



Funded by the European Union



Sweden
Sverige

Co-funded by Swedish Development Cooperation

GENDER-BASED DISCRIMINATION AND LABOUR IN BOSNIA AND HERZEGOVINA



GENDER-BASED DISCRIMINATION AND LABOUR IN BOSNIA AND HERZEGOVINA

Author: Lejla Gačanica

March, 2019

ACKNOWLEDGEMENTS

Helsinki Citizens' Assembly (hCa) Banja Luka would like to express appreciation to the CSOs, unions, representatives and institutions that were involved in this research and contributed to Bosnia and Herzegovina's first in-depth analysis of gender-based discrimination in the labour market.

We would like to express our deep and sincere gratitude to the persons who participated in interviews and the online survey, bravely sharing their experiences. In addition, hCa would like to express our thanks towards Vaska Leshoska (Reactor) for her incredible work developing and analysing the online survey. At the same time, we appreciate the support and cooperation with partner organizations from the region, which we thank for their time and constructive dialogue during the process of researching and writing this report. We greatly appreciate the assistance of the Kosovo Women's Network in coordinating the research.

We thank the peer reviewers whose comments helped improve this report: Adnan Kadribašić, Leila Šeper and Aleksandar Živanović.

Title: GENDER-BASED DISCRIMINATION AND LABOUR IN BOSNIA AND HERZEGOVINA

Author: Lejla Gačanica

Graphic design: Dajan Špirić

Publisher: Helsinki Citizens' Assembly Banja Luka - www.hcabl.org

This publication was produced with financial support from the European Union and co-financed by Swedish Development Cooperation. Its contents are the sole responsibility of Helsinki Citizens' Assembly and do not necessarily reflect the views of the European Union or Swedish Development Cooperation.

CONTENT

Acronyms.....	6
Executive Summary.....	7
Introduction.....	9
Background.....	9
Aims.....	10
Methodology.....	10
Summary of the Literature Review.....	11
Legal Analysis.....	12
Constitutional Framework.....	12
Legislation at the State Level.....	14
<i>Law on Prohibition of Discrimination</i>	14
Law on Gender Equality.....	17
Other Laws at the State Level.....	18
Entity Laws; Laws of Brčko District.....	19
<i>Labour Laws</i>	19
Criminal Codes.....	23
Laws on Job Placement and Social Security of the Unemployed.....	23
Non-legislative Measures.....	24
Institutional Mechanisms.....	24
Sanctions.....	26
Awareness and Attitudes towards	
Gender-based Discrimination.....	27
Awareness.....	27
Attitudes.....	28
Reporting.....	29
Prevalence and Experiences with gender-based Discrimination.....	34
General Findings related to Gender-based Discrimination.....	34
Discrimination based on Specific Protected Grounds.....	37
Age.....	37
Gender-based Discrimination against Persons with Different Abilities.....	38
Gender-based Discrimination against LGBTQIA+ Persons.....	39
Gender-based Discrimination based on Ethnicity, Political Affiliation, and Religion.....	40
Different Forms of Gender-based Discrimination.....	41
<i>Discrimination in Hiring</i>	41
Discrimination in Promotion.....	44
Contracts and Pay.....	47
Working Conditions.....	49
Pregnancy and Maternity Leave.....	49
Paternity Leave.....	51
Sexual Harassment at Work.....	51

Impact of GBD.....	55
The Institutional Response to gender-based discrimination.....	58
Institution of Human Rights Ombudsman of Bosnia and Herzegovina.....	58
Civil Courts.....	63
Labour Inspectorate.....	66
Legal Aid Providers.....	67
Mediation.....	68
Labour Unions.....	69
Civil Society Organizations.....	72
Recommendations.....	76
Legal Framework.....	76
Institutions.....	76
<i>General recommendations</i>	76
The Institution of Human Rights Ombudsman of Bosnia and Herzegovina.....	77
Courts.....	77
Labour Inspectorates.....	78
Free Legal Aid (public institutions).....	78
Labour Unions.....	78
Employers.....	78
CSOs.....	79
Works Cited.....	80
Web pages.....	83
Ombudsman Institution cases.....	83
Laws.....	83
Other unpublished sources:.....	84
Annex 1. Methodology.....	86
Data collection.....	86
Interviews with Institutions, CSOs, Unions, Women who experienced GBD.....	86
List of Interview Respondents.....	87
Annex 2. Interview guide example.....	90
Civil Courts.....	90
Annex 3. Survey.....	93
Survey Sample.....	93
When statistical significance is not significant.....	93
The homogeneousness of the sample.....	93
Gendered lens.....	93
Demographic.....	93
Employment status.....	94
Annex 4. Survey Instrument (sample).....	95
Survey on Discrimination at Work.....	95

ACRONYMS

ARS BiH	Agency for Gender Equality of Bosnia and Herzegovina
BD	Brčko District
BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEST FBiH	Center for Judicial and Public Training Federation of Bosnia and Herzegovina
CEST RS	Center for Judicial and Public Prosecutorial Training Republic of Srpska
CMS	Automatic System for case management in courts
CSO	Civil society organizations
CŽZ	Center of Women's Rights Zenica
ECHR	European Convention on Human Rights
EU	European Union
FBiH	Federation of Bosnia and Hercegovina
GAP	Gender Action Plan
GBD	Gender-based discrimination
HCA	Helsinki Citizens Assembly
HJPC BiH	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
ICESCR	International Covenant on Economic, Social and Culture Rights
LGBTQIA+	Lesbian, Gay, Bisexual, Trans*, Queer, Intersex, Asexual
MHRR	Ministry for Human Rights and Refugees of Bosnia and Herzegovina
PLN	Paralegal Network
PWD	People with different abilities
RS	Republic of Srpska
SDA	Party for Democratic Action
SOGISC	Sexual orientation, gender identity and sex characteristics
SOC	Sarajevo Open Centre
SSSBiH	Autonomous Trade Unions Confederation of BiH
SSRS	Trade Unions Confederation of the Republic of Srpska
STBiH	Commerce and Services Trade Union of BiH
SSDSZ	Autonomous Union of Civil Servants and Employees in Public Institutions of BiH
USC	Una-Sana Canton
WWD	Women with different abilities
ZOSPI	Law on Freedom of Access to Information

EXECUTIVE SUMMARY

This report on gender-based discrimination (GBD) in the labour market is part of a regional initiative to address GBD in six Western Balkan countries, supported by the European Union (EU). The report resulted from research that combined a variety of methods, including a literature review, legal analysis, online survey, interviews with relevant institutions and in-depth interviews with women who have experienced this form of discrimination at work or in hiring. These interviews show what discrimination really looks like, with all its social, health and economic consequences – everything that statistics only cannot show. The report focuses exclusively on GBD on the labour market, not on discrimination in general. However, it is important to point out that the research also identified numerous other violations of labour rights, which indicates a low level of respect for the rights of employees guaranteed by the legal framework in Bosnia and Herzegovina (BiH).

The research findings show that GBD awareness is extremely low and applies to both employees and employers. This is reflected in the identification, reporting and processing of GBD. Little data exists regarding discrimination complaints in BiH for various reasons: the justified fear of reporting discrimination, a lack of awareness regarding what discrimination is and how to act once it is referred to competent institutions. A serious problem in detecting GBD is the failure to record cases of discrimination within competent judicial institutions and the lack of statistical data.

An extremely complicated system of jurisdiction and an enormous number of laws at different levels make the legal framework in BiH related to gender-based discrimination in employment fragmented and inconsistent. 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. Disparities between the Law on Prohibition of Discrimination and labour laws create problems in application with regard to GBD in the labour market. Moreover, legal misunderstanding in terms of jurisdiction over proceedings under certain laws further complicates the ability to access justice and vindicate rights before courts.

Inconsistent (almost non-existent) case-law is an additional challenge in the processing of discrimination cases. Further challenges include: extremely long, financially and mentally exhausting court proceedings; unclear practice with the burden of proof; and victimization of persons who initiate proceedings. Restrictions in public institutions' provision of free legal aid and mediators in labour disputes deny the possibility of peaceful settlement of these cases, which could help avert court proceedings, as a last resort for women who experience gender-based discrimination. Trust in labour unions, after state transition and a gap in which the unions happened to be, has yet to be restored.

Implementation of the legal framework often points to numerous inconsistencies, misunderstandings and contradictions. Considering the current economic situation in BiH, where each job is precious, applicants fear challenging acts of discrimination and often tacitly accept working conditions that are far below the standards guaranteed by existing laws. In addition, social awareness and perceptions of GBD still suggest that women themselves must overcome this kind of discrimination in the labour market. 'Overcoming' means choosing between fear of losing their jobs, shame and reactions. Thus, voices against GBD often remain silent.

INTRODUCTION

Background

This report examines gender-based discrimination (GBD), defined as discrimination that affects a person *because of her or his gender*. The distinction between sex and gender differentiates a person's biological sex (the anatomy of an individual's reproductive system, and secondary sex characteristics) from that person's gender, which can refer to either social roles based on the sex of the person or personal identification of one's own gender based on an internal awareness. Because of the comprehensiveness of the term 'gender', it was used in the research and in this report. GBD can affect women and men. However, as evidence in this report suggests, it tends to affect women more than men. Therefore, the report focuses on GBD affecting women. The terms 'discrimination against women' and 'discrimination against men' clarify whom GBD has affected.

When it comes to women in the labour market in BiH, most statistics focus on participation and unemployment. Data from the 2017 Labour Force Survey show that the employment rate of women was 24.9%, and of men 43.2%. The unemployment rate between the genders differs: 23.1% for women and 18.9% for men. The percentage of employees is almost the same among men and women, but differs with regard to self-employment (22.6% of men and 17.4% of women) and unpaid family workers (1.9% of men and 7.4% of women).¹

Although these figures indicate a serious and continuous disproportion, women in the labour market has been the focus only sporadically of specific topics, such as work conditions, maternity benefits, and equal wages for the same work.² As labour laws were amended in 2016, and included for the first time discrimination, mobbing³ and sexual harassment, this research examines the legal framework as well as its application and understanding comprehensively; awareness and attitudes towards GBD; prevalence and experiences with discrimination and institutional response to discrimination.

¹ At: http://www.bhas.ba/tematskibilteni/FAM_00_2017_TB_0_BS.pdf.

² The Ombudsman Institution emphasized that gender-based discrimination in the labour market is insufficiently explored, especially in the private sector, and that due to inadequate education, it would be necessary to introduce education on discrimination in primary and secondary schools (interview, BO046).

³ Mobbing appears in earlier research as the most common form of discrimination. Although mobbing does not require a prohibited grounds, so it cannot be considered GBD, it is included in this research to examine how often it affects men and women.

Aims

This research seeks to address the existing situation regarding GBD and to inform future advocacy and outreach towards decreasing the prevalence of GBD in the labour market.

Research questions that this research aimed to answer are:

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

Methodology

In order to answer the aforementioned questions, hCa conducted research from March to December 2018. The research involved mixed research methods.

First, a legal analysis examined and assessed current anti-discrimination legislation in place in BiH, focusing on gender equality related legislation. It examines the Constitution of the BiH (including relevant international laws, treaties and conventions), BiH's and entities relevant national laws and secondary laws. The legal analysis also served to identify the relevant institutions, their roles and responsibilities.

Second, existing literature on discrimination was reviewed.

Third, gender-disaggregated data related to discrimination cases was requested and collected from several institutions that have a legal responsibility related to addressing GBD.

Fourth, representatives from these institutions, selected using variation sampling, were interviewed using a semi-structured interview guide to measure their knowledge of, awareness on and experience with GBD in the labour market. In some instances, the research team had to adjust the sample due to practical matters faced when trying to secure interviews, including written submissions (questionnaires) instead of interviews.

Fifth, in-depth interviews were conducted with people who had experienced GBD. These interviews are anonymous, and included persons from six cities, of different ages, educational levels and the fields of employment.

Sixth, an anonymous online survey in four languages (Bosnian, Croatian, Serbian and English) was launched using Lime Survey with the aim of collecting input from diverse women and men regarding their knowledge of discrimination legislation, attitudes, personal experiences with discrimination, whether such cases were reported and the reasons why they did not report discrimination. The survey was promoted broadly, also targeting under-represented

groups, including through media, email and Facebook boosting. A total of 1,378 participants clicked the online questionnaire and 547 participants (39.7%) completed approximately 90% of the questionnaire. Of them, 81.4% were women and 18.6% men. Considering the small sample size and the fact that it was not a random sample, few analyses were performed regarding the relationship between responses and ethnicity, age or rural/urban location, respectively. Any statements including the term 'significant' in relation to the survey findings suggest statistical testing with a confidence level $\alpha = 0.05$. However, given the limitations affiliated with convenience sampling, findings referred to as 'statistically significant' should be interpreted as suggestive, but not conclusive nor generalizable. Both quantitative and qualitative data was analysed by a researcher.

The research involved triangulation of researchers, methods and sources, towards enhancing validity. For further information about the methodology, please see Annex 1.

Summary of the Literature Review

The available literature in BiH on GBD is very limited. Civil society organizations (CSOs) have published numerous analyses, handbooks, and research in the field of discrimination in the past ten years, but they only sporadically include GBD. The study *Gender (inequality) on the labour market in BiH⁴ from 2012 contains valuable data, but data contained therein are outdated. The data from the Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina⁵ from 2018, again sporadically covering GBD, contains valuable information regarding the institutional response to the subject of discrimination. Also, different analyses and reports deal with gender in the economy, but focus on labour market differences, as well as differences in access to finance and business, sporadically including GBD.⁶*

The Gender Equality Agency BiH (ARS BIH) and CSOs prepare reports and shadow reports on the application of Convention on the Elimination of All Forms of Discrimination against Women in BiH, which serve as a source for analysing the state of GBD reporting in the labour market for the period covered by this research.

⁴ Bašić, Sanela and Miković, Milanka. *Rodne (ne)jednakosti na tržištu rada u BiH*. Udruženje Žene ženama, Sarajevo, 2012.

⁵ Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina, Organization for Security and Co-operation in Europe, 2018, at: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/400553?download=true>.

⁶ For example: USAID Mission in BiH, *Gender Analysis for Bosnia and Herzegovina*, (2016).

LEGAL ANALYSIS

The state structure of Bosnia and Herzegovina (BiH) consists of two entities (the Federation of BiH - FBiH and the Republic of Srpska - RS) and one district (District Brčko -BD). All three units have different internal structures. Therefore, jurisdiction over certain fields sometimes falls all the way down to the local level. Consequently, certain areas of law have unequal and inconsistent regulation, including related to labour and employment. However, important laws regulating discrimination and gender equality exist on the state level.

In this chapter, the legal framework is discussed in accordance with the hierarchy of law in BiH. This includes: the constitutional framework; legislation at the state level; legislation at the entity and district level; non-legislative measures; institutional mechanisms; and sanctions.

Constitutional Framework

The **Constitution of Bosnia and Herzegovina** prescribes the general principle of non-discrimination regarding the rights and freedoms guaranteed by the catalogue of human rights and basic freedoms (Article II/4). Sex is highlighted as one of the prohibited grounds for discrimination. The Constitution is primarily restricted to civil and political rights and thereby limited in terms of economic, social and cultural rights (with the exception of education⁷).

The **European Convention on Human Rights (ECHR)** is directly applicable in BiH and shall have priority over all other law, according to Article II/2.⁸ The direct applicability of ECHR in BiH is in a provision permitting the immediate application of the rights contained therein by courts without the adoption of subsequent acts for their implementation. Article 14 enshrines the prohibition of discrimination. However, Article 14 may only be invoked in combination with another substantive provision of the ECHR or of one of its additional Protocols. The ECHR and Protocol 12 were introduced in BiH on April 1, 2005.

Annex I of the Constitution contains additional human rights agreements that are directly applicable in BiH. Two such agreements are particularly important for addressing gender-based discrimination in labour: the 1966 International Covenant on Economic, Social and Culture Rights and the 1979 Convention on the Elimination of All Forms of Discrimination against Women. While these agreements should be directly applicable like the ECHR, the case law of the Constitutional Court has shown that the practical exercise of rights contained in the agreements is limited.⁹

⁷ Petrić, Aleksandra et al., *Alternative CEDAW Report – Report of Civil Society Organizations on Implementation of Conclusions and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013-2017*, p. 28-33.

⁸ Discussion on whether the Convention has priority over the Constitution of BiH remains ongoing.

⁹ These agreements are not fully implemented, but only in relation to the prohibition of discrimination: 'the enjoyment of rights and freedoms from the international legal mechanisms for the protection of human rights and fundamental freedoms from Annex I is possible only if it is also claimed that the beneficiary of that right or freedom is discriminated against. Therefore, the substantive and formal legal scope of this part of the constitutional law is considerably reduced (see: Constitutional Court Decision No. U 22/01 of 31.8.2001 or No. AP 2772/07 of 12.2.2009)' (Ademović, Nedim et al. *Ustavno pravo Bosne i Hercegovine*, p. 18).

The **International Covenant on Economic, Social and Culture Rights (ICESCR)** guarantees the right to work; promotion; equal pay with no exceptions, especially for women who must have the same working conditions as men and must be equally paid for equal work; labour union organizations and strikes; specific rights of women related to motherhood; and other labour rights. The Committee acknowledged many inconsistencies in implementing the ICESCR in BiH, such as: a high rate of unemployment especially among young people, women and particularly housewives; and lack of resources and qualified staff in centres for social protection in charge of social care (very important for housewives).

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** prescribes that discrimination based on gender includes marital status, family status, pregnancy and motherhood, parenthood and sexual orientation. This definition is part of the Law on Gender Equality of BiH. BiH is obliged to submit state reports to the Committee on the Elimination of All Forms of Discrimination against Women. BiH has fulfilled this obligation four times so far.¹⁰ Official reports in BiH are submitted with Alternative Reports of Civil Society Organizations.¹¹ In the Final Conclusions of the Committee from 2006 and 2013, concerns were expressed due to the low rate of women in the labour market; high level of unemployment of highly educated women; deeply rooted patterns of direct and indirect discrimination against women in state and private companies in terms of employment, promotion, benefits, motherhood protection and firing, as well as sexual harassment and violence; and the concentration of women in certain sectors and in the 'gray economy', including agreements on labour with fixed-term contracts.¹²

The **Constitutions of the Federation of BiH and the Republic of Srpska also guarantee** non-discrimination based on sex, thus enriching protection related to these issues. An integral part of the constitutional text, the Annex to the Constitution of the Federation of Bosnia and Herzegovina contains CEDAW. The **Statute of Brčko District of BiH** contains a general prohibition of discrimination that includes gender-based discrimination.

¹⁰ The initial report was submitted in 2005; in 2013, the state submitted its fourth and fifth periodic report on gender equality in BiH; in 2017, the Council of Ministers of BiH adopted the Sixth Periodical Report that will be submitted to the Committee.

¹¹ The first report on the condition of women's human rights in BiH was prepared in 1999; the second report in 2004; the third report in 2013; and the fourth in 2017.

¹² *Alternative CEDAW Report – Report of Civil Society Organizations on Implementation of Conclusions and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013-2017*, p. 81-87.

Legislation at the State Level

Law on Prohibition of Discrimination

The **Law on Prohibition of Discrimination**¹³ defines direct¹⁴ and indirect¹⁵ discrimination, as well as instruction, assistance and incitement to discrimination. The influence of EU law is expressly mentioned in explanatory report of the Law: 'Proposal of the Law on Prohibition of Discrimination ... is being harmonized with the directives of the European Union namely: Directive of the Council 2000/43/EZ on Implementing Provisions of Equality Regardless of Racial or Ethnic Inheritance and Directive of the Council 2000/78/EZ on Establishing Framework for Equal Treatment in the Field of Employment and Choosing Professional Career'. Besides gender, the Law explicitly states sexual orientation, gender identity and sex characteristics as prohibited grounds for discrimination. The Legal definition of discrimination under the Law is:

*Discrimination shall be any different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons, their relatives, or persons otherwise associated with them, on the grounds of their race, skin colour, language, religion, ethnic affiliation, national or social background, connection to a national minority, political or any other persuasion, property, membership in labour union or any other association, education, social status and sex, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance serving the purpose of or resulting in prevention or restriction of any individual from enjoyment or realization, on equal footing, of rights and freedoms in all areas of life.*¹⁶

Prohibition of discrimination shall be applied to all public bodies, all natural and legal persons, in public and private sectors, in all spheres, including employment (Article 2.2). The Law in Article 4 defines other forms of discrimination: harassment, sexual harassment, mobbing and segregation. By amending the Law in 2016, the prohibition of victimization is included in the legal text and is regulated by Article 18.¹⁷ The Law also regulates severe forms of discrimination: discrimination committed on several grounds (multiple discrimination), several times (repeated discrimination) and discrimination that exists for a long time (extended discrimination). The Law recognizes mobbing (Article 4.3) as a form of non-physical harassment in the work place that consists of 'repeating certain actions that have a humiliating effect on the victim, the

¹³ "Official Gazette of BiH", no. 59/09 and 66/16.

¹⁴ 'Every action or failure to act when a person or a group of persons is put, has been or could be put into a less favourable position unlike some other person or group of persons in similar situations shall be considered to be direct discrimination' (Article 3.1).

¹⁵ 'Every situation, in which, an apparently neutral provision, criteria or practice has or would have the effect of putting a person or group of persons into an unfavourable or less favourable position comparing to other persons shall be considered to be indirect discrimination' (Article 3.2).

¹⁶ The prohibited basis that is not covered by the Law is citizenship, whose standardization will gain in importance in the further process of EU integration of BiH (Izmjene i dopune zakonskog okvira za zaštitu od diskriminacije u BiH: Ostvareni pomaci i potrebna unapređenja, p. 4).

purpose or consequence of which is degradation of working conditions or the professional status of the employee'. The Law explicitly prohibits discrimination in the following areas:

- Employment, work and working conditions, including access to employment, occupation and self-employment, remuneration, promotions and dismissals;
- Training, including initial training and continuous professional training, all sorts and all levels of professional training, advanced professional training, additional qualifications and requalification, including gaining practical working experience;
- Membership in professional organizations, including membership in organizations of workers and employers or any other organization whose members have a specific profession; involvement in such organizations.

Exceptions to the principle of equal treatment in the Law are provided 'if they are based on objective and understandable justification'. In other words, legally prescribed measures will not be seen as discriminatory when they are used to accomplish legitimate goals, if the means used to achieve such goals is proportionate. The law left a wide margin for a discretionary assessment of the definition of additional elements of justification for different treatment, which raises fears whether decision makers in anti-discrimination proceedings will have the necessary knowledge, or relevant information on the correct application of this article.¹⁸

In determining exceptions, the Law was mainly guided by exceptions for direct discrimination defined in EU directives, but Article 5 further expanded the list; the law established all three exceptions provided for in the directives:¹⁹ genuine and determining occupational requirement, justification on the basis of religion and beliefs, and justification based on age. However, the Law's regulation of exceptions or deviations from the possibility of prohibiting discrimination is too broad and requires serious changes for alignment.²⁰

Among others, the Law exempts positive action measures created to prevent or to compensate damage that members of vulnerable groups experience (including women and pregnant women). Directive 2006/54 (Article 3) and Directive 2004/113 (Article 6) define positive action measures as a separate expression of the principle of equality in order to achieve full equality in real life, and not as an exception to the principle of equal treatment. Given that positive action measures are defined as an exception to the guarantee of equal treatment and that it does not clearly prescribe the conditions under which positive action measures are consistent with the principle of full equality in real life, the provision of Article 5 of the Law is

¹⁸ Kovač, Vanja. Kada se različito postupanje može opravdati? Izuzeci od principa jednakog postupanja u pravu Bosne i Hercegovine u svjetlu jurisprudencije Evropskog suda za ljudska prava i prava Evropske unije, p. 2).

