup>46</sup> Interview with a male prosecutor, Kosovo, December 2018.

<sup>47</sup> Interview with woman, CSO representative, Serbia, November 2018.

<sup>48</sup> Ministry of Labour, Employment, Veteran and Social Affairs, ‘Annual Reports/Inspectorate Plan’, 2018-2021, at: <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/izvestaji-o-radu/plan-inspekcijskog-nadzora>, cited in Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>49</sup> Ibid., pp. 62-63.

in addressing severe violations of the Constitution or international law when it comes to illegal operations, but it may have a slower response regarding labour violations at work.<sup>50</sup>

In 2018, in **Montenegro**, representatives from other institutions stated that the Labour Inspectorate very rarely acts in cases of gender-based discrimination. Interviewed inspectors emphasised that even though they have a legal advice service available where people can receive legal guidance on how to report cases to the Labour Inspectorate, the court, and the Ombudsperson Institution, they do not receive many calls related to suspected discrimination. They also complained that legally they do not have much authority when it comes to labour-related discrimination. They said that if they spot such a case, the only thing they can do is halt the discriminatory act until the court rules on the case in question. In 2021, interviewed inspectors tended to state that gender-based discrimination does not fall under their jurisdiction. One inspector stated: "It is not under my jurisdiction to deal with it, and I do not want to go into how I would define [gender-based discrimination]."<sup>51</sup> Moreover, inspectors mentioned that it is unclear what falls under their jurisdiction, since the LL mentions discrimination cases fall under the Agency for Peaceful Settlement of Labour Disputes and the Centre for Alternative Dispute Resolution, while the LPD states that inspectors have a special role. Therefore, inspectors do not know when such cases are under their jurisdiction.

In summary, labour inspectors across the WB seem to lack sufficient knowledge and training in how to treat gender-based discrimination cases. This coupled with the aforementioned minimal reporting of such cases mean that labour inspectors have treated few such cases and their experience with such cases also remains low. Dissatisfaction with the performance of Labour Inspectorates was a recurring theme in the WB, including among other institutions' representatives.

## Ombudsperson Institutions

As an independent body, the Ombudsperson Institution (OI) supervises and promotes respect for fundamental human rights and liberties. In most WB countries, it is responsible for addressing any complaints of unequal and discriminatory treatment. In alleged cases of gender-based discrimination at work, the OI can investigate violations and make recommendations for ending discriminatory practices or relevant violations conducted by responsible institutions. These recommendations do not have the power of decisions that should be implemented. The OI should be the final instance at country level for the protection of human rights; once all other legal options are exhausted, a person can apply for the OI's protection.

Throughout the region, the OI lacked gender-disaggregated electronic data. Therefore, few cases of gender-based discrimination handled by this institution could be identified in WB countries. Exceptionally, in **Montenegro** the OI had gender-disaggregated electronic data. In **Kosovo**, the OI had begun reforms to their data management system to better track and report this information.

Generally, OI representatives in WB countries consistently have seemed very knowledgeable about the legal framework related to gender-based discrimination.<sup>52</sup> In **Albania**, they knew the definition of gender-based discrimination and could identify a variety of situations that may constitute gender-based discrimination at work. Meanwhile, they noted the lack of training opportunities for them, especially in gender-based discrimination. In **Kosovo**, they could refer to and comment on the LL and knew their legal responsibilities for addressing complaints. In **Montenegro**, OI representatives said they had attended several

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<sup>50</sup> Interview with woman, CSO representative, Serbia, October 2018.

<sup>51</sup> Komar, O., et al., *Gender-based Discrimination and Labour in Montenegro*, 2022, p. 61.

<sup>52</sup> Notably, no interview was conducted in Serbia. The OI did not respond to several requests for an interview or data.

specialised trainings focused on gender-based discrimination, so they feel well-equipped to intervene when a complaint is made. In 2021, other institutions in Montenegro concurred that the OI has grown to be an important institution in addressing gender-based discrimination cases.

Nevertheless, in **Kosovo**, some noted that they lack infrastructure, such as office space for confidential interviews and physical access for people with different abilities. One representative also stated that involving more women employees at OI regional offices may make some women more comfortable in discussing and reporting their experiences with discrimination. Moreover, in 2021 a representative noted that even though offices are renovated, access for people with disabilities is still not guaranteed: “a person with disabilities cannot even reach my office since I have some stairs here. This problem can be fixed with only one bag of cement.”<sup>53</sup>

Considering the aforementioned lack of data regarding gender-based discrimination cases treated by this institution, it was difficult to assess the quality of OI’s performance in assisting such cases in WB countries. Yet OIs seemed to have more experience assisting cases since 2018 than in the years previous.

For example, in the period of 2018-2020, the OI in **BiH** received 667 total complaints. Several involved gender-based discrimination against women applicants, including: sexual harassment (five cases), mobbing (71), and based on social status and gender (34), sexual orientation (six), sexual characteristics (one), and gender identity (one).<sup>54</sup> The increase in cases may be attributable in part to awareness campaigns by CSOs that informed and encouraged people to approach this institution.<sup>55</sup> However, respondents expressed some suspicion regarding the efficiency of the Ombudsman. In addition to emphasising the problem of recommendations not being binding, in 2018 respondents said that the Institution “has mandates but does not use them”, “this Institution has lost its importance as a corrective force of the authorities”, and “it is uncertain how many people believe that the institution is accessible and can help address their problems”.<sup>56</sup> In 2021, a respondent emphasised that the OI is “political” and that proceedings before the Institution are lengthy, such as in discrimination cases.<sup>57</sup> Lengthy proceedings discourage people from filing claims in **NM** as well, according to a respondent in 2021. However, CSO respondents did observe positive improvements in the OI’s work, viewing it as a less costly option for justice than use of courts. A CSO representative recalled a case of discrimination in promotion where the OI stated that gender-based discrimination had occurred. However, the woman who filed the case later was demoted and did not receive a raise in her salary. This suggests that victimisation occurred. The OI encouraged the woman to proceed with court action against her employer. This case has remained ongoing (Case Box 12).

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<sup>53</sup> Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, 2022, p. 76.

<sup>54</sup> Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly Banja Luka, 2022.

<sup>55</sup> KWN correspondence with Helsinki Citizens’ Assembly Banja Luka, which undertook such campaigns through this Action “Empowering CSOs in Combatting Discrimination and Furthering Women’s Labour Rights”.

<sup>56</sup> Interviews with CSO, Union, and Labour Inspectorate representatives, BiH, 2018.

<sup>57</sup> Interviews with CSO and Ombudsperson representatives, BiH, 2018; Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly, 2022.

### Case Box 12. Ombudsperson Assists Case Involving Sex Discrimination in NM

A woman working as a member of a special police crime unit since 2013 did not receive the same wage as her male colleagues with the same rank from the same unit, even though she had good results in her work throughout the entire period as a member of this unit, she was always evaluated positively by her superiors, and she also obtained a master's degree in law. Aside from the lesser pay, she was subjected to sexual harassment by her co-workers and her boss. After taking steps to protect herself against discrimination, she was demoted to a lower-ranking and lower-paying post than her prior one. This case illustrates an example of gender-based discrimination in relation pay, as well as sexual harassment. Moreover, it illustrates victimisation that occurred as a consequence of reporting discrimination, even though victimisation is illegal under the legal framework. She filed a complaint with the Ombudsperson's office, which determined that sex discrimination had occurred. The Ombudsperson encouraged the woman to continue with court action against her employer. In July 2021, she filed a lawsuit for protection against discrimination against the Ministry of Interior. The next court hearing was scheduled for 16 May 2022 as of the writing of this report.

In **Kosovo** some officials interviewed stated that the OI has some influence when it comes to addressing gender-based discrimination at work, highlighting the importance of the recommendations made by the OI to other institutions.<sup>58</sup> For example, in 2021, the OI provided recommendations in a case where a woman was let go during the COVID-19 pandemic because she was pregnant and was therefore relieved temporarily from her duties by government measures. The OI's recommendations helped reinstate the woman after six months. Judges seemed to think in 2018 that this institution has a lot of influence related to gender-based discrimination in labour. However, in contrast, a prosecutor observed that the Ombudsperson's "power is only recommending, not binding".<sup>59</sup> Other respondents similarly considered that this institution has minimal influence because its recommendations are not binding. In **Albania**, several examples of good practice exist with the OI, which has intervened to support cases, working closely with the Commissioner against Discrimination (CPD) and CSOs. In past years, two cases from the CPD were referred to the OI, and the OI referred two cases to the CPD. This shows that the two institutions have been collaborating more. Additionally, regional offices of the OI organised joint activities with the CPD where they offered training and contributed to raising awareness.<sup>60</sup>

In **Serbia**, representatives of the OI seemed knowledgeable on the legal framework, though they lacked relevant practice.<sup>61</sup> In **Montenegro**, representatives of the OI have attended specialised training that was focused on gender-based discrimination and were very knowledgeable on the legal framework. One representative noticed that most cases of gender-based discrimination they encounter are those of women whose contracts were not renewed after pregnancy. According to this representative, nothing could be done because the contract had expired.<sup>62</sup>

In summary, OIs across the WB are perhaps the most knowledgeable institution regarding the legal framework pertaining to gender-based discrimination and labour. Nevertheless, a continued combination of low reporting due to insufficient public awareness

<sup>58</sup> Interviews with 27 representatives of different institutions, Kosovo, September – December 2018.

<sup>59</sup> Interview with a woman prosecutor, Kosovo, November 2018.

<sup>60</sup> Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022.

<sup>61</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>62</sup> Olivera Komar, Ivana Mihailović, Maja Raičević, Milena Pejović Eraković, Božana Mašanović, *Gender-based Discrimination and Labour in Montenegro*, Women's Rights Centre, Podgorica, 2021, at: [https://womensrightscenter.org/wp-content/uploads/2022/04/GBD\\_in\\_Labour\\_in\\_Montenegro.pdf](https://womensrightscenter.org/wp-content/uploads/2022/04/GBD_in_Labour_in_Montenegro.pdf).

about the role of the OI, among other factors, and weak data management practices meant that it was difficult to assess how the OI has treated cases of gender-based discrimination. Qualitative examples suggest some notable good practices across the region, particularly in **Albania**, which can be promoted and built on in the future.

## Commissioners for Protection from Discrimination

Some countries have additional specialised human rights institutions that perform roles related to addressing gender-based discrimination in the WB. Commissioners for protection from discrimination (CPD) exist in **Albania**, **NM**, and **Serbia** (titled “Commissioner for the Protection of Equality”).<sup>63</sup> They have similar tasks in each country, related to protection against discrimination. They review and make recommendations regarding complaints. In **Albania**<sup>64</sup> and **Serbia**, their decisions are legally binding, but not in **NM**. The mandate of the NM CPD has been expanded to include the power to initiate proceedings ex officio for protection from discrimination; they also can appear as an intervener in court proceedings. In these countries, CPDs have various powers in litigation and administrative processes, including deciding on complaints and representing victims in courts, subject to the victim’s consent. They monitor and evaluate the implementation of equality strategies and laws, as well as propose new legislation. They inform people about their rights to protection from discrimination and the available legal remedies.

