



Funded by the European Union

Co-funded by Swedish Development Cooperation  Sweden Sverige

GENDER-BASED DISCRIMINATION AND LABOUR IN THE WESTERN BALKANS



Implemented by:



Gender Alliance for Development Center
Qendra Aleanca Gjinore për Zhvillim



KVINNA KVINNA

REACH-OR
research in action



WOMEN'S RIGHTS CENTER
CENTAR ZA ŽENSKA PRAVA

GENDER-BASED DISCRIMINATION AND LABOUR IN THE WESTERN BALKANS

2019

© Kosovo Women's Network, 2019

All rights reserved. Licensed to the European Union under conditions.

Authors: Nicole Farnsworth, David JJ Ryan, Adelina Tërshani, Nerina Guri

This publication was produced with the financial support of the European Union and co-funded by Swedish Development Cooperation. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union or the Government of Sweden.

Printed by Night Design in Pristina, Kosovo, using eco-friendly printing.

www.womensnetwork.org

Acknowledgements

This report was a collaborative effort of six women's rights organisations in the Western Balkans: the Kosovo Women's Network, the Gender Alliance for Development Centre, Reactor-Research in Action, the Kvinna till Kvinna Foundation, Women's Rights Centre and the Helsinki Citizens' Assembly Banja Luka. This research was made possible through the dedication and hard work of a dynamic team of researchers who organised research in each country, conducted interviews, encouraged participation in the online survey, analysed the legal framework, analysed data and wrote reports regarding the situation in each of their countries:

Albania:	Mirela Arqimandriti, Megi Llubani, Olsi Çoku, Esmeralda Hoxha
BiH:	Lejla Gačanica
Kosovo*:	Iliriana Banjska, David JJ Ryan, Adelina Tërshani, Liridona Sijarina, Lirika Demiri, Nerina Guri
Montenegro:	Olivera Komar, Maja Raicevic, Marija Glomazic, Ana Scepanovic, Darja Sukovic
North Macedonia:	Vaska Leshoska, Sneshka Ilikj, Biljana Kotevska, Marija Bashevaska, Blazen Maleski, Tanja Maleska
Serbia:	Aurelija Đan, Sofija Vrbaški

The organisations worked in solidarity to research and write this report, towards improving women's labour rights in the Western Balkans.

The research team expresses their gratitude to the thousands of people who contributed to this research throughout the Western Balkans. This includes citizens, institutions and civil society organisations that offered their time and thoughts. The team also thanks the peer reviewers for their insightful feedback.

* 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

CONTENTS

Acronyms	2
Executive Summary.....	3
Introduction	4
Methodology	5
Legal Analysis.....	6
Comparative International and Constitutional Law	6
The Influence of EU Law	7
Common Issues Identified	17
Conclusion	22
Awareness.....	23
Awareness about Gender-based Discrimination.....	23
Reporting Gender-based Discrimination	24
Conclusion	26
Prevalence.....	27
General Findings Related to Gender-based Discrimination	27
Discrimination Based on Specific Protected Grounds	39
Conclusion	43
The Institutional Response to Discrimination	44
Police.....	44
Prosecution	45
Criminal and Civil Courts.....	45
Labour Inspectorate.....	47
Ombudspersons Institution.....	48
Labour Unions	49
Civil Society Organisations	51
Other Institutions.....	52
Recommendations.....	56
Works Cited.....	61
Annexes	64
Annex 1. Methodology.....	64
Annex 2. Demographic Information about the Sample.....	68
Annex 3. Sample Survey Instrument.....	72
Annex 4. Sample Interview Guide.....	78

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
GBD	Gender Based Discrimination
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
IDEA	Institute for Democracy and Electoral Assistance
ILO	International Labour Organisation
KWN	Kosova Womens’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
LI	Labour Inspectorate
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
UNDP	United Nations Development Programme
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; the 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, the research involved mixed methods, including a desk review, online survey and interviews.

WB countries have ratified a broad range of international instruments that relate 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 parental leave and paternity 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. 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. Minimal information exists about gender-based discrimination affecting protected groups' labour rights, such as among persons with different abilities, minority ethnic groups and persons with various gender identities and sexual orientations.

Police and prosecutors seemed generally knowledgeable about their responsibilities in addressing labour-related gender-based discrimination. However, few criminal cases have been reported. Therefore, these institutions lack practical experience. Criminal and civil court judges also 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 treating gender-based discrimination a priority. In contrast, Ombudsperson Institution representatives seemed very knowledgeable about the relevant legal framework, but similarly had assisted very few cases. Non-governmental actors like unions and organisations theoretically could assist victims in claiming their rights, but legal frameworks are incomplete for enabling their work. Labour union representatives tended to have limited knowledge about gender-based discrimination. Meanwhile, surveyed workers had minimal knowledge about, or trust in, unions. Civil society representatives working in this area tended to know the relevant legal framework, but similarly had assisted very few cases directly.

INTRODUCTION

Gender equality, including equal opportunities, equal treatment and equal pay for equal work, are 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 some WB countries.¹ Meanwhile, within the EU Gender Action Plan II, the EU has firmly committed to furthering women's social and economic rights.² The EU Accession process provides a unique opportunity for the EU to 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 Gender Action Plan.³ Further gender analysis was needed in the WB to inform areas that the EU could consider supporting through its cooperation and political engagement, towards implementing this Plan.

In March 2018, the Kosovo Women's Network (KWN), Gender Alliance for Development Centre (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) began collaborating towards furthering women's labour rights in their respective countries, focusing on addressing gender-based discrimination related to labour. 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.

While some prior research on this theme had been conducted in a few countries, the partners determined that comprehensive, comparable research was essential for informing future advocacy and outreach towards decreasing labour-related gender-based discrimination. The research conducted to inform this report thus 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. 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 2017?
- III. For what reasons have few discrimination cases been reported and/or filed?
- IV. How have relevant institutions treated discrimination cases to date?

¹ See Annex 2, Graph 31.

² Also known as the "Gender Action Plan II", 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-gender-2016-2020-20150922_en.pdf.

³ 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).

Methodology

The partners conducted research from March to December 2018, using the same methodology in all six WB countries. The research involved mixed methods. First, a legal analysis was conducted to examine laws and legislation offering protection from discrimination in WB countries. It sought to identify any shortcomings in aligning legislation with the EU *acquis*, focusing on gender equality, anti-discrimination and labour. The team examined international laws, treaties and conventions, constitutions, relevant laws and secondary legislation in each country. The legal analysis 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.

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, Croatian, Montenegrin, Macedonian, Serbian and English), the survey was promoted broadly through media, email and social media boosting. In total, 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). 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 an in-depth interview regarding their experiences. In total, 57 women participated in in-depth interviews about discrimination at work.

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. BA, MA and PhD (77%), and respondents located in cities. Only 2% of respondents came from rural areas. The overrepresentation of certain social groups biases the findings. Nevertheless, 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. 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 section examines the extent to which the legal and policy framework related to labour-related gender-based discrimination is complete and harmonized with relevant EU directives. This analysis begins with a comparative overview of international agreements and instruments ratified by WB countries, followed by 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 section discusses the roles of responsible institutions and procedures in place for filing discrimination cases, 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 1. Exceptionally, **Kosovo** does not have the international legal capacity to formally ratify or participate fully in conventions of the United Nations 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).

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 reporting countries have ratified Protocol 12.

Constitutional Law

The constitutions of all WB countries contain an explicit prohibition of discrimination. These prohibitions include the grounds of either sex (**BiH, North Macedonia, 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 **North Macedonia**.

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.⁴ Issues reported with these clauses include vagueness in drafting that allows potential for abuse (**Montenegro**) and restrictions being potentially too broad (**Serbia**).

⁴ Ahmed, D. and Bulmer, E. for International IDEA, *Limitation Clauses*, Strömsborg, 2017, p. 3, at: <https://www.idea.int/sites/default/files/publications/limitation-clauses-primer.pdf>.

Table 1. International Instruments Ratified by WB Countries						
International Instrument	Albania	BiH	Kosovo	Montenegro	North Macedonia	Serbia
ECHR	Y	Y	Y	Y	Y	Y
Protocol 12 ECHR	Y	Y	Y	Y	Y	Y
European Social Charter ⁵	Y	Y		Y	Y	Y
ICCPR ⁶	Y	Y	Y	Y	Y	Y
FCNM ⁷	Y	Y	Y	Y	Y	Y
ICESCR ⁸	Y	Y		Y	Y	Y
ICERD ⁹	Y	Y	Y	Y	Y	Y
CEDAW ¹⁰	Y	Y	Y	Y	Y	Y
ILO Convention No 111 on Discrimination ¹¹	Y	Y		Y	Y	Y
CRPD ¹²	Y	Y		Y	Y	Y

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.¹³ For convenience, countries' respective laws on labour, protection from discrimination and gender equality are referred to as "Labour Law", "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 and Republika Srpska) and one district (District Brčko). They have

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

⁶ The UN International Covenant on Civil and Political Rights.

⁷ 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.

⁸ The UN International Covenant on Economic, Social and Cultural Rights.

⁹ 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.

¹⁰ The UN Convention on the Elimination of All Forms of Discrimination against Women contains various 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.

¹¹ An International Labour Organisation convention prohibiting discrimination and exclusion on any basis including of race or colour, sex, religion, political opinion, national or social origin in employment.

¹² 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.

¹³ 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).

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 "DB", respectively. 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.¹⁴ Generally, definitions in **Albania, BiH, Kosovo, North Macedonia** and **Montenegro** are compliant (Table 2). The definition adopted in **Serbia** may be similarly limited, and further judicial interpretation is required.¹⁵ 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".¹⁶

"*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, except **Serbia**, where there is a concern that the definition could be 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".¹⁷ Some issues are also reported in relation to the "objective justification" defence found in this definition (discussed below).

	Albania	BiH	Kosovo	NM	M	Serbia
Direct discrimination (Recast, Art. 2.1[a])	Y	Y(S)	Y	Y	Y	P
Indirect discrimination (Recast, Art. 2.1[b])	Y	Y(S)	Y	Y	Y	P
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 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

¹⁴ Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, Fifth ed., 2011, 869.

¹⁵ Krstić, I., *Country Report: Non-discrimination Serbia*, European Commission, 2017, p. 37-38, at: <https://www.equalitylaw.eu/downloads/4408-serbia-country-report-non-discrimination-2017-pdf-1-75-mb>.

¹⁶ ECJ, C-147/08 *Römer*, 42.

¹⁷ *Non-discrimination Serbia*, p. 37-38.

one of the protected grounds”.¹⁸ 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.¹⁹ 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 3). However, **Montenegro**²⁰ and **Serbia**²¹ have some issues with clarity.

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 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.²² 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.²³

Another major 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. **Montenegro** has not transposed this principle, and issues exist

¹⁸ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law* (2018 Edition) p. 67, at: https://www.echr.coe.int/Documents/Handbook_non_discr_law_ENG.pdf.

¹⁹ Recast, Art. 2[e]; TFEU Art. 157.2.

²⁰ The Criminal Code prohibits instruction to discriminate but does not provide a definition. The LPD does not prohibit instruction to discriminate but does provide a definition. (Chopin, I. and Germaine, C., *A comparative analysis of non-discrimination law in Europe 2017*, [European Commission, 2017], p. 57, at: <https://publications.europa.eu/en/publication-detail/-/publication/36c9bb78-db01-11e7-a506-01aa75ed71a1/language-en>).

²¹ Instruction to discriminate is not recognised as a special form of discrimination in Serbian anti-discrimination legislation, and pregnancy and maternity discrimination are not explicitly prohibited as a form of direct sex discrimination (Krstic, I., *Country Report: Gender Equality Serbia* [European Commission, 2017], p. 53, at: <https://www.equalitylaw.eu/downloads/4228-serbia-country-report-gender-equality-2017-pdf-1-33-mb>).

²² OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, p. 16-17 at: <https://www.osce.org/odihhr/117801?download=true>.

²³ *Ibid*, p. 17.

with the limits of the law in **Kosovo**,²⁴ **North Macedonia**²⁵ and **Serbia**.²⁶ Table 3 summarises harmonisation of WB legislation with the EU *acquis* regarding the prohibition of discrimination.

Table 3. Harmonization with EU Acquis Regarding Prohibition of Discrimination						
	Albania	BiH	Kosovo	NM	M	Serbia
Prohibition of direct and indirect pay 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 sex 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	P	P
Prohibition of victimisation 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 setting up a business or any other form of self-employed activity (Self-employment Directive, Art. 4)	Y	Y(S)	P	P	N	P
Prohibition of discrimination on the grounds of religion or belief , disability , age , sexual orientation (Employment Equality Directive, Arts. 1-7), racial or ethnic origin (Racial Equality Directive, Arts. 1-5) in employment and occupation	Y	Y(S)	Y	P	Y	P
Prohibition of discrimination on the grounds of "sex" includes gender identity (See cases C-13/94, C-117/01, and C-423/04)	Y	Y (FBIH, RS, BD)	Y	Y	Y	Y
Prohibition of part-time workers 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	P	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, although issues with sexual orientation remain in **Serbia**.²⁷

²⁴ 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, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20171108105226438.pdf>).

²⁵ 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" (Najchevska, M., *Country Report: Gender Equality FYR Macedonia* [European Commission, 2017], p. 40, at: <https://www.equalitylaw.eu/downloads/4287-fyr-macedonia-country-report-gender-equality-2017-pdf-1-32-kb>).

²⁶ The LPD does not cover self-employment, although other laws do to some extent (Krstić, I., *Country Report: Non-discrimination Serbia*, p. 102).

²⁷ The notion of discrimination based on sexual orientation in the LPD is too narrow; it apparently only covers the declaration of sexual orientation and not equal treatment regardless of declared or presumed sexual orientation, or its public expression.

Insensitive terms continue to exist in relation to disability in **North Macedonian** law.²⁸ While discrimination based on gender identity is not explicitly prohibited in the Equal Treatment Directives, Recital 3 of the Recast Directive and case law of the European Court of Justice (ECJ)²⁹ have established that the prohibition of discrimination on the grounds of “sex” includes gender reassignment. The law of each WB country adequately reflects this.

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*³⁰: (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.³¹ All WB countries have transposed this justification correctly (Table 4), except **Albania** and **BiH**, where the provision is drafted too broadly, as a general exception 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.³²

Table 4. Positive Action and Exceptions						
	Albania	BiH	Kosovo	NM	M	Serbia
Provision for positive action 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 indirect discrimination in matters of employment and occupation (Recast, Art. 2.1[b])	P	P(S)	Y	Y	Y	Y
Genuine occupational requirement exception for discrimination in terms of access to employment (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 systematic discrimination. EU law permits, but does not mandate, such measures. All WB

²⁸ Kotevska, B., *Country Report: Non-discrimination FYR Macedonia*, European Commission, 2017, p. 38, at: <https://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb>.

²⁹ 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*.

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

³¹ C-43/75 *Defrenne*.

³² On Montenegro, see: Jelic, I., *Country Report: Non-discrimination Montenegro*, p. 83. The Montenegrin LL provision on this exception is incorrectly entitled “positive discrimination”. On Serbia, see: OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, p. 20.

countries foresee positive action in their legal frameworks, although the details differ widely. 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.³³

Maternity Related Rights and Leave Rights

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.³⁴ 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 leave that is not excessively long, paternity leave, parental leave, and childcare leave might prevent such drawbacks.³⁵

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.³⁶ As displayed in Table 5, 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. The maximum period allowed in each WB country is 12 months, except in **North Macedonia**, 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 **North Macedonia** 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**.

Parental leave is leave from work for parents related to the birth or adoption of a child to care for that child.³⁷ 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 one of the four months must be non-transferable to the other parent. 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. **Albania** comes closest to meeting this standard, as the right to use parental

³³ Šimonović Einwalter, T. and Selanec, G., *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, Sarajevo, 2015, p. 29, at: <http://eu-monitoring.ba/en/alignment-of-the-law-on-prohibition-of-discrimination-with-the-eu-acquis-expert-analysis-on-alignment/>.

³⁴ Chopin, I. and Germaine, C., *A comparative analysis of non-discrimination law in Europe 2017*, European Commission, 2017, p. 32, at: <https://publications.europa.eu/en/publication-detail/-/publication/36c9bb78-db01-11e7-a506-01aa75ed71a1/language-en>.

³⁵ *Ibid.*

³⁶ Pregnancy Directive, Article 8.

³⁷ Work-Life Balance Directive, Article 3.1(b).

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.³⁸

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.³⁹ 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 prison sentence, being severely ill, etc.)”. In **North Macedonia**, 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. In **Montenegro**, the right to parental leave is recognised as an individual right of parents, but only one parent is entitled to use it for the child. However, if one parent stops her/his parental leave, the other parent is entitled to use the unused part of the parental leave for up to 365 days.⁴⁰

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,⁴¹ with up to two weeks unpaid.⁴² 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.⁴³ In both **North Macedonia** 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** and **Montenegro** is compliant with this provision (Table 6). In **North Macedonia**, there is no provision on benefiting from improvements in working conditions, although the law theoretically could allow for such an interpretation.⁴⁴ In **Serbia**, the legislation does not explicitly guarantee that an employed woman should remain in the same job after returning from maternity leave; however, the LGE provides that absence from work because of pregnancy and parenthood cannot be a reason for assigning a person an inadequate job or terminating their contract.⁴⁵

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

³⁸ 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).

³⁹ Upcoming reforms are planned to improve transposition of the Parental Leave Directive (now presumably with the Work-Life Balance Directive) (see Ministry of Labour and Social Welfare, *Draft Fillestar i Koncept Dokumentit Për Rregullimin e Fushës Nga Marrëdhënia e Punës*, 2018, at: <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40330> [in Albanian]).

⁴⁰ Jelic, I., *Country Report: Gender Equality Montenegro*, p. 34.

⁴¹ The Kosovo Law on Labour (No. 03/L-212) contains an error as one article states 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).

⁴² *Ibid*, Article 50.2.2.

⁴³ Jelic, I., *Country Report: Gender Equality Montenegro*, p. 38.