¹⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

²⁰ See more: Šimonović Einwalter, Tena and Selanec, Goran. Alignment of the Law on Prohibition of Discrimination with the EU acquis, 2015, p. 24-26.

inconsistent with the meaning of that provision in Directive 2006/54.²¹

Exceptions are probably the weakest part of the Law, 'the way in which the Law regulates exceptions or deviations from the possibility of the prohibition of discrimination is too broad and requires serious changes for alignment'.²²

According to Article 11, every person or group of persons who consider that they have experienced discrimination shall be able to seek protection for his/her rights through existing judicial and administrative proceedings. In cases when a violation of a right to equal treatment occurs as a 'result of an administrative decision, appeal in administration proceeding and eventual initiation of an administrative dispute based on protection from discrimination, requesting annulment of such an administrative decision shall not prevent a person from initiating a judicial proceeding for protection from discrimination'. Persons or groups of persons who have suffered any form of discrimination have explicitly opened the possibility to categorize discrimination claims with claims for protection of other rights in a single lawsuit, which shall be decided in a civil law proceeding if these claims are mutually connected and if the same court has subject matter jurisdiction for every claim.

Court protection is regulated by Articles 12 and 13 of the Law which prescribes the deadlines for bringing a lawsuit as three years from the day of finding out about a committed violation and not more than five years since the violation is committed. In the case of continuous discrimination (mobbing) the deadline runs from the day when the last violation was committed. Victims of discrimination can seek various actions of the court: a determination that the respondent violated the plaintiff's right to equal treatment; a prohibition on particular actions that violate or can violate the right to equal treatment; compensation for material and non-material damage caused by violating the rights protected by the Law; announcement of the verdict in the media. If a person or a group of persons, raises sufficient evidence to suggest that discriminatory treatment may have occurred, then the burden of disproving this accusation shifts to the defendant. Where an Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Ombudsman) decision is used as evidence, the court is obliged to discuss the proposals of the Ombudsman.

Collective lawsuit (Article 17) may be brought by associations, bodies, institutions and other organizations, provided that they have a justified interest in protecting the interests of a certain group, or if they deal with protection of a particular group from discrimination within the scope of their activities as prescribed by law. They can file a lawsuit if it is probable that the violation has impacted a larger number of persons largely belonging to a group whose rights are protected by a plaintiff.

²¹ Ibid, p. 29.

²² Ibid, p.24.

The **Rules of Procedure on Collecting Data in the Cases of Discrimination in Bosnia and Herzegovina**²³ must be implemented in compliance with the provisions of the Law on Prohibition of Discrimination according to which the competent institutions²⁴ are obliged to regularly keep records of all cases of reported discrimination and submit data to the Ministry for Human Rights and Refugees of Bosnia and Herzegovina (MHRR), which must report on discrimination. Based on the Rules of Procedure, the Ministry should establish a **Central Database on Cases of Discrimination in Bosnia and Herzegovina**.

Over nine years after law entered into force, including a legal obligation for the MHRR to establish a central database on discrimination, the database is not completed.²⁵ In 2016, the Council of Ministers of BiH discussed and adopted the **Report on Discrimination in Bosnia and Herzegovina** with an Action Plan for implementing the proposals of measures for preventing discrimination in BiH. The data in the Report includes data on employment, labour and work conditions, access to employment, benefits, promotion, cancelation of the working contract and gender equality. The Report 'is based on the data of the relevant institutions in Bosnia and Herzegovina and the data presented in the annual reports of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina on the occurrences of discrimination'.²⁶ GBD in the field of labour is being recorded in hiring (Civil Service Agency of BiH).

Law on Gender Equality

The **Law on Gender Equality in Bosnia and Herzegovina**²⁷ provides a definition of GBD in Article 3.1. The Law further defines various forms of discrimination: direct, indirect, harassment ('unwanted behaviour based on gender that has an intention to harm the dignity of a person or group of persons and create an intimidating, hostile, degrading, humiliating or insulting environment'); sexual harassment (unwanted verbal, non-verbal or physical behaviour of a sexual nature that aims to harm the dignity of a person or group of persons, or has such an effect, especially when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment); and encouragement of discrimination and gender-based violence (every action that causes or may cause physical, mental, sexual or economic damage or suffering, as well as threat of such action which prevents this person or group of persons from

²³ "Official Gazette of BiH", No. 27/13.

²⁴ Institutions in charge of collecting and submitting data are institutions and bodies at the level of BiH, entities, cantons, Brčko District of BiH, municipality offices and legal individuals with public jurisdictions and other civil and legal individuals. When it comes to the officially competent authority and court disputes in cases of discrimination, institutions competent for collecting and submitting data to the Ministry in accordance with the questionnaire for collecting data are: courts in BiH; authority bodies in BiH at all levels and legal individuals with public jurisdictions in authority proceedings, directly applying regulations, discussing rights, obligations and legal interests of citizens; legal individuals or other parties in authority matters from its jurisdiction; office of the disciplinary prosecutor, High Court and Prosecution Council of BiH for cases of discrimination committed by carriers of legislation functions determined in conducted and officially completed disciplinary proceedings and other bodies created under special regulations that discuss rights, obligations and legal interests of citizens, legal individuals and other parties.

²⁵ As of the writing of this report, the Central Database on Cases of Discrimination was not completed. Nor was information provided at which stage of development the database is. According to a Policy Brief from 2016, the database will not be operational by 2019 or even 2020 (see: <http://www.analitika.ba/bs/publikacije/antidiskriminacijske-mjere-bez-mjerenja-prikupljanje-podataka-o-diskriminaciji-u-bih>).

²⁶ At: <https://www.parlament.ba/act/DownloadDocument?actDocumentId=e74a5b99-1fd8-40ac-8eaa-15a669466f31&langTag=bs>

²⁷ Law on Gender Equality in Bosnia and Herzegovina – unified text ("Official Gazette of BiH" No. 32/10).

enjoying their human rights and freedoms in public and private spheres of life). In contrast to the Law on Prohibition of Discrimination, this Law defines these forms of discrimination as criminal acts. Incitement of GBD, if done on purpose, is also discrimination. The Law (Articles 12-16) specifically prohibits GBD in employment, work and access to all kinds of resources.

While the Law on Prohibition of Discrimination prohibits GBD in a general manner, the Law on Gender Equality of Bosnia and Herzegovina specifically identifies all kinds of discrimination that are prohibited in working relations (Article 13), including but not limited to: equal pay, promotion at work on equal terms, equal opportunities for education, training and professional qualifications, securing work premises, ancillary facilities and equipment appropriate to the biological and physical needs of employees of both sexes, prohibition on different treatment on the grounds of pregnancy, childbirth or exercising the right to maternity leave.²⁸

In order to ensure equal opportunities regardless of gender, collective agreements must be harmonized with the provisions of the Law. According to the Law, labour unions and employer associations have a special role in ensuring equal protection of the right to work, equal conditions when applying for a job and that there is no GBD among members.

Judicial protection of the rights guaranteed by this Law is envisaged in the procedure in which it decides on that right as the main issue, and may also request protection in a special procedure for protection against discrimination in accordance with the Law on the Prohibition of Discrimination in Bosnia and Herzegovina. The processing and decision-making for the criminal offense and offenses established by this Law is of urgent nature and has priority in the work of the competent authorities.

The Law obliges all state bodies to collect sex-disaggregated data (Article 22). The State Office of Statistics has complied and published annually sex-disaggregated data in a publication entitled 'Women and Men in Bosnia and Herzegovina'.²⁹

Other Laws at the State Level

Various additional laws at the state level include specific provisions on gender discrimination in labour. In particular, the **Law on Labour in Institutions of BiH**³⁰ includes general prohibition of discrimination against persons seeking employment. It also defines direct and indirect discrimination and gender equality in the process of hiring, duration of working relations and cancellation of the work contract, thereby including the exceptions of the equal treatment principle. Further, the Law defines harassment and sexual harassment, gender-based violence and mobbing, as well as measures that the employer must take towards preventing gender-based violence, discrimination, harassment, sexual harassment at work and mobbing.

²⁸ This includes failure to enable an employee to return to the same job or another job of the same seniority with equal pay after the expiry of maternity leave, as well as different treatment for men and women in deciding how to take maternity leave following the birth of a child.

²⁹ Women and Men in BiH 2017, available at: http://www.bhas.ba/tematskibilteni/FAM_00_2017_TB_0_BS.pdf.

³⁰ "Official Gazette of BiH" No. 50/08, 35/09, 75/09, 32/12, 42/12 and 50/12.

The Criminal Law of BiH describes an act of a crime in Article 14531:

An official or responsible person in the institutions of Bosnia and Herzegovina, who on the ground of differences in ... sex, sexual orientation, ... denies or restricts the civil rights as provided by the Constitution of Bosnia and Herzegovina, ratified international agreement, law of Bosnia and Herzegovina, some other regulation of Bosnia and Herzegovina or general act of Bosnia and Herzegovina or, whoever on the ground of these differences or background or other status grants unjustified privileges or does unjustified favours to individuals.

Entity Laws; Laws of Brčko District

In accordance with constitutional competences, labour and employment are under the jurisdiction of entities, FBiH and RS, BD and cantons (10 cantons in FBiH). The exceptions are laws that regulate employment in public institutions of BiH, which are adopted by the Parliamentary Assembly (state level). This sub-section presents entity laws through a comparative analysis by type of law.

Labour Laws

According to official **laws in the field of labour**, BiH prohibits every type of discrimination related to labour and employment. Relevant laws in this area include the Law on Labour of FBiH³², the Law on Labour of RS³³ and the Law on Labour of BD.³⁴ The Labour Law of FBiH prohibits discrimination against employees and job seekers on the grounds of gender, sexual orientation, marital status, age, disability and pregnancy (Article 8). The Labour Law of RS explicitly states only gender as a prohibited basis for discrimination (Article 19), but the Law later prohibits asking about marital status or pregnancy during the process of employment. Laws prescribe direct discrimination (any conduct caused by any of the prohibited grounds, by which the employee, as well as job seeker, is placed in an unfavourable position compared to other individuals in the same or a similar situation) and indirect discrimination (where a seemingly neutral provision, rule, criterion or practice places or would place an employee, or job seeker, in an unfavourable position due to a certain characteristic, status, determination, belief or system of values, which falls under the prohibited grounds of discrimination, compared to another employee or job seeker). The employer and the persons he/she employed are strictly prohibited from harassment or sexual harassment, gender-based violence, as well as systematic harassment in the work place or some other act (e.g., mobbing) towards employees and persons seeking employment. In cases of gender-based violence, harassment and sexual harassment, none of the provisions of the Law can be interpreted as a limitation or diminishment of the

³¹ "Official Gazette of BiH", No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, 40/15.

³² "Official Gazette of Federation of Bosnia and Herzegovina", No. 26/16.

³³ "Official Gazette of Republic of Srpska", No. 1/16.

³⁴ "Official Gazette of Brčko District BiH", No. 19/06, 19/07, 20/13, 31/14 and 1/15.

right to initiate a criminal or civil procedure. A comparative analysis of the Labour Law with the Law on Prohibition of Discrimination confirms that these particular forms of discrimination are consistent.

The scope of the Labour Law includes: conditions for employment and selection of candidates for conducting certain types of work; working conditions and all the rights arising from employment; education, training and personal development; career progress; and termination of the labour contract. None of the three laws contain a definition of self-employed worker (employee). Laws strictly forbid differences in pay based on gender, by stating that both genders must have equal pay for equal work.³⁵

Exception from the prohibition of discrimination is possible when the nature of the job is such, or the job is performed under such conditions, that characteristics associated with any of the protected grounds constitute the substantive and decisive requirement for the performance of the job, and when the intended purpose is justified.

The Labour Law of FBiH prescribes that when entering into labour relations, future employees are not obligated to provide information that is not related to employment. However, no provision deals directly with issues related to pregnancy. In RS, the Law explicitly prescribes that an employer cannot request information regarding family/marital status and cannot condition employment by asking women to take a pregnancy test unless there is a risk for the mother and the child. The employer cannot refuse to hire a woman if she is pregnant or wants to take maternity leave; nor can the employer terminate a contract following the exercise of rights referred to in Law (Article 60.1 FBiH, Article 105 RS).

Both laws include sections on protection of motherhood.³⁶ According to laws in both entities, a woman has the right to an uninterrupted one-year maternity leave, and the most important aspect of this protection: guarantee of employment upon return. In RS, mothers may take an additional 18 months for twins, as well as every third and additional child, without interruption. Parents of the child may agree that the leave after the expiration of legal period (in RS 60 days from the date of birth of the child; in FBiH 42 days from the date of birth of the child) continues to be used by the employed father of the child instead of the mother. Still, the laws refer to this leave as 'maternal' rather than the 'paternal' or 'parental' right of fathers to take leave following the birth of a child. Neither entity regulates this as a non-transferable right, but rather based on the parent's agreement.³⁷ A new provision in RS introduces the right of women, mothers, to acquire the right to a pension for one year less insurance for each child born in relation to the conditions for acquiring the right to a pension. This provision is still not

³⁵ 'Equal labour shall be understood as labour that requires the same level of professional qualifications, same capacity for work, responsibility, physical and intellectual work, skills, working conditions and work outputs' Article 77. Labour Law FBiH.

³⁶ In RS, it is regulated under section VII titled Protection of Workers, sub-section 4 introduced Special Protection of Women and Motherhood; in FBiH, it is regulated under articles 62 -70.

³⁷ 2018 Alternative Analytical Report on the Application of BiH for EU Membership: Political Criteria, p. 30.

in line with the laws governing pension issues, and there is a justified fear that implementation will be a problem.

A woman may, at her own request and with the consent of her employer, start work before the expiration of maternity leave, but not before the period foreseen by law (longer in RS). In this case, she has the right to use a 60-minute break from work for breastfeeding her child during working hours, as well as daily leave: (twice a day in RS) for one hour for breastfeeding, until the child reaches the age of one. In FBiH, after maternity leave ends, a woman with a child for at least one year has the right to work part time. Women with twins, a third child and every subsequent child has the right to work part time until the child has reached the age of two years if in the relevant canton the right to a longer duration is not foreseen. In both laws, fathers are guaranteed the same rights regarding leave if the child's mother dies, leaves the child, or is unable to care for the child for any other reason or is unemployed. Longer parental leave and part-time work (up to three years) is ensured for both parents if the child needs additional (health) care.

During maternity leave, the employee is entitled to salary compensation. Different entities, regulate this right very differently. In RS, a unique rule has been established in the Labour Law: a woman is entitled to salary compensation equal to the average salary earned during the last 12 months prior to the commencement of maternity leave. However, in FBiH there is no law standardizing maternity leave compensation, and it differs from canton to canton. The authority regulating maternity leave compensation and financial assistance during pregnancy and childbirth (of a woman who is not employed) is divided between the FBiH and cantons in the FBiH. As a consequence of the shared competencies, this issue is regulated by one entity and ten cantonal laws. Each canton regulates the protection of families and children, so the rights of mothers, other rights and social benefits differ throughout FBiH.³⁸ Labour laws also regulate the right to maternity leave in the case of losing a child; rights of parents of a child with disabilities; and rights of adoptive parents and a person entrusted with childcare. Those provisions prevent mobility of women/parents and could amount to discrimination; if a woman decides to move for employment between an entity or a canton, she may not have any parental leave compensation.

Regarding the protection of workers' rights, labour laws in the entities have different deadlines. In cases of alleged discrimination, different entity regulations determine an employee's relation regarding seeking protection from the employer. In FBiH a specific procedure is foreseen for cases of discrimination; they must be filed within 15 days of learning of the discrimination. If the employer does not respond within 15 days of receiving such a request, the employee can file a lawsuit with the competent court within 30 days. Protection of

³⁸ This includes maternity leave, the length of maternity leave, and the amount of child allowance.

the violated right before the competent court cannot be required by an employee who did not submit a claim to the employer previously, except in cases of termination of the employment contract. Meanwhile, in RS there is a general procedure according to which the case must be filed within 30 days, but no later than three months after learning of the discrimination. Submission of a request for protection does not prolong implementation of the solution or action that the employee initially requested, or legal suit. An employer is obliged to decide on the employee's request within 30 days from the day he/she submitted the request.

In accordance with the Law on Prohibition of Discrimination, the employer has the burden of proving that no discrimination occurred (labour laws FBiH – Article 12.3 in RS 25.2.), whereas the employee has to make it probable that the (non)treatment constituted discrimination in employment.

Labour laws foresee the possibility of initiating a peaceful solution in work disputes. The employee can submit a proposal for peacefully resolving the work dispute to the competent authority within 30 days from the day he/she acknowledged that a right has been violated. In case that employer does not comply with the request for a peaceful settlement of the dispute, an employee may file a lawsuit before the competent court within a further period of 90 days.

The **Law on Labour of Brčko District BiH** prescribes that job seekers as well as currently employed persons cannot be discriminated against on gender (among other grounds) in terms of engagement, training, promotion, living conditions, cancellation of the work contract and other issues emerging from work relations. In BD, according to the Law, an employer cannot refuse to hire a woman just because she is pregnant or on maternity leave. Articles 42-52 'Protection of Woman and Maternity Leave' are in line with entity laws. An employee that believes an employer has violated his/her rights can request the exercise of this right from the employer. Submitting this request does not prevent the employee from seeking protection for the violated right before the competent court; a lawsuit can be submitted due to the violation of the right in working relations within three years from the date when the right was violated and/or the employee realized his/her right(s) were violated. At the cantonal level, Canton Sarajevo³⁹ and Canton 10⁴⁰ have labour laws. **The Labour Law of Canton Sarajevo** does not explicitly contain provisions on discrimination, while the **Canton 10 Law** in Article 4 prescribes the prohibition of discrimination, not including sex, gender, and sexual orientation, among prohibited grounds. Both laws would have to be aligned with the federal Labour Law.

The **Law on Volunteering FBiH**⁴¹ and **Law on Volunteering RS**⁴² prohibit discrimination

39 Labour Law of Canton Sarajevo ("Official Gazette of Canton Sarajevo", No. 19/2000).

40 Labour Law of HBŽ ("Narodne novine HBŽ", No: 13/98, 7/05).

41 "Official Gazette of Federation of BiH", No. 110/12.

42 "Official Gazette of Republic of Srpska", No. 89/13.

(Article 8 FBiH; Article 12.1 RS) against volunteers. The organizers of volunteering are obliged to treat volunteers in accordance with the principle of equal opportunities for all persons, regardless of their gender, sex, gender orientation, marital status and/or family obligations.

Criminal Codes

The **Criminal Code of FBiH** (in Article 177) and the **Criminal Code of BD**⁴³ (Article 174) include the criminal act known as '**Infringement of the Equality of Individuals and Citizens**'. The **Criminal Code of RS**⁴⁴ includes in Article 139 the criminal act of '**Infringement of the Equality of Citizens**'. Criminal acts are described to have occurred when an official or responsible person in the institutions of BiH denies or restricts civil rights 'provided for by the Constitution of Bosnia and Herzegovina, ratified international agreements, the laws of Bosnia and Herzegovina, some other regulation of Bosnia and Herzegovina or general act of Bosnia and Herzegovina' on the grounds of gender (in FBiH, BD); or on the basis of gender, sex and gender identity (in RS); or, on the grounds of these differences, background or other status, grants unjustified privileges or does unjustified favours for individuals. This act will be punished by imprisonment. The same punishment applies in RS to those who persecute individuals and associations that advocate equality. Article 279 in FBiH prescribes a punishment of imprisonment for anyone who limits the rights of citizens to employment in equal conditions. The Criminal Code in RS prohibits gender-based harassment of an individual who feels inferior, in a position of dependence or who is especially sensitive due to pregnancy.

Criminal codes contain penal provisions in case of violation of regulations, general acts or collective agreements based on the foundation or termination of employment, salaries or other income, working time, rest or absence, protection of women, youth and invalids or when the prohibition of overtime or night work denies or limits the employee's right (FBiH: Article 280, RS: Article 209.1). The penalties prescribed are different: in the FBiH the sentence is prescribed as a fine or imprisonment up to one year; in RS it is a fine or imprisonment for up to three years. In the RS, as mentioned above, the Criminal Code prescribes a criminal offense in case of termination of an employment relationship due to pregnancy (female employee), or if an employer asks a female employee to provide a statement that she will terminate the employment contract or accept termination of employment in case of pregnancy.

Laws on Job Placement and Social Security of the Unemployed

The **Law on Job Placement and Social Security of the Unemployed FBiH**⁴⁵ and the **Law on Intercession in Employment and Rights During Unemployment RS**⁴⁶ state that a person cannot be put in a 'delicate position' due to his/her gender, among other provisions. The RS's Law strictly guarantees gender equality in the process of employment, and specifically

43 "Official Gazette of Brčko District BiH", No. 10/03, 6/05, 21/10 and 9/13.

44 "Official Gazette of Republic of Srpska", No. 64/17.

45 "Official Gazette Federation of BiH", No. 55/00, 41/01, 22/05, 9/08.

46 "Official Gazette of Republic of Srpska", No. 30/10, 102/12.

prohibits gender-based discrimination in various aspects of access to employment (Article 5). The possibility of utilizing affirmative measures is also foreseen by this law.

Non-legislative Measures

The Ministry for Human Rights and Refugees of BiH initiated the process of creating a **Strategy for Human Rights of BiH and a Strategy for Elimination of Discrimination in BiH** that cover all of the aforementioned fundamental issues in this area. According to the agenda of the Ministry, these strategies were supposed to be adopted by the end of 2017. However, the Ministry for Human Rights and Refugees will create the **medium-term program for the elimination of discrimination in Bosnia and Herzegovina** that also will include a training program on the promotion of anti-discrimination in BiH and the promotion and protection of human rights in BiH. There was no movement on this in the last two years.

The **Gender Action Plan of Bosnia and Herzegovina from 2018-2022** (GAP) aims to guide the creation of annual operative plans at the entity, cantonal and local level. Within Strategic Goal 1 (creation, implementation and monitoring program of measures for upgrading gender equality in government institutions in accordance with priority fields), a priority field is 'Labour, Employment and Approach to Economic Resources'. The GAP envisages measures concerning the elaboration and implementation of measures and activities to eliminate discrimination based on gender in the areas of labour, employment and access to economic resources, including strengthening institutional capacities for the application of international and domestic standards in this area, the introduction of gender-responsive budgets, and the establishment of appropriate institutional mechanisms for gender equality that will coordinate the implementation of these measures.⁴⁷

The **Strategy for Employment in BiH from 2010 to 2014** has a section entitled 'Gender Dimensions', which identifies differences in the level of employment, significant differences between genders in sectors of employment and a gap in benefits and measures to improve the employment of men and women. A new Strategy for Employment in BiH (2017-2020) has not been adopted yet. On the entity level, the RS has a **Strategy for Employment of RS 2016-2020**; its measures include women among the most vulnerable groups. The FBiH has not yet adopted any strategy on employment.

Institutional Mechanisms

Gender mainstreaming mechanisms in BiH include the Agency for Gender Equality of Bosnia and Herzegovina at the state level, entity gender centres and the Commission for Gender Equality in the Assembly of Brčko District of BiH with certain jurisdiction for GBD.