In **Serbia**, in 2018, the CPD seemed very knowledgeable about gender-based discrimination and its intersections with other grounds of discrimination, such as age, ethnicity, and ability. Approximately one-third of the CPD’s case load related to discrimination in the sphere of labour. More than other institutions, women who experienced gender-based discrimination in labour tended to report it to the CPD, indicating that it may be more responsive.

In **NM**, in 2018, the Commission appeared to understand what women experience in the workplace when it comes to cases concerning pregnancy and motherhood. However, findings were somewhat inconclusive. The Commission seemingly had low knowledge and weak capacities regarding gender equality overall and the different forms of discrimination that women face. In 2021, the interviewed commissioner had sufficient knowledge on gender-based discrimination. This knowledge, however, came from experience working with a CSO that provides free legal aid.

“ *The Commission, a primary body which should fight discrimination, spends very little time working on their visibility and acquainting citizens with the role of the Commission. Citizens are not aware that a Commission exists, what is within the Commission’s scope, where it is located, etc. Cases put before the Commission are not processed or decided within the legally binding timeframe. There is no individualized approach to the different cases and the Commission does not consider the different circumstances. I would also comment on the professionalism of the members of the Commission and the apathy of the Commission to follow-up on their recommendations.*

- Man, CSO representative, NM, 2018

<sup>63</sup> Law on Protection from Discrimination, Albania, 2010 at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_178702.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_178702.pdf); Law on Labour of Republika Srpska, 2016, at: <http://www.fic.ba/uimages/zakoni/RS%20Labour%20Law.pdf>.

<sup>64</sup> The 2020 amendments to the Law on Protection from Discrimination in Albania had consequences for the competencies of the CPD. Changes included new powers to: deal with complaints under the LGE (previously limited to the LPD); monitor the implementation of the LGE; initiate procedures in the constitutional court; collect relevant information from all public institutions; and file lawsuits in defence of the principle of equality and non-discrimination on issues related to collective interests. Found in: Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022.



Since the commissioner was newly appointed, only one case had been handled by the commissioner since 2018. The commissioner recounted from past experience that they had only encountered one case of gender-based discrimination where the applicant was successful. The commissioner acknowledged that the CPD continues to lack adequate information on legal proceedings regarding gender-based discrimination because the current logging system simply registers these cases as labour disputes.

In **Albania**, the CPD knows the legislative framework on discrimination.<sup>65</sup> Employment-related discrimination cases constituted approximately 43% of all claims handled by the CPD in 2018, though these were not necessarily related to gender-based discrimination.<sup>66</sup> In 2019, the CPD received 171 cases, of which 30 were related to gender-based discrimination. In 2020, 175 cases were reported to the CPD of which 127 involved discrimination in employment. Gender-based discrimination in labour relations made up 4% of all complaints. The CPD only found elements of discrimination in 1% of all cases.<sup>67</sup> CSOs reported that the CPD has been more active since 2018. For example, the CPD and Labour Inspectorate have a memorandum of understanding, and the CPD has trained inspectors. Moreover, the CPD has been very responsive to and collaborated closely with WCSOs such as GADC in addressing specific cases.<sup>68</sup>

In **Serbia**, the Commissioner logs cases of discrimination in labour and employment, disaggregated by gender, but these do not necessarily indicate gender-based discrimination. In 2021, more women filed cases of discrimination related to labour than did men (60% women, 40% men).<sup>69</sup> Interviews indicated that approximately 90% of the Commissioner's recommendations were implemented.<sup>70</sup> Meanwhile, the fact that the Commissioner cannot force a party to implement legally binding recommendations presents an obstacle.<sup>71</sup> In Serbia, the Commissioner also created and promoted an *Equality Code of Practice: Guidelines for Developing an Anti-discrimination Policy for Serbian Employers* in 2017.<sup>72</sup>

In **NM**, the CPD in 2018 received 59 cases (25% from women and 34% from men); discrimination based on sex or gender comprised 19% of claims filed, and 41% of all cases occurred in relation to employment.<sup>73</sup> The new Commission for Prevention and Protection against Discrimination (CPPD), formed in 2021, had acted on 167 complaints (41% filed by women and 59% by men); 17% were on the grounds of sex or gender and 3% related to family or marital status; 38% of all cases related to employment.<sup>74</sup> Although a professionalised body, it has struggled to realise its legal competences due to its slow composition, limited number of professional employees, restrictive budget, and impossibility of functional independence in its use of the state budget.<sup>75</sup>

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<sup>65</sup> Interview with Anti-Discrimination Commissioner representative, Albania, February 2019.

<sup>66</sup> In 26 cases, the CPD found that discrimination had occurred, recommending measures. In most cases this led to complainants' return to work. In 2018, the CPD issued two recommendations, 10 mediations and seven fines against subjects (CPD Annual Report 2018, cited in Arqimandriti, M. et al., *Gender-based Discrimination and Labour in Albania*, 2019).

<sup>67</sup> Arqimandriti et al., *Gender-Based Discrimination and Labour in Albania*, GADC, Albania, 2022.

<sup>68</sup> KWN correspondence with GADC, 2022.

<sup>69</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022.

<sup>70</sup> Ibid.

<sup>71</sup> Interview with woman, government institution representative, October 2018, Serbia.

<sup>72</sup> The Commissioner for the Protection of Equality, *Equality code of practice: Guidelines for developing the Anti-Discrimination Policy for employers in Serbia*, Belgrade, 2017.

<sup>73</sup> European Equality Law Network, "No changes in reporting to the equality body CPAD and to the Ombudsperson", EELN Website, 2018, at: <https://www.equalitylaw.eu/downloads/4600-fyr-macedonianchanges-in-reporting-to-the-equality-body-cpad-and-to-the-ombudsperson-pdf-148-kb>.

<sup>74</sup> Commission for Prevention and Protection against Discrimination (CPPD), 2022. *Annual report of the Commission for Prevention and Protection against Discrimination* (CPPD), at: <https://kszd.mk/wp-content/uploads/2022/03/Godisen-izvestaj-2021.pdf>.

<sup>75</sup> KWN correspondence with Reactor – Research in Action, 2022.

In conclusion, in the countries where CPDs exist, their performance seems to have improved since 2018.

## Sector for Equal Opportunities, Ministry of Labour and Social Policy

In **NM**, the Law on Equal Opportunities for Women and Men established a Legal Representative in the Sector for Equal Opportunities at the Ministry of Labour and Social Policy (MLSP).<sup>76</sup> It can take decisions related to individual claims of unequal treatment between women and men, as well as initiate ex officio investigations into unequal treatment. It may cooperate with other protection mechanisms such as the Ombudsperson, CPD, and inspectors. Its position within MLSP can undermine its independence. Further, due in part to poor visibility, few claims have been filed with the Representative and thus it had hardly undertaken any action as of 2018.<sup>77</sup> The institution also has lacked financial and human resources.<sup>78</sup> In 2022, the Sector reportedly continued to face “serious issues” related to insufficient visibility of the institution’s services and minimal reporting.<sup>79</sup> In 2018, the institution received a single case.

In summary, the institution has a weak legal position and has continued to lack visibility, which has contributed to the lack of reporting of cases to this institution.

## Labour Unions

Labour unions have the potential to play an important role in defending the rights of workers, including against gender-based discrimination. Generally, the labour union representatives interviewed for this research in 2018 and 2021 knew their role in advancing workers’ rights.<sup>80</sup>

However, 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 of what constitutes gender-based discrimination, they said. Of the few cases that reached unions, some involved discrimination in hiring, promotion, firing, treatment, working conditions, and violations of maternity leave provisions.

In general, union representatives felt capable of addressing gender-based discrimination. Union representatives tended to state that people who had experienced discrimination should ask for help by contacting their union representatives, considering that reporting a case can involve a long and tiresome process.<sup>81</sup>

Meanwhile, other actors were sceptical regarding the role that unions have played in addressing such discrimination. For example, in **Serbia** the representatives of other institutions interviewed suggested that labour unions do not see gender-based discrimination as an issue that needs to be addressed or even investigated. In contrast, an interview with a

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<sup>76</sup> Leshoska, V., et al., *Gender-based Discrimination and Labour in North Macedonia*, 2019.

<sup>77</sup> Najčevska, M. and Kotevska, B., Country report on Gender Equality - Macedonia 2018, European Network of Legal Experts in Gender and Non-discrimination, 2019.

<sup>78</sup> Reactor, CEDAW Submission, North Macedonia, Official Website of the OHCHR, 2018, at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30045\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30045_E.pdf).

<sup>79</sup> Leshoska et al., *Gender-Based Discrimination and Labour in North Macedonia*, Reactor – Research in Action, 2022.

<sup>80</sup> It should be noted that we did not interview a random sample of union representatives, but rather sought to select them based on variation and convenience sampling. Thus, findings may not be representative of all unions.

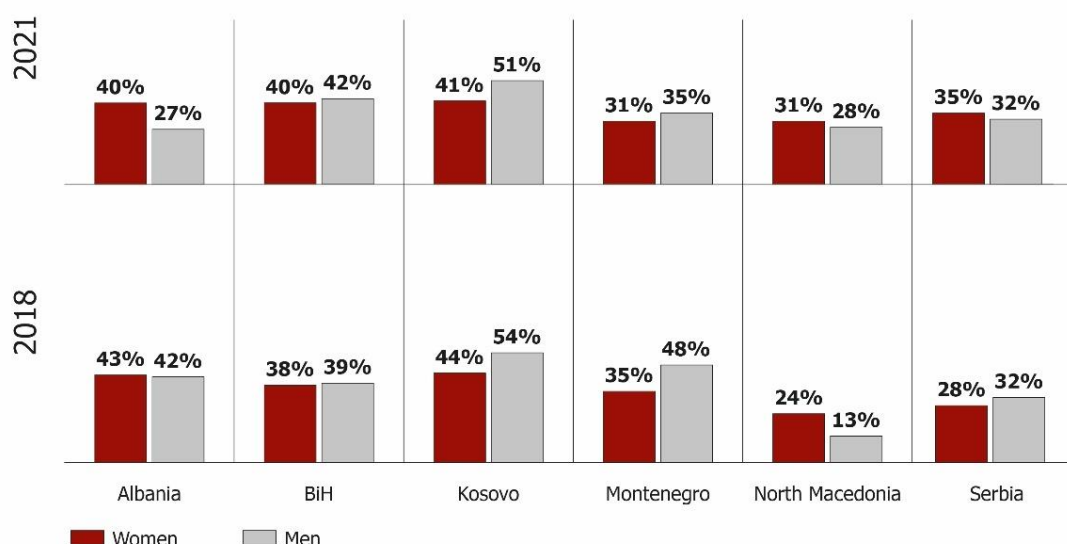
<sup>81</sup> For example, in Kosovo in 2021 a labour union representative shared information about a woman who sued the school she worked at because they would not promote her to principal. This case reportedly had elements of discrimination. While the case began in 2018, the representative said it is still in court (Banjska et al, *Gender-Based Discrimination and Labour in Kosovo*, KWN, 2022).



union representative indicated that they are aware that gender-based discrimination is a major problem in labour and hiring; they stated that they always encourage people to bring cases forward.<sup>82</sup> The difference in interview responses may indicate a disconnect between union representatives and workers, or even a lack of knowledge regarding unions' roles in addressing labour-related gender-based discrimination. Interviews in 2021 further suggested that labour unions in Serbia lacked expertise in handling cases of gender-based discrimination.