⁴⁴ Najchevska, M., *Country Report: Gender Equality FYR Macedonia*, p. 28.

⁴⁵ Krstic, I., *Country Report: Gender Equality Serbia*, p. 53.

provision. In **Serbia**, this protection is not explicitly mentioned in the law, although it has been suggested that general anti-discrimination protection in the respective legislation would provide such protection.⁴⁶

Table 5. Parental, Maternity, Paternity and Adoption Leave Rights						
	Albania	BiH	Kosovo	NM	M	Serbia
Entitlement to minimum 14 weeks' maternity 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 73 days, max. 12 months	Compulsory 3 months, max. 12 months
Paid parental 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)	N	N	N	N	N	N
Right to 10 days' paid paternity 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, parental or paternity leave (Work-Life Balance Directive, Arts. 11 and 12)	Y	Y	Y	Y	Y	Y
Right to request flexible working arrangements for caring purposes (Work-Life Balance Directive, Art. 9)	Y	Y	Y	N	Y	Y
Right to return to job at the end of maternity 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	P
Same rights to return to job at the end of parental or paternity leave as above (Work-Life Balance Directive, Arts. 10.2)	Y	Y	Y	Y	Y	P
Where distinct rights exist for adoption leave, same entitlements on return to work and protection from dismissal as above (Recast, Art. 16)	Y	Y	Y	Y	N	N

Where distinct rights are created for adoption leave, the Recast Directive requires the same entitlements upon return to work and protection from dismissal as stated. The law in **Albania, BiH, Kosovo** and **North Macedonia** complies with this requirement. The law in

⁴⁶ Ibid, p. 32.

Montenegro and **Serbia** does not provide for these protections, but it has been suggested that workers could apply for general anti-discrimination protection in the respective legislation, including for protection against dismissal.⁴⁷

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 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.⁴⁸ 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. Only **Albania** and **Serbia** have included this in their frameworks.

	Albania	BiH	Kosovo	NM	M	Serbia
Prohibition of dismissal 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
Provision for assessment of risks related to health and safety of workers (Pregnancy Directive, Art. 4)	Y	Y	P	Y	Y	Y
Where risk is found, provision to take appropriate action 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 obliged to perform duties for which there is a risk to health or safety (Pregnancy Directive, Art. 6)	Y	Y	Y	Y	Y	Y
Provision to ensure workers are not obliged to perform night work , but can transfer to daytime work or leave (Pregnancy Directive, Art. 7)	Y	P	Y	Y	Y	Y
Provision for time off to attend antenatal examinations , if such examinations must take place during working hours (Pregnancy Directive, Art. 9)	Y	N	N	N	N	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 7). The criminal codes of all WB countries prohibit either discrimination (**North Macedonia, 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-

⁴⁷ On Montenegro, see: Jelic, I., *Country Report: Gender Equality Montenegro*, p. 33 and 38. On Serbia, see: Krstic, I., *Country Report: Gender Equality Serbia*, p. 32.

⁴⁸ Upcoming reforms are planned to improve transposition of the Pregnancy Directive (see Ministry of Labour and Social Welfare, *Draft Fillestar i Koncept Dokumentit Për Rregullimin e Fushës Nga Marrëdhënia e Punës*, 2018.

⁴⁹ "Workers" in this table refers to workers who are pregnant, breastfeeding or have recently given birth, unless otherwise specified.

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 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, North Macedonia**). **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**).

	Albania	BiH	Kosovo	NM	M	Serbia
Criminal liability for discrimination	Y	Y	Y	Y	Y	Y
Criminal liability for labour related offences	N	N	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.⁵⁰ 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.⁵¹ The law of **Kosovo, NM** and **Montenegro** adequately transposes this protection. However, various issues have been reported in other WB countries. In **Albania**, the plaintiff is obliged to bring evidence in support of the lawsuit, “using every kind of lawful evidence that may show discriminating behaviour”. Such an obligation may go beyond simply establishing the facts.⁵² 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.⁵³ In **Serbia**, the textual

⁵⁰ 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.

⁵¹ European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe, *op. cit.*, 232.

⁵² OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, p. 26.

⁵³ Šimonović Einwalter, Tena and Selanec, Goran, *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, 2015, p. 27.

interpretation of relevant articles reportedly leads to this rule only applying to direct and indirect discrimination, while it also should apply to harassment and victimisation.⁵⁴

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 8),⁵⁵ the laws of **Albania, Montenegro, Kosovo** and **Serbia** appear to only allow third-party intervention on behalf of complainants, but not in support of them. The wording in these laws should be revised to reflect more adequately the principle of third-party standing outlined in the EU Equal Treatment Directives.⁵⁶

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.⁵⁷

Table 8. Procedures for Bringing a Claim						
	Albania	BiH	Kosovo	NM	M	Serbia
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
Equality Bodies and Dialogue						
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").⁵⁸ The structures of the legal frameworks in **North Macedonia** 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 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.

⁵⁴ Krstic, I., *Country Report: Gender Equality Serbia*, p. 47.

⁵⁵ Note that in North Macedonia, no specific provision under anti-discrimination legislation is made for cases of discrimination, although general provisions of civil, administrative or labour law provide some standing to associations under certain conditions (Chopin, I. and Germaine, C., *A comparative analysis of non-discrimination law in Europe 2017*, p. 89).

⁵⁶ OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, p. 25.

⁵⁷ For further information, see the Institutional Response section.

⁵⁸ As noted previously, the precise names of the laws vary, but these abbreviations are used for simplicity.

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.

Similar issues of fragmentation are identifiable in the **Serbian** legal framework where anti-discrimination laws overlap among themselves, as well as with the Labour Law. 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).⁵⁹ Further, some higher courts reportedly have dismissed lawsuits for lack of jurisdiction, on the misunderstanding that they only can decide discrimination cases in employment, while basic courts have jurisdiction to decide on discrimination cases in other areas of life. Courts also have dismissed cases based on the mistaken belief that human rights organisations submitting a lawsuit must be represented by a lawyer. Moreover, courts reportedly have had difficulties applying the sharing of the burden of proof, 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”.⁶⁰ BiH’s legal framework faces additional issues of fragmentation primarily due to its extremely complicated system of jurisdiction and enormous number of laws at different levels. This has led to misunderstanding regarding jurisdiction over proceedings in accordance with certain laws, complicating access to justice.

While **Montenegro** and **North Macedonia** may have clearer delineation between the relevant laws, issues of fragmentation are still evident. In **Montenegro**, action reportedly is needed to make progress in legislative harmonisation.⁶¹ Similarly, in **North Macedonia** the law does not provide procedures for the unification of provisions, which are necessary to nullify or amend provisions of other laws in conflict with the LPD.⁶² These observations apply to other WB countries as well.

The common issues of dispersion, multiplication 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 conscientious and harmonious drafting; additions or amendments to the legal framework have not always ensured that the laws complement each other in a logical

⁵⁹ Krstić, I., *Country Report: Non-discrimination Serbia* (European Commission, 2017), p. 81-82.

⁶⁰ Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens’ Assembly Banja Luka, Banja Luka, 2019, p. 7, at: <http://hcabl.org/wp-content/uploads/2019/05/GENDER-BASED-DISCRIMINATION-AND-LABOUR-IN-BOSNIA-AND-HERZEGOVINA-FINAL.pdf>.

⁶¹ Jelic, I., *Country Report: Non-discrimination Montenegro*, p. 83.

⁶² Kotevska, B., *Country Report: Non-discrimination FYR Macedonia*, p. 103.

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.⁶³ A framework law on discrimination was a requirement of the visa liberalisation process. 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;⁶⁴ it was applied inconsistently during visa liberalisation dialogues. For example, **North Macedonia** 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",⁶⁵ merely formal and accompanied with problems in terms of legal clarity.⁶⁶ The integration process "was never halted or delayed because of inappropriate progress in the area of anti-discrimination".⁶⁷ 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".⁶⁸ 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".⁶⁹

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**.⁷⁰ However, all countries stated that sanctions do not reach the required standard of "effective, proportionate and dissuasive". These criteria in EU law are still vague notions.⁷¹ 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.⁷²

⁶³ 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, at: <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-6.2.pdf>.

⁶⁴ 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.

⁶⁵ Fraczek, S., et al., 2016, p. 288.

⁶⁶ Ibid.

⁶⁷ Ibid, p. 285.

⁶⁸ Ibid, p. 288.

⁶⁹ Ibid, p. 284.

⁷⁰ Krstic, I., *Country Report: Gender Equality Serbia*, p. 49.

⁷¹ Lev Ivanov et. al., *Effectiveness, Proportionality and Dissuasiveness*, 2012, E. & Central Eur. J. on Env'tl. L. 11.

⁷² Council of Europe, Cybercrime Convention Committee, *Implementation of Article 13 Budapest Convention by Parties and Observers: A Comparative Study*, Strasbourg, 2016, p. 17, at: <https://rm.coe.int/0900001680651690>.

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.⁷³ In **Montenegro**, fines reportedly remain “inappropriately low compared to the fact that proceedings are long, uncertain and often ineffective”.⁷⁴ Increasing sanctions to meet their purpose was suggested to the drafters of amendments to Montenegro’s LPD.⁷⁵

In **North Macedonia**, issues have arisen related to the application of the anti-discrimination sanctions, which were drafted ambiguously.⁷⁶ 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.⁷⁷ Similarly, in **Serbia** in comparison with sanctions under other laws, the fines for discrimination are merely symbolic.⁷⁸ A policy of mild sanctions for discriminatory acts is identifiable.⁷⁹ Practical difficulties which influence the effectiveness and proportionality of sanctions are also identifiable, such as delays.⁸⁰ 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”.⁸¹

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 9 illustrates, there is a system of victim compensation in place in all WB countries, though the quality of its implementation varies.

Table 9. Compensation						
	Albania	BiH	Kosovo	NM	M	Serbia
System of victim compensation 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.⁸² This refers to the processes through which European norms are not just transposed, but also adhered to and enforced.⁸³

⁷³ Qirushi, K., *The Principle of Non-Discrimination on Grounds of Gender in the Workplace – Assessing Albanian Law through EU Standards*, 5 Albanian Law Journal 4, 2018, at: <http://www.lawjournal.al/sites/default/files/Pillar%203%2C%20ALJ%205%20ENGL.pdf>.

⁷⁴ Jelic, I., *Country Report: Gender Equality Montenegro*, p. 54.

⁷⁵ Ibid.

⁷⁶ Najchevska, M., *Country Report: Gender Equality FYR Macedonia*, p. 48.

⁷⁷ Kotevska, B., *Country Report: Non-discrimination FYR Macedonia*, p. 85 and 38.

⁷⁸ Krstić, I., *Country Report: Gender Equality Serbia*, p. 49.

⁷⁹ Krstić, I., *Country Report: Non-discrimination Serbia*, p. 103.

⁸⁰ Ibid.

⁸¹ Čolaković, 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, at:

<http://www.seelawschool.org/pdf/Book-Legal-Protection-Against-Discrimination-SEE.pdf>

⁸² Commission of the European Communities, *White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union* (COM (95)163) at:

https://www.cvce.eu/en/obj/white_paper_on_the_preparation_of_the_associated_countries_of_central_and_eastern_europe_for_integration_into_the_internal_market_of_the_union_com_95_163-en-f3207cf5-df8b-475a-bd06-6fc7d80b0c9e.html.

⁸³ Sverdrup, U., “Implementation” in Graziano, P. and Vink, M. (eds), *Europeanization: New Research Agendas*, Palgrave, 2008.

The EU enlargement strategy of 2018 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”. In each of the 2018 country reports, the recurring theme of the gap between approximation and implementation is evident, particularly related to the effective implementation of discrimination law. This issue applies to all WB countries.⁸⁴ 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.

In the 2018 country reports, the Commission suggested various solutions towards addressing these difficulties. A common recommendation is specialised training of judges and prosecutors in anti-discrimination.⁸⁵ 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.⁸⁶ These groups may also pressure governments to observe international standards.⁸⁷

The 2018 country reports also identified the need to develop data collection procedures. **Serbia** has reported a need to enhance the statistical parameters and a database for monitoring court proceedings concerning discrimination cases.⁸⁸ 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. Data has the additional use of improving policy development and implementation, as well as facilitating judicial proceedings.⁸⁹

Better data would likely improve the deficit of public awareness in the region,⁹⁰ facilitate reporting of discrimination and support enforcement of the legal framework. Indeed, another recurring recommendation in the 2018 Country Reports deals with raising public awareness, towards improving implementation. The **Montenegrin** Ombudsman has stated:

...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 strategic acts aimed at fostering gender equality, including a gender-sensitive approach to budget planning.⁹¹

⁸⁴ See, Hille P. and Knill, C. (2006), *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*.

⁸⁵ For example, in Serbia but relevant for all WB countries: Krstić, I., *Country Report: Non-discrimination Serbia*, p. 103.

⁸⁶ English, K. and Stapleton A., *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*, 1995, 90.

⁸⁷ Ibid.

⁸⁸ Krstić, I., *Country Report: Non-discrimination Serbia*, p. 103.

⁸⁹ Makkonen, T., *European handbook on equality data, 2016 Revision*, Luxembourg, 2016, p. 19, at: <https://publications.europa.eu/en/publication-detail/-/publication/cd5d60a3-094d-11e7-8a35-01aa75ed71a1>.

⁹⁰ See the next section on *Awareness*.

⁹¹ European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2017*, European Commission, 2017, p. 30-31, at: <https://www.equalitylaw.eu/downloads/4553-a-comparative-analysis-of-gender-equality-law-in-europe-2017-pdf-847-kb>.

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.

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 United Nations or the Council of Europe, though various international agreements and instruments are directly applicable by virtue of Kosovo's Constitution. The constitutions of all WB countries contain an explicit prohibition of discrimination based on sex or gender.

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, North Macedonia, Montenegro, Serbia**). Another issue in compliance relates to the transposition of the prohibition of discrimination related to self-employment (**Montenegro, Kosovo, North Macedonia, Serbia**).

Generally, all WB countries have included as protected grounds disability, sexual orientation and ethnicity. However, sexual orientation has not yet been included in **Serbia**. The burden of proof is not adequately understood or prescribed in most countries. Approximation issues also exist with protection of self-employed persons and exceptions or defences. Sanctions seem too low to be considered "effective, proportionate and dissuasive". The most glaring issue is leave entitlements. No country complies with parental leave or paternity leave entitlements, and various issues are identifiable in connection with related leave rights.

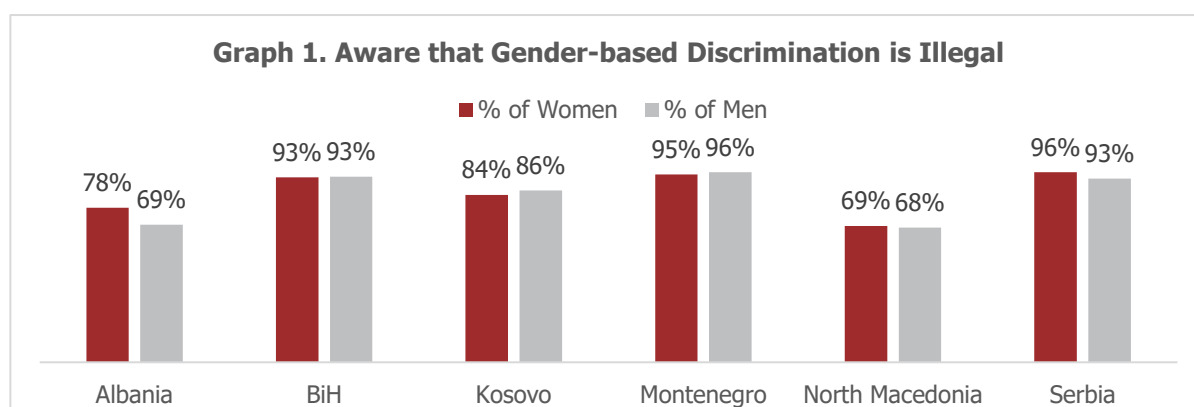
Overall, the legal frameworks pertaining to discrimination are fragmented and often inconsistent. Dispersion, multiplication and overlap of provisions has led to confusion, with different standards of protection, different procedures and different sanctions applicable under the various overlapping laws. 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. 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 section examines people's awareness about 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.

Awareness about Gender-based Discrimination

Generally, survey respondents tended to know that gender-based discrimination is illegal. More respondents from **Serbia, Montenegro, BiH** and **Kosovo** had this knowledge than those from **Albania** and **North Macedonia** (see Graph 1). In **Albania**, comparatively more women (78%) than men (69%) knew that gender-based discrimination is illegal.¹ Similarly, slightly more women (96%) than men (93%) in **Serbia** had this knowledge.² In contrast, in **Kosovo**, slightly more men (86%) than women (84%) respondents had this knowledge.³



The relationship between knowing that discrimination is illegal and respondent age was significant. Across the WB,⁴ fewer youth ages 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.⁵ However, the skewed sample of mostly urban respondents may mean that the level of knowledge of persons in rural areas may be misrepresented.

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 (Graph 2).⁶ Slightly more respondents from **Kosovo** than

¹ N = 1,087.

² N = 688.