In accordance with Article 22 of the Law on Gender Equality of Bosnia and Herzegovina,

⁴⁷ Gender Action Plan of Bosnia and Herzegovina from 2018-2022, p.21.

the **Agency for Gender Equality of BiH** has been established within the Ministry for Human Rights and Refugees of Bosnia and Herzegovina to monitor implementation of the Law. Within its jurisdiction, the Agency receives and analyses requests, complaints and other requirements of individuals and groups of individuals that point to violations of certain rights from the Law on Gender Equality (including for GBD).

On the entity level, institutions with the same competencies have been formed. The Center for Gender Equality – **Gender Center of RS, the Gender Center of FBiH and the Commission for Gender Equality of Brčko District**. The aim of the centres is to support gender equality in all areas of life and work through laws, policies and programs in cooperation with domestic and international institutions and organizations in accordance with domestic laws and international conventions and agreements ratified by BiH. These institutions also receive complaints, including for GBD.

The GAP obliges the **governments of Cantons in FBiH** to form a coordination committee for gender equality. These have been established in two of the ten cantons. Cabinets of mayors in the municipalities also have established the commission for gender equality.

Within the legislative authority, commissions/committees for gender equality have been established at all levels. The **Committee on Gender Equality of the Parliamentary Assembly of BiH** operates at the state level. At the entity level, the Commission for Achieving Gender Equality of House of Peoples, the **Commission for Gender Equality of the House of Representatives of the Parliamentary Assembly of the FBiH and the Committee of Equal Opportunities of the National Assembly of Republic of Srpska** are operative. These bodies primarily provide opinions, proposals and initiatives related to compliance with international conventions on gender equality and the prohibition of gender-based discrimination. They also discuss the condition of women's rights and propose measures for the elimination of possible consequences of discrimination.

Competencies arising from the Law on the Prohibition of Discrimination are performed by the **Sector for Human Rights** of the Ministry for Human Rights and Refugees of BiH. The Ministry has no specialized section for combating discrimination.

GBD institutional mechanisms are the Ombudsman and labour inspectorates. The central institution competent for protection from discrimination is the **Institution of Human Rights Ombudsman of Bosnia and Herzegovina. Labour Inspectorates** monitor the implementation of labour law regulations. This includes the federal or cantonal inspector for labour in FBiH and the inspector for labour and inspection management in RS. More on the competences and functioning of these mechanisms in practice is elaborated in the section **The Institutional Response to Discrimination**.

Sanctions

The laws discussed above prescribe different sanctions for gender-based discrimination related to labour and employment. Different procedures, exist for minor offences (with financial penalty sanctions), protective measures and criminal sanctions.

AWARENESS AND ATTITUDES TOWARDS GENDER-BASED DISCRIMINATION

Awareness

‘I will go to Strasbourg’ is a recurring phrase among women who decided to report gender-based discrimination in employment.⁴⁸ In the few cases that women decide to report the discrimination that they experienced, their knowledge of the legal framework and responsible institutions is remarkable; they know their rights and are determined. They address all relevant institutions, as well as labour unions. However, such cases are rare.

The concept of discrimination seems prevalent in everyday speech, including on topics concerning the labour market. The question is how many employees, institutions, lawyers and judges genuinely know and understand the meaning of discrimination? To what extent do people who are being discriminated against know their rights?

This research suggests a very low level of awareness. Civil society respondents pointed out that:

‘Most women we encounter in our work and who come forward are unfamiliar with their rights, and the reason for this is that most of them are too focused on finding ways to provide basic living conditions for their families.’⁴⁹
‘[There is a] lack of knowledge of the provisions of the Law on Prohibition of Discrimination by both employers and employed women, as well as the absence and non-compliance of employers’ internal acts which regulate internal protection of their employees against various forms of discrimination.’⁵⁰
‘Women from marginalized groups are entirely uninformed.’⁵¹

Labour unions, lawyers, judges, the Ombudsman and gender mechanisms all expressed similar views.

Insufficient knowledge about discrimination seems widespread in the public and private sectors, across different educational levels, and among employers and employees, interviews suggest.⁵² Often, violations of different labour rights are called discrimination (especially in the online survey). The findings of the ‘Report on Public Opinion Surveys on the Perception and Experience of Discrimination’ from 2012 also pointed to a very low level of awareness: ‘most of surveyed are not familiar with the Law on Prohibition of Discrimination and (even more dangerous) most do not believe in its effectiveness’, while discrimination was described as

⁴⁸ Woman, public sector, age 46, Travnik; lawyer (BL051).

⁴⁹ Interview, BN001.

⁵⁰ Interview, BLA008.

⁵¹ Questionnaire U01/18.

⁵² BN001, BN002, BN003, BN004, BN005, BN006, BN010, BN019, BLA008, BU016, BU07, BU025, BLI026, BLA034, BN038, BN039, BO046, BL051.

‘humiliation’.⁵³ Also, in the same survey, respondents believed that the area of employment (especially in public and state enterprises and institutions, as well as private enterprises) is most burdened by discrimination, but gender has not been identified as the most common ground for discrimination.

The online survey conducted as part of this research provided insight into citizens’ awareness of GBD in the labour market. According to the survey findings, most respondents (93.1% of women and 93.5% of men) know that gender-based discrimination is unlawful in BiH.

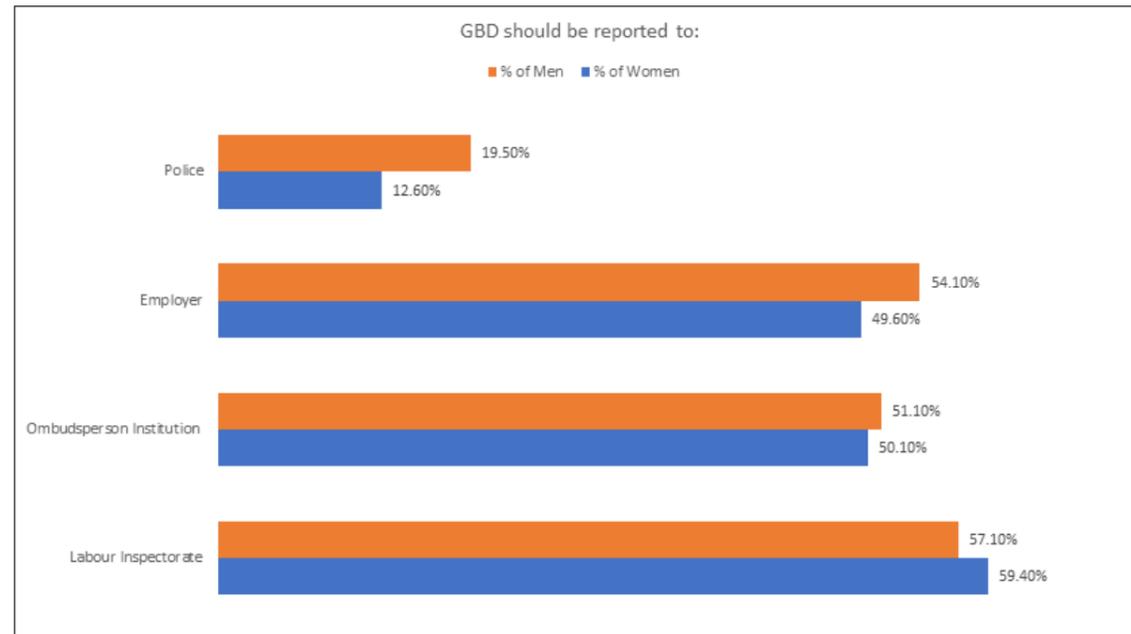


Chart 1: Awareness regarding competent institutions

However, every tenth respondent (10% of women and 10.5% of men) does not know where to report gender-based discrimination if it happens. More than half of the participants mentioned one of the enlisted institutions in identifying which are responsible for addressing GBD.

Attitudes

According to a judge of the Mostar Municipal Court, ‘our country is far from a law-governed state, people are uneducated, poverty and fear are present, people are hopeless, they do not know what else to do and keep silent, and nepotism is widespread’.⁵⁴ People’s (and institutions’ representatives’) belief that laws are not implemented may be an attitude that prevents people from seeking address when discrimination occurs. Women also fear that nobody will believe them: ‘She asked for it’;⁵⁵ ‘Look at the way she is dressed’;⁵⁶ and ‘Men will

53 At: http://www.diskriminacija.ba/sites/default/files/Diskriminacija_izvijestaj_1_0.pdf.

54 BCC029.

55 Woman, public sector, age 62, Sarajevo.

56 Woman, private sector, age 30, Mostar.

be men’;⁵⁷ were among the responses.⁵⁸ This fear is closely related to the patriarchal character of BiH society.

When asked what would be best for a woman to do if she experienced GBD, most respondents answered that she should report it⁵⁹ or seek legal aid, regardless of the challenges accompanying reporting. On the one hand, this suggests a generally widespread attitude that GBD should be reported, because ‘women must be aware that they will prevent ten other cases by reporting their problem’.⁶⁰ Moreover, concern over complex, lengthy procedures may prevent people from seeking redress: representatives of CSO’s mentioned that is hard to advise reporting discrimination when it is known what women must endure if they go through with the complaint (mental aspect, financial aspect), and there is no guarantee that long and expensive proceedings will be completed in their favour.⁶¹

Reporting

Research findings suggest that although few cases of GBD (including mobbing and sexual harassment) at work and in hiring are reported, this does not mean that such discrimination does not exist. On the contrary, the reasons for not reporting are complex and very unsettling.

According to the online survey findings, 76.3% of victims of GBD in the workplace said that they had not contacted any institution competent for cases of discrimination. Only 17 participants answered about the response of the authorities.

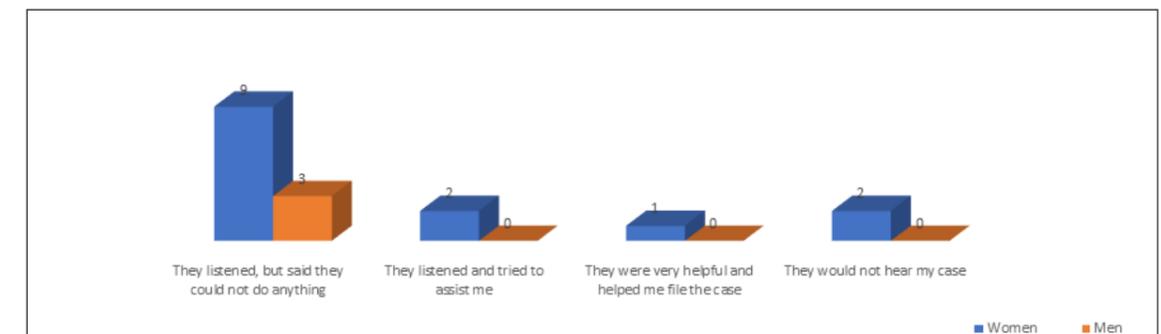


Chart 2: Responses of the authorities

‘Distrust in the judiciary’ appears to be one of the reasons for this lack of reporting, according to different stakeholders. For example, a respondent noted that ‘The overall mood is that these mechanisms should not be used because they are useless. I also think that those who discriminate rely on this ‘it’s useless attitude’. If more women were to use these mechanisms, the situation would improve’.⁶² Lengths of proceedings

57 Woman, private sector, age 27, Sarajevo.

58 Woman fear they will be considered ‘guilty’ if they speak about discrimination (BU016).

59 BN001, BN002, BN033, BN019, BO046, BLI026.

60 BU016.

61 BN003, BN003, BN005, BA013.

62 BN002.

are also an argument against reporting GBD: representatives from labour unions have stated that proceedings last three to five years (referring to legal validity).⁶³

CSO representatives agreed and added that procedures are also expensive and exhausting while penalties are uncertain and low.⁶⁴ During interviews, lawyers stated that overwhelming difficulties in collecting evidence for court may affect the number of cases reported, whereas the withdrawal of witnesses is an additional issue.⁶⁵

For employees, coming forward regarding the discrimination they experienced means frequent 'labelling' by society, work colleagues and family. This is particularly true in cases of sexual harassment, where, in addition to shame, there is an evident fear of society's response.⁶⁶ There is no difference whether GBD occurs in the private or public sector, who society often deems to incline as 'troublemaking'. This is especially prevalent in state institutions where there is a high degree of perceived nepotism.⁶⁷ Concern over what people may think thus prevents victims from reporting discrimination.

After lodging a complaint (against the director), my husband received sms messages saying 'your wife is a waitress; aren't you ashamed who you live with; everyone is laughing at you'. He called me a waitress when talking to me in the office. Everyone knows that during the war I worked in a neighbourhood cafe. I am proud of this because I contributed to the family budget when nobody in my family worked (mother, father and brother). I also got an anonymous letter at work saying 'who do you think you are, driving a car and buying clothes in second-hand shops; look at your hair, your colleagues are laughing at you; talk less and mind your own business...' The things he writes to me do not offend me, but who gives him the right to meddle in my personal life?

Interview with woman, public sector, age 46, Travnik

This illustrative example evidences how women may be intimidated by perpetrators in many different ways, as well as how threats may negatively affect women's social image among her peers. This can dissuade people from reporting.

Of the 36 interviewed stakeholders of different profiles (institutions representatives, CSO, unions lawyers, legal aid providers, labour inspectorates, civil court judges), 26 identified employees' (women's) fear of losing their jobs (or fear of not getting a job) as a reason for not reporting GBD. This reason involves the fear of losing a job due to pregnancy. For example,

63 BU017.

64 BN005, BLA008, BN028.

65 According to their allegations, witnesses are most commonly employed by the employer accused for GBD, and although they originally agree to testify, they are often relieved of their testimonies due to pressures or fear of losing their job (BL024, BL051).

66 BO046.

67 BU016.

respondents mentioned tightening women's pregnant bellies in health care institutions, in order to conceal pregnancy and avoid dismissal.⁶⁸ Women tend to fear that nobody will believe them and that no employer will hire them ever again; these fears prevent them from reporting GBD.

Meanwhile, in contrast, two interview respondents claimed that GBD is not reported because discrimination does not really exist: 'there is not that much discrimination; there are only good and bad workers and types of work'. These statements came from entity institutions responsible for employment legislations and addressing GBD.⁶⁹

As mentioned, another reason for not reporting GBD is the perceived high costs of proceedings. While proceedings before the Ombudsman carry no cost (free of charge proceedings with no lawyer required), these proceedings are limited in scope because recommendations issued by the Ombudsman are not binding. In terms of initiating and conducting court proceedings, free legal aid provided by the state is unavailable to employed women.⁷⁰ Meanwhile, free legal aid provided by CSOs usually involves free of charge work performed by lawyers, but employed women must still pay for the court fees and expertise.⁷¹ If an employed woman reports GBD (to any institution), it must be done under her full name, not anonymously. This increases the likeliness that she will be dismissed or victimized.⁷² In case of dismissal, she most certainly would not have money to pay for legal representation.

Although some of the issues described here are clearly addressed by the legal framework (such as non-binding recommendations by the Ombudsman and the ban on victimization), respondents seemingly either have insufficient knowledge or mistrust in the effectiveness of law enforcement. The non-governmental organizations Rights for All and the Centre of Women's Rights Zenica stressed that the very difficult position of women, their economic dependency on their husbands or other family members and the fear of dismissal or ill-treatment by their employer after initiating proceedings all prevent women who have experienced GBD from reporting it.⁷³

'Why would I finance the birth rate?' an employer asked in a TV show. 'As soon as [the pregnant ones] start to bleed, they take sick leave and do not work for nine months,' he continued. He also said that he was thinking about buying women in the company birth control pills, otherwise, 'his company will collapse'.⁷⁴ This illustrates the context in which women need to earn wages for mere survival, as well as attitude towards women employee.

68 BA013.

69 BML045, BM044.

70 This aid is subjected to a means test; only persons without income and property are eligible to receive this aid.

71 BLA008.

72 BN004.

73 Questionnaire U04/18, BN005, BN006

74 In a TV show 'Stav' on Prnjavor TV K3, Marinko Umičević, technical director of Bema Footwear Factory, councillor in the Banja Luka City Assembly, member of the SNSD main committee and RS senator, strongly criticized gynaecologists and pregnant female workers.

Any public institution or employer with more than 20 employees should have an internal act on the procedure in cases of discrimination. Employers usually do not have them, as shown in the proceedings conducted by the Ombudsman.

Ombudsperson Institution representative

With amendments to the 2016 Law on Prohibition of Discrimination, all public bodies and other legal entities are required to provide effective internal anti-discrimination procedures. Practice shows that there are no special rules introducing internal procedures for protection against sexual and gender-based harassment, mobbing and other forms of discrimination, that there are no rules that systematically address the issue of protection against discrimination within public bodies and legal entities. If such provisions exist, they are within the scope of other acts to which this legal person is required under other special laws.

Midhat Izmirlija in Internal Anti-Discrimination Proceedings - the gap between theory and practice, 2019.

Due to the small number of reported cases of gender-based discrimination in the labour market, it is difficult to determine whether it is the lack of knowledge about discrimination or the fear of consequences that may arise if it is reported. It may tend to be a combination of these two reasons.⁷⁵

Regardless of the sector, awareness of discrimination seems closely related to personal experiences. In addition to insufficient knowledge about discrimination and the responsibilities of institutions, GBD remains under-discussed due to concerns of humiliation, embarrassment, ostracization of someone 'who sues employers' and the fear of losing employment. At the same time, employees are not encouraged to report or even discuss GBD. Moreover, in many cases, they do not even recognize it when it actually happens to them. General attitudes towards institutions may prevent the reporting of gender-based discrimination, particularly distrust. Moreover, concern over complex, lengthy procedures may prevent people from seeking redress: reporting discrimination is inadvisable when it is known that women must endure hardship (mentally and financially) if they go through with the complaint. In case of a successful lawsuit, however, the plaintiff should receive all salaries, damages, interest rates, compensation, etc., which is not the case for discrimination in other areas (which only receive damages). However, this

⁷⁵ In an example of discrimination on the basis of sexual orientation, LGBTQIA+ persons are afraid of unwanted outing through the procedure and also of losing their jobs. This is the reason why these cases are rarely reported to the court or even the Ombudsperson. (BN010)

perspective was completely lacking in all aspects of research (online survey, interviews, desk review). This may be interpreted as a result of deeply-rooted fears and distrust in institutions resolving GBD cases, but also a lack of such examples (visibility) that could potentially alter the existing perception. Thus the institutional response to discrimination against women in the labour market (poor law enforcement, inadequate judicial protection), as well as the response of society seem intertwined.

PREVALENCE AND EXPERIENCES WITH GENDER-BASED DISCRIMINATION

The precise prevalence of GBD cannot be known given that many cases are never reported. For the purpose of collecting data for this research, access to information requests were sent to the competent institutions. Questionnaires pertaining to data also were sent to CSOs, employers' associations, labour unions and other relevant stakeholders.

General Findings related to Gender-based Discrimination

Collecting data from **first instance civil courts** was hampered due to the inability of searching records of discrimination (and grounds) related to labour disputes with the CMS, the official electronic information system of the judiciary of Bosnia and Herzegovina.⁷⁶ In the period of 2008-2017, according to records from the 45 (of 52) first instance courts that provided data, only 14 municipal (FBiH) and four basic (RS) courts had cases of discrimination in the labour market (labour relations and employment). Of them, only three courts could provide information on gender-based discrimination related to employment. None had registered sexual harassment cases, but all 18 had mobbing cases. Moreover, the exact number of GBD cases in relation to employment cannot be determined because four courts cannot disaggregate data simultaneously using both categories of 'labour disputes' and 'gender-based discrimination/sexual harassment'. The only data that could be obtained, if cases were recorded, related to mobbing. According to data from municipal and basic courts, mobbing is the most common form of discrimination in employment. Since it is not required to provide grounds for judicial protection in cases of mobbing (in practice, respondents mentioned a combination of several grounds,⁷⁷ as they perceived their situations), it cannot be determined whether these cases involved GBD.

The 2018 Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina analysed 148 court cases (for the period 2009-2017), which were decided before courts in BiH by applying the Law on Prohibition of Discrimination.⁷⁸ Most discrimination cases, 29.4%, refer to the field labelled as 'Cases of discrimination in the field of employment, labour and working conditions – access to employment, occupation and self-employment'.⁷⁹ The category 'Cases of discrimination in the field of employment, labour and working conditions' has five subcategories, namely 'benefits, promotion', 'dismissal', 'access to employment, occupation and self-employment' and 'working conditions'. The total percentage of cases in this category is 64.4%, which means that almost two-thirds of all discrimination cases refer

⁷⁶ Immediately after the adoption of the Law on Prohibition of Discrimination, the HJCP has introduced a special register for cases of discrimination in the Case Management System (CMS). Data in this database are extremely important because they provide insight into the number of cases of discrimination before courts in BiH. These data refer to the number of cases, courts which handled cases of discrimination, duration and manner of completion of court proceedings, legal effects, the area of private and public life that the case of discrimination related to, and finally, the gender of the plaintiff and the gender of the defendant' (Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina, p. 11).

⁷⁷ BCC029, BLI026.

⁷⁸ At: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/400553?download=true>.

⁷⁹ According to the Analysis, cases of discrimination (in general) were considered before 43 courts, including 26 municipal/basic courts, eight cantonal courts, all five district courts, the Court of BiH, courts in BD BiH and both entity supreme courts.

to discrimination in the field of employment, labour and working conditions. GBD has been recorded in 11 cases, but not exclusively in the field of labour and employment. In very few cases did complaints referred to more than one ground of discrimination. In cases where other grounds were mentioned, these were usually related grounds, such as ethnicity and national origin, ethnicity and language, and the like. Therefore, 'it is safe to conclude that there were no cases of multiple discrimination'.⁸⁰

Apart from cases brought to civil courts, proceedings on citizens' complaints in cases of discrimination are conducted before the **Ombudsman**. The Ombudsman has had a complaint database since 2010, and all data provided by this Institution covered the period 2010-2018.⁸¹ According to the formal response provided, the Institution does not disaggregate data and this means that it is impossible to have exact data on the number of complaints and recommendations regarding GBD in employment and in hiring by this institution.⁸² The exact number could only be obtained by direct review of each case, which could not be done in the course of this research.⁸³ Since the Ombudsman database cannot combine field (employment) and grounds of discrimination (gender), the data collected in this research are limited to the total number of complaints/recommendations in the field of employment/discrimination. According to the data provided, there were 1,631 cases in the category of 'discrimination' during the period of 2010-2017. In total, 106 recommendations were issued in this category from 2011 to 2018. From 2010 to 2018, the Ombudsman acted ex officio in 284 complaints related to discrimination. Of the total number of complaints, 37 referred to 'discrimination', while 12 referred to the violation as 'employment'.

The **Civil Service Agency of BiH** provided data on the number of complaints for the period of research. Of 21 total complaints for the protection of labour rights, not a single one refers to a case of discrimination on the basis of gender, sexual orientation, sexual harassment or mobbing. Of five total disciplinary proceedings (all conducted against men), one is for sexual harassment.

Labour inspectorates hold that they have no competence regarding discrimination in employment, referring to the provisions of labour laws which stipulate that protection in the event of discrimination in employment is under the exclusive jurisdiction of courts. Therefore, they have no recorded cases in this field.