The percentage of survey respondents who said that they knew of a workers' union in their country that could represent their interests differed by country (Graph 15). In 2018, in most countries, a higher percentage of men than women knew about unions in their respective countries (except in **Albania** and **NM**). In 2021, a higher percentage of women survey respondents knew about labour unions in **Albania**, **Serbia**, and **NM**. Still, fewer than half of the respondents in 2021 knew of a union in their country that could represent their interests.

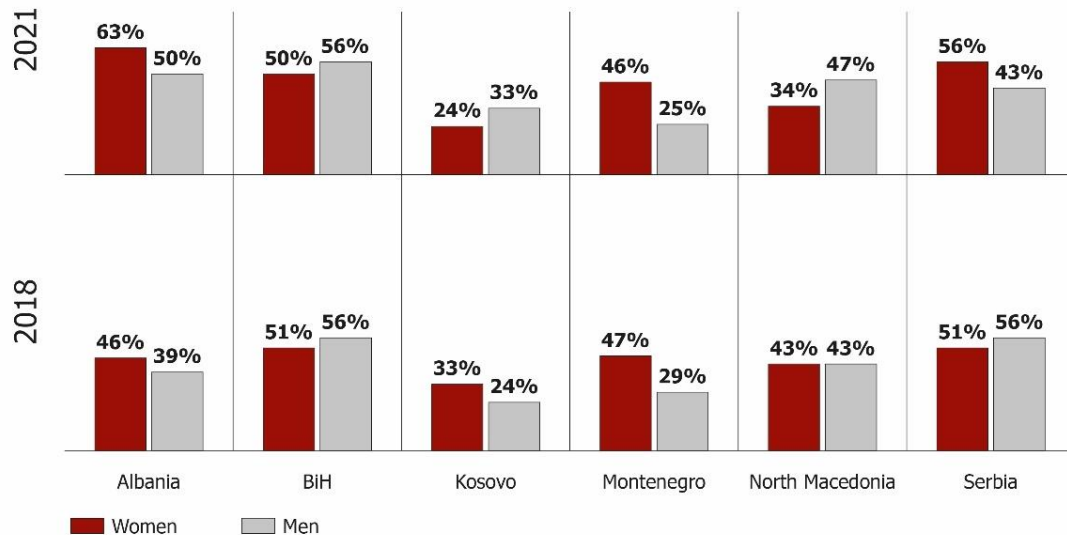
**Graph 15.** People Who Knew a Workers Union in Their Country



Together with the aforementioned general distrust in institutions, workers' trust in unions may be a factor affecting the extent to which workers may contact unions to assist them in gender-based discrimination cases. As Graph 16 illustrates, in both 2018 and 2021, among the respondents who knew of unions in their countries, several felt that unions represent their interests "poorly" or "very poorly". Low reporting of gender-based discrimination to unions may derive from the low trust that respondents seem to have in unions.

<sup>82</sup> Đan, A., Vrbaški, S., *Gender-based Discrimination and Labour in Serbia*, 2019, p. 43.

**Graph 16.** Percentage of Respondents Who Feel that Workers Unions Represent Their Interests Poorly or Very Poorly



In **Serbia**, interviews with union representatives in 2018 suggested that labour unions did not see labour-related gender-based discrimination as an issue that needed to be seriously addressed or even investigated. Although an interviewed union representative noted the importance of gender equality in employment rights, it seemed that no major steps had been taken in this direction. In contrast, in 2021, interviews suggested that union representatives did see gender-based discrimination as a serious issue needing address, though they indicated that they lacked the capacities to do so. Women are underrepresented in higher positions of Serbian unions, with only one woman on the executive board of one of the main unions; this could also contribute to women's insufficient trust in unions to represent their interests. Further, no cases of gender-based discrimination had been reported to the union, and it had no unified system for collecting data concerning discrimination at work.<sup>83</sup>

In **Kosovo**, some respondents observed that gender-based discrimination also may exist within unions themselves. "If there is a meeting with the Prime Minister, the delegation is comprised of men [...] because 'men are more intelligent'", a woman union representative said.<sup>84</sup> Moreover, in **Albania**, union representatives observed some difficulties in treating gender-based discrimination. One interviewee noted that sometimes labour unions represent their members in court for cases of discrimination, but unions usually assign this responsibility to the Commissioner and the Labour Inspectorate.<sup>85</sup>

In summary, few people seem to have approached labour unions for support in dealing with cases involving labour-related gender-based discrimination. This seems partially

<sup>83</sup> Dičić-Kostić, N., Čolak, A., & Vrbaški, S., *Gender-Based Discrimination and Labour in Serbia*, The Kvinna till Kvinna Foundation, 2022, p. 65.

<sup>84</sup> Interview with woman, labour union representative, Kosovo, October 2018.

<sup>85</sup> Arqimandriti, M., Llubani, M., Çoku, O., Hoxha, E., *Gender-based Discrimination and Labour in Albania*, Albania, GADC, 2019, p. 53, at: [http://www.gadc.org.al/media/files/upload/GBD%20Labour%20Albania\\_EN.pdf](http://www.gadc.org.al/media/files/upload/GBD%20Labour%20Albania_EN.pdf).

due to lack of knowledge and trust in labour unions. As a result, unions still have limited experience with assisting cases of gender-based discrimination.

## Civil Society Organisations

The EU equal treatment directives foresee the legal standing of associations, organisations, or other legal entities in judicial and administrative discrimination procedures as an important enforcement tool for persons who have experienced discrimination. As noted in the Legal Analysis, WB countries' legal frameworks foresee that such organisations can support persons who have suffered discrimination in accessing justice. CSOs also can play important roles in raising awareness about legal rights, providing legal advice, and holding institutions accountable for implementing the relevant legal framework through monitoring and advocacy. They can use their public influence as a leverage in holding institutions accountable.<sup>86</sup>

The CSO representatives interviewed tended to know about the relevant legal framework and what gender-based discrimination entails. They all indicated that they feel somewhat to very capable to address this issue. Several CSOs in the WB support LGBTQIA+ persons, PWD, ethnic minorities and/or persons who have experienced gender-based discrimination. Some provide free legal aid and counselling. However, in 2018 very few CSOs had focused specifically on tackling gender-based discrimination related to work. By 2021, more CSOs had engaged in monitoring cases of gender-based discrimination in courts and had reported on such cases, largely due to the EU and Sida-funded Action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights" through which this research was funded. CSOs also engaged in several different activities and services related to addressing gender-based discrimination, including organising workshops, raising awareness including among marginalised groups, monitoring the performance of responsible institutions, and providing legal aid. Thus, more CSOs have directly assisted persons affected by gender-based discrimination at work since 2018.

Even so, as with other institutions, CSOs observed that people still hesitate to report gender-based discrimination. In **Montenegro**, for example, a CSO reported receiving a case in which a woman was harassed by her boss because she was a lesbian. The worker's boss said that he had fantasies about having sexual intercourse with her. She was forced to quit. On another occasion, a man was fired because he was gay. However, in both cases the victims refused to report their cases to institutions in Montenegro.

Several CSOs described cases of gender-based discrimination that they had treated in the past three years. In **NM**, there have been cases where women were asked to sign contracts that stated they would not become pregnant within two years of signing their contracts. A CSO representative mentioned that the organisation has used strategic representation and strategic litigation to bring court cases to challenge the abuse of successive fixed-term contracts to evade maternity rights.

In **Albania**, the Centre for Labour Rights was established in 2018, offering free legal aid related to labour rights issues, including discrimination. By 2021, additional CSOs in Albania had addressed cases of gender-based discrimination, including the Albanian Women Empowerment Network (AWEN) and Counselling Line for Girls and Women.

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<sup>86</sup> Interview with CSO representative, Montenegro, October 2018.

### Case Box 13. Counselling Line for Women and Girls Empowers Workers to Report Gender-Based Discrimination at Work

Frida\* was only 17 years old when her family forced her to marry her 40-year-old husband. Her parents told her that she was a girl and that it was her duty to obey them. She had only met her husband five times before their wedding day. The violence started the first week that they lived together. She soon learned that he was an alcoholic and substance abuser. She endured living with him, in this abusive relationship, for 10 years.

Frida worked as a tailor in a shoe-making factory near Tirana, Albania. She faced many hardships. During a violent episode, her husband broke her arm, and she could not work. However, her employers did not allow Frida to take medical leave, and they stopped paying her immediately. Frida, now unemployed, faced economic hardship, particularly as she still had to care for her three children. Moreover, after she was fired, her abusive husband was furious. He stabbed her with a knife. The neighbours called the police, and he was immediately arrested.

After these incidents, Frida did not know where to seek help or where to report the labour rights violations she had faced at work. While listening to the radio, she learned about the Counselling Line for Women and Girls (CLWG) and called their toll-free number: 116117. One of the counsellors provided her with free psychological support and mentoring about employment opportunities. With her permission, the counsellors referred Frida to the Gender Alliance for Development Center (GADC), which supported her in reporting her prior employer's violations of her labour rights. Frida also attended the CLWG's educational trainings about the legal framework in Albania, which protects women's labour rights, as well as the institutions where one can report gender-based discrimination at work.

"In these training courses, I had the possibility to meet different women, and we all had many things in common," Frida recalled. "We were all survivors of violence, who had, one way or another, experienced discrimination, and unfair treatment in the workplace. I feel like employers understand when women are vulnerable and uninformed, and they take advantage of this. Employers do not comply with the legislation, and they treat you unfairly. However, after attending these trainings, I feel stronger and much more confident, because now I know how to respond to injustice, and who to contact for help. Now I know what is legal and not, what my rights are as an employee, and where I can report discrimination".

With the help of CLWG counsellors, Frida has found work as a tailor in a small shop. She also started attending a cooking course offered by the state, free of charge, for survivors of domestic violence. She still meets regularly with the GADC to learn more about her rights regarding work, sick leave and pay.