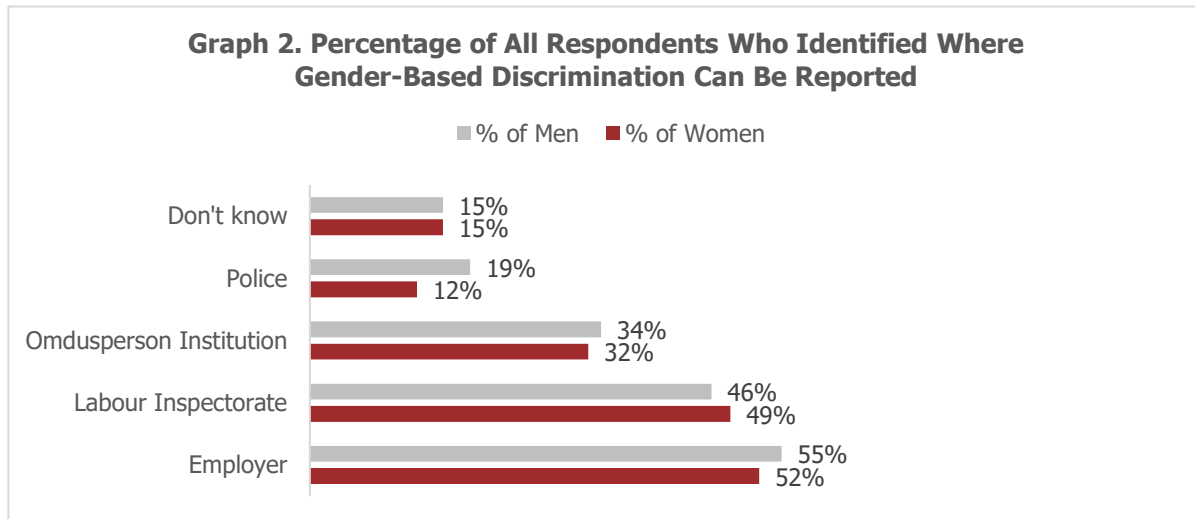
³ N = 1,790.

⁴ N = 6,040.

⁵ N = 6,028.

⁶ 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), North Macedonia (n = 1,050) and Serbia (n = 739).

from other countries believed discrimination should be reported to the employer (64% of women, 75% of men).⁷ Meanwhile, in all countries except **Albania** more than half of the respondents thought discrimination should be reported to the Labour Inspectorate. Approximately a third of respondents knew discrimination could be reported to the Ombudsperson Institution. More people seemingly possess knowledge about the Ombudsperson in **BiH** and **Montenegro** than in other countries. Few respondents knew discrimination could be reported to police.



Meanwhile, 15% of the respondents did not know where to report discrimination or thought that they should not report it at all.⁸ Substantially more respondents from **Albania** (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.⁹ In all WB states, respondents ages 18 to 39 tended to lack knowledge as to where they could report gender-based discrimination.¹⁰ This is concerning considering that they are of working age.

Overall, findings suggest that respondents may know more about internal procedures for reporting gender-based discrimination to employers, but less about other steps they can take in accordance with the legal framework. Limited knowledge in all countries regarding where gender-based discrimination can be reported may contribute to under-reporting.

Reporting Gender-based Discrimination

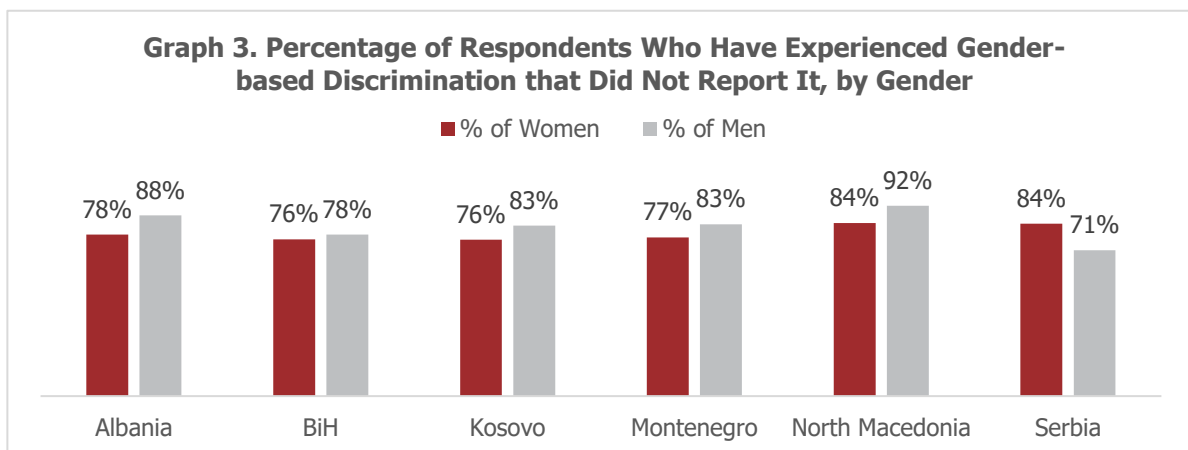
The online survey sought to estimate the extent to which people may report labour-related gender-based discrimination, as well as to analyse why people may or may not report it. Of the survey respondents who said that they had experienced some form of labour-related gender-based discrimination, most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

⁷ N = 1,279.

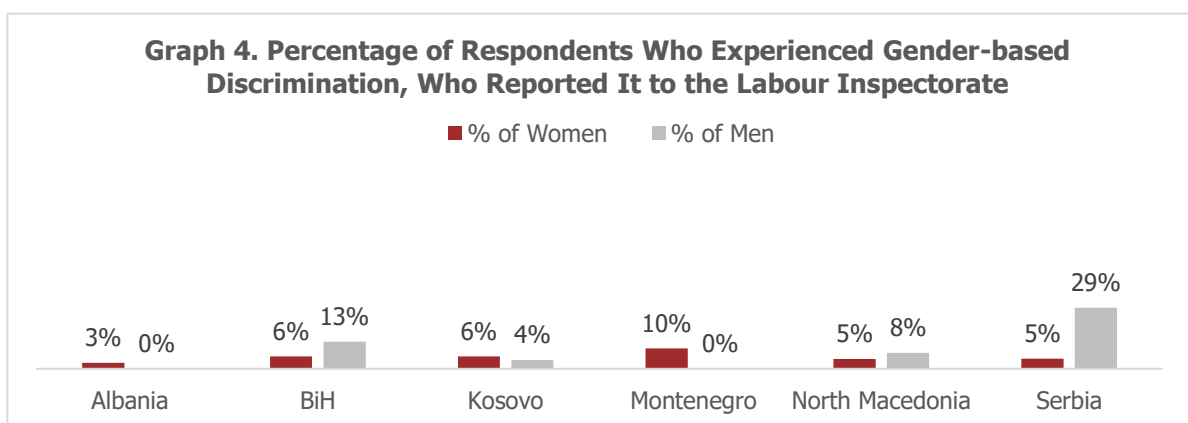
⁸ N = 6,948.

⁹ N = 1,194.

¹⁰ N = 6,682.



Of those who did report discrimination, most contacted the Labour Inspectorate. 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 and 29% of men who said they had experienced gender-based discrimination (Graph 4). Whereas 29% of men reported gender-based discrimination to the Labour Inspectorate in Serbia, no men respondents did in Albania or Montenegro.



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 reflected, “People are not reporting cases as they do not know that they are experiencing discrimination, they do not know where to report it”.¹¹ 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, “Discrimination is happening everywhere, but people do not report it. They sacrifice everything for their jobs”. Another repeatedly stated reason for underreporting was difficulty documenting discrimination cases; this could reflect a lack of awareness regarding sharing the burden of proof, at least in countries where applicable.¹²

“*I don't want to lose my job. That's why I endure.*

- Woman, age 47, Montenegro

¹¹ Interview with woman prosecutor in North Macedonia, November 2018.

¹² For further information, please see the [Legal Analysis](#).

Conclusion

The research findings suggest that most women and men in the WB tend to know that labour-related gender-based discrimination is illegal. However, people lack awareness regarding where they can report such discrimination. This 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.

PREVALENCE

Considering that few cases of labour-related gender-based discrimination have been reported, its prevalence cannot be determined. This section draws from the online survey and interviews with diverse actors to better understand people's experiences with different forms of gender-based discrimination. 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.

General Findings Related to Gender-based Discrimination

Overall, 30% of survey respondents said they had experienced some form of labour-related gender-based discrimination in their lifetimes (34% of women and 13% of men).¹ 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.

The strongest predictor of the probability of being discriminated against is gender in **BiH** and **Kosovo**.² The odds of experiencing gender-based discrimination at work are 2.8 times greater for women than for men in **BiH** and **Kosovo**. Although not statistically significant, the odds of experiencing such discrimination were 2.4 times greater for women in **Montenegro** and 2.15 times greater for women in **North Macedonia**.³ Persons ages 30 to 49 in **Montenegro** and **Kosovo** and individuals receiving a monthly salary of less than €300 in **Kosovo** also seem more at risk of such discrimination. The probability of experiencing labour-related gender-based discrimination may be higher for persons with higher education, such as a Bachelor's, Master's or PhD degree in **BiH**, **Kosovo** and **Macedonia**. However, this may be attributable to more educated respondents being better able to recognise different forms of gender-based discrimination, rather than necessarily being more likely to experience it.

Discrimination in Hiring

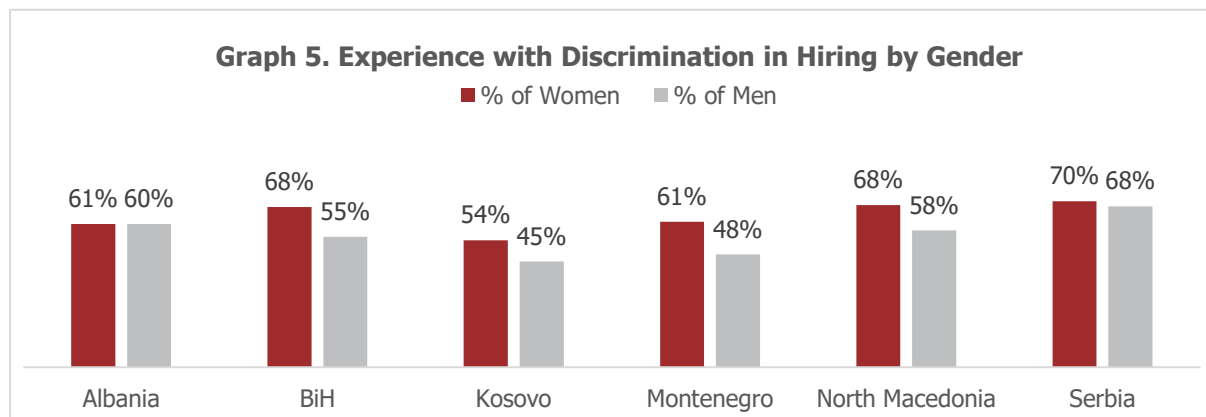
Research findings suggest that gender-based discrimination in hiring is widespread. In all WB countries, more than 49% of the survey respondents said they had experienced

¹ More specifically, 1,210 women and 140 men (n = 4,569).

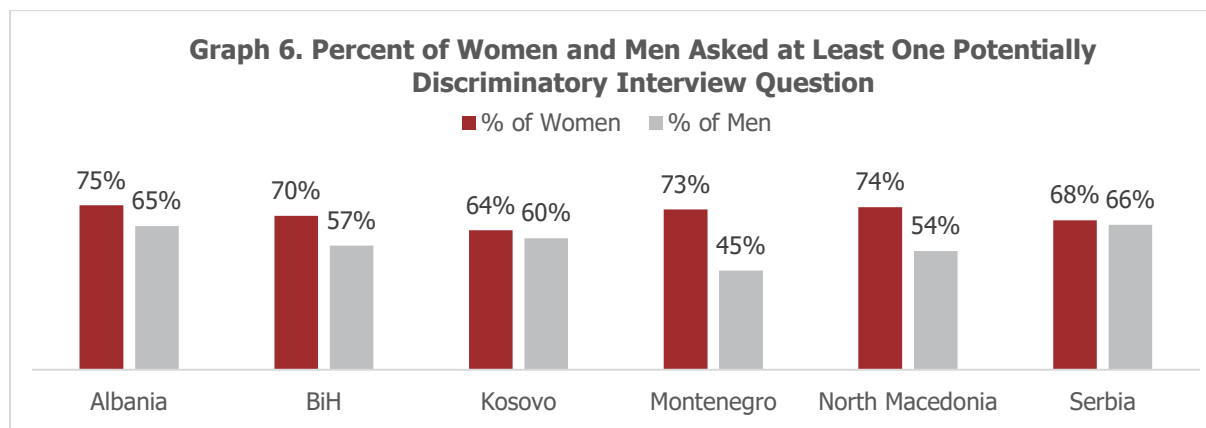
² Researchers used logistic regression to test whether the probability of experiencing gender-based discrimination at work is determined by gender, age category, educational level, current employment position and monthly salary. The model is significant for: i) Kosovo ($\chi^2(22) = 66.476$, $p = .000$, and explains between 6 (Cox & Snell $R^2 = .065$) и 10 (Nagelkerke $R^2 = .108$) percent of the variance; the Hosmer and Lemeshow Test is insignificant $\chi^2(8) = 9.477$, $p = .304$, additionally confirming the fit of the model); and, ii) BiH ($\chi^2(22) = 47.382$, $p = .000$, and explains between 10 (Cox & Snell $R^2 = .104$) и 14 (Nagelkerke $R^2 = .140$) percent of the variance; the Hosmer and Lemeshow Test is insignificant $\chi^2(8) = 4.268$, $p = .832$, additionally confirming the goodness of fit of the model).

³ The chances of experiencing gender-based discrimination are two times higher if you work in the private sector (compared to the public sector) in Kosovo, whereas odds are 2.5 times higher if you work in the public sector in Albania, though this finding may be influenced by sampling bias.

discrimination in hiring.⁴ The probability of being discriminated against in hiring is significantly higher for women in all countries except **Albania** and **Serbia** (Graph 5).



In all countries, more than half of the respondents had been asked at least one potentially discriminatory question during a job interview.⁵ 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 all countries, a higher percentage of women than men were asked such questions (Graph 6). Comparatively higher percentages of women said they were asked discriminatory questions in **Albania** (75%), **North Macedonia** (74%) and **Montenegro** (73%).

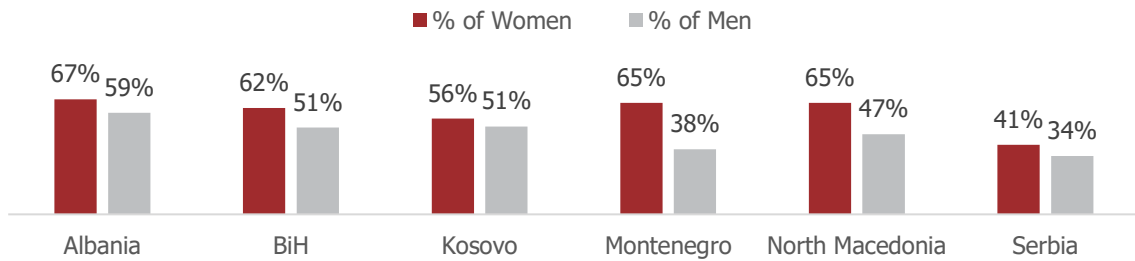


Such questions concerned job applicants’ marital status, number of children, plans to have children or to marry (see Graphs 7 to 10). More women than men were asked a question concerning their marital status in all countries, ranging from 41% in **Serbia** to 67% in **Albania**; their plans to get married, ranging from 18% in **Kosovo** to 31% in **Montenegro**; their number of children, ranging from 21% in **Kosovo** to 45% in **BiH**; and their future plans to have children, ranging from 14% in **Kosovo** to 36% in **North Macedonia**.

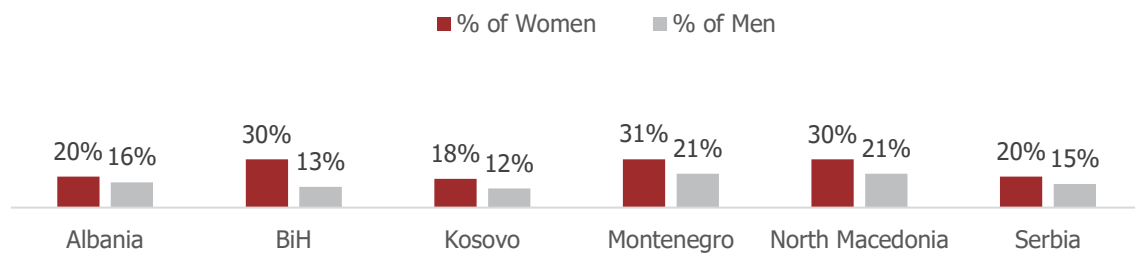
⁴ N = 3,524.

⁵ N = 3,562.

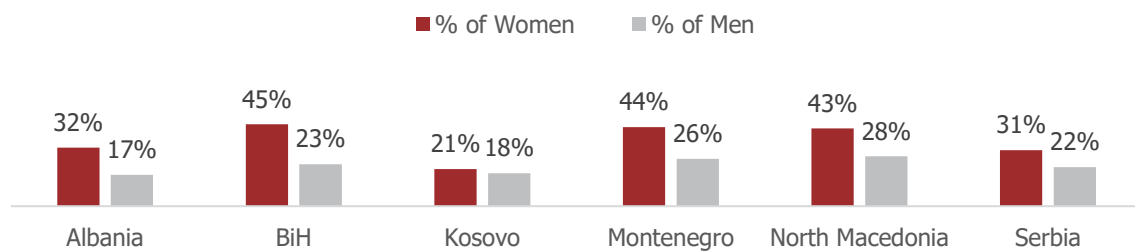
Graph 7. Percentage of Women and Men Asked a Potentially Discriminatory Interview Question Concerning Marital Status



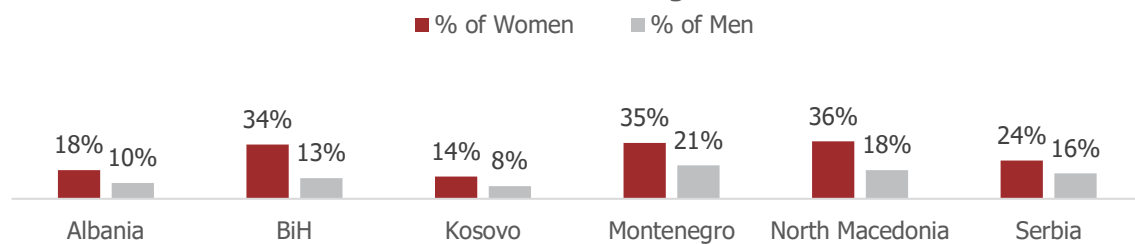
Graph 8. Percentage of Women and Men Asked about Their Plans to Marry during an Interview



Graph 9. Percentage of Women and Men Asked about the Number of Children They Have during an Interview



Graph 10. Percentage of Women and Men Asked about Their Future Plans to Have Children during an Interview



More women respondents from **BiH** (40%), **Montenegro** (39%) and **North Macedonia** (39%) than from other countries were asked how many children they had or planned to have in the future. A Kosovar woman shared, “In a lot of interviews [for a job at a supermarket], I was asked if I had children or planned to have them”.⁶ Women who did not have children reportedly also experienced discrimination if they indicated they wished to have them in the future.