Labour unions keep records, but not for counselling, which is the most common form of providing legal aid to women employees who report GBD. There were complaints, but even when a labour union contacts the employer, women employees deny accusations and withdraw

⁸⁰ Ibid, p. 20.

⁸¹ Correspondence with the institution, e-mail dated 7 August 2018, kept by the research team.

⁸² Ibid.

⁸³ The request for review of official cases was rejected for reasons of personal data protection (LYRA) and partially granted for a certain number of cases that could not contribute to the assessment of the overall number of cases addressing GBD.

their complaints, a union representative said.⁸⁴ However, after consulting with labour unions, most women employees decide not to take any action.⁸⁵ There are no accurate data on GBD because it is usually conducted (and completed) as counselling within unions. Mobbing cases are the most commonly reported cases. However, as previously mentioned, it is not possible to identify GBD in cases of mobbing. However, respondents do make comments on gender as a possible reason for mobbing.⁸⁶ According to an online survey on violations of labour rights in the labour and services sector in BiH 2012-2014, the prevalence of gender-based discrimination in employment was 26%, and there were five cases of sexual harassment.⁸⁷

According to the **Gender Equality Agency**, there were not many cases of GBD in the labour market; only four cases in ten years were received by this institution. There were requests for address of violations of the provisions of the Law on Gender Equality: disabled promotion at work (indirect discrimination, change of regulations); the titles at the university are written only in a male gender (recommendation); and protection of motherhood rights (recommendation).⁸⁸

The **Policewomen's Network Association** as an organisation that gathers women employees in different police forces in BiH, provided information on only one case of gender-based discrimination in 14 police institutions, based on their knowledge. According to the results of an anonymous survey published in the publication 'Human Rights Defenders in the Police Structures of Bosnia and Herzegovina – Mechanisms for the Protection against Discrimination', in which 45 policewomen from different police agencies in BiH participated, 21 policewomen believed that they were victims of GBD, while seven policewomen believed that they were victims of sexual harassment.⁸⁹

Considering the limitations in the accuracy of the data submitted, it is difficult to determine the gender of persons reporting GBD in employment, as well as the gender of those who have been reported as discriminators. The experiences of a lawyer from Sarajevo and a judge of the Bihac Municipal Court suggest that, irrespective of gender, the discriminator is almost always a superior.⁹⁰ The most commonly reported form of discrimination is certainly direct discrimination, then mobbing, while other forms unfortunately remain obscured behind the term 'field of employment, labour and working conditions – access to employment, occupation and self-employment'. Direct insight into cases showed dismissals because of pregnancy,⁹¹ as a form of GBD; gender-discriminatory job advertisements; and other violations of labour rights

84 BU025.

85 BU016.

86 For example, women are more often subjects of mobbing than men because of their gender (BU016).

87 At: <http://pzzapromjene.ba/media/1167/stbih-brosura-rezultati-istra%C5%BEivanja-12-14-final.pdf>.

88 BA018.

89 At: <https://udruzenjemps.ba/assets/files/AC7rtZlzS-braniteljice-ljudskih-prava-u-policijskim-strukturama-u-bih-mehanizmi-zastite-od-diskriminacijepdf.pdf>.

90 Interview BLO51 and BCC023.

91 Case at the Mostar Municipal Court.

that are not discrimination but have been reported as GBD (in lawsuits).

Online survey shows that 43.9% people who responded experienced GBD in BiH, where 48.8% of the women and 22.5% of the men stated that they have experienced GBD at the work place. Nearly half (48.6%) of the employees living in other cities in BiH had experienced GBD in the workplace compared with 35.5% of the workers living in Sarajevo.

Failure to report GBD is the main reason behind the small number of recorded and prosecuted cases. Almost half of the women respondents in the online survey said that they had been discriminated against in the labour market. Overall, according to the data collected, the number of reported GBD cases seems small.

Discrimination based on Specific Protected Grounds

The fact that discrimination may not be reported or registered does not necessarily mean that it has not occurred or is not prevalent. This research used other sources such as the online survey and interviews to better understand the nature of GBD.

Age

The online survey found that age discrimination may be among the most frequent forms of discrimination in hiring, as reported by 33.7% of women and 24.6% of men respondents. In terms of promotion, 8.7% of surveyed women said that they have experienced age discrimination, and 11.2% of surveyed men.

Age discrimination is frequent in the trade sector. Women older than 45 years of age, compared to their younger colleagues, are given jobs that require no contact with customers. These are difficult jobs, such as stocking the shelves, unloading the goods, cleaning and sweeping parking lot area in front of the facility. Young women should work inside the facility.

Mersiha Beširović, President of Commerce and Services Trade Union of BiH

The experiences of CSOs and the Commerce and Services Trade Union suggest that middle-aged women experience age discrimination,⁹² while women over fifty years of age can almost never secure employment.⁹³ The Gender Equality Agency also attributes the inability to find work to 'the mature age of women due to the changing needs of the labour market'.⁹⁴

92 BU017, BN039, BLA008.

93 Questionnaire U01/18.

94 Sixth Periodic Report for Bosnia and Herzegovina on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women 2013-2016, p. 33.

Gender-based Discrimination against Persons with Different Abilities

Discrimination in the labour market is a very complex issue for persons with different abilities (PwD), especially women (WwD), particularly considering the overall situation of PwD in BiH. According to data in the BiH Alternative Report 2016: Political Criteria, women with different abilities, especially with a higher degree of disability, find it more difficult to secure employment than men, regardless of their qualifications, because employers prioritize disabled veterans, which tend to be men. Of all PwD employed in 2015 in the FBiH, women comprised 26.6% (66 of 248); in the RS women comprised only 6.2% of employed disabled persons (34 of 547) for 2013-2016.⁹⁵ Tanja Mandić Đokić from the Association of Women with Disabilities NIKA believes that GBD in employment against WwD is widespread. According to the Association's data, the public sector has employed some WwD. However, this is only a formality, they said, because these women are prevented from advancing at work; the overall impression is that they are there to simply be showcased. On the other hand, many men with different abilities do not want to secure employment because they receive substantial social benefits, and this is the difference between disabled veterans and other persons with disabilities.⁹⁶

It really comes down to that no matter how hard you try you cannot catch up with the healthy people. As a result, you are constantly frustrated and put even more effort to prove that you are worthy and equal in unequal conditions. In practice, I see that men with disabilities find it easier to fit in, that somehow there is a greater sense of solidarity. I don't know why this is so. 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.

Tanja Mandić Đokić, NIKA

Perhaps the first (even greater) challenge for WwD is their disability, which is often unacceptable to employers; then gender may only be a secondary form of discrimination. A firmly established argument, especially in the private sector, is 'you can't do it'.⁹⁷ The Alternative report to CEDAW for 2016 stated that 'practice also notes that women with a higher degree of functional disability are the least likely to get a job, regardless of qualifications'.⁹⁸

⁹⁵ See: http://soc.ba/site/wp-content/uploads/2016/07/HRP_alternativni-izvjestaj_ENG-web.pdf.

⁹⁶ BN002.

⁹⁷ BV007.

⁹⁸ Report of civil society organizations on implementation of the concluding observations and recommendations of CEDAW committee for Bosnia and Herzegovina 2013-2017, p. 105.

My personality becomes completely insignificant. My qualifications no longer matter. I am defined either by disability or by gender. Where they cannot reject all the arguments on the basis of disability, they timidly ask me about my plans to have children. They show a bit of embarrassment, not because they are discriminating against me on that basis, but because of the conviction that a woman with disabilities cannot create a family of her own... I was afraid that I would never become independent, that I would graduate from college only to have my degree hanging on the wall, that I would never get a chance to be who I am.

Ana Kotur Erkić, journalist and activist

As these stories and accompanying interviews illustrate, women with disabilities face discrimination in hiring based on their ability as well as their gender. Moreover, workplaces are unadjusted to meet the needs of PwD; and employers are unwilling to make such adjustments.⁹⁹ It is emphasised that WwD face discrimination in employment related to the unadjusted physical space of workplaces and working hours,¹⁰⁰ but it should be noted that this is related to different ability not gender. Women who have children with disabilities also face several social challenges that prevent them from obtaining employment.¹⁰¹

Gender-based Discrimination against LGBTQIA+ Persons

The main source of information for this section was Sarajevo Open Centre (SOC). No data on discrimination based on sexual orientation in the labour market was provided by competent institutions. The Ombudsman and courts had only limited disaggregated data, whereas public institutions for free legal aid had not recorded any such cases. The online survey administered through this research did not provide any such data on discrimination against Lesbian, Gay, Bisexual, Trans*, Queer, Intersex, Asexual or other identifying (LGBTQIA+) persons in employment either.

In an interview with Vladana Vasić, advocacy manager of SOC, it was emphasized that although it may seem that few cases of discrimination against LGBTQIA+ persons exist in the labour market, this is untrue. Many people do not disclose their gender identity or sexuality because they fear losing their jobs or facing violence. Meanwhile, discrimination in employment occurs when a person decides to come out 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.

The labour market for LGBTQIA+ persons in BiH is limited. Generally, LGBTQIA+ persons cannot find employment, and they tend to work in the shadow economy, or 'gray market'.

⁹⁹ BN001, BN002.

¹⁰⁰ BN002, BV007, qualitative answers from online survey.

¹⁰¹ BN001, BN002, BN003.

This makes them even more vulnerable to systemic discrimination. Transgender persons are probably the most vulnerable. Due to the fact that they cannot hide that they are transgender and the legal problem of securing ID documents, they are often forced to work in the shadow economy. Meanwhile, no legal measures protect transgender persons. The shadow economy emerges as a field in which not all, but many LGBTQIA+ persons obtain jobs. Working in the grey economy forces one to waive one's labour rights, paving the way for employers to exploit these workers. LGBTQIA+ persons are not the only ones exposed to these labour violations; persons who do not conform to gender stereotypes also may be at greater risk of such labour violations.

SOC provides legal counselling in order to support and assist LGBTQIA+ persons. Legal counselling consists of providing legal information and contacting lawyers if the case goes further in proceedings. Regarding discrimination in the labour market, persons have contacted SOC, but none of the LGBTQIA+ persons have decided to initiate protection procedures. The Ombudsman also stated that they had LGBTQIA+ persons contact them, but they were not ready to initiate proceedings.¹⁰² SOC stresses the necessity of openness of public institutions for free legal aid; economic vulnerability is not the only factor that makes a person eligible to use this kind of aid, social vulnerability should be considered too. Moreover, courts, labour unions and lawyers need to be more receptive to assisting LGBTQIA+ persons.

Gender-based Discrimination based on Ethnicity, Political Affiliation, and Religion

Even 25 years after the official end of the conflict, post-conflict life in BiH remains complex and ethnically charged, including in relation to employment. Closely related to ethnic groups, according to respondents, are religion and political affiliation.

I was discriminated against for being a woman and a Croat. I was discriminated against by my superiors, who are also Croats, because at that time my political affiliation did not sit well with them.

Woman respondent, age 30-39, Široki Brijeg, online survey

Findings suggest that ethnic discrimination against women is also present. The online survey found that nearly every tenth respondent (8.7% of women and 11.2% of men) said they had faced discrimination on the basis of their ethnicity. Experiences of the United Women Banja Luka Association has shown that women who are refugees or displaced have a lesser chance of securing employment.

¹⁰² B0046.

Political unsuitability. I'm politically inactive', 'audacious puritan'. I'm politically active. My open support to the LGBT population (and) religious belief. They asked me and I told them I was an atheist, after which I listened to a ten-minute rant about Allah being the greatest and how I must return to the right path, political unsuitability (I didn't want to join the SDA), etc.

Responses from women to online survey

Political (non)affiliation is related to ethnicity: 'Political affiliation to a political party in power is principal here, so it is much easier for women who are members of a political party in power to secure employment'.¹⁰³

Different Forms of Gender-based Discrimination

Discrimination in Hiring

Research findings suggest that GBD in hiring exists, as various women were asked questions pertaining to family planning, marital status and family status during job interviews.¹⁰⁴ Sometimes job advertisements openly discriminated against women applicants.¹⁰⁵ Women reportedly were asked to attach their photo to job application forms.¹⁰⁶ In Recommendation no. P-290/17, on the appeal for discrimination of employees based on sex (women employees), the Ombudsman also observed that classified ads in daily newspapers and job ads on online portals included the condition of 'pleasant appearance', obliging candidates to attach a photo to their job application form. This indirectly tells potential candidates that their physical appearance will be evaluated as a condition of employment. Setting physical appearance as a condition to perform any work is inappropriate and degrading; it constitutes indirect discrimination against potential candidates whose 'appearance is unpleasant' in the opinion of the employer.

According to the Sena Družić, USC Administration for Inspection Affairs, employers require a medical examination (medical certificate) not to determine the health condition, but to determine whether an applicant may be pregnant.¹⁰⁷ Although laws prohibit discrimination in the text of job ads, as well as questions about maternity and pregnancy, in practice, this reportedly happens regularly.

Last year we had several reports by young women complaining about discrimination. When applying for jobs, employers asked them whether they were married and whether they planned to have children. Some women were even asked to sign a statement that they would not get pregnant in the next two years. Women who are trying to have a baby through in vitro fertilization must

¹⁰³ Questionnaire U01/18.

¹⁰⁴ BLI026, BN038, BN043.

¹⁰⁵ BN043.

¹⁰⁶ BN038.

¹⁰⁷ BLI026.

hide that too. If an employer suspected that a woman was undergoing these treatments, she would be fired.

Željko Lazarević, Beba više, Brčko District

‘Behind closed doors’, at job interviews, nothing can be done to prevent the prohibited questions from being asked, which is why these cases are not reported.¹⁰⁸ Not only are questions about pregnancy and pregnancy planning asked, but women are required to sign statements that they will not become pregnant for several years (e.g., two, five).¹⁰⁹

At a job interview I was asked whether I was planning to be a mother. Thereafter it was emphasized 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 a number of other inappropriate names unrelated to their qualifications.

Woman respondent, age 40-49, Banja Luka, online survey

According to survey data, 70.2% of women respondents, who had attended at least one job interview, had experience with questions that might imply discrimination (compared to 56.5% of men). Women experienced gender-based discrimination comparatively more often (28.5% of women and 10.1% of men), including discrimination on the basis of planning to have children (13.3% of women and 1.4% of men) or having children (13.5% of women and 0% of men).

¹⁰⁸ B0046, B1026, BN004.

¹⁰⁹ Questionnaire U01/18: Considering that, as a ‘rule’, this was requested by banks in BiH, women did not complain because they wanted to get the job.

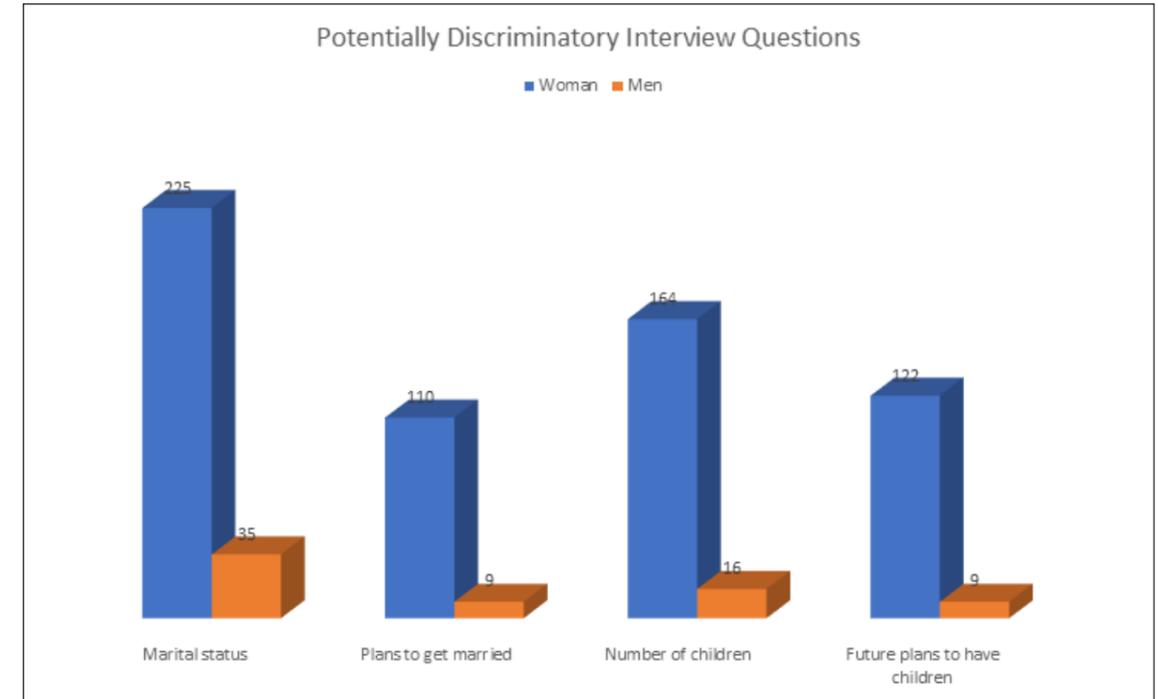


Chart 3: Interview questions related to GBD

There are statistically significant differences between men and women; the percentage of women who have faced potentially discriminatory questions during interviews is larger than that of men for every type of GBD discussed in the survey. Apart from questions about pregnancy and family life, 67.6% of women survey respondents and 55.1% of men, who had at least one job interview, think that they have been discriminated against in hiring. Age discrimination is the most frequently reported form of discrimination in hiring (33.7% of women and 24.6% of men). Discrimination in hiring reportedly occurs significantly more often for respondents living in cities other than Sarajevo (71.3%).

At one interview I asked about working hours and salary. The employer gave me a strange look and said: ‘I thought you knew that it is an unwritten rule to not ask about salary at a job interview.’ I was shocked at this and never asked the same question again.

Interview with woman, private sector, age 39, Mostar

The Autonomous Union of Civil Servants and Employees in Public Institutions of Bosnia and Herzegovina states that it is not involved in the selection procedure for hiring public servants, and that there is discrimination in the hiring process in state institutions. Also, the ‘discretionary power’ to select a candidate, regardless of the result achieved in the selection

procedure, is a potential area for discrimination including GBD.¹¹⁰ The discretionary power to assign persons to job positions within the institution¹¹¹ also may involve GBD, as discussed in the next section on promotion.

Discrimination in Promotion

‘Men and women have unequal opportunities in the labour market, and often have different treatment ... When it comes to employment, women are subject to prejudices arising from traditional patriarchal social norms on the type of work that women have, as well as from various difficulties that prevent them from reaching higher positions on which decisions are made’.¹¹²

In the Rulebook on evaluating the performance of civil servants in BiH institutions,¹¹³ the direct superior performs an evaluation twice per year. Given that employment and labour rights in the civil service are regulated in more detail, the assumption is that discrimination cannot happen there.¹¹⁴ However, regarding promotion, research results indicate a tendency for GBD to occur in public institutions. Reportedly, an evaluation scoring system used in the civil service by superiors allows for a kind of ‘covert’ discrimination. The evaluation process, according to respondents, is used to ‘retaliate’ against employees who have been exposed to GBD (e.g., rejecting a proposal of a sexual nature from a superior, or as an extension of mobbing).¹¹⁵ Cases were noted when assessment was used to ‘punish’ employees for reporting GBD.¹¹⁶ This, however, is not visible from data provided by the Civil Servant Agency (see section on prevalence). Lejla Čopelj, President of Autonomous Union of Civil Servants and Employees in Public Institutions of BiH, stated that this process is ideal for abuse, including discrimination and mobbing. The Rulebook is currently being amended, and the aforesaid union is not participating in the process.¹¹⁷

It started in 2016 when he began to talk to me (a long pause) things: that I am a handsome woman, we should date... I then told him clearly (pause) it is very unpleasant to talk about this, I said that I’m not interested, that I have my husband, a very nice marriage, ... that I have my job and I’m not interested in anything he suggests. I have already made him aware of this, but then I thought that I was not clear enough, so I clearly in a polite way said ... he said that he no longer trusts me ... in parallel with my claims (to competent institution’s bodies

110 BU016.

111 Therefore, the RS Agency for Peaceful Resolution of Labour Disputes states: ‘The minister has discretionary power to assign or not assign a person to a position. Everyone is responsible for their service... How another worker feels in that situation is a matter of subjective perception, we cannot speak of mobbing now... Can that happen in practice? In theory, a person can feel like a victim, that they are discriminated against for that reason or what have you.’

112 At: <http://documents.worldbank.org/curated/en/754241467992483659/pdf/97640-ESW-P132666-and-P152786-Box385353B-PUBLIC-BiH-Gender-Disparities-in-Endowments.pdf>.

113 At: http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=1895&catid=39&Itemid=91.

114 BN006, BU016.

115 BV040, BU016.

116 BV021, BU016, BA013, BV036, BN019.

117 BU016.

about this), my negative evaluation started.

Interview with women, civil servant, Sarajevo.

Further, according to respondents, access to advanced training and education, which are crucial for promotion or training of civil servants, is more often granted to men without further elaboration. A member of the Parliamentary Assembly of BiH, Maja Gasal Vražalica,¹¹⁸ gave the example that internal competitions for advanced training reportedly are announced when a woman goes on pregnancy or maternity leave, excluding them from participating.

Moreover, interview respondents agreed that discrimination exists in the gender structure of managerial positions in state institutions, where men are disproportionately overrepresented.¹¹⁹ The Autonomous Union of Civil Servants and Employees in Public Institutions of BiH provided the example of the Ministry of Security of Bosnia and Herzegovina, where out of ten managerial positions, only one woman has been appointed. A similar ratio is present in two other state-level ministries, while in four ministries there are no women at all in managerial positions.¹²⁰ According to the available data (2016), there were 61 men and 21 women in state ministries in managerial positions. Data from the official statistics of the Civil Service Agency for 2018 point to almost equal gender representation of civil servants (47% of men, 53% of women).¹²¹ The statistics are based of the types of official titles.¹²² In 2017, managerial positions involved 39% women and 60,9% men.¹²³ According to the ‘Sixth Periodic Report for Bosnia and Herzegovina on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (2013-2016)’, the situation in the entities is similar in terms of representation of women in the civil service, but their ‘number is reduced depending on the managerial jobs, where there are more men in both entities with about 59%’.¹²⁴ Statistics point to a higher percentage of men in managerial positions. In certain individual institutions, it represents an extremely large difference (such as the given example of the Ministry of Security). Some data are available, as a result of specific research. For example, ‘in the structure of police officers, the total number of women is around 14%, while the percentage of representation of high-ranking women in all BiH law enforcement agencies is around 0.50%’.¹²⁵ A similar situation of underrepresentation is evidenced at entity ministries: 9.4% of women (FBiH) and 1.2% (RS) are in positions of managerial police officers.¹²⁶ However, the underrepresentation of women and men in higher positions does not necessarily mean GBD occurred, and those data should be observed as consequence of possible different causes.

118 At the time of the interview.

119 BA015, BA013, BU016.

120 See: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izviestaj-za-BiH_Nacrt.pdf.

121 At: http://www.ads.gov.ba/v2/index.php?option=com_content&view=article&id=4881&Itemid=166&lang=bs.

122 Where 5% (211 total) are in managerial positions in the civil service.

123 At: http://www.bhas.ba/tematskibilteni/FAM_00_2017_TB_0_BS.pdf.

124 At: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izviestaj-za-BiH_Nacrt.pdf, p. 28.

125 At: <https://udruzenjemps.ba/assets/files/AC7rtZlzS-braniteljice-ljudskih-prava-u-policijskim-strukturama-u-bih-mehanizmi-zastite-od-diskriminacijepdf.pdf>, p. 10.