"It is still not easy for her, or for the other women who have attended our trainings and received our services," said one of the CLWG counsellors. "However, this information and support has empowered them, and their future seems brighter".

This is the story of one woman, a survivor of domestic violence, who received support from CLWG. In 2020 alone, CLWG received 6,000 calls from women and girls about discrimination in the workplace, assisting them in knowing their rights and seeking justice. This initiative is part of a CLWG action, supported by GADC, KWN, and their partners through the Action "Furthering Women's Labour Rights". This Action is financed by the EU and co-funded by Sida.<sup>87</sup>

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<sup>87</sup> \*Her name has been changed to protect her identity. Story published by KWN on 30 June 2021, at: <https://womensnetwork.org/counselling-line-for-women-and-girls-empowers-them-to-report-gender-based-discrimination-at-work/>.

#### Case Box 14. AWEN, GADC Assists Women in Filing a Collective Case

During the pandemic, women workers, especially those working in textile and footwear factories, faced gender-based discrimination and labour rights violations. Seventeen women workers in Albania approached the Albania Women's Empowerment Network (AWEN) as they were unfairly and unjustifiably fired collectively, effective immediately, by a textile company in Tirana on 9 July 2020. In addition, they were not paid their June and July 2020 salaries. Nor had the company paid their obligatory social and health insurance contributions since they had begun employment in this company in September 2015, despite the fact that the company had told these employees that their social and health insurance were paid regularly.

"In many cases, the treatment of employees and the provision of normal working conditions have not been appropriate," a woman worker said. "Despite the unworthy treatment that this employer has done to us, the employees of his firm, we have endured every action or behavior that has been done towards us because we have not had other employment opportunities. We have worked regularly every day, so we have to get paid for the work we have done," she said.

AWEN provided the women with legal advice. "They received instructions and presented their case to the State Inspectorate of Labour and Health Services, to the Institution of the Commissioner for Protection against Discrimination and filed a Criminal Report with the Judicial District Prosecutor's Office in Tirana. A lawsuit was drafted and submitted at the District Court in Tirana," AWEN Director Ines Leskaj explained. AWEN worked together with its ten network members, including the Gender Alliance for Development Center (GADC) on this case, securing support from the law firm Agolli.

After the intervention of the State Inspectorate of Labour and Social Services, the women demanded, through the court, that the owner of the company pay their full salaries, as well as their health and social contributions. The case was transferred to the District Court of Tirana. Several hearings have been held. Despite the support that the women have received from the relevant institutions, unfortunately none of the state institutions summoned as third parties by the court took part in the session.

Based on its expertise, GADC has continued to follow the issue closely to ensure that the process proceeds properly. "Unfortunately, cases like this often occur in this sector," GADC Director Mirela Arqimandriti said. "So, the work and contribution that GADC gives is important because unfair, discriminatory treatment [and] violations of labor rights must be stopped. Through its work, GADC gives a voice to a category that needs to be protected and empowered."

Following several hearings, the court confirmed that the 17 women were discriminated against at work and were not treated properly for months. The next hearing was set for 3 May 2022 but had to be rescheduled as it was a national holiday. Lawyers continue to follow the case.

The law firm Agolli said that this is the first time that steps have been taken for state bodies to be held responsible in such a case. While women and men have filed collective lawsuits in Albania against oil companies before, represented by the Oil Workers' Unions, this was the first case in which women working in a textile factory filed a collective lawsuit. As such, this case sought to strategically set an example for other women working in similar conditions to come forward to claim their rights. The financial support for this strategic litigation case was provided through AWEN, GADC, KWN, and their partners in the Action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights", funded by the EU and co-financed by Sida, as well as from the Olof Palme International Centre.

In **BiH**, CSOs continued to undertake several activities related to gender-based discrimination, including providing legal aid, training for public institutions, training for women, training for educational institutions, conferences, roundtables, debates, and street actions towards awareness-raising. Since 2015, the Centre of Women's Rights Zenica (CŽP) has provided free legal aid, including for all persons suffering discrimination based on sex, gender, sexual orientation, ethnicity, disability, and race through the program "Equality for All: Civil Society Coalition against Discrimination". From 2015 to the end of 2017, through its specialised free legal aid service, CŽP provided at least 6,146 services to at least 3,113 women related to violations of their rights (not exclusively discrimination). Only 2.8% of these services (173 cases) involved discrimination against

women in the field of labour and employment, though a marked increase in such requests occurred in 2017. By 2021, CŽP had worked on 19 more cases that related to labour rights violations and gender-based discrimination. Services included counselling, preparation of written complaints, as well as legal aid through an online service. Legal aid was available to women and men throughout BiH.<sup>88</sup> Meanwhile, since 2018 more CSOs have become engaged in providing legal counselling and psychological support as a direct result of the Action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights", which strengthened the capacities of CSOs to provide legal aid.<sup>89</sup> From March to September 2020, legal counsellors in CSOs provided free legal assistance to 82 beneficiaries from 13 cities across BiH.<sup>90</sup>

Altogether, since 2018, seven organisations provided legal aid in at least 684 cases of gender-based discrimination in the WB through this Action. Approximately 17% of the cases related to gender-based discrimination, while 78% involved labour rights violations not explicitly involving gender-based discrimination and 5% were unidentified. From the cases involving gender-based discrimination, 97% of the applicants were women or groups of

“ In the last year, 2020, we had so many questions in regards to labour rights and violations of labour rights related to discrimination in the domain of work in betting houses. Most of them were coming from women. All betting houses were closed during the pandemic, and they lost their jobs. However, they had been working in betting houses for over 10 years and had indefinite contracts. They did not know they had the right to compensation.

- Activist, Centre of Women's Rights Zenica, BiH, 2021

“ We had a lot of questions considering that this year was very specific due to the Coronavirus pandemic. We enabled people to contact us via our online page. We had around 60 questions and the same number of answers. From the beginning of 2021, we had two cases of gender-based discrimination. One girl was not able to get a shift change because she was divorced and became a single parent, addressed as a children's provider; she has not yet received an answer and the appeal procedure is ongoing. In the meantime, several of her colleagues had shift changes, which is why this is an evident example of discrimination.

- Activist, Foundation United Women Banja Luka, BiH, 2021

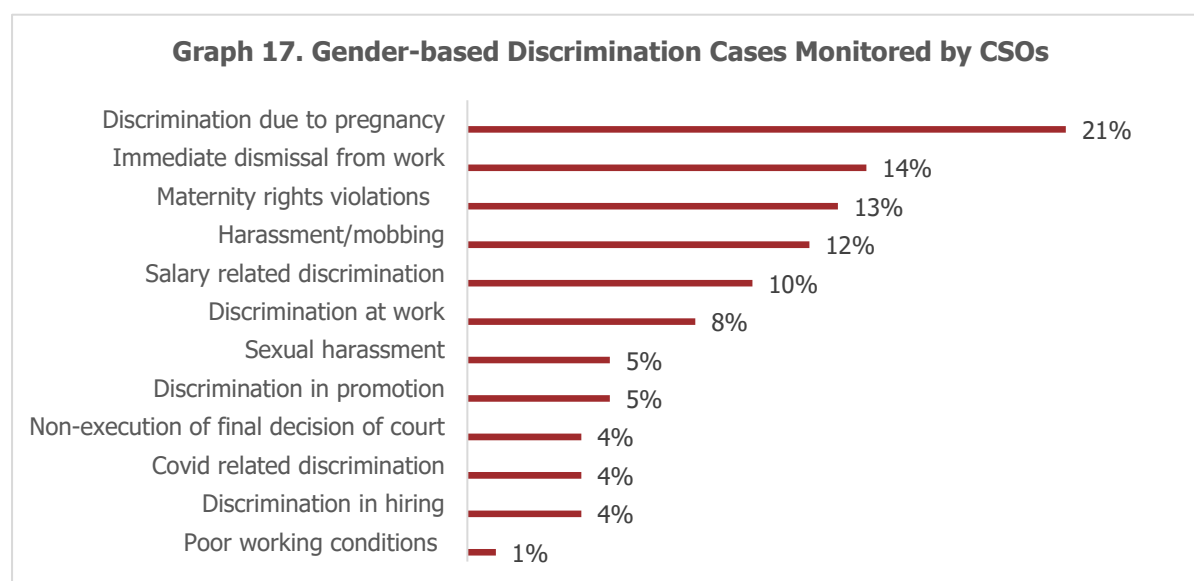
<sup>88</sup> Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, 2019, p. 72.

<sup>89</sup> Ramić Marković, *Gender-Based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, 2022.

<sup>90</sup> Gačanica, L., *Protection of workers women's rights in Bosnia and Herzegovina: Analysis of judgments and legal aid in areas of labour relations with a focus on gender-based discrimination*, 2021.



women, while only 3% were men. From the gender-based discrimination cases,<sup>91</sup> the three most common rights violations included discrimination based on pregnancy (21%), immediate dismissal from work (14%), and maternity rights violations (13%) (Graph 17).



#### Case Box 15. Trade Union of Media of Montenegro Provides Legal Aid

In 2020, a woman was dismissed from her high-profile position in a public institution. She initiated court proceedings on the grounds of protection against discrimination and mobbing. The plaintiff did not need any legal assistance, but she approached the Trade Union of Media of Montenegro (TUMM) for advice. As the court proceedings were ongoing, TUMM provided advice.<sup>92</sup>

Additionally, TUMM provided legal aid to a woman whose salary was reduced during her absence from her job because she sustained a work-related injury. Her employer also forced her to return to work even though she was still not able to. TUMM's legal aid professional provided legal assistance and counselling in preparation for meetings with the employer. The woman did not receive any answer from her employer. Thus, TUMM suggested to bring her case to competent institutions. Court proceedings were ongoing at the time of publishing their report.<sup>93</sup>

CSOs also continued to undertake advocacy to hold employers accountable for failing to protect women's rights. For example, in **NM**, CSOs reacted against private sector employers' discriminatory interpretation of collective agreement. After the CSOs' reaction, the Commission for Interpretation of the Collective Agreement for the private sector in the area of commerce decided that women who use maternity leave and are employed for six months by the same employer in the calendar year are entitled to compensation.

In all WB countries, CSOs recognised the impact that the COVID-19 pandemic has had on the labour market in their respective countries and how this has affected women in the labour market. In **BiH**, women who worked for over ten years with a continuous contract were let go in a sector affected by the pandemic. A CSO in **Serbia** published a report which

<sup>91</sup> N = 84.

<sup>92</sup> Zaric, D. & I. Mihajlovic for Trade Union of Media of Montenegro, *Equality Through Justice: Cases of Discrimination Against Women in Connection with Work*, 2021.