⁶ Woman, age 36, Kosovo.

“ 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 respondent, age 40-49, BiH

“ 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, North Macedonia

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 with no contract in order to make ends meet”.⁷ 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.⁸ Similar experiences were reported in all WB countries, as illustrated in the pulled quote boxes.

In all WB countries, except **Serbia**, research 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’”.⁹ 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

Discrimination in Promotion

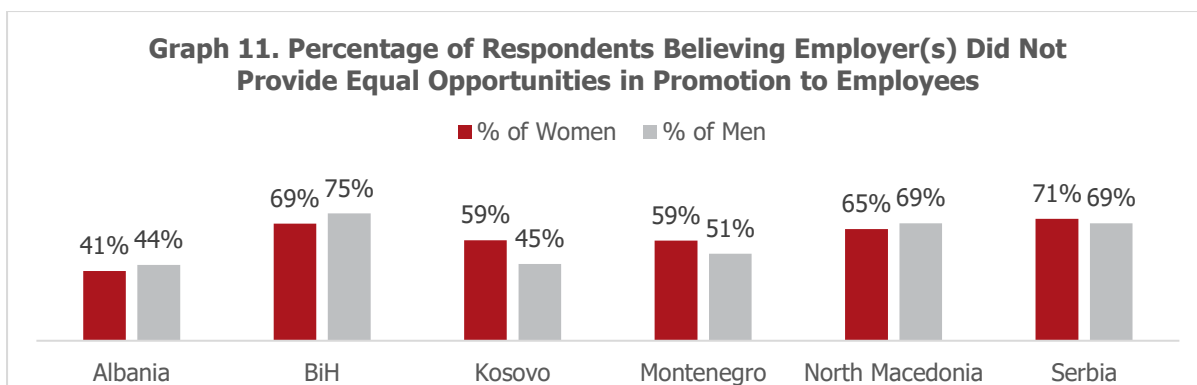
Generally, more than 43% of survey respondents believed that employers do not provide all employees with equal opportunities for promotion.¹⁰ A higher percentage of women than men respondents believed this in **Serbia** (71%), **Kosovo** (59%) and **Montenegro** (59%) (Graph 11). Meanwhile, a higher percentage of men than women believed that employers have not provided equal opportunities to promotion in **BiH** (75%), **North Macedonia** (69%) and **Albania** (44%).

⁷ Woman, age 45, Serbia.

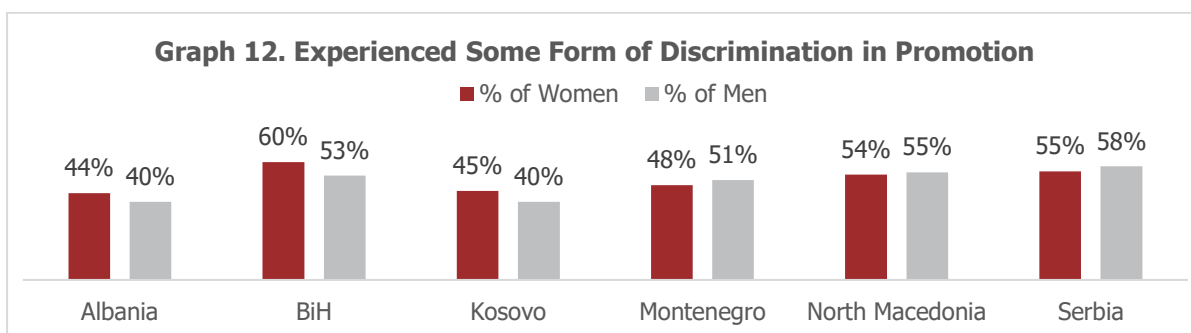
⁸ Nikolić-Ristanović, V., Čopić, S., Nikolić, J., Šaćiri, B., *Discrimination against women at the labour market in Serbia*, Belgrade, Serbia: Victimology Society of Serbia, 2012.

⁹ 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

¹⁰ Respondents enlisted several non-gender related reasons as to why they considered promotion unfair, including personal preferences by the employer, ethnicity, religion and place of residence. These are not discussed as they are outside the scope of this research.



More men than women said they experienced some form of discrimination in promotion in **Serbia, North Macedonia** and **Montenegro** (Graph 12), albeit not necessarily gender-based discrimination. Meanwhile in **BiH, Kosovo** and **Albania** more women than men said they faced discrimination in promotion.



While men respondents tended to say that they did not get promoted because of their ethnicity, sexual orientation or age, women respondents tended to attribute discrimination in promotion to their gender. The percentage of women who felt they had experienced gender-based discrimination in hiring ranged between 11% of women in **Albania** and 18% of women in **BiH**. In comparison, the percentage of men stating they had experienced gender-based discrimination in promotion ranged from 4% of men in **BiH** to 15% in **Montenegro**. 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".¹¹

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".¹²

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

- Woman, age 30, Serbia

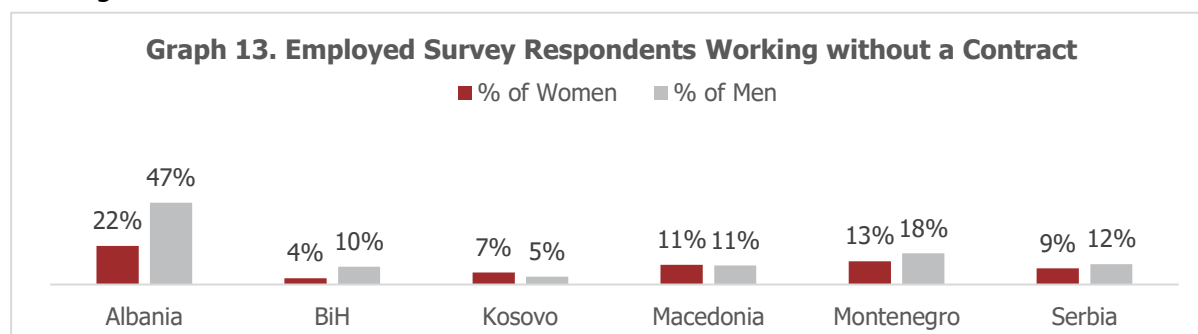
In conclusion, both quantitative and qualitative data suggest that gender-based discrimination in promotion seems widespread in all WB countries, particularly affecting women.

¹¹ Woman, age 31, Kosovo.

¹² Woman, age 47, Serbia.

Discrimination in Contracts

Working without a contract can place workers in a precarious position and entail several rights violations. Since 2008, a higher percentage of surveyed women than men had been asked to work without a contract in **Albania** (43%), **North Macedonia** (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%). A slightly higher percentage of women respondents *currently* were working without contracts in **Albania** (22%) than in other countries (Graph 13). A higher percentage of men than women respondents currently were working without a contract in **Albania** (47%), **Montenegro** (18%), **Serbia** (12%) and **BiH** (10%). Only in **Kosovo** 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 realize 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%), **Serbia** (53%) and **Montenegro** (50%). In contrast, in **North Macedonia** (49%) and **BiH** (64%), a slightly higher percentage of women than men had indefinite contracts. Some employers reportedly have used short-term contracts to avoid responsibilities affiliated with maternity leave, as discussed in the forthcoming section on Maternity Leave.

In **Kosovo** (13%) and in **Montenegro** (31%), 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%), **North Macedonia** (42%), **BiH** (31%) and

“ 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

“ 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

Albania (20%), a higher percentage of men respondents had done so. Again, this may not necessarily have involved gender-based discrimination. However, in **Serbia** respondents shared that there is an unwritten “rule” according to which contracts may contain an additional annex with an undated notice of employment termination. Some employers reportedly ask employees to sign this annex without allowing them to read it. 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.

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 WB 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.¹³ According to the World Bank, even when adjusted for relevant wage determinants, the gender wage gap in Serbia amounted to almost 14% in 2016.¹⁴ The gender wage gap in **Albania** was estimated at 17.4% in 2013.¹⁵ In **Montenegro**, the gender pay gap was reported at 13.9% in 2015.¹⁶ In **Kosovo**, a 2017 survey similarly found that women tend to earn less than men.¹⁷ According to the Agency for Gender Equality in **BiH**, there are “visible gender differences in hourly rates in favour of men in all age groups, levels of education, occupations and industries”.¹⁸

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 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 exists in WB countries.

Poor Working Conditions and Equal Treatment

No clear conclusion can be drawn from this research as to whether women and men may be more inclined to face gender-based discrimination related to working conditions.¹⁹ Yet, qualitative evidence suggests that in some situations women may face poor working conditions and unequal treatment. In **Serbia**, research by the Clean Clothes Campaign has discussed

¹³ Babović, M., *Gender equality index for the Republic of Serbia*, Social Inclusion and Poverty Reduction Unit, Government of the Republic of Serbia, 2018.

¹⁴ Žarković-Rakić, J., and Vladisavljević, M., *Women's access to economic opportunities in Serbia*, World Bank 2016, at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/11/Womens-Access-to-Economic-Opportunities-in-Serbia.pdf>.

¹⁵ Ekonomi, M., Sala, V., Mandro A., Gjermeni, E., Duka, R., Lena, O., *Gender Inequalities in Pay in Albania*, Gender Alliance for Development Centre, 2013, at: http://idmalbania.org/wp-content/uploads/2014/10/empowering_albanian_rural_woman_economic_and_social_perspectives_2010.pdf.

¹⁶ 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.

¹⁷ 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-Final-Research-Report-1.pdf>. They found on average women receive €289 per month compared to men receiving €353.

¹⁸ Agency for Gender Equality, BiH, CEDAW Periodic Report for BiH, 2018, at: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izvjestaj-za-BiH_Nacrt.pdf, p. 34.

¹⁹ A higher percentage of women than men respondents said that their health or safety was at risk because of their work in Kosovo (37%) and BiH (57%). In Serbia (64%), Montenegro (56%), Albania (26%) and North Macedonia (56%) a higher percentage of men said this. However, this may relate more to the sector in which they work than to their gender, so no conclusion could be drawn.

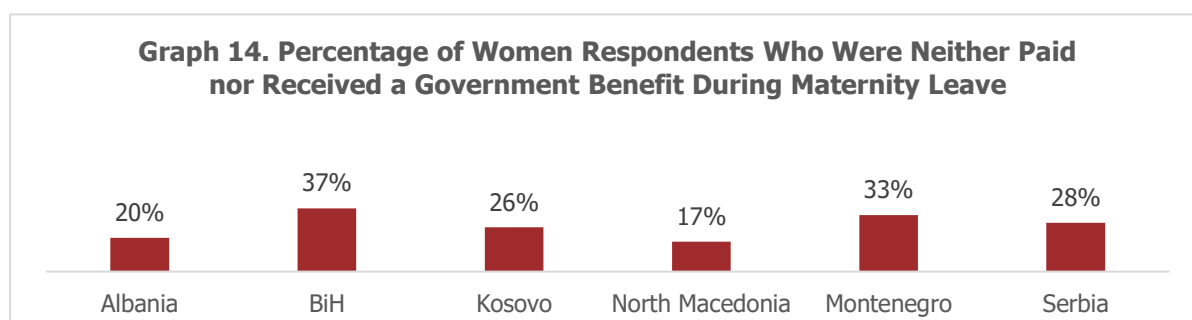
the poor working conditions in the textile and shoe industry, as a sector in which women represent a majority.²⁰ The research found that employers disrespected employees; required them to use diapers to avoid time loss affiliated with going to the toilet; and made them work in poor air quality, which led women to faint, especially in summer.²¹ 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). Similarly, in **BiH**, media have reported that working conditions in newsstands, where mostly women are employed, seemingly involve double shifts, no toilette and no protection from robbery, violence and exposure to sexual harassment.²² 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.

“ 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

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. Among the women survey respondents who were working when they became pregnant, 37% in **BiH**, 33% in **Montenegro**, 28% in **Serbia**, 26% in **Kosovo**, 20% in **Albania** and 17% in **North Macedonia** said that they did not receive any payment during their maternity leave from their employer or from the government (Graph 14).



Several surveyed women from **Montenegro** (39%), **BiH** (27%), **Albania** (24%), **Serbia** (24%), **North Macedonia** (22%) and **Kosovo** (15%) reported that they did not return to their place of employment following maternity leave. In **Montenegro** and **North Macedonia**, the fact that their employer terminated their contract was among the main

²⁰ Tamindžija B., Aleksić S., Musiolek B. (2017). *Country profile: Serbia. Clean Clothes Campaign*, 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.

²¹ Ibid.

²² Zavitan 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>.

reasons for women not returning to work. Interview respondents similarly observed that employers terminated women’s contracts during their pregnancies or while they were on maternity leave, without prior notification. In **Montenegro, North Macedonia, Albania** and **BiH** several women reported that their contract ended during their maternity leave and was not renewed.²³ 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.

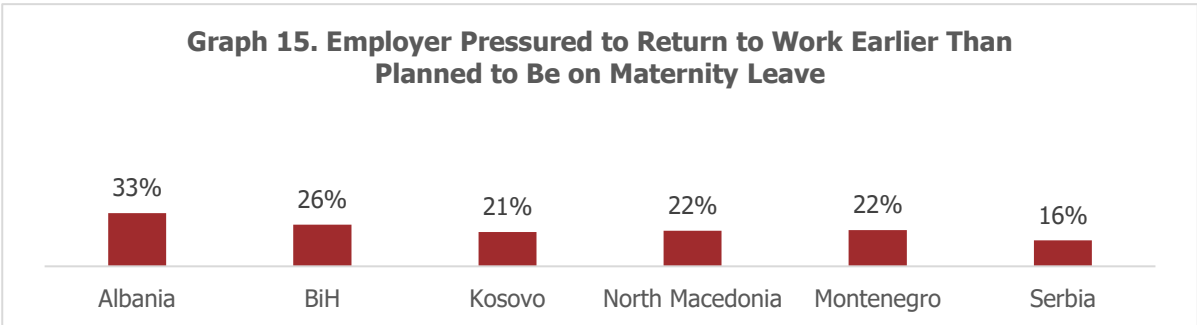
“ I was advised by my colleagues to keep my pregnancy a secret because [according to them,] the moment I would say that I was pregnant, I would lose my job. I hid it for five months. I managed to do that! During the fifth month, they discovered the pregnancy and I was put under a lot of pressure when 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

“ 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

Numerous surveyed women in **Albania** (34%), **BiH** (26%), **Montenegro** (24%), **North Macedonia** (23%), **Kosovo** (22%) and **Serbia** (16%) said that employers pressured them to return to work earlier than planned (Graph 15).



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%), some women said that employers decreased their salaries after they returned from maternity leave: in **Serbia** (15%), **Montenegro** (13%) and **BiH** (11%). Interviews conducted for this research similarly suggest that some women who took maternity leave had lower positions when they returned to work.

²³ This was also a recurring theme in interviews.

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”.²⁴

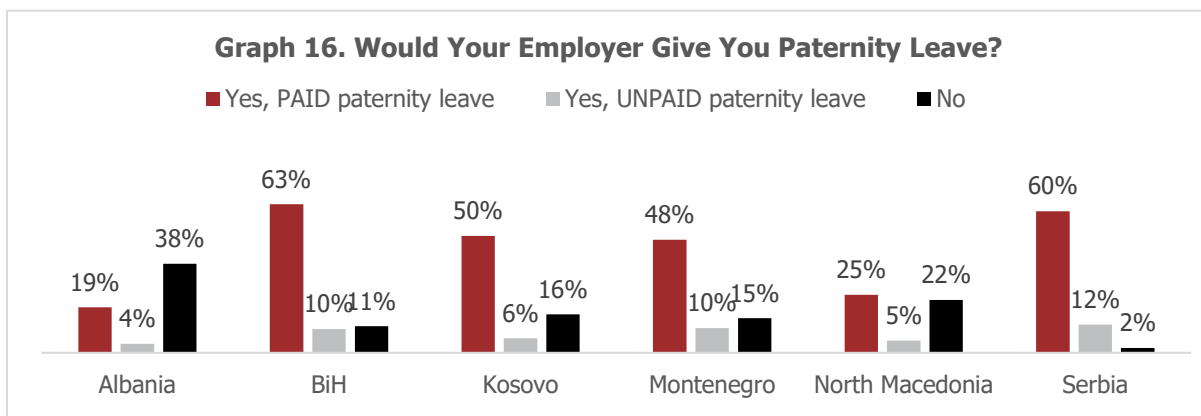
Overall, qualitative and quantitative evidence suggest that several women in the WB have faced violations of their rights to maternity leave.

“ 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

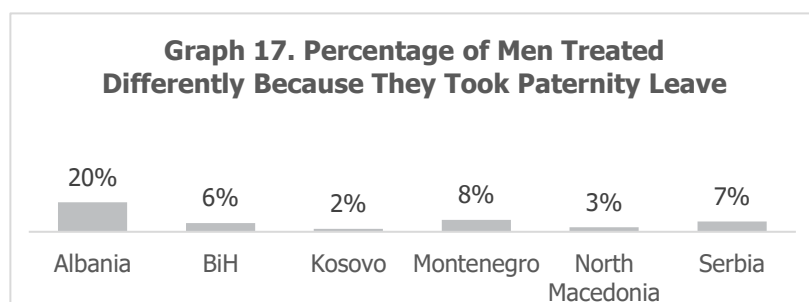
Paternity Leave

As described in the Legal Analysis, WB states have not yet established the legal right to paid paternity leave in accordance with the new 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 16),²⁵ most men respondents believed that their employer would give them some paid paternity leave in **BiH** (63%), **Serbia** (60%), **Kosovo** (50%), **Montenegro** (48%) and **North Macedonia** (25%). Only in **Albania** did a higher percentage of men respondents state that their employers would not give them paid or unpaid paternity leave (38%).