126 At: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izviestaj-za-BiH_Nacrt.pdf, p. 28.

While GBD seems more present in relation to promotion in the public sector, discrimination also occurs in the private sector. According to data from the 'Survey on the number of women and men in the management structures' of 2014 companies, there were only 15.7% of women in the management structures of companies.¹²⁷ However, GBD in hiring and working conditions seems far more pronounced than discrimination in promotion in the private sector.¹²⁸ This may reflect the economic situation, high unemployment rate and lesser regulation of the private sector compared to the public sector where rulebooks stipulate everything regarding employment and at least normatively ensure equal rights. Cases of mobbing expressed through denial of promotion because of gender also were reported in civil society organizations, including some organizations dealing with women's rights/human rights.¹²⁹

(Discrimination has involved) ... private meetings with CEOs in restaurants and the negotiating of salary raises (only involving male employees); (or) sending me to bring food and make coffee because I'm the only woman attending the meeting. I was not allowed to work as a crime lab technician because of the obligatory attendance at autopsies because 'it's not for women'. I didn't get the promotion I should have got at the beginning of the New Year because I got married and (it) was thought that I would immediately get pregnant. I didn't get the desired residency because 'it's not for women'. While working at a gas station, I was to be promoted to a manager position, but I was told that only men can handle fuel (pumping fuel from cisterns into tanks).

Online survey responses from women

Of the survey participants, 69.5% think that their employer treats some employees differently, meaning that all employees do not have an equal opportunity to be promoted, while 58.8% of them think that they have been discriminated against in promotion. Every tenth participant (10.1%) has mixed experiences, i.e. depending on the employer, and nearly every fifth participant (18.5%) thinks that all employees have an equal opportunity to be promoted. Interestingly, a comparatively larger percentage of men than women perceive unequal treatment in promotion (68.5% of women and 74.5% of men). About 17.9% of women think that they were not promoted just because they are women. A significantly lower percentage of men (4.1%) think that they were not promoted just because they are men.

127 Ibid, p. 34.

128 At: <http://www.measurebih.com/uimages/Edited20GA20Report20MEASURE-BiH.pdf>.

129 BV014.

Contracts and Pay

According to the online survey, there are no statistically significant differences between men and women related to signing contract or the duration of contracts. However, 31.3% of all respondents have been asked to work regularly without a contract. A comparatively larger percentage of men reported that they do not have an employment contract (3.6% of women and 10.3% of men). Most workers (56%) without an employment contract work in the private sector, in entry level positions (56.5%). Of those who have employment contracts, 30.3% have been asked to sign an employment contract without being allowed to read and understand the terms of the contract. Of the participants that have an employment contract (or had in some period since 2008), 63.5% have indefinite duration employment contracts, while 27.5% have employment contracts lasting no more than one year.

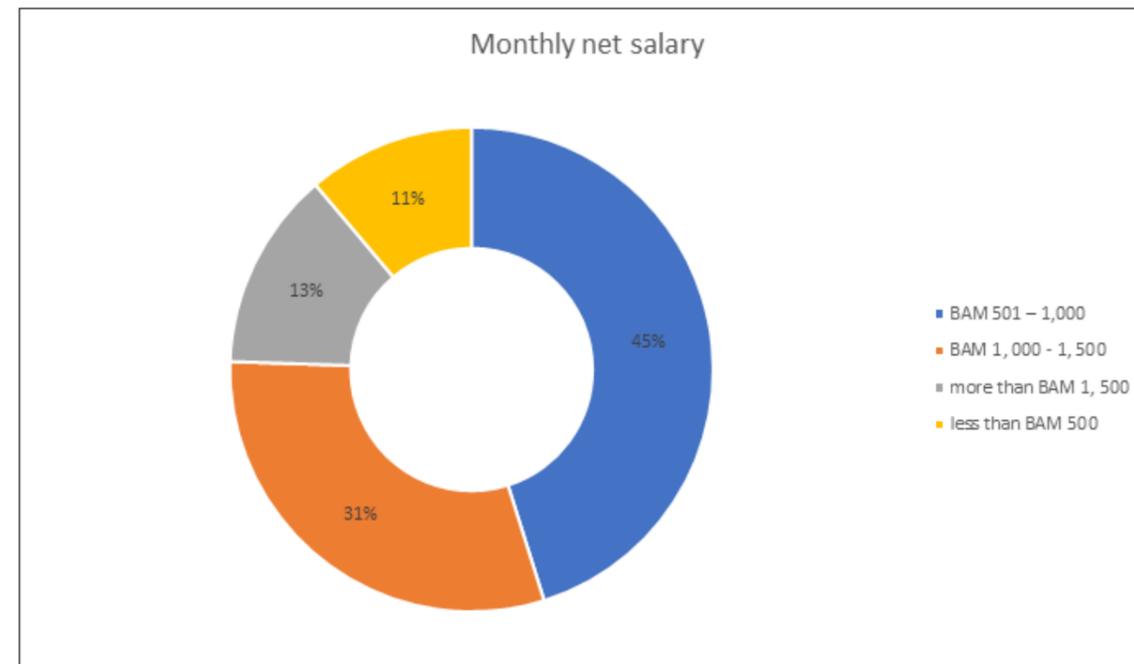
The possibility of concluding a fixed-term employment contract emerges as a 'legal remedy' in potential cases of discrimination against women in employment. Labour laws provide for fixed-term employment contracts, which are used often in the employment of women. Then, if a woman becomes pregnant while employed, the employment is simply terminated upon the expiration of the contract (BO046, BL051, BU017, and BN004). If not, contracts are 'extended': new fixed-term employment contracts are concluded. For example, a respondent to the online survey said: 'I worked on a fixed-term contract for three years, fulfilling the condition to have an indefinite duration employment contract. However, at the time I was on maternity leave, which cost me my job and the extension of my employment contract. I worked overtime through the entire pregnancy (overtime is not additionally paid)'.

More than half (52.3%) of the employed survey respondents said that they work overtime, and more than half of them (52.7%) said that they are not compensated for overtime. More men survey respondents said that they are paid for overtime (20.6%) than did women (12.3%), indicating that they are paid at the same rate or a higher rate than their usual wage. Among the survey respondents who said that they worked overtime, 68.7% were employed in the private sector, whereas 34.5% worked in the public administration.

When it comes to salary, ARS BIH stated that there are 'visible gender differences in hourly rates in favour of men in all age groups, levels of education, occupations and industries.' Within the population working for a salary or daily allowance between the ages of 15 and 64, gender differences in the hourly rate are estimated at 9% of the average hourly rate of male workers'.¹³⁰ This is present in almost all industries, 'men earn more, except in the agriculture

130 At: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izviestaj-za-BiH_Nacrt.pdf p. 34.

and mining sector, real estate transactions, and administrative services. There are no data on what condition this situation, especially because of the fact that women with a higher level of education participate in the market, unlike men'.¹³¹ BiH, however, does not have 'clearly defined indicators for systematic monitoring of gender pay gaps'.¹³² The surveyed men and women in the sample do not differ significantly in terms of their monthly salary.



Charter 4: Monthly net salary

Only 2.4% of the employed persons in the sample said they received the minimum wage or less than the minimum wage in BiH (less than BAM 400).¹³³ Approximately 14.1% of the respondents said that their employer does not declare their real salary to state authorities, and 11.2% do not know if this is the case.

According to the 'Gender Country Profile for Bosnia and Herzegovina', published in June 2014, informal employment is widespread in BiH, with an estimated 30% to 40% of labourers working in the informal economy.¹³⁴ Informal work places labourers in a precarious position that may involve 'poor working conditions and no social security', the report continued. High unemployment rates in the 'official' economy create conditions in which individuals may be forced to work within the informal economy in order to support their families, who otherwise may live in extreme poverty.¹³⁵

¹³¹ Ibid.

¹³² See: <http://soc.ba/site/wp-content/uploads/2018/04/2018-Alternative-Analytical-Report-on-the-Application-of-BiH-for-EU-Membership.pdf>.

¹³³ More than half (56.5%) of the workers living in other cities in BiH do not receive anything extra for overtime work compared to less than half (46.9%) of workers living in Sarajevo.

¹³⁴ See at: https://arsbih.gov.ba/wp-content/uploads/2015/03/delegacijaEU_2014070314432045eng.pdf

¹³⁵ Ibid.

The Profile continues:

Informal economy is a phenomenon which will not easily disappear from BiH economy, so it is very important to understand what the gender consequences of its high presence are. Single mothers might be especially prone to accept jobs in (the) informal economy due to the economic pressure related to dependents. Women in BiH generally having lower education than men might be under higher risks of staying in informal economy continually.¹³⁶

Working Conditions

According to the survey data, 45.4% of respondents who are employed or have work experience have been denied the right to take off work for sick leave, national holidays or annual leave at least once. More than half (55.9%) of the respondents who have been employed in the last ten years think that their health or safety is at risk because of their work. No significant differences existed between men and women.

Media research articles dealing with working conditions at particular jobs testify to difficult working conditions. For example, working conditions in the newsstand, where mostly women are employed, reportedly involves two shifts, no toilette, no protection in case of robbery and violence, and exposure to sexual harassment.¹³⁷ Another example is 'right to a chair' – in small shops or large shopping centres, workers 'are left without a simple asset that would greatly ease them at all an easy-to-do business - a chair and the opportunity to have periodic breaks during a minimum of eight hours of daily work'.¹³⁸

Pregnancy and Maternity Leave

GBD in BiH is most present regarding pregnancy and maternity leave. Interviews suggest that the most frequently cited reason for termination of employment among women is pregnancy, particularly in the private sector.¹³⁹ Often it is impossible to exercise the right to maternity leave either because the employer terminates employment or because a fixed-term employment contract expires (and simply is not extended) when a woman becomes pregnant. Interview respondents from labour unions, civil society organizations and labour inspectorates tended to agree that pregnancy and maternity rights are probably the 'least desirable' for employers.¹⁴⁰ This finding was further validated by survey responses in which women workers said that they have been warned to 'keep their job and regularly take birth control', to reimburse the employer for salary compensation paid during maternity leave and that promotion is denied to women who become pregnant.

¹³⁶ Ibid.

¹³⁷ At: <http://karike.ba/uslovi-rada-u-trafikama-znala-sam-se-vratiti-s-kraja-ulice-kako-bih-otisla-u-toalet/>.

¹³⁸ At: <http://www.diskriminacija.ba teme/%C5%BEene-u-trgovini-bez-prava-na-stolicu>.

¹³⁹ BN001; BN006; BN010; BLI026; BLA034; BU042; BML049; BL050.

¹⁴⁰ BN001; BN005; BN006; BLA008; BN019; BU025; BLI026; BLA034; BN038; BML045.

I became pregnant and my employment contract was not extended because of it. My colleagues and I had signed fixed-term employment contracts since the opening of the company. When I told my superiors about my pregnancy, and I had to tell them right away because I performed physically strenuous tasks at the shop, after the expiration of the contract, all my colleagues had their contracts extended except me... My superior (also a woman) told me how sorry she was because she had been discriminated against in the previous company and fired because of her pregnancy. However, the employer had decided so, and if it were up to her, she would not fire me because I didn't do anything wrong in performing my job. During the pregnancy I had continued performing physically strenuous tasks; they didn't give me easier tasks to do. My colleagues in the shift helped me with loading banana and potatoes packages, crates of fruits and vegetables, as I was in charge of the produce section.

Woman survey respondent, age 18-29, Bijeljina

Of the surveyed women respondents, 31.3% had been pregnant while employed. The right to paid maternity leave was denied to 36.8% of those women, and they were neither paid nor received a government benefit during their maternity leave.

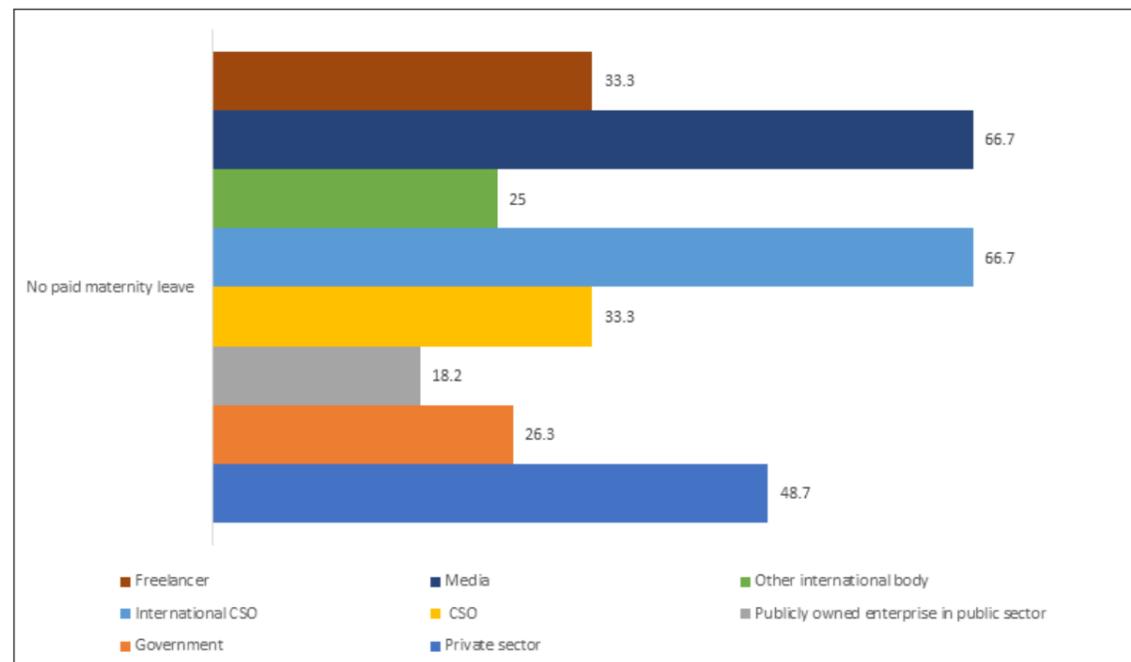


Chart 5: Percentage of Women Denied the Right to Maternity Leave, by Sector of Employment

After their maternity leave, 67.1% of women returned to their previous place of employment, and 25.7% were pressured to return to work earlier than planned. Almost 37.3% felt that they were treated differently after their maternity leave by their peers or boss. For example, a comment by a woman survey respondent was illustrative:

My superior and certain colleagues, especially men, openly comment about my pregnancy-related sick leave, taken because of a risky pregnancy involving twins. They particularly stress that the sick leave is 'false', and degrade me in front of people deciding on my promotion.

When asked specifically about the 'before and after treatment', 11.8% of women said that they had fewer and 18.6% said they had more responsibilities when they returned, 10.8% said they had a lower salary after they had taken their leave, and 8.8% said they had more working hours when they returned. These findings suggest that discrimination against some women likely exists in relation to maternity leave.

Paternal Leave

Of the surveyed employed men, more than half (62.9%) thought that their employer would give them paid paternity leave. Of the men survey respondents, 20.4% had a new-born child while employed. Of them, six participants (30%) said that their employer had allowed them to take off five days, and five participants (25%) said that they had three days off. The labour laws of both entities provide employed fathers with the right to use parental leave. They differ in the number of obligatory days that the mother must spend with the child (42 in FBiH, and 60 days in RS). Fathers have the right to a maximum of 10 months of leave in the RS and a little longer in FBiH.

When asked how they were treated after the leave, 93.8% said that they were treated the same. Most men survey respondents who answered the question on paternity leave, 67.4%, agreed that men should have more paid time off for paternity leave. Nevertheless, 14.6% were against increasing paternity leave. Sixteen participants (18%) did not know if men should have more paid time off for paternity leave. This should be discussed in terms whether respondents answered on parental leave experienced in practice or defined by laws. Overall, this suggests that rather substantial public support for increasing paternity leave exists among men.

Sexual Harassment at Work

The smallest official number of cases (complaints) reported to any institution is for sexual harassment. Nevertheless, survey findings suggest that this form of discrimination is not only present, but is commonplace. Yet, sexual harassment rarely is discussed. Survey data suggests that sexual harassment is more often among the employees living in cities outside the capital.

Compared with 26.1% of workers living in Sarajevo, 39.7% of workers living in other cities in BiH were subjected to sexual harassment.

Although the sample of men experiencing sexual harassment at work is too small to be conclusive, it is interesting to observe that more than half of these men (12 of 22 respondents) did not tell anyone about the sexual harassment.

I worked in a café as a waitress at the age of 15. It was my first work experience ever in order to earn some pocket money because I needed money at the time. I was very young, and I didn't tell anyone about the things that happened to me. One of the worst things that happened involved the shift leader who was 10 years older than me. He constantly touched me every time I walked past him, or he leaned his body against mine when I was in front of him. He did that as if it were a joke. The café's co-owner commented to guests 'what a hottie this girl is' so I could hear him... Even today when I see these persons, my heart starts to pound. I feel uncomfortable. I am even upset right now just talking about it.

Interview with woman, private sector, age 27, Sarajevo

Survey findings suggest that women are significantly more likely to experience sexual harassment at work than men. Compared to 21.2% of men, 37.5% of women said that they had experienced at least one form of sexual harassment, and nearly every fifth (18%) had been subjected to it more than once (compared to 11.2% of men).

When it comes to specific forms of sexual harassment that can occur in the workplace, survey results show that women are subjected to sexual gestures, jokes or sounds significantly more often than men: 36.4% of women compared to 19.2% of men experienced this form of sexual harassment.

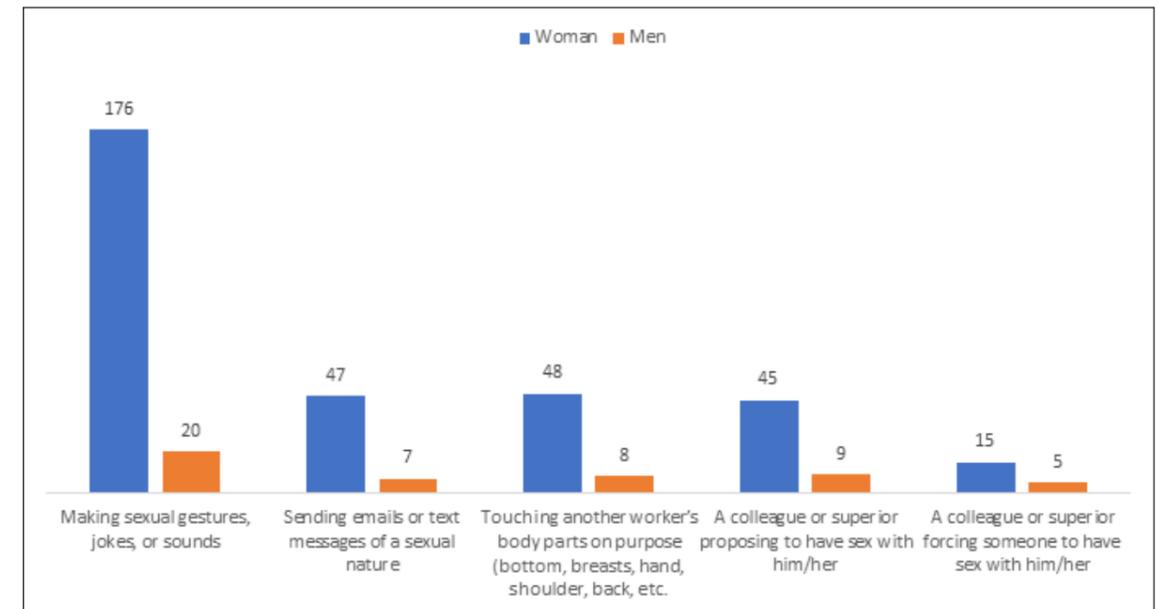


Chart 6: Forms of sexual harassment experienced by women and men at work

Of the surveyed women who said that they had experienced sexual harassment at work, 85.1% said that the perpetrator was a man, and 13.3% had both men and women as perpetrators. Only 1.7% of these women said that the perpetrator was a woman. The sample of surveyed men who said they were subjected to sexual harassment at work is rather small (only 22 respondents). However, half (11) said that women had sexually harassed them, and eight (36.4%) said they had both women and men perpetrators.

The Dean of (the) Faculty sexually harassed me and conditioned an extension of my contract. My contract was not extended.

Woman survey respondent, age 30-39, Sarajevo

When asked about the position of perpetrators, 69.6% of respondents said that the perpetrator was a person who worked in a higher position than them; 39.2% were sexually harassed by a person in the same level of position; and 12.3% said that the perpetrator was in a lower position than them.

We have more women who are employed at private entrepreneurs and who report to us offensive and sexist behaviour by employers. Even after we explained to them their rights, they did not take any action as that was their only source of income.

Nada Golubović, United Women Banja Luka

The experiences of sexual harassment is higher among survey respondents employed in the public administration; 31.8% of persons employed in this sector had experienced at least one form of sexual harassment at their workplace, compared to 20% of persons employed in the private sector. Although the sample sizes of surveyed respondents employed in other sectors are too small to be conclusive, notably of the 17 persons employed in media, eight said they had experienced sexual harassment at work. According to the Commerce Trade and Services Trade Union of BiH, they only had one reported case of sexual harassment. Women workers often seek assistance or advice, but they never agree to any kind of specific help or to be placed on record, they said.¹⁴¹ The Center for Women's Rights was contacted by a client who wanted to report sexual harassment (unwanted touching, messages). After preparations for the proceeding began, the woman employee in question withdrew for personal reasons.¹⁴²

The online survey results corroborate this finding: nearly half of the women (50.9%) who did not report their experience with sexual harassment thought that they should have taken care of it themselves; 26.4% were afraid that they would lose their job, and 24.5% were ashamed. The reasons for this are more complex than the reasons for GBD in hiring or promotion. For example, in addition to the fear of losing their job, women also feared 'labelling', the questioning of the morality of women and the general doubt whether she is telling the truth. According to the chairperson of the Cantonal Committee of the Autonomous Trade Unions Confederation of USC, these cases are rarely reported because of the 'patriarchal society'.¹⁴³

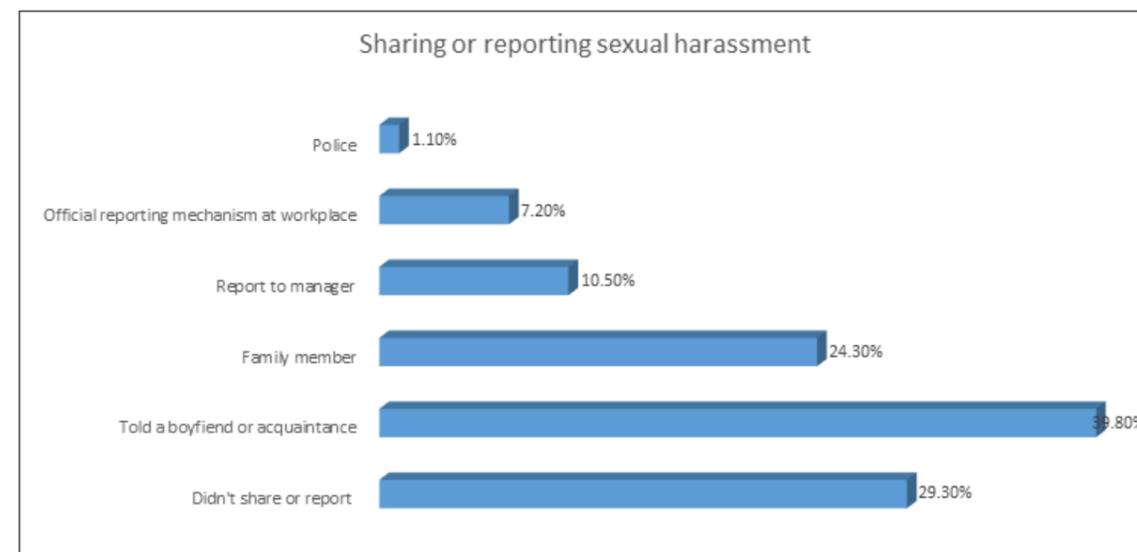


Chart 7: Percentage of persons sharing or reporting their experiences of sexual harassment

141 BU017.
142 BLA008.
143 BU025.

The perfidy of the acts of sexual harassment (they happen behind closed doors, without witnesses, and usually without any kind of material evidence) or their easy-going character because they are 'mere jokes',¹⁴⁴ make women who are exposed to this form of discrimination feel ashamed, embarrassed and voiceless.