<sup>93</sup> Ibid.



illustrated how women were overrepresented in sectors that were affected by the pandemic the most, i.e., healthcare or supermarkets. CSOs in **NM** increased their support to people amid the pandemic and focused primarily on providing support to marginalised communities and/or vulnerable groups. After a state of emergency was declared, CSOs that provide free legal aid in NM registered more women that requested their services for labour right violations.

Meanwhile, in **Serbia**, CSOs continued to report facing several challenges, including lack of trust among individuals in the labour force,<sup>94</sup> lack of institutional data, and funding restrictions from donors which means few resources for providing support. Another challenge highlighted in Serbia was that very few CSOs have ongoing collaboration with governmental institutions. In 2021, Serbian CSOs continued to mention a lack of resources given donor priorities and the challenges that this posed to their sustainability. Limited resources were a recurring theme among CSO representatives, who noted that their ability to assist cases was limited by insufficient financial resources. In **Kosovo**, a CSO representative stated, "Every organisation that is dealing with this problem should have a lawyer that will provide free legal help. Psychological and social help is important, too, but can't solve the case".<sup>95</sup>

While the aforementioned Action provided much-needed resources to address such cases, CSOs still sought ways to continue and sustain their legal aid services. For some, like the Kosovo Law Institute (KLI), new knowledge and expertise were developed through the Action, which they have begun utilising as part of their continuing legal aid services, thereby providing sustainable services after the Action ended. KLI launched an online platform dedicated to victims of gender-based crimes.<sup>96</sup> Women who have suffered gender-based discrimination can report their case, and KLI offers free legal aid. The platform has enabled more women, including those in marginalised groups or rural areas to seek justice.

In all WB countries, free legal aid provided by CSOs has continued. In **Serbia**, the Victimology Society of Serbia has enhanced their organisational sustainability, published guidelines,<sup>97</sup> monitored COVID-19 restrictions closely, and become a leader for people, especially women, to contact regarding labour violations and gender-based discrimination, including related to the pandemic.

In conclusion, while CSOs, and particularly those working on gender equality and anti-discrimination, have the knowledge and capacities to support people in seeking justice for discrimination and/or in holding institutions accountable for their appropriate treatment of gender-based discrimination cases, people still hesitate to come forward to receive support, even despite several outreach campaigns that have encouraged them to do so. The special target groups that CSOs serve have not wanted to take their cases to institutions, and CSOs historically have not had sufficient financial and human resources to fully assist people who have suffered gender-based discrimination. CSOs' expertise and experience in treating such cases have increased since 2018. As of 2021, more CSOs were offering free legal aid and monitoring court cases than had done so in prior years. They sought continued support that would enable them to continue providing legal aid until institutions are more accountable for rights violations and since changing social norms and encouraging people to come forward is a process that takes time.

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<sup>94</sup> Mihailović, S., et al., *The activity of workers and Civil Society: Protecting and strengthening labour rights*, Centar za razvoj sindikalizma, Belgrade, Serbia, 2018, at: [http://sindikalizam.org/wpcontent/uploads/2019/03/Radna\\_prava\\_Istra%C5%BEiva%C4%8Dki\\_izve%C5%A1taj.pdf](http://sindikalizam.org/wpcontent/uploads/2019/03/Radna_prava_Istra%C5%BEiva%C4%8Dki_izve%C5%A1taj.pdf).

<sup>95</sup> Interview with woman, CSO representative, Kosovo, October 2018.

<sup>96</sup> Kosovo Law Institute, at: <https://kli-ks.org/>.

<sup>97</sup> Victimology Society of Serbia (VDS), *Guidelines for protection of women from gender-based discrimination and labour violations in labour and hiring*, at: [http://www.vds.rs/File/VodicKaoKnjiga\\_2020.pdf](http://www.vds.rs/File/VodicKaoKnjiga_2020.pdf).

## Chambers of Commerce

Chambers of commerce were interviewed in 2021 in Kosovo and Montenegro. In **Kosovo**, the mission of the chamber is to create a network for Kosovo-based companies, which connects them to foreign companies, establishing cooperation. The representative that agreed to an interview had information on the legal framework surrounding gender-based discrimination. The representative emphasised that they do not think it is necessary for them to have training on gender-based discrimination because throughout the COVID-19 pandemic there have been other problems that needed attention first. In **Montenegro**, the chamber has a Board for Women's Entrepreneurship that encourages women to participate more in the economy. Representatives were knowledgeable on the legal framework and mentioned that there is insufficient monitoring of discrimination in the labour market.<sup>98</sup> Chambers have never dealt with cases of discrimination in the labour force, despite the fact that opportunities could exist for them to work with their members, such as through codes of conduct and encouragement of policies within workplaces that would prevent and address gender-based discrimination.

## Conclusion

Even though the police officers interviewed in the region generally seemed knowledgeable about their responsibilities to investigate and treat gender-based discrimination, they had handled few cases. Their data management systems do not disaggregate data in such a way to determine if labour-related gender-based crimes have occurred. Similarly, prosecutors did not have data regarding gender-based discrimination cases treated. Courts also lacked judicial practice, which seemed to affect judges' knowledge regarding the relevant legal framework. Nor had Labour Inspectorate representatives treated gender-based discrimination cases. While OI representatives seemed very knowledgeable about the relevant legal framework, they too have had few cases due to insufficient public awareness about the role of the OI and weak data management practices. Given the overall lack of institutional experience treating cases of labour-related gender-based discrimination, it was difficult to assess their capacities in treating such cases.

Labour unions generally felt capable of addressing gender-based discrimination cases, but few cases or complaints seem to have reached unions. Also, citizens' minimal trust in unions likely has meant that few cases have been brought to unions, limiting their ability to support workers in addressing gender-based discrimination.

Some WB countries have additional institutions that could treat labour-related gender-based discrimination. In Albania and Serbia, where Commissioners on Protection from Discrimination exist, they have handled cases of discrimination, albeit few cases of gender-based discrimination, through Albania has some notable best practices. NM's newly formed CPPD is a professionalised body, but it has struggled to realise its legal competencies. Legal aid providers also seem not to have assisted in such cases.

The few changes observable since 2018 resulted largely from cases brought to court and other relevant institutions by CSOs, primarily funded through this EU and Sida-funded Action "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights". They encouraged women to come forward to report cases, informed people of their rights, and provided legal aid in realising those rights. They contributed to the establishment of more, albeit still limited, institutional experience in addressing such cases.

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<sup>98</sup> Komar, O., et al., *Gender-based Discrimination and Labour in Montenegro*, 2022.

# RECOMMENDATIONS

## For the European Union, including the European Commission

- Prioritise and require implementation of institutional reforms towards better addressing gender-based discrimination related to labour as a conditionality of the EU accession process.
- Encourage and ensure that all WB countries amend their legal frameworks in line with EU directives, including the EU Work-Life Balance Directive.
- Monitor reforms using a standardised approach across the countries, regularly including such monitoring as part of country reports related to human rights as well as employment.
- Include in political dialogues with WB countries and in country reports specific recommendations based on this report (and the reports from each country from which it has drawn) related to improving institutional performance in treating gender-based discrimination in labour.
- Consider recommending that WB countries strengthen their Ombudsperson and Commissioner for the Protection of Discrimination, including their mandates and abilities to enforce decisions.
- Continue meeting with women's rights organisations to gather their input in monitoring the progress of reforms related to gender-based discrimination and labour.
- Encourage contractors, particularly those engaged in furthering the capacities of police, prosecutors, judges, and OIs, among others, to cooperate closely with women's rights organisations and CSOs, which have expertise in gender-based discrimination and can support the planning and implementation of activities.
- Continue supporting women's rights organisations engaged in raising awareness among diverse citizens and institutions regarding gender-based discrimination and labour, advising women who have suffered such discrimination, providing legal aid, and monitoring institutions to hold them accountable to providing better services to persons who have suffered gender-based discrimination.

## For WB Countries' Legal Frameworks

- Adopt the ILO Violence and Harassment Convention (No. 190, 2019).
- Ensure harmonisation with the EU **Work-Life Balance Directive**. In particular:
  - Provide paid **parental leave** as an individual right of both parents for at least four months. Ensure that at least two months are non-transferable.
  - Provide at least 10 days paid **paternity leave**.
  - Provide at least five days **carers' leave** (Kosovo, NM, Montenegro).
- Amend existing legal frameworks pertaining to discrimination to **reduce fragmentation** and ensure that the proper level of protection (both substantively and procedurally) is clearly applicable to labour and non-labour contexts.
- Focus efforts on strengthening **implementation** of the legal frameworks through measures such as specialised anti-discrimination training for key actors; improving data collection procedures; ongoing education and directing public awareness on equal treatment; and improving human and financial capacities to monitor the implementation.
- Clarify and expand provisions related to **victimisation** consistent with EU Equal Treatment Directives (BiH, Montenegro, Serbia).
- Amend the anti-discrimination framework to protect **self-employed persons** as required by the Self-employment Directive (Kosovo, NM, Montenegro).
- Improve provisions related to the sharing of the **burden of proof** in discrimination cases (Albania, BiH, Serbia).

- Encourage reforms to increase **financial sanctions** to a level that reflects the severity of discrimination. Encourage the development and use of sanctions that go beyond fines, and which may be more useful for someone who has suffered discrimination.

### **For 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 regular training for police, ensure inclusion of information on the legal framework pertaining to gender-based discrimination and labour, particularly sexual harassment. Report on and make public the frequency and outcomes of training.
- Ensure that a system of support and referral to appropriate institutions exists for persons who report gender-based discrimination.
- Participate in awareness campaigns to strengthen public trust and confidence in police protection.

### **For Prosecutors**

- 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 gender-based discrimination. Ensure the level of protection provided by the legal framework and the functioning of procedural protections are clearly understood and correctly applied. Report on and make public the frequency and outcomes of training.
- 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.
- Promote successful instances of protection from gender-based discrimination to increase public confidence in institutions that provide protection from discrimination. Coordinate with other institutions involved in the system of protection.
- Participate in awareness campaigns related to gender-based discrimination to strengthen public trust and confidence in protection mechanisms.

### **For Courts**

- Improve data collection and management by ensuring that all electronically managed data is disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).
- Ensure all judges undergo training on gender equality, gender-based discrimination, sexual harassment and understanding shared burden of proof, as relevant to the country. Ensure the level of protection provided by the legal framework and the functioning of procedural protections are clearly understood and correctly applied. Report on and make public the frequency and outcomes of training.
- Consider designating specialised judges well-trained in gender-based crimes, including gender norms, intersecting grounds of discrimination, power relations, and putting an end to ongoing practices of "blaming the victim".
- Reduce legal representation fees and court taxes for marginalised and vulnerable claimants.
- Where possible, process gender-based discrimination cases, establishing a body of experience, precedent and/or case law, as relevant to the country. Publish rulings and relevant case-law.