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 17).

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 **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



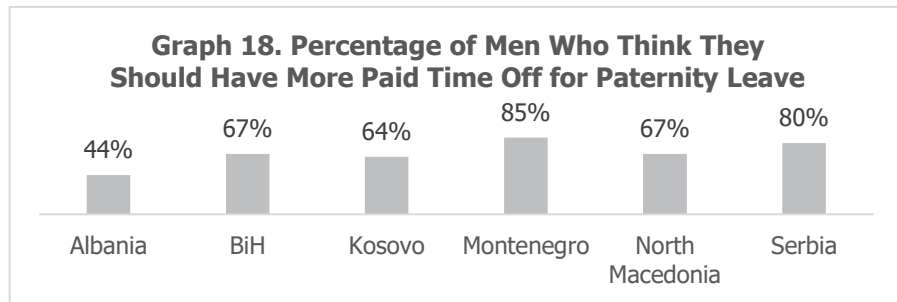
²⁴ Komar, O. et al., *Gender Based Discrimination and Labour in Montenegro*, p. 32.

²⁵ The percentages do not total 100% as some respondents said they did not know.

leave in accordance with Kosovo’s Labour Law.²⁶ It makes economic sense for employers to hire men in order 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, this survey, among several others,²⁷ has

evidenced that most men in WB countries would welcome more paid paternity leave (Graph 18). In this survey, the highest percentage of men respondents stating

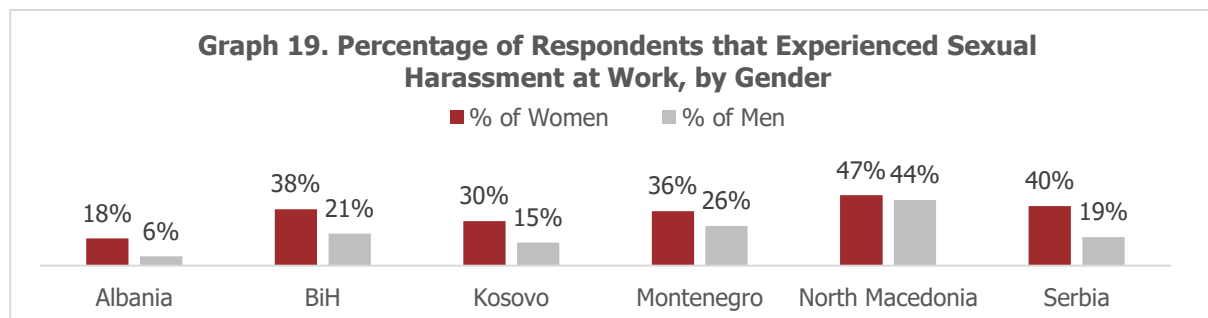


that fathers should have more time off were from **Montenegro** (85%), followed by **Serbia** (80%), **BiH** (67%) and **North Macedonia** (67%). Comparatively fewer men in **Albania** (44%) believed that fathers should have more time off for paternity leave.

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

Sexual Harassment at Work

Overall, 30% of the survey respondents said they had experienced sexual harassment at work: 1,263 women and 184 men.²⁸ A higher percentage of women respondents (34%) had experienced sexual harassment than men (17%). In **North Macedonia**, a higher percentage of women reported experiencing sexual harassment (47%) than in other countries. Nevertheless, as Graph 19 illustrates, many women faced sexual harassment in **Serbia** (40%), **BiH** (38%), **Montenegro** (36%), **Kosovo** (30%) and **Albania** (18%).²⁹



²⁶ Banjska, I., Rrahmani, G., Farnsworth, N., *Striking a Balance*, Kosovo, Kosovo Women’s Network, 2016, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160504154201373.pdf>.

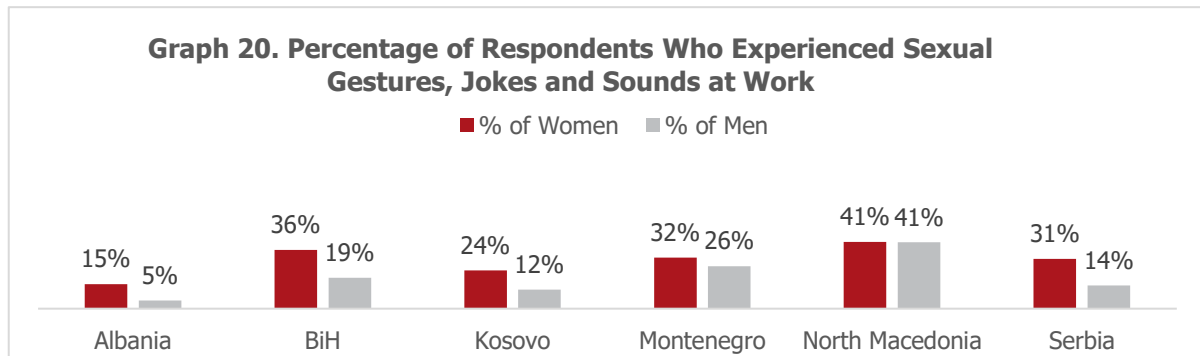
²⁷ In Kosovo, Democracy for Development (D4D), *Shifting paradigms: Equity through Parental Leave*, Kosovo, 2017, p. 7 and KWN, *Striking a Balance*; in North Macedonia, Reactor, *For everyone’s sake - new model for parental leave*, 2019, at: <http://reactor.org.mk/CMS/Files/Publications/Documents/Reaktor%20-%20Za%20secie%20dobro%20-%20051.pdf>, p. 11.

²⁸ N = 4,828.

Of all surveyed respondents, up to 41% of respondents in WB countries 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% of women, 19% 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".³⁰ Comparatively more women (41%) and men (41%) had suffered this form of sexual harassment in **North Macedonia** than in other countries (see Graph 20).

“ My superior came across. He looked at my shirt and mimicked the shape of my breasts and sighed.

- Woman, age 44, Montenegro



Of the respondents in the WB who said they had experienced sexual harassment, up to 12% reported receiving emails or text messages of a sexual nature, up to 15% reported being touched when touching was unnecessary, up to 14% reported a colleague or superior proposing to have sex with them and up to 6% reported a colleague or superior forcing someone to have sex with them. 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. However, 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 **Montenegro**, 5% of respondents to a separate survey said they have been forced to have sexual intercourse with a colleague or supervisor.³¹

When considering all forms of sexual harassment, in **Kosovo**, statistically, the odds of being sexually harassed are higher if you are a woman and if you work in the private or civil society sector (compared to the public sector).³² In **BiH**, the odds of being sexually harassed are twice as high for women as they are for men.³³ In **Albania**, the odds of being sexually harassed are higher if you live in the capital city and work in the public sector.³⁴ The models are statistically significant for Albania, BiH and Kosovo.

Overall, from the respondents who stated that they experienced sexual harassment, more than 75% of women said the perpetrators were men. Meanwhile, the percentage of

³⁰ Komar, O. et al., *Gender Based Discrimination and Labour in Montenegro*, p. 32.

³¹ Ibid, p. 33.

³² N = 2,836. Researchers used logistic regression to test whether the probability of experiencing sexual harassment is determined by gender, age category, educational level, current employment position and monthly salary. The model is significant $\chi^2(12) = 100.218$, $p = .000$, and explains between 9 (Cox & Snell $R^2 = .093$) и 14 (Nagelkerke $R^2 = .145$) percentage of the variance. The Hosmer and Lemeshow Test is insignificant $\chi^2(8) = 14.224$, $p = .076$, confirming the fit of the model.

³³ The model is significant $\chi^2(22) = 36.646$, $p = .002$, and explains between 7 (Cox & Snell $R^2 = 0.077$) и 10 (Nagelkerke $R^2 = 0.107$) percentage of the variance. The Hosmer and Lemeshow Test is insignificant $\chi^2(8) = 7.081$, $p = 0.528$, additionally confirming the goodness of fit of the model.

³⁴ The overall model is significant $\chi^2(15) = 57.295$, $p = .000$, and explains only 11 (Cox & Snell $R^2 = .113$) to 18 (Nagelkerke $R^2 = .186$) percentage of the variance.

men respondents who had experienced sexual harassment from women ranged from 17% in **Serbia** to 50% in **BiH**. Up to 67% 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 countries who had experienced at least one form of sexual harassment, between 56% in **Kosovo** and up to 75% in **Serbia**, said persons in higher positions had harassed them sexually. Meanwhile, from the respondents who had experienced at least one form of sexual harassment, more than 66% 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.³⁵

Despite the prevalence of sexual harassment, only 5% of persons (87 women, 11 men) who suffered harassment took steps to report it to the police and/or workplace mechanism.³⁶ Of those who experienced sexual harassment but did not tell anyone, approximately half said

“ 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

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.

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

Discrimination Based on Specific Protected Grounds

The Legal Analysis described various protected grounds in most WB countries, which can protect individuals from gender-based discrimination related to labour. This sub-section examines the experiences of protected persons with different abilities; lesbian, gay, bisexual, trans,³⁷ queer, intersex, asexual and differently identifying persons (LGBTQIA+); and individuals from minority ethnic groups. By examining how other grounds of discrimination

“ 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

“ 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

³⁵ Woman, age 39, Serbia.

³⁶ N = 1,988.

³⁷ 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.

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). 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 hear relate to discrimination in hiring: although PWD applicants reportedly have the requested qualifications, they are not hired. PWD also report discrimination in promotion. However, few respondents could provide 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, “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”.³⁸ In Kosovo, a CSO representative 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.³⁹

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 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 tend to opt to pay the fine instead. In **North Macedonia**, a special fund exists for adjusting the workplace to meet the needs of PWD. However, reportedly, in 2016 only 0.02% was used.⁴⁰

In **Kosovo**, data collected by Handikos suggests that women with different abilities likely face more challenges in securing employment than men. For example, in Gjakovë/Đakovica region, among the 668 known PWD of working age, only 14 (two women) are employed in municipal public institutions, whereas four (one woman and three men) are employed in CSOs, primarily working with PWD.⁴¹

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.

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

- Judge, Montenegro

³⁸ Interview with a CSO representative, BiH, November 2018.

³⁹ Interview with a woman representative of HandiKOS, Kosovo, October 2018.

⁴⁰ 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-physical-disabilities-in-the-Republic-of-Macedonia.pdf>, p. 46.

⁴¹ Research by HandiKOS in Gjakovë/Đakovica, Kosovo (KWN interview, October 2018).

Gender-based Discrimination against LGBTQIA+ Persons

All WB countries have laws that prohibit discrimination based on gender or sex. 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 2009.⁴²

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 recent survey said that they faced discrimination at work in the last five years.⁴³ In a 2015 **Kosovo** poll, LGBTQIA+-identifying persons were asked, "in which area are LGBTI people most frequently exposed to discrimination?". Most respondents mentioned employment, education and professional development.⁴⁴ 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.⁴⁵

CSOs and LGBTI activists in WB states said they encounter a few such 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.⁴⁶ 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.

Discrimination in employment also occurs when a person decides to come out regarding their sexuality or is outed. As an illustration, a gay man lodged a complaint for discrimination in the workplace. As a result, the man was dismissed and verbally abused.⁴⁷ 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".⁴⁸ 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 'tough'".⁴⁹ In **BiH**, activists similarly observed that people who do not conform to gender stereotypes may be at greater risk of labour violations.

“ 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

⁴² Kurtić, V. Džuvljarko: *Roma lesbian existence*, European Roma Rights Centre, Niš, Serbia, 2013.

⁴³ 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.

⁴⁴ 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>.

⁴⁵ 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, at:

https://kvinnatillkvinna.org/wp-content/uploads/2019/05/EU_Final_GenderLabourSerbia_eng.pdf; Komar, O., Šćepanović, A., Glomazić, M. and Šuković, D., *Gender-based Discrimination and Labour in Montenegro*, p. 26.

⁴⁶ This case was filed at the Labour Inspectorate and OI (in IMPAQ International for USAID Kosovo, p. 39).

⁴⁷ Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, p. 39.

⁴⁸ IMPAQ International for USAID Kosovo, p. 39.

⁴⁹ Ibid.

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.⁵⁰ In **Serbia**, transwomen seemingly face added discrimination, as their gender non-conformity can be noticeable and “read” by their physical appearance.⁵¹ 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.

Although discrimination occurs, 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.⁵² In **Montenegro**, interviews suggest that LGBTQIA+ people do not pursue legal actions because of fear and shame.

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

- CSO representative in Montenegro

Discrimination against Minority Ethnic Groups

Interviews suggested that some minority ethnic groups face discrimination at work. In a separate survey in **Albania**, a relatively high percentage of Roma shared experiences of discrimination *because of their ethnicity* (40%), compared to 7% of Albanians. They said that discrimination occurred mainly when seeking work (46% of Roma respondents).⁵³ In **North Macedonia**, it was observed that although discrimination towards Roma seems frequent, Roma are among the least likely to report their experiences. Indeed, few cases were identified

“ 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

through this research that involved discrimination based on both gender and ethnicity as a protected ground. A respondent in Kosovo 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, some qualitative evidence collected suggested that Roma women may face “double discrimination” based on their gender and their ethnicity.

⁵⁰ Interview with a CSO representative, Albania, November 2018.

⁵¹ Interview with trans* LGBTQIA+ CSO representative, Serbia, October 2018.

⁵² Interview with a CSO representative, Kosovo, October 2018.

⁵³ UNDP & INSTAT, *Roma and Egyptians in Albania: A socio-demographic and economic profile based on the 2011 Census*, 2015, at:

<http://www.al.undp.org/content/dam/albania/docs/Census%202011%20Profile%20of%20Roma%20and%20Egyptians%20final.pdf>.

Conclusion

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 is 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 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 gender-based discrimination against women. Violations of maternity leave rights seem widespread, either because the employer terminates employment or because a fixed-term employment contract expires and is not extended when a woman becomes pregnant. Men tend 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. Sexual harassment at work remains widespread in WB countries, particularly affecting women. 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 section 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 section 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 section reflects on the overall institutional response to gender-based discrimination at work in accordance with 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.¹

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 system is not established in such a way as to disaggregate data to determine if a crime was based on gender. For example, 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. In **Kosovo**, officers believed that gender-based discrimination usually falls outside their competences; therefore, they do not receive such cases to record them.

In general, police officers in **Albania**, **Kosovo** and **Montenegro** stated that they had completed training on human rights and gender equality.² 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. 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**, the police officers interviewed mentioned five cases 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.

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

² Other countries did not interview police.

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. The only two potential cases mentioned during interviews with prosecutors in **Kosovo** involved sexual harassment. For example, prosecutors mentioned a case that involved the criminal act of a male employer harassing a female employee, which was still under review.³

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.⁴ 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.⁵ In contrast, other prosecutors acknowledged that gender-based discrimination exists, though they had not had any cases.

The general lack of cases reported meant that prosecutors 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.

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 crime, alleged offenses involving such discrimination have not been recorded explicitly. Nor is the 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.⁶ 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 region.

Only 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.

Interview and survey data suggest that few discrimination cases have been filed with courts. Among the few cases mentioned, violations of women's rights to maternity leave and sexual harassment seem among the most common. Exemplary of a recurring trend, in one case in Kosovo a woman had a fixed contract for 30 days, which was continually renewed

³ Interview with a man prosecutor, Kosovo, November 2018.

⁴ Interview with a man prosecutor, Kosovo, December 2018.

⁵ Interview with a woman prosecutor, Kosovo, December 2018.

⁶ Komar, O. et al., *Gender-based Discrimination and Labour in Montenegro*, p. 39.

until she became pregnant, at which time the employer stopped renewing her contract. While legally legitimate, the company circumvented obligations to keep the employee during maternity leave. In **North Macedonia**, only one court case was published in which the court found the employer guilty of discrimination in relation to pregnancy; the applicant was fired from her job when the employer learned of her pregnancy.⁷

In general, the few judges who had treated cases of gender-based discrimination said they responded to the cases correctly. For example, a judge in Kosovo mentioned a case of a public company firing a pregnant woman, though she had a contract until 2021.⁸ 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. A CSO representative in Kosovo said that courts prolong cases of this nature and that cases “are not taken seriously”.⁹ Similarly, a representative of the Ombudsperson Institution in North Macedonia 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**.¹⁰ 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.

The lack of judicial practice seems 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”.¹¹ 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 inappropriate and said there was a legal basis for a higher sentence. The prosecution has re-opened the case with the Appeals Court.

“ In our court, we have lots of cases and it would take longer than compared to other courts for the case to be closed. [We] try to process them with a priority. We attempt to close work-related cases within six months, but it will likely be appealed, and this will extend the timeframe [to at least a year in total].

- Civil Court Judge, North Macedonia

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

- OI representative, Kosovo

⁷ Leshoska, V., Ilikj, S., Kotevska, B., Bashevaska, M., Maleski, B., Maleska, T., *Gender-based Discrimination and Labour in North Macedonia*, Skopje, Reactor, 2019, at: <http://reactor.org.mk/CMS/Files/Publications/Documents/kwn-final14.pdf?fbclid=IwAR3LEdGHIbtwse6tuPGkHN-oS3LSsr2vSWSpCuUjN1LmismAkng122dehoKw>.

⁸ Interview with man, judge, Kosovo, November 2018.

⁹ Interview with woman, CSO representative, Kosovo, November 2018.

¹⁰ Interview with CSO, Union and Labour Inspectorate representatives, BiH, September – December, 2018.

¹¹ Interview with woman judge, K 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/wp-content/uploads/2018/10/20180312142859762.pdf>).

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.

Labour Inspectorate

Labour Inspectorate representatives' knowledge differed across the WB countries, ranging from little to very knowledgeable about legal provisions pertaining to gender-based discrimination at work. In **BiH, Montenegro** and **Kosovo**, they tended to know less about laws pertaining to gender equality and discrimination. In **BiH**, for instance, the chief inspector believed that there was not enough knowledge nor education among cantonal inspectors regarding gender-based discrimination. Some inspectors' responses similarly suggested that they may not be able to identify gender-based discrimination. The State Labour Inspectorate in **North Macedonia** also voiced concerns regarding the scope of their responsibilities and difficulties in proving gender-based discrimination at work. In **Albania**, inspectors seem aware of the legal framework.