Impact of GBD

I'm nervous, depressed, losing my temper. I'm completely absorbed in this, it's all I do. Everything else comes second. My children have finished elementary school, all grown up, and I deal with him (director). I don't know what I'm like anymore. Maybe my children could tell you. It feels to me that I'm normal, but I really don't know how other people perceive me.

Interview with woman, public sector, age 46, Travnik

The experiences that women shared suggest that GBD and mobbing impacts not only their economic situation, but also their health. Their descriptions include consequences on their physical and mental state.

That's when I experienced high blood pressure for the first time. In addition, the doctor also noted depression and advised me to seek professional help... In the meantime, I was diagnosed with two autoimmune diseases... I had been going to work with a knot in my stomach for ten years. I went to bed with a knot in my stomach. One time the defendant (employer) asked me whether all this was necessary saying, 'Why do you need to do this? You are 60 years old, about to retire, you have grandchildren.'

Interview with woman, public sector, age 63, Banja Luka

My spirit is broken... I was ill, even experiencing physical symptoms – irregular menstrual cycle, heart palpitations. I cried a lot and was depressed. Ultimately, I had realized that I had become aggressive when I couldn't deal with something, and that's not who I was. I took sick leave the moment I had realized that I would go to work and lash out at the director – that would be my defeat. I couldn't let that happen because I am a single mother and a breadwinner. While writing a complaint to the Ombudsperson, one day I would take two Apaurin pills to calm down. The next day I would drink a decilitre of brandy to calm down. It took me a month to finish writing the complaint. Now when I read the complaint, it's clear that I was unwell.

Interview with woman, public sector, age 44, Sarajevo

144 BN010.

Psychological counselling for persons who have experienced or are exposed to various forms of GBD is not discussed at all at this point in institutions. Only a few CSOs are able to provide this type of assistance along with legal assistance. All interviewed women first spoke about the effects that discrimination has on their health (including serious psychological conditions). Only later did they speak about the economic effects of GBD.

It feels like you are talking to a brick wall. He is overconfident because he did what he wanted and gloats because you are powerless to do anything. That is very humiliating... You get tired. That's when heart disease appeared. Stress affected my health. I went to a psychiatrist to see if I was normal. I had survived the war, the death of my mother and the death of members of my immediate family without having taken any antidepressants. Now I take half a pill of lexilium every morning before work, and another half during the day when the harassment begins. I feel sick right now... So when he calls me to his office, I leave the door open (sexual harassment and mobbing).

Interview with woman, public sector, age 62, Sarajevo

What is also often disregarded, primarily suppressed by questions of survival, is how giving up on education, profession and desire to work affects women. According to the structure of unemployed persons by the highest education level attained in 2017, 17.6% of women compared to 7.5% of men with high education are unemployed.¹⁴⁵ Given their equal qualifications, this suggests GBD.

As there were not openings for my profession (B.A. in economics), I started to apply for all the jobs I could. A few months after, I got a job as a saleswoman in a supermarket in the bakery department. My university degree bothered them from the start, so they decided to put me in a department where they thought I couldn't become prominent. After two years, I was promoted to administration as a procurement officer, but still with a secondary education degree (working as employee with secondary education degree not B.A.). Of 30 employees in the administration, only my colleague and I had university degrees, everybody else had secondary education degrees. A secondary education degree was required for all positions. My salary and my colleague's salary were much lower than the salaries of our male colleagues: twice less pay. They told us it was because we were new, and we were the only women in the administration. Extra work was always deployed to the two of us and one male colleague. The manager always

¹⁴⁵ At: http://www.bhas.ba/tematskibilteni/FAM_00_2017_TB_0_BS.pdf p. 72.

requested and got a raise for the male colleague for extra work. The two of us never got a raise for our salaries, which were two times lower. We wrote an e-mail to the manager regarding a raise; neither of us got the raise, nor a reply to our request. The colleagues didn't want to help us, kept information from us, tried to blame us for everything that was wrong. The manager called us incompetent in front of everyone, and we started to re-examine our work. At some point, one begins to wonder... I felt uncomfortable, I wanted to fit in. This was a promotion in my profession and it was important for me to keep it. I had hoped that things would change and that I would get into the swing of it.

Interview with woman, private sector, age 33, Bihać

THE INSTITUTIONAL RESPONSE TO GENDER-BASED DISCRIMINATION

This section discusses how institutions treat cases of gender-based discrimination. The section is organized by institution. For each institution, it includes their knowledge, attitudes and treatment of discrimination cases, including any available data or, alternatively, the lack of data available in that specific institution. Findings draw from institutional responses to official requests for information, survey data and interviews with representatives of responsible institutions.

Institution of Human Rights Ombudsman of Bosnia and Herzegovina

The Law on Prohibition of Discrimination of BiH established the Institution of Human Rights Ombudsman as a central institution for protection against discrimination. A Department for Elimination of All Forms of Discrimination of the Ombudsman was formed in 2009. Its responsibility is to receive complaints and to initiate investigations *ex officio*.¹⁴⁶ Applications in cases of discrimination are submitted to the Ombudsman through the Department and in the form of a complaint.¹⁴⁷ This procedure is completely free of charge. In order to be considered, the complaint must contain personal data from the complainant, data on the authority for which the complaint is being filed, a description of the events that led to the violation of rights and freedoms, a statement as to whether and when proceedings have been initiated with another body regarding the case, and whether the complainant wants her/his identity or the circumstances of the case to be revealed.¹⁴⁸

Based on the analysis of data obtained from the Ombudsman, there was a total of 1,631 complaints (out of all 26,927 received complaints) for GBD for the period 2010 – 2018. These included:

Sexual harassment: 1 (F)	Mobbing: 422 (191 F)	Social status and gender: 62 (34 F)	Sexual orientation: 39 (6 F)	Sexual characteristics: 1 (F)
-------------------------------------	---------------------------------	--	---	--

These data cannot be interpreted as data necessarily related to GBD in employment (except mobbing on which data was provided). Rather, they may serve as general data on GBD, considering the previously explained limitation in data records. Vanja Dandić, Acting Head of the Department for Elimination of All Forms of Discrimination, said that the number of cases related to sexual harassment is extremely small (only a few cases for

¹⁴⁶ In cases where violations and problems are identified in exercising the rights arising from the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Convention on the Elimination of All Forms of Racial Discrimination, CEDAW, the Framework Convention for the Protection of National Minorities and especially in cases of any form of discrimination based on race, colour, gender, language, political or any other opinion, national or social origin, material status. See: <https://www.ombudsmen.gov.ba/Default.aspx?id=19&lang=BS>.

¹⁴⁷ Via a complaint form available on the Institution's website and submitted by post, by electronic means, by fax, personally delivered to the Institution's office or by filling out the complaint form with the help of the Ombudsman's lawyer. See: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101419280006bos.pdf, p. 8.

¹⁴⁸ At: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101419280006bos.pdf, p. 8.

the entire period). Mobbing has been the most prevalent, and parties rarely emphasized that it was gender-based. Generally speaking, the number of reported cases of GBD in employment has been small because of shame, guilt, and also ignorance. While mobbing often has been discussed, it usually has been confused with violations of labour rights.¹⁴⁹ Of the total 285 *ex officio* cases¹⁵⁰ initiated in the period 2010-2018, 36 cases concerned discrimination (10 women, two men) and 13 cases concerned the right to work (two men, one woman).¹⁵¹

In the experience of the Ombudsman, cases of direct discrimination have been prevalent since the institution began its work, but more cases of indirect discrimination have emerged over time.¹⁵²

In addition to complaints and *ex officio* cases, *LYRA Online Platform for Reporting Discrimination* has been available since 2017. The Platform for Reporting Discrimination is an online mechanism for reporting cases of discrimination to the Ombudsman and the MHRR; all BiH citizens can use it.¹⁵³ The difference between standard complaints and LYRA complaints is that LYRA provides for anonymous reports, but in such cases, it is not possible to monitor recommendations possibly issued by the Ombudsman. In practice, complainants most often remain anonymous when lodging complaints this way.¹⁵⁴ In 2017-2018, via the LYRA Platform, there were 16 complaints, of which six related to discrimination:

- Two complaints for mobbing (both women who wished to remain anonymous);
- Three complaints of gender-based discrimination in hiring (two women and one man).

Regarding these complaints lodged via LYRA, one recommendation was issued: an Opinion of the Ombudsman on discriminatory public advertisement for employment in the private sector. The gender of the applicant is unknown because the complaint was anonymous (P-290/17, implemented).¹⁵⁵

An anonymous complaint was lodged via the LYRA platform because of job advertisements containing the phrase 'Female worker required' in a BiH town. According to the complaint, these advertisements are found 'on a daily basis, placed in different establishments from pita places, pastry shops, stores, bakeries, clothing stores.' The Ombudspersons in the issued recommendation on this complaint have noted that it is prohibited to advertise vacancies in which

¹⁴⁹ BO046.

¹⁵⁰ Information about discrimination is taken from media monitoring, reports, etc.

¹⁵¹ Correspondence with the institution, e-mail dated 7 August 2018, kept by the research team.

¹⁵² BO046.

¹⁵³ The Platform was created as part of the 'Young Roma Leaders in Action – Phase II' project. The Platform is administered by the organizations 'Otaharin' and 'Altruist'. More information is at <http://prijava-diskriminaciju.ba/>.

¹⁵⁴ BO046.

¹⁵⁵ Correspondence with the institution, e-mail dated 7 August 2018, kept by the research team.

a personal trait is a condition for employment, while the trait is not an actual and decisive condition for the performance of duties and tasks in the workplace given the nature of the work and the conditions in which it is performed.

Recommendation no. P-290/17 of 11 October 2017.

If discrimination is proven, the Ombudsman issues recommendations to the competent authorities to take measures to remedy violations.¹⁵⁶ Data on recommendations issued by Ombudsman, disaggregated by categories, have been kept since 2011. A review of the implementation of the 106 recommendations issued for discrimination cases suggests that the relevant body cooperated in most cases (44). In 25 instances the recommendation was implemented, while the number of recommendations without response and without implementation are alarming (16 each).

The fact that recommendations are not binding constrains the work of Ombudsman. Therefore, the institution's role has been criticized as 'unproductive', i.e., it could contribute far more in protection against discrimination.¹⁵⁷ Meanwhile, when examining complaints, the Ombudsman faced the challenge of limited ability to use evidence, given that the procedure is in writing; witnesses cannot be called, and expert testimonies cannot be used. Therefore, the threshold to make something plausible is quite low, whereas the situation in court is more serious but the volume of evidence is greater.

My complaint to the Institution of Ombudsman for mobbing was sent to the director for a declaration, as well as the complaints of my colleagues. Only my complaint was sent (by the director) to all employees in the institution where I work. My colleagues read it out loud, laughed and commented. Mentally, this is difficult to bear.

Interview with woman, public sector, age 44, Sarajevo.

Although the Law on Prohibition of Discrimination expressly prohibits victimization, interviews with persons who have experienced GBD in employment have shown that victimization regularly occurs after they decide to report discrimination to competent institutions. This is particularly true of complaints addressed to the Ombudsman,¹⁵⁸ and the likely

¹⁵⁶ Ombudspersons can issue one of four types of recommendations: declaratory recommendation, which establishes whether discrimination has occurred at all; constitutive recommendation, which recommends to the responsible party how to eliminate the established discrimination; recommendation with guarantee of non-repetition in which the responsible party is given a recommendation on how to establish an efficient method of preventing future repetition; and a recommendation for compensation of damages, in which the responsible party is given a recommendation to compensate pecuniary and non-pecuniary damages. A declaratory recommendation is a prerequisite for giving any other recommendation. It may be perceived as the most important of all recommendations (see: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101419280006bos.pdf).

¹⁵⁷ BL051, BCC029, BA013.

¹⁵⁸ There are recorded cases of victimization after lodging a discrimination complaint. Ombudspersons also respond to such cases (BO046).

cause is the non-binding character of recommendations issued by this institution. Regardless of the outcome of proceedings before the Ombudsman, persons accused of discrimination know that recommendations can be ignored and not implemented. Persons who have suffered discrimination are being victimized in the workplace in the course of proceedings, and often after recommendations have been issued.¹⁵⁹ Nonetheless, some relief is felt when the institution 'confirms' that discrimination has occurred: 'that I am not a lunatic, it really happened and it is unlawful'.¹⁶⁰ This points to the importance of the Institution of Ombudsman in establishing GBD in employment, as well as preventing it.

All interviewees agreed that the greatest obstacle in the elimination of discrimination through the proceedings of the Ombudsman is the non-binding character of its recommendations. However, it is important to have in mind the role of the Ombudsman, according to international and domestic standards and why recommendations are not binding.

Although Ombudsman Institutions are competent to initiate misdemeanour proceedings, such as for non-implementation of recommendations, this option has not been used due to limited capacities; the Department has only three employees.¹⁶¹ The failure to initiate misdemeanour proceedings has been seen as a serious shortcoming in the performance of the Institution, regardless of it being understaffed.¹⁶² Interviews also suggested a degree of suspicion regarding the efficiency of the work of Ombudsman. In addition to emphasizing the problem of recommendations not being binding,¹⁶³ some respondents said that Ombudsman: 'have mandates but they do not use them',¹⁶⁴ 'this Institution has lost its importance as a corrective force of the authorities',¹⁶⁵ 'it is uncertain how many people believe that the institution is accessible to their problems and can help',¹⁶⁶ and proceedings before the Institution of Ombudsman are lengthy, such as the response of the institution to which discrimination is reported.¹⁶⁷

In proceedings before the Ombudsman, citizens have the possibility of consultation. In the experience of the Ombudsman, these activities have marked the beginning and the end of GBD cases in employment, especially cases of sexual harassment and discrimination based on sexual orientation. Citizens come forward, their stories are heard, but they often decide not to initiate any proceedings.¹⁶⁸

¹⁵⁹ BV009, BV021, BV035, BV031. Persons participating in the survey also described victimization after reporting discrimination.

¹⁶⁰ BV009.

¹⁶¹ BO046.

¹⁶² BN038, BN005, BN006, BCC029.

¹⁶³ BN005, BU016, BA020, BLI026, BN039, BL050, BA013, BU017, BL024, BU025, BCC029, BL051.

¹⁶⁴ BN038.

¹⁶⁵ BL024.

¹⁶⁶ BN028.

¹⁶⁷ BN010.

¹⁶⁸ BO046.

The Ombudsman believed that a single database is necessary to monitor cases and to upgrade the entire system. Currently, there are situations in which persons initiate several proceedings, including civil proceedings before court and proceedings before the Gender Equality Agency. Although there is an obligation to indicate in the complaint to the Ombudsman whether other proceedings have been initiated, this has not always been observed. These parallel proceedings show that parties have complained about discrimination before the Ombudsman, while initiating proceedings for violations of labour rights before courts.¹⁶⁹

Data collected in the online survey showed that 17 respondents reported various forms of discrimination to the Ombudsman, of which 15 were women and two men. Reports made to the Ombudsman constituted only 7.1% of all reports survey respondents made to different institutions after experiencing discrimination. Of the men and women who did complain to the Ombudsman, these surveyed employees reported violations of rights in their current workplace. Men and women equally sent these complaints. The content of their complaints suggest that they faced discrimination on grounds other than gender or mobbing. One case dealt with violations of labour rights not under the legal definition of discrimination. Thus, the survey produced little relevant information on which to assess the performance of the Ombudsman specifically related to gender-based discrimination at work.

Despite the aforementioned shortcomings, the significance of this institution remains uncontested. However, most respondents suggested that the work of the Ombudsman can be more efficient in order to increase citizens' trust, so that cases of discrimination can be resolved and more effective protection provided.

Civil Courts

Considering the limited effect of recommendations issued by the Ombudsman and that labour inspectorates proclaim themselves not competent,¹⁷⁰ courts appear to be the most important instance in formal proceedings for protection against GBD in employment.

However, according to data collected from municipal and basic courts in BiH, half of the first instance courts that provided data (23), have not had a single case of discrimination based on gender, sexual orientation, or sexual characteristics, (including special forms of discrimination) in the last ten years. Of the courts that provided data on discrimination cases (45), only a few had specific information about the cases.

Number of discrimination cases related to the prohibited grounds of gender, sexual orientation, or gender marker: 3	Data on the complainant disaggregated by gender: 6 <i>(only the Municipal Court in Tešanj included data on the gender of the defendant)</i>	Data on special forms of discrimination: 18 <i>(all relating to mobbing)</i>
--	---	--

When lodging lawsuits for discrimination or mobbing in employment, it is frequently advised to apply labour laws in proceedings rather than the Law on Prohibition of Discrimination.¹⁷¹ Court proceedings rarely have been initiated just because of discrimination; a violation of other labour rights usually has been involved.¹⁷²

In order to collect data from case-law, files provided by two municipal courts were inspected: the Bihać Municipal Court (seven files) and the Mostar Municipal Court (one file).¹⁷³ Only one of the examined cases concerned GBD in employment, involving termination of an employment contract because of pregnancy. The complainant was served with dismissal notice during pregnancy-related sick leave. In the judgment annulling the dismissal notice and establishing discrimination due to pregnancy, the court invoked the provisions of the Constitution of BiH and the European Convention on Human Rights. This civil action was completed within 15 months. The other cases only partially touch upon gender as a basis for discrimination, such as through acts of mobbing (e.g., verbal abuse, insults, name-calling because of the complainant's gender).¹⁷⁴ Courts did not pay special attention on these factors, just confirming discrimination or mobbing in general.

According to the survey data, 19 respondents (8.8% of those who experienced GBD) were involved in a court action related to discrimination at work. Sixteen of them were women.

¹⁷⁰ See next section.

¹⁷¹ BN010, BN005.

¹⁷² BLI026.

¹⁷³ Bihać and Mostar were two cities in which field work was performed (as part of sampling: different cantons, different part of BiH, similar size and population, and both report having registered court proceedings on GBD).

¹⁷⁴ Notes made during the inspection of files in the Bihać Municipal Court, kept by Helsinki Citizens' Assembly Banja Luka.

No further information was provided; the examples described in the survey cannot be directly linked to GBD, but only discrimination on other grounds or violations of labour rights.

As illustrated by these few cases and confirmed by judges and lawyers during interviews, the lack of case-law related to GBD in labour is one of the main challenges for courts.¹⁷⁵ Judges recognized the lack of sufficient orientation points to act,¹⁷⁶ drawing knowledge from training courses,¹⁷⁷ which are scarce according to the judges interviewed (for discrimination in general, including GBD). Data provided by entities' centres for judicial and prosecutorial training (FBiH and RS) point out that the topic of discrimination was represented in the education of judges and prosecutors, including issues concerning GBD and discrimination in the field of employment and labour rights. In the period 2012 - 2018, the Center for Judicial and Prosecutorial Training FBiH (CEST FBiH) organized 56 educational activities (workshops, seminars, round tables and distance e-learning) on the subject of discrimination. These activities were attended by 1,219 participants, including 952 judges, 89 prosecutors and 178 other associates. The mentioned trainings were attended by judges from all FBiH municipal courts, from each cantonal court in FBiH, judges of district and basic courts of the RS, judges of the Appellate and Basic Court of BD, and judges of the Court of BiH and the Supreme Court of FBiH. The structure of 'other associates' is composed of professional and legal associates, legal counsellors, psychologists and lawyers.¹⁷⁸ The Center for Judicial and Public Prosecutorial Training RS (CEST RS) also provided data on educational activities for judges and prosecutors. For the period 2012-2018 altogether 27 seminars on discrimination were held, and 474 holders of judicial functions have been involved.¹⁷⁹ From the annual education programs of centres it is apparent that the themes included: examination of violations of the prohibition of discrimination and procedures of evidence; discrimination based on sexual orientation and sexual identity; examples of practices and burden of proof of discrimination; discrimination in employment; protection of women at work according to the provisions of CEDAW; and sexual harassment. According to this data, it is not possible to consider lack of education and specifically thematized issues on discrimination that were previously pointed out as unknown (like burden of proof). In addition to the already implemented education, it is worrying that omnipresent opinion on 'insufficient knowledge of discrimination' by courts and lawyers is still very much present.

Judges and lawyers agree that the procedure of proving discrimination in court proceedings is complex. Although the burden of proof is on the accused, the plaintiff(s) still must make it plausible that discrimination has occurred. 'To make it probable' turns into a process of proving facts, where evidence is limited to testimonies. Further, if discrimination occurred verbally and/or in private, it is almost impossible to obtain evidence. According to

175 BL024, BCC029, BL051, BCC023.

176 BCC023.

177 BCC029.

178 Correspondence with the Center for Judicial and Prosecutorial Training FBiH, e-mail dated 7 March 2019.

179 Correspondence with the Center for Judicial and Public Prosecutorial Training RS, e-mail dated 7 March 2019.

Tanja Hadžagić, lawyer, 'it is very difficult to prove that gender discrimination has occurred - it is necessary to have appropriate documents and witnesses, who are most often other employees with the same employer and who ultimately decide not to testify, leaving the victim of discrimination all alone.'¹⁸⁰ Judges also emphasized that the procedure of proving discrimination is hampered due to the specificity of the violation of the right.¹⁸¹ They are faced with ambiguities regarding what it actually means 'to make probable' when evaluating the merit of the claim.¹⁸² In addition to these challenges, the duration of proceedings is perceived as too long, lasting several years.¹⁸³ The Law on Prohibition of Discrimination marks these proceedings as 'urgent'. However, the perceptions of interview respondents suggest that courts are overburdened, so they do not respect 'urgency'. According to one interviewed lawyer, she is 'happy if the first instance decision is taken within a year because it usually takes two years' in the Sarajevo Municipal Court. Another perception is that appeal proceedings also take a long time (there are still ongoing cases from 2013)¹⁸⁴ and lengthy proceedings accompanied by high costs.¹⁸⁵ Considering these circumstances, perhaps it is unsurprising that plaintiffs may lose confidence that their agony resulting from discrimination will ever end.