- Ensure urgent and efficient processing of cases, as well as effective protection and remedies.

### **For Labour Inspectorates**

- 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, position of the perpetrator, sector of work, and relevant laws breached, by article.
- Increase the number of inspectors and financial resources to carry out their duties, especially related to gender-based discrimination and labour. Ensure a gender balance among inspectors by using affirmative measures to recruit and hire more women inspectors.
- Institutionalise regular training for all inspectors on gender equality in general, as well as on forms of gender-based discrimination at work specifically. Report on and make public the frequency and outcomes of training.
- Oversight ministries: ensure mechanisms for compliance with the rules and regulations for inspectors regarding their competencies. There should be zero-tolerance toward corruption and illegal practices undertaken by inspectors who favour employers and violate workers' rights. They should immediately be sanctioned.
- Increase the number of inspections in the private sector, especially in the sectors identified as most problematic related to gender-based discrimination.
- Improve cooperation and coordination with other institutions to ensure a multi-agency approach to tackling this type of discrimination.

### **For State Legal Aid Providers**

- Provide free legal aid to vulnerable persons, defined by specific criteria, but potentially waiving restrictive criteria such as property ownership or employment, which can prevent otherwise vulnerable women from accessing needed assistance.

### **For Ombudsperson Institutions**

- Maintain better gender-disaggregated data, marking whether cases involved gender-based discrimination at work and prohibited grounds, facilitating future monitoring and reporting.
- 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 who have suffered discrimination.
- Monitor cases of discrimination before courts.
- Engage in training on gender-based discrimination for other institutions, particularly the Labour Inspectorate.
- 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, available free protection instruments, legal aid, and support the OI can provide.
- Promote successful examples of protection against gender-based discrimination at work to increase confidence in institutions and stimulate reporting.

### **For Anti-Discrimination Commissioners**

- Ensure better data collection and publication (except Serbia).

- Organise awareness campaigns on gender-based discrimination related to workers' rights, redress mechanisms, and the work of the Commissioner.
- Cooperate with labour unions, CSOs, and the Labour Inspectorate in identifying and following gender-based discrimination cases.
- Increase the reach of commissioners in each country, especially in rural areas.

### **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, the body to whom the complaint is addressed, and legal aid provided to better monitor violations. Log multiple discrimination based on protected grounds, such as gender and age, ability, ethnicity, and sexuality.
- Ensure policies against gender-based discrimination and equal opportunities are in place and implemented.
- Provide training for all union representatives regarding the relevant legal framework pertaining to gender-based discrimination at work.
- Collaborate with relevant institutions and CSOs to organise outreach campaigns that inform workers about the legal framework pertaining to gender-based discrimination and labour. Collaborate with experienced women's rights organisations for more effective outreach 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 target more women to become active union members; collaborate with women's rights organisations to plan effective outreach.
- Provide educational materials for workers that explain what gender-based discrimination in employment is, how it is manifested, what protection mechanisms exist, and contact addresses of competent institutions providing advice.
- Provide legal aid for people who are considering reporting labour-related gender-based discrimination in an approachable and sensitive manner.
- Monitor the work of the Labour Inspectorate to verify if gender-based discrimination at work is being addressed correctly.

### **For Civil Society Organisations**

- Continue collaboration among the existing, diverse network of CSOs involved in anti-discrimination efforts, strategizing based on this research and lessons learned, as well as prioritising advocacy and awareness-raising efforts towards addressing gender-based discrimination in labour; coordinate efforts towards efficiency, effectiveness, and wise use of limited resources.
- Continue collaborating with other actors to organise awareness campaigns to increase women's and men's knowledge about gender-based discrimination in labour, as well as relevant institutions and procedures for seeking recourse for rights violations.
- Continue outreach to minority ethnic groups, LGBTQI+ persons, and PWD with information about their rights; support them in reporting and seeking justice for gender-based and multiple discrimination.
- In addition to legal aid, provide psychological counselling to persons exposed to gender-based discrimination, especially mobbing and sexual harassment.
- Continue contributing to the establishment of judicial experience and/or case law, as relevant to the country, related to gender-based discrimination at work by providing legal aid and strategic litigation.

- Regularly monitor the work of institutions responsible for addressing cases of labour-related gender-based discrimination to ensure that their duties are performed in an efficient and fair manner. Document experiences and use them to inform advocacy for improved response.
- File more official complaints with relevant institutions when they fail to implement their legal responsibilities.
- Consider researching, documenting, and bringing cases on behalf of groups of persons who have suffered discrimination ("class action suits") in countries where this is possible.
- Collaborate to raise awareness among funders regarding the important role of women's rights organisations in addressing labour-related gender-based discrimination, including the importance of linking confidential legal aid with psychological counselling in sensitive cases, and holding institutions accountable through the provision of legal aid, towards securing sufficient resources for this work.

### **For Chambers of Commerce**

- Organise training on gender-based discrimination at work for Chamber members, including the various forms of gender-based discrimination and how they can introduce policies and mechanisms that offer protection against such discrimination in their workplaces.

### **Collaboration among Actors**

- Continue to organise joint information campaigns to help persons who have experienced labour-related gender-based discrimination to understand the presently complex and unclear legal frameworks. Improve awareness about and application of available sanctions, redress, and reparations.
- Particularly among ministries: Increase budgetary allocations towards implementing legislation on gender-based discrimination related to labour, including resourcing for appropriate capacity building of responsible institutions and sufficient staff for implementing the legal framework.
- Collaborate with chambers of commerce and employers' associations to organise training and information campaigns targeting employers regarding employees' rights related to gender-based discrimination in all its forms. Support employers to incorporate principles of non-discrimination into the rules of procedure, policy manuals, and other internal acts, as well as to establish and promote clear procedures for reporting cases of discrimination. Encourage and/or require employers to post in workplaces information about what constitutes gender-based discrimination and how to report it.
- Post and circulate information in public areas about gender-based discrimination and workers' rights under the legal framework, towards ensuring that workers have access to information about their rights.
- Collaborate to transform gender norms, relations, and stereotypes that contribute to gender-based discrimination as an underlying factor, including through institutionalizing curricula that undo traditional gender roles and stereotypes; undertaking joint awareness-raising efforts; and engaging media in transforming gender norms and stereotypes, as foreseen in the EU Gender Action Plan III.



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# ANNEXES

## Annex 1. Methodology

This annex provides further details about the research methodology.<sup>1</sup> In order to address the research questions outlined in the introduction, the research involved mixed methods: 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 of, and experiences with gender-based discrimination in labour; and an anonymous online survey of women and men. This section provides further details about the methodology.

### 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" 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 legislation with the EU acquis (particularly the "gender equality acquis"). It also sought to identify the relevant institutions, their roles, and responsibilities. It involved examination of international laws, treaties, conventions, constitutions, 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? This second edition also examined relevant changes in the legal framework since 2018.

### Literature Review

The literature review examined any existing data on gender-based discrimination that was available, towards grounding the report in existing information and avoiding duplication of existing research. It included examination of the research methods used and timeframes of prior research conducted. Findings relevant to this research were incorporated and mentioned within this report.

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<sup>1</sup> This and the other annexes are taken directly from KWN, *Gender-based Discrimination and Labour in Kosovo*, but adapted slightly according to the regional research.

## Data Collection

The research team sought to collect data related to discrimination cases at work for the period of 2008 to 2020, disaggregated by gender, from all relevant institutions: police, prosecution, courts, OIs, Labour Inspectorates, labour unions, and legal aid providers, among others specific to each country. This involved sending official data requests to these institutions and following up for responses. As noted within the report, institutions kept very little if any data related to the research questions.

## 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. For the second edition of this research, the survey was slightly modified to remove questions identified as problematic during the first survey, as well as to add questions pertaining to the COVID-19 pandemic. Annex 3 includes the original and revised survey instrument. The partners collaborated to create and check the online survey in local languages (Albanian, Bosnian, Macedonian, Montenegrin, Serbian, and English). Reactor – Research in Action (North Macedonia) created and administered it using Lime Survey. The survey was promoted broadly, including through media, social media, by public institutions, and via email. It was open from 29 October 2018 through 10 January 2019 for the first survey and from 26 March through 17 June 2021 for the second survey. For demographic information about respondents, see Annex 2.

## Interviews

In total, partners conducted 323 interviews with institutions responsible for implementing the relevant legal framework in 2018 and 301 in 2021, regarding their knowledge, attitudes, and experiences in treating gender-based discrimination cases to date. This included police officers, prosecutors, civil court judges, criminal court judges, labour inspectors, legal aid providers and OI representatives (see Table 12). CSO respondents included organisations representing the interests of persons who were hypothesised to potentially face multiple forms of discrimination, such as PWD, LGBTQIA+ persons and minority ethnic groups. The team used variation sampling to select a diverse range of interview respondents of different genders, ethnicities, and geographic locations. Additional details are available upon request.

**Table 12. Number of Respondents by Institution and Country**

Respondent	Albania		BiH		Kosovo		Montenegro		NM		Serbia		Total	
Year	2018	2021	2018	2021	2018	2021	2018	2021	2018	2021	2018	2021	2018	2021
Police	14	13	0	0	32	25	3	4	0	0	0	0	49	43
Prosecutors	2	6	0	0	13	7	3	4	2	0	0	0	20	17
Criminal court judges	5	4	0	1	13	9	0	4 <sup>2</sup>	0	0	0	0	18	16
Civil court judges	0	2	2	4	13	8	10	10	2	2	0	11	27	37
Labour inspectors	5	6	2	1	7	7	2	2	1	2	0	0	17	18
Ombudsperson Institution	2	5	1	2	7	4	1	0	1	1	0	0	12	12
Labour unions	7	4	5	5	3	3	3	2	2	0	1	2	21	15
CSOs	10	17	14	11	14	11	6	6	3	3	11	4	58	52

<sup>2</sup> This refers to higher courts and not to criminal courts.

<b>Table 12. Number of Respondents by Institution and Country</b>														
<b>Respondent</b>	<b>Albania</b>		<b>BiH</b>		<b>Kosovo</b>		<b>Montenegro</b>		<b>NM</b>		<b>Serbia</b>		<b>Total</b>	
Governmental institutions	2	7	0	4	0	10	8	0	0	0	3		13	18
Lawyers and legal aid providers	2	2	3	3	0	3	6	0	0	0	4		15	7
CPD	3	4	0	0	0	-	0	0	1	1	0	1	4	6
Other institutions	0	5	9	3	0	-	0	0	3	0	0	2	12	10
Business representatives/ Chamber of Commerce		6	0	0		1		1		1	0	4		13
Persons who experienced gender-based discrimination	13	8	15	16	6	0	15	0	1	0	7	7	57	31
<b>Total</b>	65	89	51	50	108	88	57	33	16	10	26	31	323	301

Despite efforts, researchers struggled to identify men, PWD, LGBTQI+ persons, or persons from minority ethnic groups who had experienced gender-based discrimination who were willing to be interviewed. 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 research team coded 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 other research team members. Towards maximising the use 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. 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 or 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 WB countries. Sample selection bias existed as only people who had internet access and viewed the opportunity to participate in the survey were included, whereas a subset of the population without this access was systematically excluded, biasing the estimates of parameters of the logit regression. Therefore, the percentages reported do not reflect the prevalence of the phenomena among the general population; 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 survey, more women than men respondents 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). The sample was rather homogeneous 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 having 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.