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

In **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 suggested low capacities within this institution, hindering their effectiveness in protecting workers' rights. As one CSO representative there 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.¹²

In **Kosovo**, some inspectors' statements 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 colleagues", he said.¹³ Such comments suggest the presence of victim-blaming. Other institutions noted the inadequate inspection of discrimination cases, breaches of confidentiality and vague reporting on inspected cases. "Their reports are vague, leaving

“ 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

¹² Interview with woman, CSO representative, Serbia, November 2018

¹³ Interview with man, Labour Inspector, Kosovo, November 2018.

room for interpretation”, a prosecutor stated. This makes “it difficult for other institutions to give a verdict”.¹⁴

Dissatisfaction with the performance of Labour Inspectorates was a recurring theme in the WB, including among other institutions’ representatives. For example, in **Serbia**, according to one interviewee, the Labour Inspectorate is active 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.¹⁵

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.

Ombudspersons Institution

As an independent body, the Ombudsperson Institution (OI) supervises and promotes respect for fundamental human rights and liberties. In most 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.

Generally, OI representatives in WB countries seemed very knowledgeable about the legal framework related to gender-based discrimination.¹⁶ 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. In **Kosovo** they could refer to and comment on the Labour Law and knew their legal responsibilities for addressing complaints. In **Montenegro**, OI representatives said they had attended several specialised trainings focused on gender-based discrimination, so they feel well-equipped to intervene when a complaint is made.

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.

Meanwhile, in **Albania** the OI representatives noted the lack of training opportunities for them, especially in gender-based discrimination.

¹⁴ Interview with a male prosecutor, Kosovo, December 2018.

¹⁵ Interview with woman, CSO representative, Serbia, October 2018.

¹⁶ Notably, no interview was conducted in Serbia. The OI did not respond to several requests for an interview or data.

Considering the lack of data regarding cases treated by this institution, it was difficult to assess the quality of OI's performance in treating such cases in WB countries.

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.¹⁷ Judges seemed to think 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".¹⁸ Other respondents similarly considered that this institution has minimal influence because its recommendations are not binding. In **BiH**, respondents expressed some suspicion regarding the efficiency of the Ombudsman. In addition to emphasising the problem of recommendations not being binding,¹⁹ respondents said that the Institution "has mandates but does not use them",²⁰ "this Institution has lost its importance as a corrective force of the authorities", "it is uncertain how many people believe that the institution is accessible and can help address their problems",²¹ and that proceedings before the Institution are lengthy, such as in discrimination cases.²²

Generally, a combination of low reporting, due to insufficient public awareness about the role of the OI, and weak data management practices meant that it was difficult to assess how the OI has treated cases of gender-based discrimination.

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 knew their role in advancing workers' rights.

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 feel 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.

However, 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 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.²³ 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.

The percentage of respondents who said that they knew of a workers' union in their country that could represent their interests differed by country (Graph 21). In all countries

¹⁷ Interviews with 27 representatives of different institutions, Kosovo, September – December 2018.

¹⁸ Interview with a woman prosecutor, Kosovo, November 2018.

¹⁹ Interview with CSO, Union and Labour Inspectorate representatives, BiH, September – December 2018.

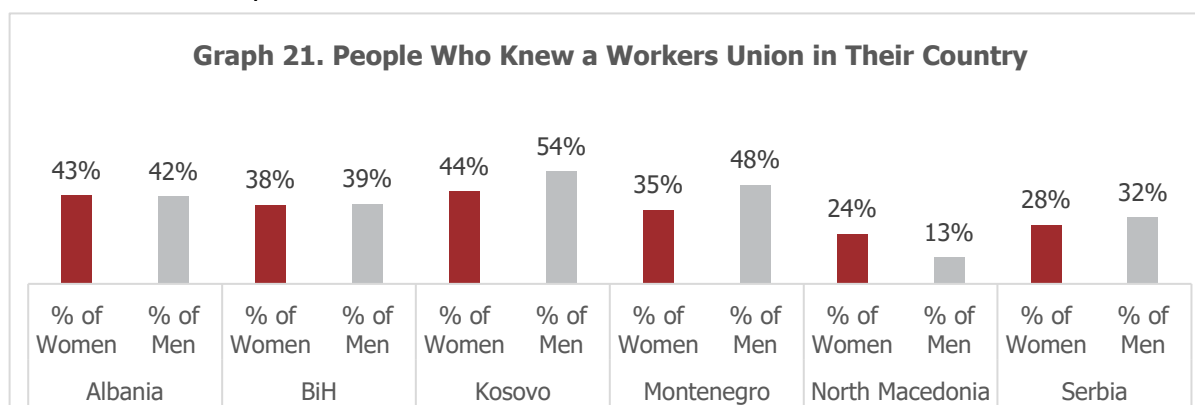
²⁰ Interview with CSO and Labour Inspectorate representatives, Bosnia and Herzegovina, November 2018.

²¹ Interview with a CSO representative, BiH, October 2018.

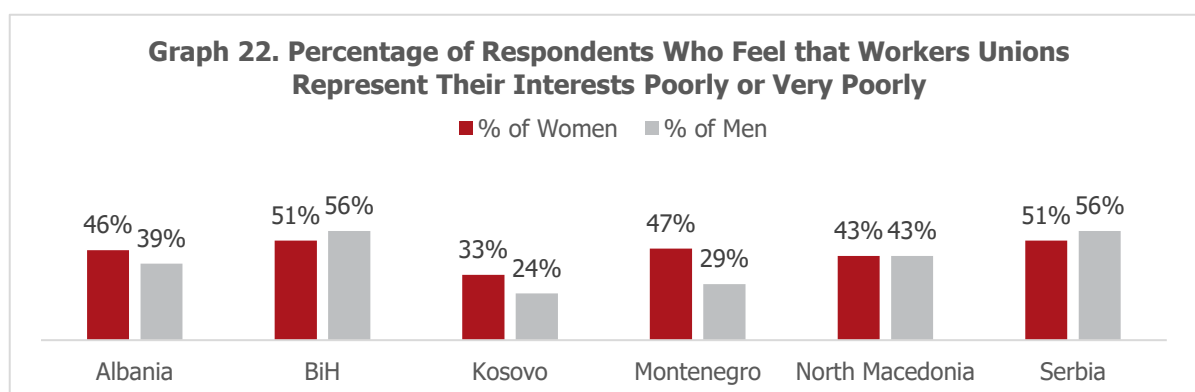
²² Interview with CSO and Ombudsperson representatives, BiH, September – October 2018.

²³ Interview with woman, union representative, Serbia, 2018.

except **North Macedonia**, a higher percentage of men than women respondents knew of a union that could represent their interests.



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 22 illustrates, 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.



In **Serbia**, interviews with union representatives suggest that labour unions do not see labour-related gender-based discrimination as an issue that needs 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 have been taken in this direction. 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.²⁴

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.²⁵ Moreover, in **Albania**, union representatives observed some difficulties in treating gender-based discrimination. Thus, 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.²⁶

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 due to lack of knowledge and trust in labour unions.

²⁴ Đan, A., Vrbaški, S., *Gender-based Discrimination and Labour in Serbia*, p. 43.

²⁵ Interview with woman, labour union representative, Kosovo, October 2018.

²⁶ Arqimandriti, M., Llubani, M., Çoku, O., Hoxha, E., *Gender-based Discrimination and Labour in Albania*, Albania, Gender Alliance for Development Centre, 2019, p. 53, at: http://www.gadc.org.al/media/files/upload/GBD%20Labour%20Albania_EN.pdf.

Civil Society Organisations

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.²⁷

The CSO representatives interviewed tended to know about the relevant legal framework and what gender-based discrimination entails. They indicated that they feel somewhat to very capable to address this issue. Several CSOs in the WB support LGBTQIA+ persons, PWD, ethnic minorities

“ CSOs can do a lot, but they cannot take all the responsibilities of institutions.

- CSO representative in BiH

and/or persons who have experienced gender-based discrimination. Some provide free legal aid and counselling. However, generally, very few CSOs have focused specifically on tackling gender-based discrimination related to work. Thus, very few CSOs operating in WB countries have directly assisted persons affected by gender-based discrimination at work. As with other institutions, few CSOs have had people approach them seeking assistance related to gender-based discrimination. Some CSO representatives noted that their ability to assist such 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”.²⁸

A few CSO representatives shared information about cases of discrimination that were reported to them. In **Montenegro**, for example, a woman was harassed by her boss because she was a lesbian. He was saying that he had fantasies about having sexual intercourse with her. She was forced to quit. In another occasion a man was fired because he was gay. In both cases the victims refused to report their cases to institutions in Montenegro.

In **Albania**, a CSO called the Centre for Labour Rights was recently established, which offers free legal aid related to labour rights issues, including discrimination. In **North Macedonia** CSOs also assist with reporting discrimination.

In **Serbia**, CSOs have faced some challenges, including lack of trust among individuals in the labour force,²⁹ lack of institutional data and funding restrictions from donors which means few resources for providing such support. Another challenge highlighted in Serbia is that very few CSOs have ongoing collaboration with governmental institutions.

Somewhat different from other countries, in **BiH** CSOs undertake several activities related to gender-based discrimination, including 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,

²⁷ Interview with CSO representative, Montenegro, October 2018.

²⁸ Interview with woman, CSO representative, Kosovo, October 2018.

²⁹ 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.

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) were related to discrimination against women in the field of labour and employment, though a marked increase in such requests occurred in 2017. Services included counselling, preparation of written complaints, as well as legal aid through an online service. Legal aid was available to all women and men throughout BiH.³⁰

CSOs also undertake advocacy to hold employers accountable for protecting women's rights. For example, in **North Macedonia**, 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 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 in their appropriate treatment of gender-based discrimination cases, few CSOs have experience in this area. The main reasons include the fact that the special target groups they serve have not wanted to take their cases to institutions, and CSOs have not had sufficient financial and human resources to fully assist people who have suffered gender-based discrimination.

Other Institutions

Some countries have additional, unique institutions that perform roles related to addressing gender-based discrimination in the WB. This subsection examines these institutions' knowledge, experience and treatment of gender-based discrimination cases related to labour.

Commissioner on Protection from Discrimination

Commissioners for protection from discrimination (CPD) exist in **Albania**, **North Macedonia** and **Serbia** (titled 'Commissioner for the Protection of Equality').³¹ They have similar tasks in each country, related to protection against discrimination. They review and make recommendations regarding complaints. In **Albania** and **Serbia**, their decisions are legally binding, but not in **North Macedonia**. In the latter, the CPD can refer the case to "competent authorities". In these countries, CPDs have litigation powers, including deciding on complaints and representation in courts, with at least one 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**, the CPD seems very knowledgeable about gender-based discrimination and its intersections with other grounds of discrimination, such as age, ethnicity and ability. However, the CPD had slightly less knowledge of the extent to which anti-discrimination laws are applied to the labour market; it was indicated that this fell outside the CPD's jurisdiction.

³⁰ Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, p. 72.

³¹ 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; Law on Labour of Republika Srpska, 2016, at: <http://www.fic.ba/uimages/zakoni/RS%20Labour%20Law.pdf>.

In **North Macedonia**, 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 **Albania**, the CPD knows the legislative framework on discrimination.³² 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.³³ 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 **North Macedonia**, the CPD 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.³⁴

CPD engage in various awareness raising initiatives. For example, in **Serbia**, the Commissioner created and promoted an *Equality Code of Practice: Guidelines for Developing an Anti-discrimination Policy for Serbian Employers*.³⁵

In **Serbia** and **Albania**, interviews suggested that the Commissioner could provide more recommendations, act on complaints and initiate court procedures. The fact that the Commissioner cannot force a party to implement legally binding recommendations presents an obstacle.³⁶

Sector for Equal Opportunities, Ministry of Labour and Social Policy

In **North Macedonia**, 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).³⁷ 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, inspectors. Its position within MLSP can undermine its independence. Further, due in

“ *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, North Macedonia

³² Interview with Anti-Discrimination Commissioner representative, Albania, February 2019.

³³ 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*).

³⁴ 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-macedonia-nochanges-in-reporting-to-the-equality-body-cpad-and-to-the-ombudsperson-pdf-148-kb>.

³⁵ The Commissioner for the Protection of Equality, *Equality code of practice: Guidelines for developing the Anti-Discrimination Policy for employers in Serbia*, Belgrade, 2017.

³⁶ Interview with woman, government institution representative, October 2018, Serbia.

³⁷ Leshoska, V., et al *Gender-based Discrimination and Labour in North Macedonia*.

part to poor visibility, few claims have been filed with the Representative and thus it has hardly undertaken any action.³⁸ The institution also lacks financial and human resources.³⁹

Mediation

Most countries foresee possible mediation, which offers the possibility of addressing discrimination more efficiently and quickly than through courts.⁴⁰ In **North Macedonia**, a Board can provide peaceful resolution to collective and individual labour disputes.⁴¹ In individual cases, the Board can issue a decision in cases involving termination of a working contract and unpaid salaries. In collective disputes, the Board issues a recommendation.⁴²

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 is more efficient. 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.

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.⁴³ It takes free of charge executive decisions. However, 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.⁴⁴ In **FBiH**, a draft law foreseeing similar peaceful settlement of disputes is in the process of adoption, albeit parties would cover expenses except for the arbiter (paid by the Ministry).⁴⁵ **DB** has no such institution.⁴⁶

Legal Aid

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.⁴⁷ Seven such institutions provided data, 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 serve persons qualifying as underprivileged (**BiH, Kosovo**), employed persons cannot receive its support.⁴⁸ In **North Macedonia**, a new law on free legal aid will enter into force in October 2019, which will enable financing of authorized associations to provide legal assistance through grants from

³⁸ Najčevska, M. and Kotevska, B., *Country Report on Gender Equality - Macedonia 2018*, European Network of Legal Experts in Gender and Non-discrimination, 2019.

³⁹ 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.

⁴⁰ This was not examined in depth in all countries and could be an area for further research.

⁴¹ Law on Peaceful Resolution of Labour Disputes, 2007, and subsequent amendments. For further information, see the MLSP website: <http://www.mtsp.gov.mk/mirno-reshavanje-na-rabotni-sporovi-baner.nsp>.

⁴² Law on Peaceful Settlement of Labor Disputes (Official Gazette of the Republic of Macedonia, n: 87/2007, 27/2014, 102/2014, 30/2016).

⁴³ Law on Peaceful Settlement of Disputes and Labour Law of RS (Official Gazette of Republic of Srpska" No. 91/2016).

⁴⁴ Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, p. 68.

⁴⁵ 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.

⁴⁶ Interview with Labour Ministry representative, BiH, October 2018.

⁴⁷ 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*).

⁴⁸ Gačanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, p. 67.

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.

In **Montenegro**, free legal aid providers have not been trained in representing cases of gender-based discrimination.⁴⁹ In **BiH**, free legal aid providers noted that they lack capacities in protection from discrimination.⁵⁰

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 a labour-related gender-based crime had 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 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 such 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, Serbia and North Macedonia, where Commissioners on Protection from Discrimination exist, they have handled cases of discrimination but not necessarily gender-based discrimination. The Sector for Equal Opportunities in the Ministry of Labour and Social Policy in North Macedonia lacks financial and human resources; due to poor visibility, few claims have been filed and thus it has undertaken little action related to gender-based discrimination. Legal aid providers also seem not to have assisted in such cases.

⁴⁹ 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.

⁵⁰ Ibid, p. 68.

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 new EU Work-Life Balance Directive.
- Monitor reforms using a more standardised approach across the countries, including such monitoring as part of regular reporting in country reports.
- In accordance with the EU Gender Action Plan II, 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 offer input in planning and implementing activities. Encouraging such cooperation also would be in line with the EU Gender Action Plan II.
- 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

- Ensure harmonisation of parental leave and paternity leave entitlements with the EU Work-Life Balance Directive.
- 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.
- 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, North Macedonia, Montenegro, Serbia).
- 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.
- Revise wording in laws to reflect more adequately the principle of third-party standing outlined in the EU Equal Treatment Directives, allowing CSOs to support victims in making complaints (Albania, Montenegro, Kosovo and Serbia).

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 protection mechanisms.

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, power relations and identifying instances 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 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. Corruption and illegal practices undertaken by inspectors that favour employers and violate workers' rights must involve zero-tolerance policies and 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 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 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.
- 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 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 explicitly target more women to become active union members; collaborate with women CSOs 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

- Collaborate with a diverse network of CSOs involved in anti-discrimination to coordinate efforts towards efficiency, effectiveness and wise use of limited resources; set a joint strategy for shared work against discrimination in labour; share information regularly; and exchange best practices.
- Collaborate 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.
- Reach out to minority ethnic groups, LGBTQI+ persons and PWD with information about their rights; support them in reporting and seeking justice for gender-based discrimination.
- In addition to legal aid, provide psychological counselling to persons exposed to gender-based discrimination, especially mobbing and sexual harassment.
- Contribute 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 allowed.
- 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, towards securing sufficient resources for this work.

Collaboration among Actors

- Organise joint information campaigns to help persons who have experienced labour-related gender-based discrimination 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 II.