I experienced such harassment at the Banja Luka Basic Court that even now, 11 years after, I shudder at the thought of it. At one hearing I became sick. I had to leave the courtroom. The defendant's lawyer said: 'You are such a good actress!' They addressed me in a disrespectful tone of voice. The proceedings at the Basic Court lasted five years. During this time, I worked but I was completely isolated. My case was a warning to other colleagues - keep quiet, otherwise, the same thing will happen to you. The Clinical Center's psychologist said that the defendant was an intellectual and a public figure who had served as a minister in five RS governments, including those at the time of Radovan Karadžić, and that as such he couldn't have perpetrated mobbing... The Constitutional Court (appeal, after exhausting all ordinary legal remedies), noted that the proceedings had lasted unnecessarily long. I waited three years for their decision. Perhaps, knowing what I know today, I wouldn't go through with this. You can't even imagine the torture you go through in court. You can't fight the system! ... Despite the evidence, the system is designed to work against the common man."

Interview with woman, public sector, age 66, Banja Luka

180 BL051.

181 BCC023.

182 BCC029.

183 BN006, BU017, BN004, BL051, BA013.

184 BL051.

185 Referring to costs of lawyer, court fees.

According to data from the 'Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina', the average duration of court decision-making in cases of discrimination is 368 days.¹⁸⁶ A total of 19 cases were decided in second instance proceedings, and the average duration in such cases is significantly higher and amounts to 751 days, as it also includes the time of resolving the case by the first instance court, second instance court and appeal court.¹⁸⁷

Labour Inspectorate

In the attempt to collect data on cases of GBD in employment, the entity labour inspectorates and the BD inspectorate were contacted. Two cantonal inspectorates and a Banja Luka labour inspectorate also were selected for interviews. The answers of the entity labour inspectorates, as well as the interview with the chief of the FBiH labour inspector suggested that these inspectorates are not competent for matters of discrimination in employment.¹⁸⁸ The competences of inspectorates are defined by labour laws, according to which they perform controls, monitoring implementation of that law, but not the Law on Prohibition of Discrimination.¹⁸⁹ Meanwhile, labour laws specify that protection against discrimination is under the exclusive jurisdiction of the court.¹⁹⁰ However, discrimination is prescribed by all three labour laws, which creates a clear jurisdiction for labour inspectorates also. For example, Labour Law FBiH prescribes penal provisions in Article 140.14, 140.24-31.

The FBiH Administration for Inspection Affairs rejected the researcher's request for access to information because 'it has no legal obligation or technical and staff capacity to make reports on conducted inspections'.¹⁹¹ In an interview with Muhamed Pašukanović, the chief FBiH labour inspector, more specific answers were obtained regarding amendments to the Labour Law, which prescribe competence for the FBiH Labour Inspectorate only in monitoring the work of enterprises founded by the FBiH. He also stated that this perhaps was not the best solution since employees still complained to this inspectorate, which unnecessarily prolonged proceedings; thus workers and the general public are dissatisfied. However, no cases of gender-based discrimination or sexual harassment have been reported in the monitoring performed during the last two years since this change in competency. Occasionally there were complaints of mobbing, but due to limitations in providing evidence, parties were referred to court because the inspectorate could only perform controls and record findings.¹⁹² The

¹⁸⁶ 'The average duration varies in relation to the outcome. Therefore, in judgments in which the claim has been accepted, the duration of deciding the case by the court is 413 days, 404 days for rejected claims and 467 days for dismissed claims.'

¹⁸⁷ Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina, p. 18.

¹⁸⁸ As an illustration, the RS Administration for Inspection Affairs has stated that 'the labour inspectorate is not competent to establish gender-based discrimination, sexual harassment and mobbing, as that is established in court under the Labour Law.'

¹⁸⁹ BLI048.

¹⁹⁰ Official answer no. 24.004/054-121-2/18 of 27 July 2018, Official answer no. 18-34-14913-2/18 of 19 October 2018, BLI026, Official answer no. 14-09-34-03568/18 of 19 October 2018.

¹⁹¹ Violations are not recorded by types but by economic entities; electronic programs are not elaborated, but more accurate records would be useful (BLI048).

¹⁹² The competences of the inspectorate are not defined by the Labour Law, while the inspectorate monitors the application of the Labour Law (not the Law on Prohibition of Discrimination).

Cantonal Administration for Inspection Affairs of Sarajevo Canton responded¹⁹³ that they do not disaggregate data in the database so as to specify answers in line with the research topic.

Sena Družić, Chief Cantonal Labour Inspector of USC, noted that the experiences of labour inspectorates in this field cover a short period of time: since the amendments to the 2016 Labour Law. Additionally, 'Labour Law did not prescribe penal provisions limits the work of the labour inspectorate regarding discrimination'. Thus, the inspectorate can only record evidence of violations and refer the worker to court. Inspectors have observed that even records documented by inspectorates can have an effect on employers, encouraging them to stop violating rights, which is why reports are important.¹⁹⁴ However, it is important to notice that the Labour Law does prescribe offenses within the competence of the labour inspectorates (such as termination of employment contract or dismissal of work due to pregnancy, not allowing a woman paid leave, preventing a woman from absence for breastfeeding, etc.). The USC Labour Inspectorate has not had any reports of GBD or sexual harassment, whereas reports of mobbing are frequent and reportedly have risen since 2017. Discrimination is a novelty and a challenge for labour inspectors, which is why the inspectorate has a hard time dealing with such requests. The chief inspector believed that there is not enough knowledge nor education for cantonal inspectors regarding GBD.

Legal Aid Providers

The public institutions responsible for providing free legal aid in BiH are the: RS Centre for Provision of Free Legal Aid, Legal Aid Office of Brčko District, 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. Notably, these free legal aid institutions are not found throughout the country.¹⁹⁵

Regarding their activities on GBD in employment (including mobbing and sexual harassment), seven institutions provided data, but none had cases related to GBD in employment. More specifically, the Cantonal Institute for Free Legal Aid Široki Brijeg responded that according to the conditions for providing free legal aid, this service is intended for underprivileged persons; therefore, employed persons cannot benefit from this service.¹⁹⁶

All regulations governing free legal aid in RS, BD and cantons contain similar provisions. Therefore, the unavailability of free legal aid for persons who have suffered discrimination may be an aggravating factor for employed and unemployed women¹⁹⁷ who want to report GBD

¹⁹³ Official answer no. 14-09-34-03568/18 of 19 October 2018.

¹⁹⁴ BLI026, BLI048.

¹⁹⁵ The Mostar Municipal Court judge noted that Mostar does not have a free legal aid office that would be of great use in cases of discrimination (BCC029).

¹⁹⁶ Official answer no. 20-09-147-1/18 of 16 August 2018.

¹⁹⁷ If they own some property.

and initiate proceedings. Public institutions for free legal aid believed that they do not have capacities in the field of protection against discrimination.¹⁹⁸

Mediation

The Public Institution Agency for Peaceful Settlement of Labour Disputes Banja Luka is the first institution in RS dealing with the peaceful settlement of labour disputes (individual and collective). This is an alternative to the settlement of disputes between parties to a dispute (employees and employers, or the participants involved in concluding a collective agreement), including involvement of third parties: conciliators and arbiters. The Agency's services are free of charge for both employees and employers. Its decisions are of an executive nature and they are quickly adopted.

Borislav Radić, the Agency Director, stated that the Agency does not classify complainant parties by gender, nor are they responsible for addressing GBD in employment, harassment, sexual harassment or mobbing: 'Our institution is not responsible for such subjects, we do not deal with that. In instances where there is such a request – we may have had two requests of this type - we say that we are not responsible, particularly in terms of these four types of discrimination. If the party contacts us, we refer them to contact the court'.¹⁹⁹ For all questions pertaining to women's rights in employment, such as discontinuation of work due to pregnancy, promotion and maternity rights (GBD), the Agency did not have any complaints or cases. Moreover, it did not consider itself responsible for handling such cases.²⁰⁰ The mandate of this Agency is in the Law on Peaceful Settlement of Disputes and Labour Law of RS.²⁰¹ It involves the mandate to hear any dispute, including cases of discrimination and specific forms of discrimination.

In the FBiH, a draft Law on Peaceful Settlement of Labour Disputes in the FBiH²⁰² has been in the process of being adopted. It would regulate peaceful settlement of individual and collective labour disputes. The law regulates the method of selecting conciliators and arbiters, the procedure of handling peaceful settlement of disputes, as well as the arbitration procedure. The FBiH Ministry of Labour and Social Policy believed that peaceful settlement of labour disputes would be very beneficial to employees, employers and courts (disburdening) since it should enable quick and efficient settlement of labour disputes. Each party to a dispute would cover expenses generated during the conciliation procedure or arbitration, except for the conciliator's expenses (covered by the Ministry).

In the BD, there is no institution for peaceful settlement (mediation) of labour disputes.²⁰³

198 Questionnaire U04/18.

199 BM044.

200 As a reminder, discrimination is part of the labour legislation in the RS from 2016.

201 "Official Gazette of Republic of Srpska" No. 91/2016.

202 Available at: <http://www.javnaraspava.ba/Content/CDN/LawText/FM6E8S89.pdf>, last accessed on 14 January 2019.

203 BML045.

Persons who experience discrimination generally lack knowledge of what discrimination is and how to recognize it. Reported cases of GBD in the labour market are mere exceptions. Therefore, it is very difficult to assess the quality of actions taken by responsible institutions. It appears that there is a vicious circle here in which discrimination is not reported for fear of the consequences, particularly economic consequences.

Institutions work poorly and they don't think at all about the terrible consequences that they leave. Not only on my health, but also on the overall atmosphere in the work environment and on the quality of work.

Interview with woman, public sector, age 62, Sarajevo

When discrimination is reported, the responsible institutions lack knowledge, capacity and opportunities to provide adequate protection. On the other hand, some institutions characterize discrimination as 'complex', 'new', and without sufficient practice in providing protection. This hinders the effective implementation of relevant laws. There is a clear lack of accountability on the side of many institutions. Even in cases when clear provisions exist for the treatment of GBD, they prefer claiming that they are not competent to dealing with cases of discrimination.²⁰⁴

Labour Unions

Labour unions have the potential to play an important role in defending the rights of workers, including against GBD. Several labour unions relevant to this research were monitored and analysed:

- The Autonomous Trade Unions Confederation of BiH (SSSBIH) consists of 24 branch trade unions. At the same time, there are also seven cantonal committees of SSSBIH operating in nine Cantons in the Federation of Bosnia and Herzegovina.²⁰⁵
- Trade Unions Confederation of the Republika Srpska (SSRS) is the largest umbrella trade union organization in the Republika Srpska.
- Trade Unions Confederation of the Brčko District.
- Commerce and Services Trade Union of BiH (STBiH) gathers more than 12 thousand

204 As an illustrative example, describing laws as a 'dead letter' was a recurring theme among interview respondents, including lawyers and judges.

205 At: <http://www.sssbih.com/o-nama/>.

members from all parts of BiH, of which 72% are women members. It has been a part of the trade union movement of BiH for more than a hundred years and is considered its founder. It reactivated its work in 1996, organizing itself from scratch.²⁰⁶

- Autonomous Union of Civil Servants and Employees in Public Institutions of BiH (SSDSZ) has existed in its current form since 2007 at the level of state institutions, while its members include employees in state institutions. Currently, its membership covers 35 institutions and involves approximately 3,000 members.²⁰⁷

SSSBiH did not submit any data about potential employees' complaints regarding GBD, sexual harassment and mobbing. SSRS, SSB, SSDSZ and STBiH recorded some discrimination cases, but no cases of GBD. From all of above-listed labour unions, most complaints reported referred to mobbing (out of 57 discrimination cases in SSRS, the majority referred to mobbing; in 2017, STBiH recorded an increase of 21% of complaints for mobbing compared to 2016 – 96 cases; SSDSZ also noted mobbing as the most frequent reason for discrimination complaints).

The above-listed labour unions provide legal aid including counselling, consultation, correspondence with employers, negotiations, representation (via legal offices)²⁰⁸. In the proceedings in the court, SSDSZ and STBiH provided workers with lawyers. According to their records, there were no GBD cases in court (which came through the union).

In most cases, once assistance is sought regarding GBD or sexual harassment, the workers usually opt for an interview, without further actions (either against the employer or competent institution). The reasons are the same as those present with all providers of any legal aid: the fear of losing a job and compromising personal integrity.

STBiH has a Paralegal Network (PLN), which assists its members either by phone or visit. Following an initial interview, a PLN member completes an anonymous/coded questionnaire, advising the worker how to proceed. Usually, workers have different options, such as: participate in an interview with the employer, during which the problem is presented; or participate in an interview and counselling with Vaša Prava BiH, the Labour Inspectorate, or another body. Most frequently, workers choose to participate in an interview with the employer. Cases are monitored by a coordinator and PLN members and all steps are followed by filling out anonymous/coded questionnaires. Even if workers decide not to take any action, this method allows monitoring potential violations of workers' rights in practice, including sensitive cases, such as sexual harassment.

Correspondence with Željka Rubinić, Commerce and Services Trade Union of BiH

206 At: <http://stbih.ba/o-nama/>.

207 BU016.

208 BU016, BU017, BU025, BU042, Questionnaire U03/18.

When asked about labour unions in the online survey, 37.8% of the participants thought that no unions represent their interests, and several (24.1%) did not know if they exist. However, 38.1% believed that there are labour unions in Bosnia and Herzegovina representing their interests.

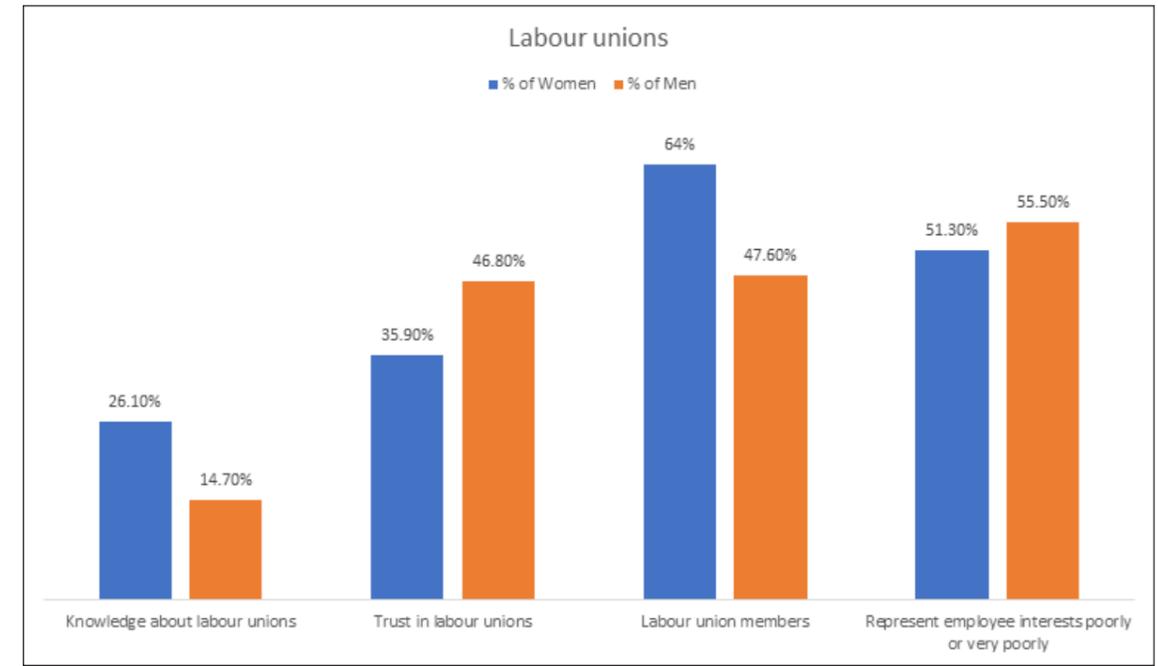


Chart 8: Survey Respondents' Perceptions of Labour Unions

As demonstrated by the online survey results, trust into labour unions varies. Due to weak relations with SSSBiH and widespread criticism of the SSSBiH activities (including non-transparent activities and political influence²⁰⁹), as well as previous bad experiences of workers with some labour unions (resulting in membership exclusions²¹⁰), the workers' trust in labour unions has been weakened, although it is supposed to be 'the first bastion of defence of workers' rights.' For some categories of workers, such as LGBTQIA+ persons, labour unions are still not visible and the community does not perceive them as organizations to be approached regarding their labour rights.²¹¹ It is certain that sensitizing and bringing labour unions closer to workers, or 'restoring trust in labour unions',²¹² are required.

Mersiha Bećirović, President of STBiH, points out the role of employers in unions' weak public image: 'employers don't want their workers to be unionized and try to discourage that by all means. The biggest problem is that permits for unionization are scarce and very selective for certain areas'.²¹³

209 According to an interviewed representative from Parliament: 'labour unions are simply a copied model of political parties; they do not protect workers but only their own position, except for a few exceptions'.

210 BU016.

211 BN010.

212 BU017.

213 Ibid.

Civil Society Organizations

In the field of GBD, civil society organizations (CSOs) undertake several activities, including: provision of legal aid, trainings for public institutions, trainings for women, training for educational institutions, conferences, roundtables, debates and street actions towards awareness-raising. Some CSO activities are limited by donors (time and content). This further means that not all activities are accompanied by appropriate follow-up, nor are all of the same quality.

Legal aid is very important for persons who suffered GBD. Considering the shortcomings in public institutions' provision of free legal aid, CSOs are the main provider. However, only three CSOs in BiH provide free legal aid to victims of discrimination: Vaša Prava from Sarajevo, the Center of Women's Rights from Zenica in the FBiH, and United Women Banja Luka in RS.²¹⁴ Although organizations in the FBiH have field offices in other cities in the FBiH (Vaša prava²¹⁵), that is, office days (Center of Women's Rights, when visiting other cities for the purpose of providing legal aid), activists believed that this is insufficient for meeting the needs of women who, for example, do not live in these cities, who do not have financial means to reach legal aid providers, or who are unaware that this kind of free aid exists.

Since 2015, the **Center of Women's Rights Zenica (CŽP)** has provided free legal aid, including for all victims of discrimination based on sex, gender, sexual orientation, ethnicity, disability and, race through the program 'Equality for All: Civil Society Coalition against Discrimination'. From 2015 to the end of 2017, through its specialized service of free legal aid for victims of discrimination, 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) 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 the online legal aid link. Legal aid to victims of discrimination was available to all women and men throughout BiH.

The CŽP's online free legal aid services have been available since 2011. Women who reached out via the online legal aid link because of gender-based discrimination in labour and employment most often sought advice regarding: non-extension of fixed-term employment contracts by employers because of pregnancy or childbirth; sexual harassment by their immediate superior or a colleague, which included making inappropriate comments (about clothing, physical appearance), unwanted touching, sending SMS messages, messaging via social networks or sending inappropriate content applications; and protection against mobbing.

Only a few women decided to initiate any procedure for protection. However, CŽP

²¹⁴ Ibid.

²¹⁵ Nine offices in both BiH entities.

emphasized that it is important to have free legal aid (even when formal complaints to relevant institutions or employers are not submitted); through consultations women learn the difference between discrimination and other violations of their rights. They also become informed of protection mechanisms available to women if they decide to seek protection against employers' discriminatory behaviour and practices. Representatives of the United Women Association agreed; women who received assistance in their office became more familiar with possibilities available for reporting discrimination.²¹⁶ The fact that their services are free of charge has further encouraged women to seek protection against discrimination, particularly those who would not otherwise be able to afford legal advice nor qualify for free legal aid.

Free legal aid provided by the Center of Women's Rights Zenica

- **Counselling involved: explaining the term discrimination and sharing information about protection mechanisms.**
 - **Written submissions involved writing letters and letters before action to employers, primarily owners of retail chains and shops, banks, education and health care institutions, who were informed of discriminatory practices, such as non-extension of fixed-term employment contracts for women due to pregnancy, maternity leave or age.**
 - **Filing complaints with the Institution of the Ombudsman for Human Rights in BiH regarding discriminatory behaviour of employers, primarily education and healthcare institutions.**
 - **Providing judicial protection by referring an antidiscrimination lawsuit related to mobbing to the court, in which the Center served as a proxy holder.**
 - **Sending letters to employers on behalf of women employees regarding the harmfulness of sexual harassment, as well as the envisaged sanctions for such behaviour.**
-

In addition to providing legal aid, some CSOs also provided psychological counselling (such as Sarajevo Open Centre), which has been identified by the interviewed women who had experienced GBD as a very important, albeit perhaps under-appreciated type of assistance.

Only a fraction of what CSOs have done in the past 10 years related to discrimination, as the image illustrates.

CSOs have undertaken several advocacy activities related to addressing discrimination.

²¹⁶ Questionnaire U01/18.

Analyses, reports and handbooks

- Guidelines for adopting a non-discrimination rulebook in public institutions and a rulebook model' (several CSOs);
- 'Guidelines on sexual harassment in the judiciary and at universities' (Atlantic Initiative);
- 'Women and discrimination in BiH: how to be protected against discrimination?' (in education, social services, workplace, health care) (ICVA);
- 'Guide for protection against discrimination through legislation and public institutions' (ICVA);
- 'Handbook for anti-discrimination advocacy' (Rights for All);
- 'Response of public institutions, special-status institutions and public companies regarding prevention of discrimination against women' (several CSOs).

Trainings and advocacy

- Handbook 'How to Recognize Discrimination' for all vulnerable groups and public institutions, followed by training for public institutions (Initiative and Civil Action)
- Dozens of anti-discrimination campaigns; MOOT trials with faculties of law; trainings for civil servants in cooperation with the Civil Service Agency of BiH (Rights for All)
- Educational and consultative meetings with citizens (about discrimination); street actions in different cities in the FBiH (Center of Women's Rights Zenica)
- Training for lawyers, judges and prosecutors (Sarajevo Open Center)
- Program 'Employment Breaks the Vicious Circle of Violence' (United Women Banja Luka)
- Campaigns: "I don't want a carnation, I want to go to a cinema," "What Women with Disabilities Want" (CSO: Association of Disabled Women 'NIKA')

Shadow Reports

- CEDAW shadow report
- Alternative Answers of Civil Society Organizations to the European Commission Questionnaire
- Alternative Progress Report

At present, the Association "Beba više" is undertaking an initiative focused on women selected for sterility treatment, advocating that they should be granted the status of pregnant women and thus cannot be dismissed from work.²¹⁷

In 2015, HJPC BiH adopted the Guidelines for the prevention of sexual and gender harassment in judicial institutions in BiH (developed by CSO Atlantic Initiative), as an official mechanism for preventing sexual and gender harassment, applied in all judicial institutions in BiH. In applying these guidelines, trainings are being held for advisors from courts and prosecutor's offices. In addition to judicial institutions, the Guidelines have been also adopted at universities (Faculty of Political Sciences at the University of Sarajevo (UNSA), Faculty of Law at UNSA, Faculty of Criminal Justice, Criminology and Security Studies at UNSA, and the entire University of East Sarajevo).

Majda Halilović, Atlantic Initiative

It is important to emphasize that there is cooperation between CSOs and institutions in this segment²¹⁸, but regarding analysed situation in the institutional treatment of GBD, a more systematic approach is also needed here.

CSOs represent perhaps 'the safest' place for people who experience discrimination based on gender, sexual orientation and gender labels.²¹⁹ Amra Bećirović from CŽP described her experience with women who come to their Center: 'these women come frightened and the interviews with them take hours and are very emotional. This shows that they consider it a safe place where someone can listen to them and take them seriously, without saying that it is all in their head'.²²⁰ However, the scope of what CSOs can achieve is limited. Few organizations provide free legal aid, and their activities depend on donor funds. Moreover, these organizations are not available throughout the country, though online inquiries have sought to provide such support more broadly.²²¹ 'CSOs can achieve a lot, but they cannot take all the responsibility that should be taken by public institutions,' Diana Šehić from Rights for All said. Indeed, despite CSOs' significant efforts, the final responsibility to ensure protection against GBD at work belongs to public institutions.