In **Serbia**, a key challenge was an extremely low response rate from institutions, and the Labour Inspectorates did not respond at all. The researchers faced major barriers in interviewing institutional representatives. Interview requests were ignored, phone calls were either ignored or redirected, and emails were unanswered. Even so, by drawing from different sources, researchers hypothesise that there was enough qualitative and quantitative data to answer the research questions and provide recommendations, despite the missing institutional voices.

## **Reflexivity**

The research team members envision a more gender equal society. Thus, the team conducted research and analysed results from the position of CSOs that seek to further gender equality. This means that the team in a few, rare instances chose not to reflect some perspectives that arose from interview respondents. For example, some respondents believed that laws should be in line with the “reality”, meaning current social norms, rather than progressively seeking to further social, cultural, and economic changes towards gender equality. In contrast, the team and this report have taken the perspective that progressive laws are necessary, albeit insufficient, for contributing to social change, namely gender equality. Recommendations reflect this perspective, towards improving the legal framework for addressing gender-based discrimination. The team acknowledges that education, awareness-raising, and penalties must accompany these legal changes for them to be

implemented properly. Recommendations reflect this particular position and approach to social change.

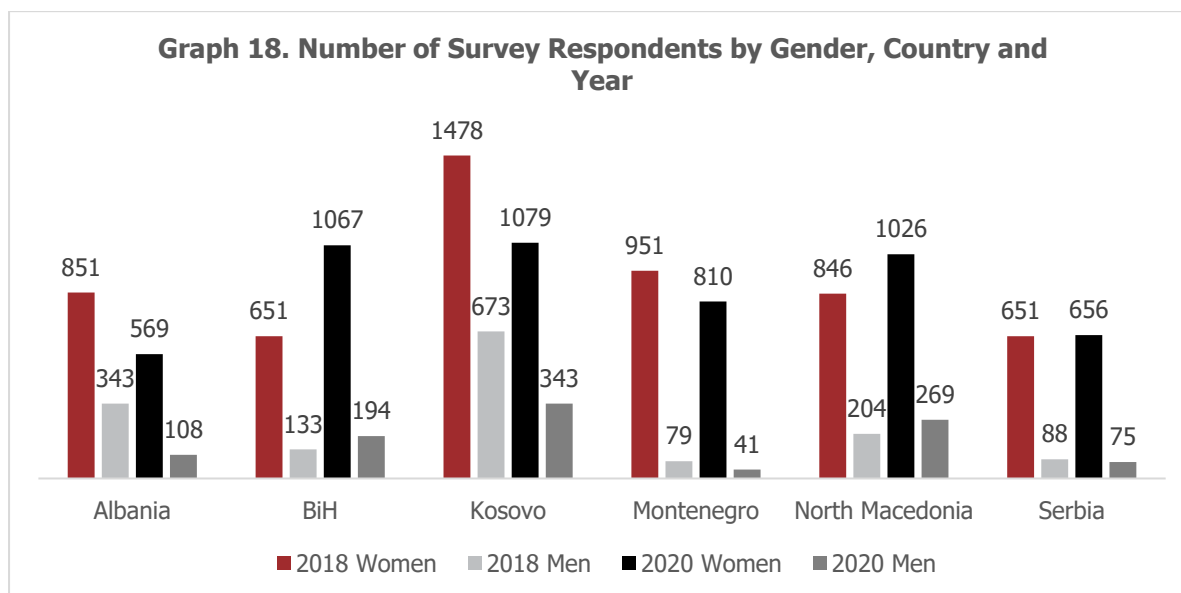
Also pertaining to reflexivity, the research team was instructed to take note of how their presence and approach during interviews may have influenced the research findings and to estimate any potential error. In some instances, the fact that the researchers were young women may have meant that some 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 stakeholders also were designed 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

Graph 18 illustrates the total number of online survey respondents by country, gender, and year.



All other demographic information in this Annex refers to respondents who completed at least 90% of the online survey, unless otherwise noted. Clearly, women were overrepresented among the survey respondents in all countries, both in 2018 and 2021. The high imbalance in terms of gender, constrained the possibility to compare women's and men's survey responses.

**Table 13. Percentage of Survey Respondents Who Completed 90% of the Survey**

	2018		2021	
	Women	Men	Women	Men
Albania	69%	31%	84%	16%
BiH	81%	19%	85%	15%
Kosovo	67%	33%	75%	25%
Montenegro	91%	9%	94%	6%
NM	83%	17%	79%	21%
Serbia	89%	11%	90%	10%

**Table 14. N for Survey Respondents Who Completed 90% of the Survey**

	2018		2021	
	Women	Men	Women	Men
Albania	649	293	314	66
BiH	445	102	574	109
Kosovo	859	420	511	170
Montenegro	572	57	410	25
NM	524	107	627	164
Serbia	482	59	438	46
Total	3531	1038	2874	580

In 2018, in **Kosovo**, **BiH**, and **NM**, the highest percentage of respondents were ages 30 to 39. In **Albania**, the highest percentage of respondents were ages 18 to 29, in **Serbia** 40 to 49, and in **Montenegro** 30 to 39 for women respondents and 18 to 29 for men respondents. In 2021, in **Albania**, **Kosovo**, **Montenegro**, and **NM**, the highest percentage of respondents were ages 30 to 39, whereas in **BiH** the highest percentage was 50-59, and in **Serbia**, 40-49 for women and 30-39 for men.

**Table 15. Age of Respondents by Gender**

2018												
	Albania		BiH		Kosovo		Montenegro		NM		Serbia	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
18-29	38%	23%	15%	18%	30%	17%	29%	38%	36%	28%	25%	27%
30-39	26%	20%	42%	37%	34%	33%	36%	29%	38%	48%	31%	31%
40-49	17%	10%	27%	22%	21%	23%	25%	27%	17%	15%	32%	34%
50-59	9%	19%	14%	20%	13%	21%	8%	5%	6%	7%	10%	7%
60-69	6%	15%	2%	3%	3%	7%	2%	2%	1%	1%	1%	2%
2021												
	Albania		BiH		Kosovo		Montenegro		NM		Serbia	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
18-29	20%	20%	12%	11%	22%	15%	17%	25%	19%	17%	25%	27%
30-39	40%	35%	35%	28%	31%	32%	40%	38%	38%	31%	31%	35%
40-49	25%	30%	35%	28%	25%	22%	31%	25%	28%	27%	33%	31%
50-59	14%	11%	38%	42%	17%	24%	11%	13%	12%	20%	11%	7%
60-69	1%	5%	14%	16%	4%	7%	2%	0%	3%	6%	0%	0%

**Table 16. N for Survey Respondents Who Completed 90% of the Survey by Age**

2018												
	Albania		BiH		Kosovo		Montenegro		NM		Serbia	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
18-29	245	66	68	18	248	68	163	21	184	29	122	16
30-39	171	57	187	38	285	137	198	16	195	50	147	18
40-49	107	28	118	22	172	94	139	15	89	16	156	20
50-59	59	54	62	20	106	85	43	3	33	7	50	4
60-69	61	78	10	4	26	28	12	1	10	2	6	1
2021												
	Albania		BiH		Kosovo		Montenegro		NM		Serbia	
	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men
18-29	63	13	67	12	109	25	68	6	117	27	42	7
30-39	123	23	201	30	154	54	159	9	233	50	133	10
40-49	78	20	216	45	125	37	124	6	169	44	168	14
50-59	43	7	77	17	87	40	43	3	75	32	70	9
60-69	3	3	5	3	25	13	7	0	20	9	21	4

Table 17 shows the percentage of respondents that live in urban areas by country and gender. Most respondents in 2018 and 2021 resided in urban areas.

**Table 17. Percentage of Survey Respondents from Urban Locations**

2018				2021	
	Women		Men	Women	Men
Albania	100%		100%	91%	76%
BiH	96%		96%	87%	84%
Kosovo	99%		97%	85%	71%
Montenegro	100%		100%	94%	96%
NM	95%		93%	92%	85%
Serbia	98%		92%	89%	89%

**Table 18. N for Respondents from Urban Areas Who Completed 90% of the Survey**

2018				2021	
	Women		Men	Women	Men
Albania	642		290	286	50
BiH	426		96	500	91
Kosovo	840		399	435	121
Montenegro	549		54	387	24
NM	496		32	579	140
Serbia	458		55	391	41

Tables 19 and 20 show the level of education of respondents by gender and country. Overall, in 2018, approximately 74% of respondents had completed university (BA, MA, PhD) and 23% had a secondary or vocational education. In 2018, the mode category for BiH, Montenegro, and NM was a Bachelors' degree, whereas for Kosovo it was a MA and/or PhD, and for Serbia it was secondary, vocational, or lower. For Albania, most women participants had a MA and/or PhD, while among men the mode category was secondary, vocational, or lower education. In 2021, MA and/or PhD was the mode category for Albania, Kosovo, and Serbia, whereas for NM it was BA and for BiH it was secondary, vocational, or lower. In Montenegro, most women had a BA whereas men had secondary, vocational, or lower. It is evident that both the Albanian and Serbian sample of men in 2021 was more educated compared to the respective sample from 2018.

<b>Table 19. Educational Levels among Respondents in 2018 and 2021</b>						
<b>2018</b>						
	<b>Secondary, Vocational or Lower</b>		<b>BA</b>		<b>MA and/or PhD</b>	
	Women	Men	Women	Men	Women	Men
Albania	20%	60%	27%	19%	54%	21%
BiH	24%	37%	41%	43%	35%	21%
Kosovo	13%	12%	43%	40%	44%	48%
Montenegro	25%	25%	51%	42%	24%	33%
NM	35%	41%	49%	38%	16%	21%
Serbia	36%	58%	27%	23%	36%	17%
<b>2021</b>						
	<b>Secondary, Vocational or Lower</b>		<b>BA</b>		<b>MA and/or PhD</b>	
	Women	Men	Women	Men	Women	Men
Albania	4%	26%	15%	17%	81%	58%
BiH	39%	53%	31%	22%	30%	25%
Kosovo	13%	15%	43%	31%	44%	54%
Montenegro	31%	40%	43%	28%	26%	28%
NM	29%	43%	48%	37%	26%	24%
Serbia	13%	12%	43%	40%	44%	48%

**Table 20. N for Respondents Who Completed 90% of the Survey by Education Level**

<b>2018</b>						
	<b>Secondary, Vocational or Lower</b>		<b>BA</b>		<b>MA and/or PhD</b>	
	Women	Men	Women	Men	Women	Men
Albania	119	75	118	42	348	62
BiH	107	37	160	31	53	14
Kosovo	110	49	366	167	379	203
Montenegro	144	14	287	24	136	19
NM	180	43	252	40	84	22
Serbia	180	36	128	14	180	36
<b>2021</b>						
	<b>Secondary, Vocational or lower</b>		<b>BA</b>		<b>MA and/or PhD</b>	
	Women	Men	Women	Men	Women	Men
Albania	11	16	47	11	253	38
BiH	222	58	180	24	171	27
Kosovo	67	25	218	53	222	92
Montenegro	127	10	175	7	106	7
NM	152	48	308	88	167	28
Serbia	187	21	116	8	135	17

### Employment Information

Tables 21 and 22 illustrate whether survey respondents were employed by gender and country. In 2018, in all countries except Albania, more than 80% of the survey participants were employed. In 2021, in all countries more than 80% were employed.