WORKS CITED

- Agency for Gender Equality, BiH, *CEDAW Periodic Report for BiH*, 2018, at: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izvjestaj-za-BiH_Nacrt.pdf.
- Ahmed, D., and Bulmer, E. for International IDEA, *Limitation Clauses*, Strömsborg, 2017, at: <https://www.idea.int/sites/default/files/publications/limitation-clauses-primer.pdf>.
- Arqimandriti, M., Llubani, M., Çoku, O., Hoxha, E., *Gender-based Discrimination and Labour in Albania*, Albania, Gender Alliance for Development Centre, 2019, at: http://www.gadc.org.al/media/files/upload/GBD%20Labour%20Albania_EN.pdf.
- Babović, M., *Gender equality index for the Republic of Serbia*, Social Inclusion and Poverty Reduction Unit, Government of the Republic of Serbia, 2018.
- Banjaska, I., Rrahmani, G., Farnsworth, N., *Striking a Balance*, Kosovo, Kosovo Women's Network, 2016, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160504154201373.pdf>.
- Berisha, A., Farnsworth, N., Hoti, D., *From Words to Action? Monitoring the Institutional Response to Gender-based Violence in Kosovo*, Kosovo Women's Network, 2017, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20180312142859762.pdf>.
- Chopin, I. and Germaine, C., *A comparative analysis of non-discrimination law in Europe 2017*, European Commission, 2017, at: <https://publications.europa.eu/en/publication-detail/-/publication/36c9bb78-db01-11e7-a506-01aa75ed71a1/language-en>.
- Craig, P. and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, Fifth ed., 2011.
- 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, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20171108105226438.pdf>.
- Čolaković 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, at: <http://www.seelawschool.org/pdf/Book-Legal-Protection-Against-Discrimination-SEE.pdf>.
- CPD Annual Report 2018, cited in *Gender-based Discrimination and Labour in Albania*, at: http://www.gadc.org.al/media/files/upload/GBD%20Labour%20Albania_EN.pdf
- Commission of the European Communities, *White Paper on the Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union* (COM(95) 163), at: https://www.cvce.eu/en/obj/white_paper_on_the_preparation_of_the_associated_countries_of_central_and_eastern_europe_for_integration_into_the_internal_market_of_the_union_com_95_163-en-f3207cf5-df8b-475a-bd06-6fc7d80b0c9e.html.
- Council of Europe (Cybercrime Convention Committee), *Implementation of Article 13 Budapest Convention by Parties and Observers: A Comparative Study*, Strasbourg, 2016, at: <https://rm.coe.int/0900001680651690>.
- _____, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000, at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043>.
- _____, Directive 2004/113/EC on implementing the principle of equal treatment between men and women in the access to and supply of goods and services, 2004, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>.
- _____, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), 2006, at: <https://eur-lex.europa.eu/eli/dir/2006/54/oj>.
- _____, Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance), 2010, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1551092004220&uri=CELEX:32010L0018>.
- _____, Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, 2010, at: <https://eur-lex.europa.eu/eli/dir/2010/41/oj>.
- _____, Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, 1978, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007>.
- _____, Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31997L0081>.

- _____, Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, 1992, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>.
- Dan, A., Vrbaški, S., *Gender-based Discrimination and Labour in Serbia*, Belgrade, Kvinna till Kvinna Foundation, 2019, at: https://kvinnatillkvinna.org/wp-content/uploads/2019/04/GBD-Labour-Serbia_2019-04-02_FINAL.pdf.
- D4D, *Shifting paradigms: Equity through Parental Leave*, Pristina, 2017 at: https://d4d-ks.org/wp-content/uploads/2017/12/D4D_PI_13_ENG_WEB.pdf.
- Draft Law on Peaceful Settlement of Labour Disputes in the FBiH, at: https://www.ilo.org/dyn/ceelex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_YEAR:BIH,2015.
- Ekonomi, M., Sala, V., Mandro A., Gjermeni, E., Duka, R., Lena, O., *Gender Inequalities in Pay in Albania*, Gender Alliance for Development Centre, 2013, at: http://idmalbania.org/wp-content/uploads/2014/10/empowering_albanian_rural_woman_economic_and_social_perspectives_2010.pdf.
- 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, Brussels, 21.9.2015, at: https://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf.
- _____, Opinion on Albania's application for Membership of the European Union, Commission Staff Working Document, Analytical Report, SEC (2010) 1335.
- European Union Agency for Fundamental Rights, European Court of Human Rights and the Council of Europe. _____ and Council of Europe, Handbook on European non-discrimination law, 2018, at: https://www.echr.coe.int/Documents/Handbook_non_discrimination_Law_ENG.pdf.
- English, K. and Stapleton A., *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*, 1995. European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe 2017*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4553-a-comparative-analysis-of-gender-equality-law-in-europe-2017-pdf-847-kb>.
- 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-macedonia-nochanges-in-reporting-to-the-equality-body-cpad-and-to-the-ombudsperson-pdf-148-kb>.
- ECJ, C-13/94 P v S and Cornwall County.
- _____, C-43/75 Defrenne.
- _____, C-117/01 K.B. v N.H.S.
- _____, C-147/08 Römer.
- _____, C-170/84 Bilka-Kaufhaus GmbH v Weber von Hartz, 1986.
- _____, C-423/04 Sarah Margaret Richards v Secretary of State for Work and Pensions.
- 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, at: <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-6.2.pdf>.
- Gaćanica, L., *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, Helsinki Citizens' Assembly Banja Luka, Banja Luka, 2019, at: <http://hcabl.org/wp-content/uploads/2019/05/GENDER-BASED-DISCRIMINATION-AND-LABOUR-IN-BOSNIA-AND-HERZEGOVINA-FINAL.pdf>.
- Hille P. and Knill, C., 2006, "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.
- IDEAS Research and Development Center, Study findings about the status of LGBT+ person in the labour market, Factsheet, at: <https://www.dijalog.net/wp-content/uploads/2018/10/LGBT-na-radu-.pdf>
- IMPAQ International for USAID Kosovo, *Gender, LGBTI, and Persons with Disabilities Assessment*, Pristina.
- Jelic, I., *Country Report: Gender Equality Montenegro*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4360-montenegro-country-report-gender-equality-2017-pdf-1-37-mb>.
- Krstic, I., *Country Report: Gender Equality Serbia*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4228-serbia-country-report-gender-equality-2017-pdf-1-33-mb>.
- _____, *Country Report: Non-discrimination Serbia*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4408-serbia-country-report-non-discrimination-2017-pdf-1-75-mb>.
- 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-physical-disabilities-in-the-Republic-of-Macedonia.pdf>.

- Kotevska, B., *Country Report: Non-discrimination FYR Macedonia*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb>.
- Komar, O., Šćepanović, A., Glomazić M., Šuković, D., *Gender-based Discrimination and Labour in Montenegro*, Montenegro, Women's Rights Centre, 2019, at: http://womensrightscenter.org/files/documents/1557742198-Montenegro%20report_%20final%20eng%20version.pdf.
- Knill, C., "European Policies: The Impact of National Administrative Traditions", 1998, 18(1) *Journal of Public Policy*.
- Kosovo Ministry of Labour and Social Welfare, *Draft Fillestar i Koncept Dokumentit Për Rregullimin e Fushës Nga Marrëdhënia e Punës*, 2018, at: <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40330> [in Albanian].
- _____, Law on Albanian State Police, Article 17/c, at: <https://www.refworld.org/pdfid/4c20cad92.pdf>.
- Lev Ivanov et. al., Effectiveness, Proportionality and Dissuasiveness, 2012, *E. & Central Eur. J. on Envtl. L.* 11.
- Makkonen, T., *European handbook on equality data*, 2016 Revision, Luxembourg, 2016, at: <https://publications.europa.eu/en/publication-detail/-/publication/cd5d60a3-094d-11e7-8a35-01aa75ed71a1>.
- Marjanović, D., *Assessment of the structural barriers that hinder the employment of Roma women*, UN Women, 2015.
- Ministry for Human and Minority Rights, *Second report on the implementation of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, Montenegro, 2015.
- Millennium Challenge Corporation, *Kosovo - Labor Force & Time Use Survey*, 2017, at: <https://data.mcc.gov/evaluations/index.php/catalog/205/study-description>.
- Nikolić-Ristanović, V., Čopić, S., Nikolić, J., Šaćiri, B., *Discrimination against women at the labour market in Serbia*, Victimology Society of Serbia, 2012.
- National Democratic Institute et. al., *NDI Public Opinion Poll in the Balkans on LGBTI Communities*, 2015, at: <https://www.lgbti-era.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf>.
- Najchevska, M., *Country Report: Gender Equality FYR Macedonia*, European Commission, 2017, at: <https://www.equalitylaw.eu/downloads/4287-fyr-macedonia-country-report-gender-equality-2017-pdf-1-32-kb>.
- OSCE and ODIHR, *Overview of Anti-Discrimination Legislation in the Western Balkans*, at: <https://www.osce.org/odihhr/117801?download=true>.
- Šimonović Einwalter, Tena. and Selanec, Goran, *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, Sarajevo, 2015, at: <http://eu-monitoring.ba/en/alignment-of-the-law-on-prohibition-of-discrimination-with-the-eu-acquis-expert-analysis-on-alignment/>.
- 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.
- Sverdrup, U., "Implementation" in Graziano, P. and Vink, M. (eds), *Europeanization: New Research Agendas*, Palgrave, 2008.
- Stopić, J., Tadžić, J., Petković, N., *Being LGBTI in Eastern Europe: Serbia country report*, United Nations Development Programme, 2017.
- Tamindžija B., Aleksić S., Musiolek B., *Country profile: Serbia*. Clean Clothes Campaign, 2017, at: <https://cleanclothes.org/livingwage/europe/country-profiles/serbia>.
- 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*, at: <http://www.lawjournal.al/sites/default/files/Pillar%203%2C%20ALJ%205%20ENGL.pdf>.
- Qosaj-Mustafa, A., Berisha, A., Farnsworth, N., Banjska, I., *Sexual Harassment in Kosovo*, Pristina, KWN, 2016, at: <https://womensnetwork.org/wp-content/uploads/2018/10/20160223185243349.pdf>.
- UNDP & INSTAT, *Roma and Egyptians in Albania: A socio-demographic and economic profile based on the 2011 Census*, 2015, at: <http://www.al.undp.org/content/dam/albania/docs/Census%202011%20Profile%20of%20Roma%20and%20Egyptians%20final.pdf>.
- World Bank, *SEE Jobs Gateway*, based on data provided by national statistical offices and Eurostat, 2017, at: <https://www.seejobsgateway.net/>.
- Žarković-Rakić, J., and Vladisavljević, M., *Women's access to economic opportunities in Serbia*, World Bank, 2016, at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/11/Womens-Access-to-Economic-Opportunities-in-Serbia.pdf>.
- Zavitan 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/>.

ANNEXES

Annex 1. Methodology

This annex provides further details about the research methodology.¹ 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 the labour market; 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?

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.

¹ 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 2017, 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 context. This involved sending official data requests to these institutions and following up for responses. As noted, 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. The partners collaborated to create and check the online survey in local languages (Albanian, Bosnian, Croatian, 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 and email. It was open from 29 October 2018 through 10 January 2019. For demographic information about respondents, see Annex 2 and for the survey instrument, see Annex 3.

Interviews

In total, partners conducted 323 interviews with institutions responsible for implementing the relevant legal framework, regarding their knowledge, attitudes and experiences in treating 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 10). 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 available upon request.

Respondent / Institution	Albania	BiH	Kosovo	M	NM	Serbia	Total
Police	14	0	32	3	0	0	49
Prosecutors	2	0	13	3	2	0	20
Criminal court judges	5	0	13	0	0	0	18
Civil court judges	0	2	13	10	2	0	27
Labour inspectors	5	2	7	2	1	0	17
Ombudsperson Institution	2	1	7	1	1	0	12
Labour unions	7	5	3	3	2	1	21
CSOs	10	14	14	6	3	11	58
Governmental institutions	2	0	0	8	0	3	13
Lawyers and legal aid providers	2	3	0	6	0	4	15
CPD	3	0	0	0	1	0	4
Other institutions	0	9	0	0	3	0	12
Persons who experienced gender-based discrimination at work	13	15	6	15	1	7	57
Total	65	51	108	57	16	26	323

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 organization carried out the statistical analysis of survey data using SPSS, which was reviewed by other research team members. Towards maximizing the usage of the data gathered, the data from everyone who completed a particular question was processed and presented. Thus, the number of missing cases differed for each variable and increased for questions posed towards the end of the survey. The number of responses ("n") is reported in the presentation of findings. Any statements including the term "significant" in relation to the survey findings suggest statistical testing with a confidence level $\alpha = 0.05$. However, limitations outlined in the next section must be considered.

Limitations

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

First, since random sampling was not used, the findings cannot be generalized to the entire population. Statistical inference means to generalize the findings from a sample to a population, usually using significance tests. Considering that the survey sample was a non-probability sample and that statistical inference based on conventions for p values presupposes probability sampling, the findings referred to as "statistically significant" should be interpreted as suggestive, but not conclusive or generalizable. Statistical tests were used as heuristics to differentiate "large enough" differences or correlations on which the research team could comment.

Second and related, since the survey sample was convenient, it was not demographically representative of the population of WB countries. 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 (80% women, 20% men), 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 generalizability.

Third and related, the sample involved more respondents who were educated and living in urban areas (see Annex 2). Thus, the sample was rather 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 hypothesizes that the level of knowledge about discrimination and the experiences with discrimination may be even worse for persons working in rural areas and/or who have lower levels of education.

In **Serbia** in particular, a key challenge was an extremely low response rate from institutions. The researchers faced major barriers in interviewing institutional representatives. Interview requests were ignored, phone calls were either ignored or redirected and emails were unanswered. Thus, of the six countries involved in this research, the Serbian research is the only one that lacks interviews with judges. 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.

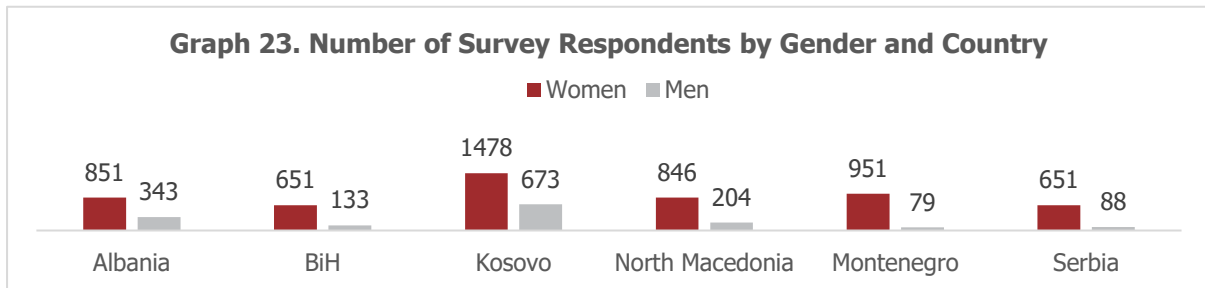
Also pertaining to reflexivity, the research team was instructed to take note of how their presence and approach during interviews may have influenced the research findings and to estimate any potential error. In some instances, the fact that the researchers were young women may have meant that some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

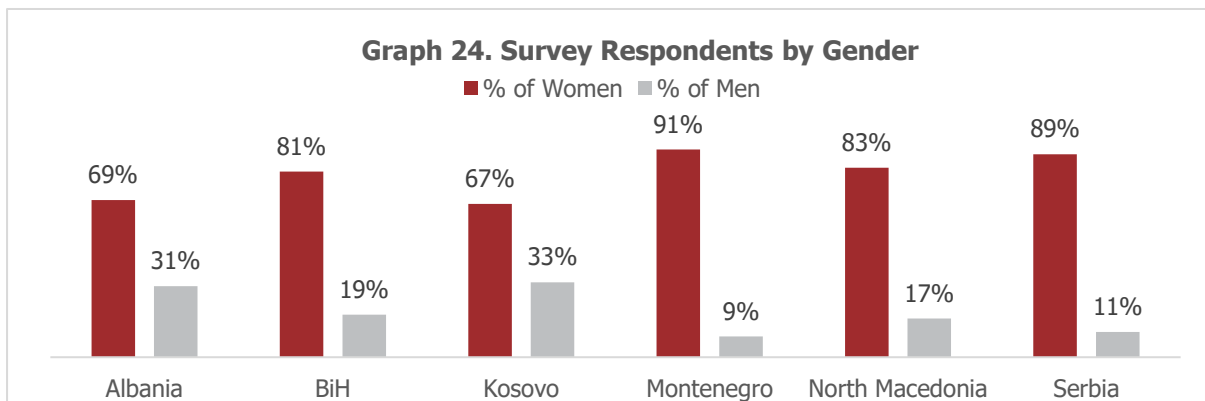
The research team sought to enhance the validity of the findings through triangulation of data sources (e.g., citizens, institutions, CSOs, statistics), methods and researchers. Peer review and participant checks of findings by diverse experts and stakeholders also were designed to identify any potential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

Annex 2. Demographic Information about the Sample

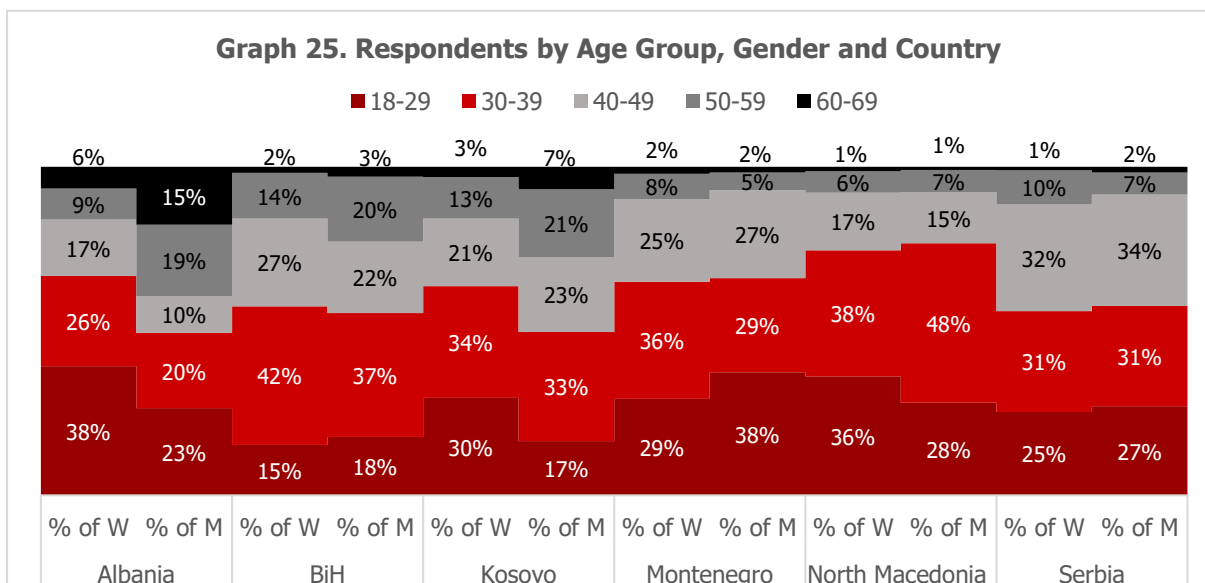
Graph 23 illustrates the total number of survey respondents by country and gender.



All other demographic information in this Annex refers to respondents who completed at least 90% of the online survey, unless otherwise noted. Graph 24 illustrates the gender of persons who completed at least 90% of the survey.² Clearly, women were overrepresented among the survey respondents in all countries.



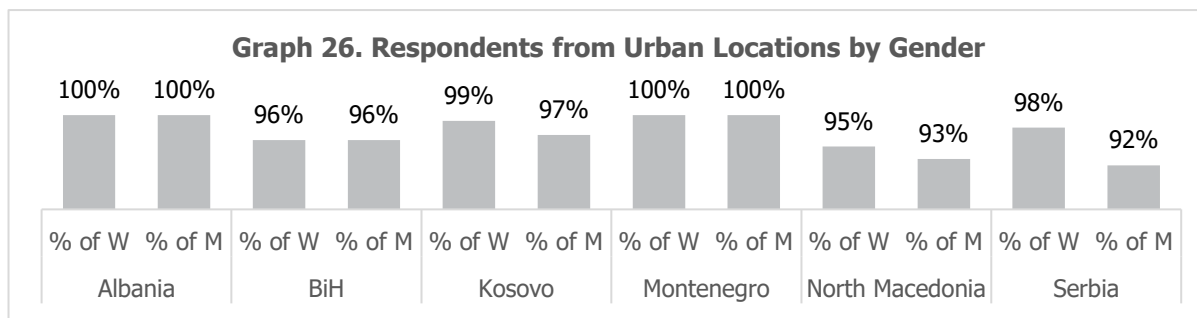
Graph 25 shows respondents' country, gender and age group.³ In **Kosovo, BiH and North Macedonia**, the highest percentage of respondents were ages 30 to 39. In **Albania**, the highest percentage of respondents were ages 18 to 29, in **Serbia** 40 to 49 and in **Montenegro** 30 to 39 for women respondents and 18 to 29 for men respondents.



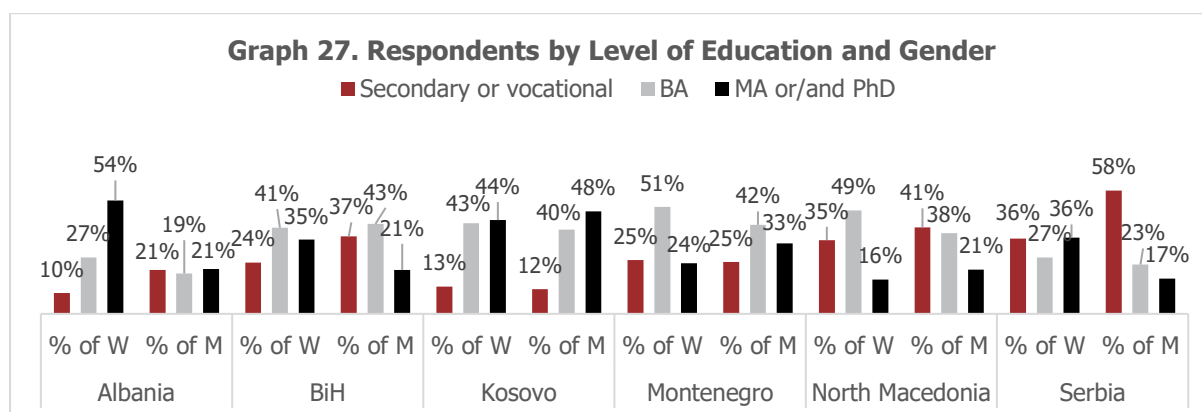
² N = 4,569.

³ N = 4,504.

Graph 26 shows the percentage of respondents that live in urban areas by country and gender. The majority of respondents reside in urban areas.⁴

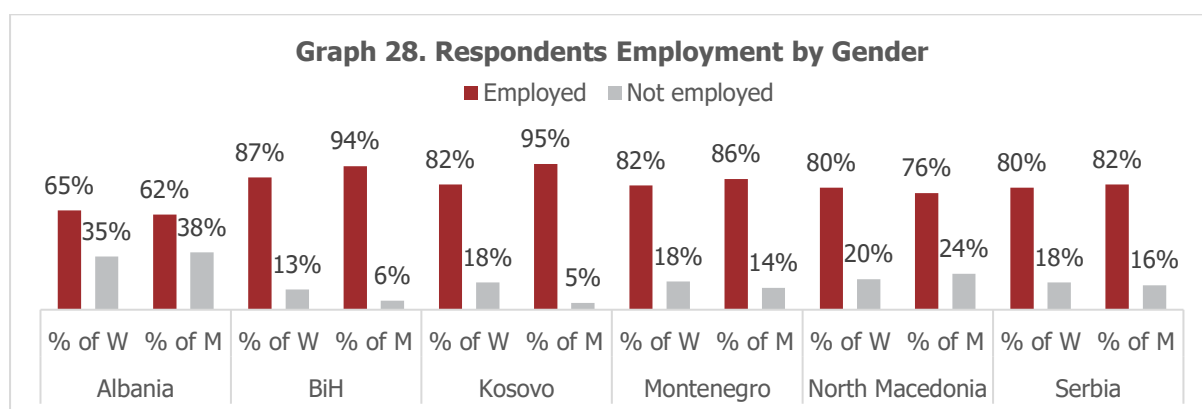


Graph 27 shows the level of education of respondents by gender and country. Overall, approximately 74% of respondents had completed university (BA, MA, PhD) and 23% had a secondary or vocational education.⁵



Employment Information

Graph 28 illustrates whether survey respondents were employed by gender and country. Overall, approximately 81% of respondents were employed (79% of women and 83% of men).⁶ A slightly higher percentage of women were employed than men in **Albania** and **North Macedonia**, whereas in other countries more men were employed than women.

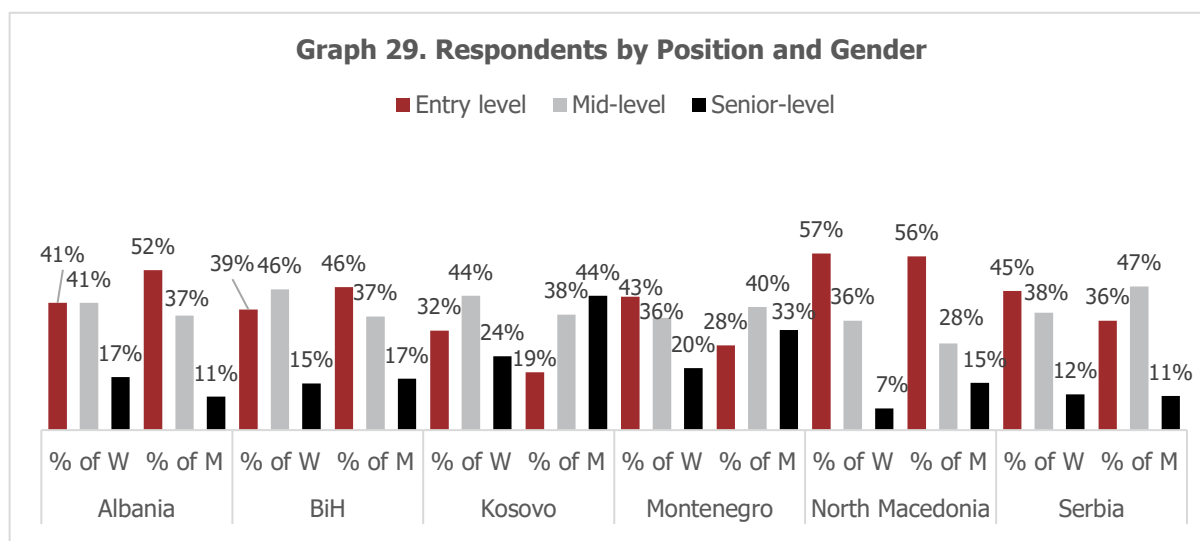


⁴ N = 4,491.

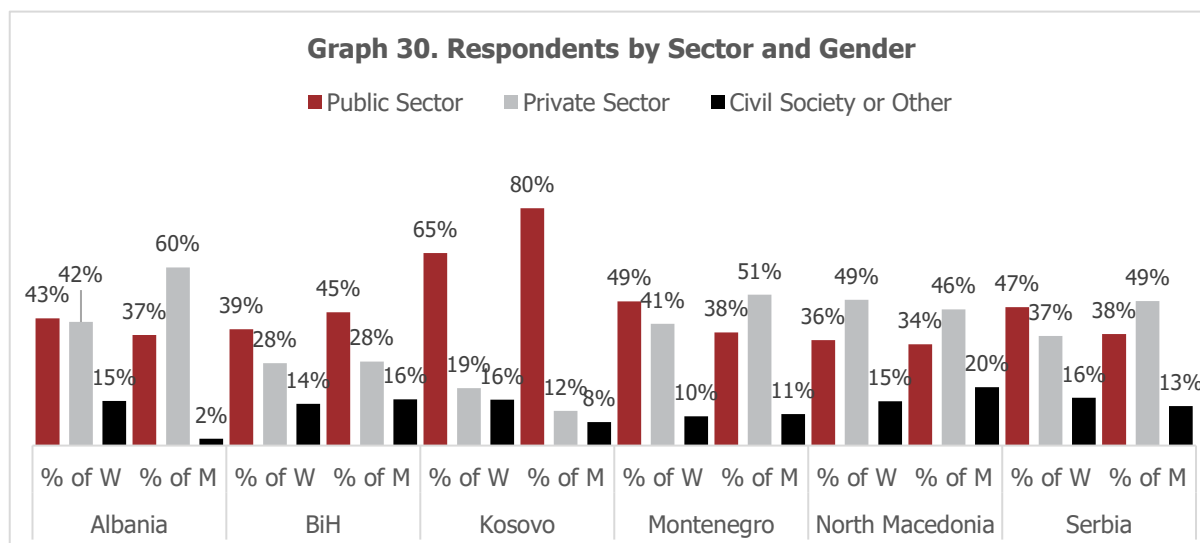
⁵ N = 4,545.

⁶ N = 4,469.

Graph 29 shows the position of employed respondents by gender and country. Overall, 41% of respondents worked in entry level positions (43% of women, 39% of men), 39% worked in mid-level positions (40% of women, 38% of men) and 19% were in senior level positions (16% of women, 22% of men).⁷



Graph 30 shows the sectors in which survey respondents worked by gender and country. Overall, 46% of respondents worked in the public sector (46% of women, 46% of men), 39% worked in the private sector (36% of women, 41% of men) and 13% of respondents worked in civil society or other sectors (14% of women, 12% of men).⁸ **Kosovo** had a higher percentage of public sector employees than other countries did; 80% of men and 65% of women respondents were from this sector.



Actual Employment Rates in the WB

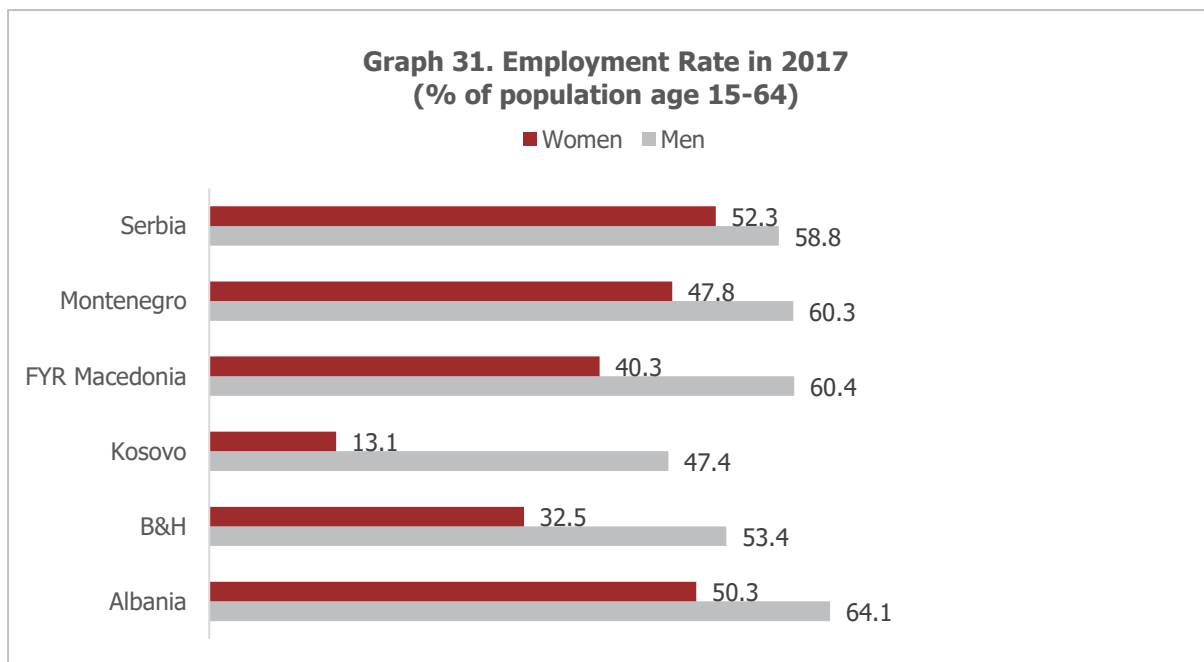
Graph 31 illustrates the actual employment rates among women and men across countries as of 2017.⁹ In all countries, a higher percentage of men were employed than

⁷ N = 3,235.

⁸ N = 3,485.

⁹ World Bank, SEE Jobs Gateway, based on data provided by national statistical offices and Eurostat, 2017, at: <https://www.seejobsgateway.net/>.

women. However, in **Serbia** and **Albania**, women and men were employed at more similar rates. In stark contrast, significant differences existed among women and men in **Kosovo**.



Annex 3. Sample Survey Instrument

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

GENERAL INFORMATION

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

What is your gender? Woman Man Other

In which year were you born?

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

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

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

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

What is your current marital status?

Single Engaged Married Divorced Co-habiting Widowed

Do you consider yourself to have a disability? Yes No

EMPLOYMENT INFORMATION

Are you currently:

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

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

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

Where do you work? Please check all that apply.

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

In which field do you work?

Administrative and support services
Accommodation and food service (hotel, restaurant)
Agriculture, forestry or fishing
Arts and Entertainment

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

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

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

Which of the following best describes your current position?

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

YOUR VIEWS

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

Yes No I don't know

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

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

HIRING

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

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

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

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

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

Please elaborate:

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

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

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

PROMOTION

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

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

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

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

WORKING CONDITIONS

Have you ever been denied the right to take off work for sick leave, national holidays, or annual leave? Yes/No

Do you think your health or safety is at risk because of your work? Yes/No

UNIONS

Do any workers' unions exist in your country, which could represent your interests? Yes/No/I don't know

Are you a member of any workers' union? Yes/No

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

- Very well Good Somewhat Poorly Very poorly

PREGNANCY AND MATERNITY LEAVE

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

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

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

- Yes No

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

- Yes No I am still on maternity leave

Why not? Please mark all that apply.

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

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

Yes/No

When you returned to work, did you have:

More responsibilities Fewer responsibilities The same responsibilities

Did you have:

Higher pay Lower pay The same pay

Did you have:

More working hours Less working hours The same working hours

When you returned, were you:

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

PATERNITY LEAVE

Would your employer give you paternity leave?

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

Since 2008, have you ever had a new born child while being employed? Yes/No

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

When you returned from leave, were you:

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

Do you think that men should have more paid time off for paternity leave? Yes/No/I don't know

CONTRACTS AND PAY

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

Yes/No

Do you currently have a contract? Yes/No

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

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

In your workplace, who tends to have longer contracts?

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

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

Yes/No

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

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

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

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

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

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

Has your employer ever asked you to return part of your salary to the employer? Yes/No

Usually, how are you compensated for overtime worked?

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

SEXUAL HARASSMENT AT WORK

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

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

Were the persons who did this to you: Women Men Both

Were the persons who did this in (please check all that apply):
 Lower positions than you Equal positions as you Higher positions than you

Who did you tell? Please check all that apply.

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

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

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

OVERALL REFLECTIONS

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

- Yes
- No

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

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

In which sector were you working when this occurred?

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

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

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

What happened when you reported discrimination to the relevant authorities?

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

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

- Yes
- No

FOLLOW-UP

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

- Yes
- No

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

Phone:
Email:

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

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

Annex 4. Sample Interview Guide

(For the Labour Inspectorate)

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

Introduction

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

Demographics

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

Knowledge

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

Attitudes and Perceptions

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

Training

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

Laws and Implementation

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

23. To what extent do you think that the Law on Gender Equality is being implemented in the labour market?
24. Other comments related to this:
25. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008?
 - 25.1.1 Yes
 - 25.1.2 No

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

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

Gender-based discrimination cases reported

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

Katalogimi në botim – **(CIP)**
Biblioteka Kombëtare e Kosovës “Pjetër Bogdani”

331.105.44(497-15)

Gender-based discrimination and Labour in the
Western Balkans / Nicole Farnsworth, David JJ
Ryan, Adelina Tërshani, Nerina Guri. – Prishtinë :
Kosovo Women’s Network, 2019. - 79 f. ; 21 cm.

1.Farnsworth, Nicole 2. Ryan, David JJ 3. Tërshani,
Adelina 4. Guri, Nerina

ISBN 978-9951-737-33-3

ISBN 978-9951-737-33-3



9 789951 737333