**Table 21. Employment Status of Survey Participants**

	<b>2018</b>				<b>2021</b>			
	<b>Employed</b>		<b>Not employed</b>		<b>Employed</b>		<b>Not employed</b>	
	Women	Men	Women	Men	Women	Men	Women	Men
Albania	62%	61%	38%	39%	91%	88%	9%	13%
BiH	86%	93%	14%	7%	84%	86%	16%	14%
Kosovo	82%	95%	18%	5%	91%	88%	9%	13%
Montenegro	81%	86%	19%	14%	88%	96%	12%	4%
NM	80%	76%	20%	24%	88%	91%	12%	9%
Serbia	80%	82%	20%	18%	89%	83%	11%	17%

**Table 22. N for Respondents Who Completed 90% of the Survey by Employment Status**

	<b>2018</b>				<b>2021</b>			
	<b>Employed</b>		<b>Not employed</b>		<b>Employed</b>		<b>Not employed</b>	
	Women	Men	Women	Men	Women	Men	Women	Men
Albania	402	177	243	115	282	56	29	8
BiH	373	94	61	7	473	92	85	14
Kosovo	696	400	152	19	438	161	66	8
Montenegro	446	48	106	8	354	24	47	1
NM	393	81	100	25	540	149	77	14
Serbia	373	46	94	10	376	38	48	8

In terms of the positions of employed respondents, the sample of Albania in 2021 differs substantially from that of 2018, with the percentage of those in entry level positions significantly smaller in the 2021. Similar changes existed but were less pronounced in the sample for NM.

<b>Table 23. Positions of Survey Respondents</b>						
	<b>2018</b>					
	<b>Entry level</b>		<b>Mid-level</b>		<b>Senior-level</b>	
	Women	Men	Women	Men	Women	Men
Albania	41%	52%	41%	37%	17%	11%
BiH	39%	46%	46%	37%	15%	17%
Kosovo	32%	19%	44%	38%	24%	44%
Montenegro	43%	28%	36%	40%	20%	33%
NM	57%	56%	36%	28%	7%	15%
Serbia	44%	32%	37%	53%	13%	11%
	<b>2021</b>					
	<b>Entry level</b>		<b>Mid-level</b>		<b>Senior-level</b>	
	Women	Men	Women	Men	Women	Men
Albania	11%	23%	59%	50%	28%	23%
BiH	46%	44%	40%	41%	13%	14%
Kosovo	32%	18%	35%	37%	30%	44%
Montenegro	34%	33%	45%	54%	18%	13%
NM	42%	42%	38%	37%	17%	15%
Serbia	46%	34%	36%	50%	16%	11%

<b>Table 24. N for Employed Respondents Who Completed 90% of the Survey by Position</b>						
	<b>2018</b>					
	<b>Entry level</b>		<b>Mid-level</b>		<b>Senior-level</b>	
	Women	Men	Women	Men	Women	Men
Albania	151	67	151	48	63	14
BiH	137	39	160	31	53	14
Kosovo	210	71	283	142	156	165
Montenegro	170	11	143	16	79	13
NM	213	44	132	22	26	12
Serbia	160	16	135	21	41	5
	<b>2021</b>					
	<b>Entry level</b>		<b>Mid-level</b>		<b>Senior-level</b>	
	Women	Men	Women	Men	Women	Men
Albania	29	13	151	28	72	13
BiH	212	39	184	36	58	12
Kosovo	131	27	147	56	124	68
Montenegro	113	8	148	13	61	3
NM	221	60	196	53	90	21
Serbia	165	13	128	19	57	4

Both in 2018 and 2021 nearly half of the employed participants worked in the public sector, whereas more than a third worked in the private sector. Both in 2018 and 2021 **Kosovo** had a higher percentage of public sector employees responding to the survey than other countries did. The percentage of participants employed in the private sector in the Albanian sample decreased between 2018 and 2021. In NM, the percentage of men participants employed in the public sector increased in 2021, whereas the percentage of those employed in civil society or other sectors decreased.



**Table 25. Sector in which Survey Respondents Were Employed**

	<b>2018</b>					
	<b>Public Sector</b>		<b>Private Sector</b>		<b>Civil Society or Other</b>	
	Women	Men	Women	Men	Women	Men
Albania	43%	37%	42%	60%	15%	2%
BiH	39%	45%	28%	28%	14%	16%
Kosovo	65%	80%	19%	12%	16%	8%
Montenegro	49%	38%	41%	51%	10%	11%
NM	36%	34%	49%	46%	15%	20%
Serbia	47%	38%	37%	49%	16%	13%
	<b>2021</b>					
	<b>Public Sector</b>		<b>Private Sector</b>		<b>Civil Society or Other</b>	
	Women	Men	Women	Men	Women	Men
Albania	54%	49%	24%	44%	22%	7%
BiH	40%	38%	30%	37%	7%	6%
Kosovo	60%	75%	18%	17%	22%	8%
Montenegro	48%	43%	45%	43%	8%	14%
NM	47%	52%	43%	44%	9%	3%
Serbia	45%	43%	42%	47%	12%	8%

**Table 26. N for Employed Respondents Who Completed 90% of the Survey by Sector of Employment**

	<b>2018</b>					
	<b>Public Sector</b>		<b>Private Sector</b>		<b>Civil Society or Other</b>	
	Women	Men	Women	Men	Women	Men
Albania	168	64	163	103	59	4
BiH	175	46	153	44	63	16
Kosovo	436	314	130	46	104	31
Montenegro	206	18	174	24	42	5
NM	131	26	181	35	55	15
Serbia	168	17	133	22	58	6
	<b>2021</b>					
	<b>Public Sector</b>		<b>Private Sector</b>		<b>Civil Society or Other</b>	
	Women	Men	Women	Men	Women	Men
Albania	222	35	100	31	88	5
BiH	228	42	171	40	46	6
Kosovo	251	117	76	27	91	13
Montenegro	161	9	150	9	25	3
NM	212	55	231	71	82	17
Serbia	159	16	149	18	44	3

## 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: [...]. 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's 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?**

Yes  
No

## **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)
- 1-7 days
- 8-15 days
- 16-30 days
- 30+ days
- Not applicable to me

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

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

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

- Yes
- No

**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?**

Yes  
No

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

Yes  
No

**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  
Partially paid medical leave  
Unpaid medical leave  
Annual vacation days  
Other (please write)  
I don't know

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

Yes, always  
Yes, sometimes  
No  
Not applicable as I was not working

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

Yes  
No

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

Yes  
No

**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)?**

Yes

No

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

Yes

No

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

Three months or less

4-6 months

7-12 months

More than 1 year, but less than 3 years

4 or more years

Indefinite

I have never had a written contract

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

Women

Men

It's the same for both

Not applicable (only men or only women work here)

I don't know

**Since 2008/2018, 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?**

Yes

No

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

1-20

21-40

41-60

More than 61

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

Less than or equal to 129

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?**

Yes

No

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

I don't receive anything extra (beyond my regular monthly wage)

I'm paid for the extra time worked at the same rate as my usual wage

I'm paid for the extra time worked with a higher rate than my usual wage

I receive time off

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

No

I don't know



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

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

## **HIRING**

**How many times have you been in a job interview since 2018?**

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

**Since 2008/2018, in a job interview have you ever been asked questions concerning:**

	Yes	No
<b>Your marital status or marriage plans</b>		
<b>Your plans to get married</b>		
<b>The number of children you had at the time/If you have or plan to have children</b>		
<b>Your future plans to have children</b>		
<b>Medical proof that you are not pregnant</b>		
<b>Your sexual orientation and/or gender identity</b>		
<b>Something else not related to your skills, education or work experience that felt inappropriate (if yes, please elaborate):</b>		

**Since 2008/2018, in your opinion, have you ever not gotten a job that you applied for because:**

	Yes	No
<b>You are a woman</b>		
<b>You were pregnant</b>		
<b>You have children or are planning to</b>		
<b>You shared that you are planning to have children</b>		
<b>Your ethnicity</b>		
<b>Your age</b>		
<b>Your appearance</b>		
<b>Your political preference</b>		
<b>Your place of residence (for example, rural)</b>		
<b>Your sexual orientation and/or gender identity</b>		
<b>Other criteria not related to skills, education, or experience</b>		

	Yes	No
<b>You are a man</b>		
<b>You are expecting a baby</b>		
<b>You have children</b>		
<b>You shared that you are planning to have children</b>		
<b>Your age</b>		
<b>Your appearance</b>		
<b>Your political preference</b>		
<b>Your place of residence (for example, rural)</b>		

<b>Your sexual orientation and/or gender identity</b>		
<b>Other criteria not related to skills, education, or experience</b>		

## PROMOTION

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

Yes, all employees have an equal opportunity

No, some employees are treated differently than others

Both - It differs depending on the employer I have had

Don't know

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

Your 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?**

Yes

No

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

Yes

No

**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 newborn 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?**

Yes

No

**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

Police

Courts

Prosecution

Ombudsman

CSO that provides legal help

Lawyer

Other (please write)

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

They would not hear my case

They listened, but said they could not do anything

They listened and tried to assist me

They were very helpful and helped me file the case

Other (please write)

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

Yes

No

## **FOLLOW-UP**

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

Yes

No

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

Phone:

Email:

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

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

## Annex 4. Sample Interview Guide

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

21. 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

22. 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?
- What about maternity leave provisions?
  - 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?
  - 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?
  - What about equal pay for women and men?
23. To what extent do you think that the Anti-Discrimination Law is being implemented in the labour market?
24. To what extent do you think that the Law on Gender Equality is being implemented in the labour market?
25. 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:

26. 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?
27. 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:]

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

### Gender-based discrimination cases reported

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

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



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