²¹⁸ Cooperation is evidenced by the Ombudsman, gender mechanisms (ARS, Committee on Gender Equality of the Parliamentary Assembly of BiH), HJPC, and unions.

²¹⁹ CSOs' sensitivity and confidentiality create a 'safe space' for persons who have suffered discrimination.

²²⁰ BLA008.

²²¹ For instance, there is an already mentioned option at the website of the Center of Women's Rights Zenica. There was also an option for filing complaints online against discrimination on the diskriminacija.ba website, though it is no longer active.

RECOMMENDATIONS

Legal Framework

- Harmonize entity labour laws with regard to the prohibited grounds of discrimination set forth in the Law on Prohibition of Discrimination in such a way to incorporate all prohibited grounds under this Law into labour legislation.
- Harmonize legislation relating to persons with different abilities to eliminate discrimination with regard to persons with disabilities and disabled veterans, and to provide more efficient implementation of incentive measures for women with disabilities.
- Adopt laws that will regulate the procedure of changing the name, gender marker and personal identification number in all identification documents, providing for a legal gender change without requiring gender reassignment surgery. This is extremely important for trans persons to access the labour market in legal employment opportunities.

Institutions

General recommendations

- Improve cooperation among competent institutions regarding GBD in employment.
- Expand the CMS by adding new indicator 'grounds of discrimination' (HJPC).
- Report on progress in the elaboration of the Central Discrimination Database maintained by the Ministry of Human Rights and Refugees. Make the database usable, including forms of discrimination, grounds of discrimination, case status and gender-disaggregated data. Ensure that it maintains confidential information that is accessible to relevant persons within institutions for monitoring cases of discrimination.
- Become acquainted with public bodies and legal entities with the obligation to introduce internal anti-discrimination procedures.
- Establish a comprehensive internal procedure for protection against discrimination and harmonization of existing acts and procedures with the Law on Prohibition of Discrimination.
- Conduct assessment of training needs (CEST and HJPC) for judges, as well as continue training of judges and lawyers for discrimination with particular training for GBD cases.
- Support all institutions to develop effective measures to prevent GBD and sexual harassment.

- Ensure the application of provisions on disaggregation of data on occurrences of discrimination by gender for all institutions, especially those responsible.
- Educate, sensitize and operationalize bodies for mediation in labour disputes with regard to the provisions of labour laws relating to discrimination.
- Ensure an open dialogue with a representative labour union and include it in the preparation of documents regulating the rights of employees in the institutions of BiH (civil servants).
- Regulate the process of evaluation of civil servants so as to minimize potential space for discrimination, especially mobbing.
- Support institutions to gender mainstream policies related to PWDs.
- Define a set of gender-sensitive context indicators on the BiH labour-market, and track movements regularly, such as the male to female participation rate gap, male to female self-employment gender pay gap, and similar.

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

- Strengthen the capacity of the Department for Elimination of All Forms of Discrimination to initiate misdemeanour proceedings in cases of discrimination.
- Disaggregate cases of discrimination by prohibited grounds and areas in the database maintained by the Institution of Ombudsman.
- Continue monitoring cases of discrimination before courts in BiH.
- Encourage citizens to use available free protection instruments and legal aid, especially online platforms that are accessible to everyone.

Courts

- Introduce the possibility of recording cases in the CMS database of courts through a subcategory that would indicate discrimination and grounds of GBD in labour disputes. Ensure the gender of the claimant and alleged perpetrator are recorded.
- Supreme Courts of entities and/or the HJPC should compile and publish a newsletter of relevant case-law (national and regional) on GBD in employment.
- Ensure urgent and efficient processing of GBD cases, as well as effective protection and remedies.

Labour Inspectorates

- Provide regular training for all labour inspectors (at all levels) on GBD at work and their legal responsibilities for treating such cases.
- Improve the system of registering reports of violations of rights (include discrimination, mobbing, special forms of discrimination) and performed inspection controls, as well as imposed measures.

Free Legal Aid (public institutions)

- Harmonize the means test for beneficiaries of free legal aid from public institutions so as to increase the property criterion for employees with income in the amount of the legal minimum wage. Also, provide free legal aid to vulnerable persons, which can be defined by particular criteria.
- Strengthen the capacity of public and non-governmental institutions for protection against GBD in order to expand the network of service providers and to provide support to persons who experience GBD, as well as to make protection services accessible.

Labour Unions

- Make labour unions visible and more accessible to workers, especially reaching out to marginalized workers.
- Increase public outreach in order to increase citizens' awareness of how labour unions could support persons who have experienced GBD.
- Improve the position of unions regarding transparency, apoliticization and trust-building.
- Establish records of all types of legal aid provided, where lacking, including consultations, in order to monitor violations of labour rights and to develop programs for their prevention and suppression.
- Provide educational materials for workers, which would include explanations of what GBD in employment is, how it is manifested, what protection mechanisms exist, and contact addresses of competent institutions providing advice.

Employers

- Through employers' associations, provide training on discrimination in employment emphasising GBD in hiring and promotion, mobbing and sexual harassment. Provide the same training to small private employers, as well as employers in the non-governmental sector who are not members of employers' associations.

- Incorporate principles of non-discrimination into the rules of procedure, policy manuals and other internal acts of employers, as well as the procedures for reporting cases of discrimination to the employer.
- Post and make clearly visible to employees information about what constitutes discrimination, including GBD, and how to report it.

CSOs

- In addition to legal aid, consider providing psychological counselling to workers exposed to GBD, especially mobbing and sexual harassment.
- Provide continuous awareness raising activities for citizens.
- Collaborate to raise awareness among funders regarding the important role of CSOs in addressing GBD at work, including the importance of linking confidential legal aid with psychological counselling.
- Collaborate with CSOs carrying out different anti-discrimination activities in order to enable the exchange of best practices and to set a joint action platform against GBD in employment. This can make use of existing materials and strategies, towards efficient use of resources. Moreover, it can serve as a united advocacy coalition, towards joint advocacy for shared aims for legal, policy and other changes.

WORKS CITED

Ademović, Nedim et al. Ustavno pravo Bosne i Hercegovine. Fondacija Konrad Adenauer e. V. Predstavništvo u Bosni i Hercegovini. Sarajevo, 2012. Available at: http://www.kas.de/wf/doc/kas_33649-1522-15-30.pdf?130227155156 (accessed 30.8.2018)

2018 Alternative Analytical Report on the Application of BiH for EU Membership: Political Criteria. Inicijativa za monitoring EU integracija i Helsinški parlament građana Banja Luka. Banja Luka and Sarajevo, 2018. Available at: <http://soc.ba/site/wp-content/uploads/2018/04/2018-Alternative-Analytical-Report-on-the-Application-of-BiH-for-EU-Membership.pdf> (accessed 11.5.2018)

Alternative Answers Of Civil Society Organizations To The European Commission Questionnaire, Inicijativa za monitoring EU integracija and Helsinški parlament građana Banja Luka. Banja Luka, 2017. Available at: http://eu-monitoring.ba/site/wp-content/uploads/2017/08/alternativni-odgovori_ENG-1.pdf (accessed 10.5.2018)

Alternative Report 2016: Political criteria. Inicijativa za monitoring evropskih integracija Bosne i Hercegovine, 2016. Available at: http://eu-monitoring.ba/site/wp-content/uploads/2016/07/HRP_alternativni-izvjestaj_ENG-web.pdf (accessed 23.12.2018)

Analysis of Judicial Response to Discrimination Challenges in Bosnia and Herzegovina. Organization for Security and Co-operation in Europe, 2018, Available at: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/400553?download=true> (accessed 27.12.2018)

Bosnia and Herzegovina: Gender Disparities in Endowments, Access to Economic Opportunities and Agency. The World Bank, Agency for Statistics of Bosnia and Herzegovina, FBiH Institute for Statistics and RS Institute for Statistics, 2015. Available at: <http://documents.worldbank.org/curated/en/754241467992483659/pdf/97640-ESW-P132666-and-P152786-Box385353B-PUBLIC-BiH-Gender-Disparities-in-Endowments.pdf> (accessed 10.3.2019.)

Bašić, Sanela and Miković, Milanka. Rodne (ne)jednakosti na tržištu rada u BiH. Udruženje Žene ženama, Sarajevo, 2012.

Izmirlija, Midhat. Interne procedure za zaštitu od diskriminacije - jaz između teorije i prakse. Sarajevski otvoreni centar, Sarajevo, 2019. Available at: http://eu-monitoring.ba/site/wp-content/uploads/2019/02/Interne-procedure-za-za%C5%A1titu-od-diskriminacije_web.pdf (accessed 10.3.2019.)

Izmjene i dopune zakonskog okvira za zaštitu od diskriminacije u BiH: Ostvareni pomaci i potrebna unapređenja. Analitika – Centar za društvena istraživanja. Sarajevo, 2015. Available at: http://www.analitika.ba/sites/default/files/publikacije/preporuke_-_policy_memo_-_web.pdf (accessed 28.8.2018)

Izvešće o pojavama diskriminacije u Bosni i Hercegovini s Akcijskim planom za realizaciju prijedloga mjera za sprečavanje pojava diskriminacije u Bosni i Hercegovini. Available at: [file:///C:/Users/Lejla/Downloads/Izvjst.o%20pojavn.diskrim.u%20BiH%20s%20Akcionim%20planom%20za%20realiz.predl.mjera%20za%20sprc.poj.diskr.uBiH-27.5.16.-B%20\(1\).pdf](file:///C:/Users/Lejla/Downloads/Izvjst.o%20pojavn.diskrim.u%20BiH%20s%20Akcionim%20planom%20za%20realiz.predl.mjera%20za%20sprc.poj.diskr.uBiH-27.5.16.-B%20(1).pdf) (accessed 28.8.2018)

Gender akcioni plan Bosne i Hercegovine za period od 2018. do 2022. godine, Agencija za ravnopravnost spolova Bosne i Hercegovine, 2018. Available at: https://arsbih.gov.ba/wp-content/uploads/2018/11/GAP-BiH-2018-2022_B.pdf (accessed 22.1.2019.)

Gender Analysis Report for Bosnia and Herzegovina. MEASURE-BiH, 2016. Available at: <http://www.measurebih.com/uimages/Edited20GA20Report20MEASURE-BiH.pdf> (accessed 5.3.2019.)

Hughson, Marina. *Gender Country Profile Study for Bosnia and Herzegovina*. 2014, European Commission. Available at: https://arsbih.gov.ba/wp-content/uploads/2015/03/delegacijaEU_2014070314432045eng.pdf (accessed 10.12.2018)

Izveštaj o rezultatima ispitivanja javnog mnijenja o percepciji i iskustvu diskriminacije. Fond Otvoreno društvo BiH, 2012. Available at: http://diskriminacija.ba/sites/default/files/Diskriminacija_izvjestaj_1_0.pdf (accessed 28.8.2018)

Jakšić, Zlatko. *Rezultati višegodišnjeg istraživanja sindikata trgovine o pružanju pravne podrške radnicima*. Sindikat radnika trgovine i uslužnih djelatnosti BiH (STBiH). 2014. Available at: <http://pzzapromjene.ba/media/1167/stbih-brosura-rezultati-istra%C5%BEivanja-12-14-final.pdf> (accessed 30.8.2018)

Jozić, Kristina. *Braniteljice ljudskih prava u policijskim strukturama Bosne i Hercegovine- Mehanizmi zaštite od diskriminacije*, Fondacija lokalne demokratije, Sarajevo, juni 2018. Available at: <https://udruzenjemps.ba/assets/files/AC7rtZzlzS-braniteljice-ljudskih-prava-u-policijskim-strukturama-u-bih-mehanizmi-zastite-od-diskriminacijepdf.pdf> (accessed 12.11.2018)

Kovač, Vanja. *Kada se različito postupanje može opravdati? Izuzeci od principa jednakog postupanja u pravu BiH u svjetlu jurisprudencije Evropskog suda za ljudska prava i prava Evropske unije*, Available at: http://www.analitika.ba/sites/default/files/kada_se_razlicito_postupanje_moze_opravdati.pdf (accessed 28.8.2018)

National Survey of Citizens' Perceptions in Bosnia and Herzegovina 2016. MEASURE-BiH, 2016. Available at: <http://www.measurebih.com/uimages/National20Survey20of20Citizens20Perceptions20201720Report.pdf> (accessed 8.7.2019)

Petrić, Aleksandra et al. *Report of civil society organizations on implementation of the concluding observations and recommendations of CEDAW committee for Bosnia and Herzegovina 2013-2017*. Helsinki Citizens' Assembly and Rights for All. Banja Luka and Sarajevo, 2016. Available at: <http://hcabl.org/wp-content/uploads/2016/11/CEDAW-ENG-web.pdf> (accessed 10.5.2018)

Priručnik za postupanje ombudsmana za ljudska prava Bosne i Hercegovine u predmetima diskriminacije, Institucija ombudsmena/ombudsmana za ljudska prava Bosne i Hercegovine, 2016, Available at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2016101419280006bos.pdf (accessed 10.12.2018)

STAV TV K3 08. 11. 2018. Available at <https://www.youtube.com/watch?v=OPxNpGEvdlk> (accessed 20.1.2019.)

Šesti periodični izvještaj o provedbi Konvencije o eliminaciji svih oblika diskriminacije žena Bosne i Hercegovine za period 2013-2016, Available at: https://arsbih.gov.ba/wp-content/uploads/2017/12/170823_VI-periodicni-CEDAW-Izvjestaj-za-BiH_Nacrt.pdf (accessed 12.2.2019.)

Šimonović Einwalter, Tena and Selanec, Goran. *Alignment of the Law on Prohibition of Discrimination with the EU acquis*. Sarajevo Open Centre. 2015. Available at: http://eu-monitoring.ba/site/wp-content/uploads/2016/05/DISKRIMINATION_HRP-9_eng_01_27.04.2015_WEB.pdf (accessed 29.8.2018.)

Women and Men in BiH 2017. Agency for Statistics of Bosnia and Herzegovina Available at: http://www.bhas.ba/tematskibilteni/FAM_00_2017_TB_0_BS.pdf (accessed 29.8.2018.)

Zavitan, ma. *Uslovi rada u trafikama: Znala sam se vratiti s kraja ulice kako bih otišla u toalet!*, Karike, 19.11.2018. Available at: <http://karike.ba/uslovi-rada-u-trafikama-znala-sam-se-vratiti-s-kraja-ulice-kako-bih-otisla-u-toalet/> (accessed 10.3.2019.)

Žene u trgovini: Bez prava na stolicu, www.diskriminacija.ba, 15.2.2016. Available at: <http://www.diskriminacija.ba/teme/%C5%BEene-u-trgovini-bez-prava-na-stolicu> (accessed 10.9.2018.)

Web pages

Autonomous Trade Unions Confederation of BiH, <http://www.sssbih.com/>

Trade Unions Confederation of the Republika Srpska, <http://savezsindikatars.org/>

Commerce and Services Trade Union of BiH, <http://stbih.ba/>

Autonomous Union of Civil Servants and Employees in Public Institutions of BiH, <http://www.reprezentativni-sindikat.org/>

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, <https://www.ombudsmen.gov.ba>

Lyra Online Platform for Reporting Discrimination, <http://prijava-diskriminaciju.ba/>

Ombudsman Institution cases

Recommendation no. P-290/17 Complaint Ž-SA-06-630/17 of 30 June 2017.

Laws

Law on Prohibition of Discrimination ("Official Gazette of BiH", No. 59/09 and 66/16)

Law on Gender Equality in Bosnia and Herzegovina („Official Gazette of BiH“, No. 102/09)

Law on Labor in Institutions of BiH („Official Gazette of BiH“, No. 50/08, 35/09, 75/09, 32/12, 42/12 and 50/12)

Criminal Code of BiH („Official Gazette of BiH“, No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 08/10, 47/14, 22/15, 40/15)

Law on Job Placement and Social Security of the Unemployed FBiH ("Official Gazette Federation of BiH", No. 55/00, 41/01, 22/05, 9/08)

Labor Law of Federation of BiH („Official Gazette of Federation of BiH“, No. 26/16)

Law on Volunteering of Federation of BiH ("Official Gazette of Federation of BiH", No. 110/12)

Criminal Code of Federation of BiH

Law on Intercession in Employment and Rights During Unemployment RS ("Official Gazette of Republic of Srpska", No. 30/10, 102/12)

Law on Labor of Republic of Srpska („Official Gazette of Republic of Srpska“, No. 1/16)

Labour Law of Canton Sarajevo ("Official Gazette of Canton Sarajevo", No. 19/2000).

Labour Law of HBŽ ("Narodne novine HBŽ", No: 13/98, 7/05).

Law on Volunteering of Republic of Srpska („Official Gazette of Republic of Srpska“, No. 89/13)

Criminal Code of Republic of Srpska („Official Gazette of Republic of Srpska“, No. 64/17)

Law on Labour of Brčko District of BiH („Official Gazette of Brčko District of BiH“, No. 19/06, 19/07, 20/13, 31/14 and 1/15)

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

Criminal Code of Brčko District (“Official Gazette of Brčko District of BiH”, No. 10/03, 6/05, 21/10 and 9/13)

Rules on the method of performance appraisal of civil servants in the institutions of Bosnia and Herzegovina (“Official Gazette of BiH”, No. 59/11)

Proposal of the Law on the peaceful settlement of labor disputes (Available at: <http://www.javnasprava.ba/Content/CDN/LawText/FM6E8S89.pdf>)

Constitution of BiH

Constitution of Federation of BiH

Constitution of Republic of Srpska

Statute of Brčko District

Other unpublished sources:

Correspondence with the Ombudsman Institution, e-mail dated 7 August 2018

Correspondence with the Center for Judicial and Prosecutorial Training FBiH, e-mail dated 7 March 2019

Correspondence with the Center for Judicial and Public Prosecutorial Training RS, e-mail dated 7 March 2019

Official act no. 24.004/054-121-2/18 of 27 July 2018, Inspectorate of RS

Official act no. 18-34-14913-2/18 of 19 October 2018, FBiH Administration for Inspection Affairs

Official act no. 14-09-34-03568/18 of 19 October 2018., Cantonal Administration for Inspection Affairs of Sarajevo Canton

Statement no. 20-49-147-1/18 of 16 August 2018., Cantonal Institute for Free Legal Aid Široki Brijeg

Questionnaire U01/18, Nada Golubović, Udružene žene, Banja Luka

Questionnaire U02/18, Zulka Baljak, CGS Livno

Questionnaire U03/18, Goran Stanković, Sindikat RS

Questionnaire U04/18, Aida Nezić i Amra Bećirović, Centar ženskih prava Zenica

Questionnaire U05/18 – SSSBIH

ANNEX 1. METHODOLOGY

This annex provides further details with regards to the research methodology used for this research. In order to respond to the research questions outlined in the introduction, the research involved mixed methods, involving: 1) a review of the relevant legal framework, with a specific focus on gender equality related legislation, 2) a literature review, 3) collection of existing data related to discrimination cases, disaggregated by gender, from institutions, 4) semi-structured interviews with representatives of institutions (selected using variation sampling) that have a legal responsibility for addressing discrimination to measure their knowledge of, awareness on and experience with GBD in the labour market, 5) in-depth interviews with people who experienced GBD and 6) an anonymous online survey using Lime Survey, launched with the aim of collecting input from diverse women and men. The following sections provide further details.

Data collection

A total of 75 requests for data on reported and / or processed GBD cases were sent to different competent institutions. In total, 65 responses were received.

The Ministry of Human Rights and Refugees is the only institution that did not respond to request for an interview or to a request for information. Therefore, their experience and data from an extremely important Central Discrimination Database remained uncovered by this research.

Interviews with Institutions, CSOs, Unions, Women who experienced GBD

For the selection of institutional representatives to be interviewed, hCa used variation sampling which included selecting a wide range of 'extremes', based on institution level (e.g., state, entity, cantonal) and geographic locations. This means that a very different selection of people was interviewed with the aim of collecting the entire range of potential responses from the population, of institutions that have a legal obligation to address GBD.

In total, 14 representatives from different institutions were interviewed to assess their knowledge of, awareness on and experiences with GBD in the labour market. In a few instances, the methodology had to be adjusted because of practical considerations.

Some difficulties were faced in securing interviews with judges. In several cases, court presidents decided not to allow judges to participate in the research.

Some institutions rejected oral interviews and offered to provide written answers. Two institutions explicitly refused to participate in the research due to their heavy workloads.

Besides representatives of institutions, interviews were conducted with 14 CSO representatives from five cities (FBiH, RS and BD), all working on GBD, regarding their knowledge,

awareness and experiences with GBD in the labour market. Interviews were conducted with representatives from five labour unions in different fields, different sectors and different cities. Also, interviews were conducted with three lawyers on their experiences with GBD in the labour market, including court cases.

In-depth anonymous interviews were conducted with women who had experienced GBD in five cities in BiH. The variation sampling included selecting diverse respondents based on age, sector of employment, place of living and form of discrimination. In total, 15 interviews were conducted, lasting between 60 minutes and three hours.

List of Interview Respondents

Code	Name	Institution	Place	Date
BN001	Lana Jajčević	United Women Banja Luka Association	Banja Luka	1.8.2018.
BN002	Tanja Đokić Mandić	Association of Disabled Women 'NIKA'	Banja Luka	10.8.2018.
BN003	Selma Hadžihalilović	Women's Network Bosnia and Herzegovina	Sarajevo	2.8.2018.
BN004	Vesna Vukmanić	Initiative and Civil Action	Sarajevo	12.9.2018.
BN005	Diana Šehić	Rights for All	Sarajevo	12.9.2018.
BN006	Arijana Čatović	Rights for All	Sarajevo	12.9.2018.
BV007	Ana-Kotur Erkić	Activist, journalist, women who have experienced gender-based discrimination	Brčko	13.9.2018.
BLA008	Amra Bećirović	Center of Women's Rights Zenica	Zenica	14.9.2018.
BV009	Anonymous	Women who have experienced gender-based discrimination	Travnik	14.9.2018.
BN010	Vladana Vasić	Sarajevo Open Centre	Sarajevo	19.9.2018.
BV011	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	20.9.2018.
BV012	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	20.9.2018.
BA013	Maja Gasal Vražalica	Parliamentary Assembly of Bosnia and Herzegovina	Sarajevo	27.9.2018.
BV014	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	28.9.2018.
BA015	Mirsad Isaković	President of the Committee on Gender Equality of the Parliamentary Assembly of BiH	Sarajevo	28.9.2018.
BU016	Lejla Čopelj	President of Autonomous Union of Civil Servants and Employees in Public Institutions of BiH	Sarajevo	1.10.2018.
BU017	Mersiha Beširović	President of Commerce and Services Trade Union of BiH	Sarajevo	8.10.2018.
BA018	Branislava Crnčević Čulić	Agency for Gender Equality of BiH	Sarajevo	8.10.2018.

Code	Name	Institution	Place	Date
BN019	Kristina Jozić	Policewomen's Network Association	I.Sarajevo	10.10.2018.
BA020	Aida Kreho	Joint Committee on Human Rights of the Parliamentary Assembly of BiH	Sarajevo	11.10.2018.
BV021	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	12.10.2018.
BV022	Anonymous	Women who have experienced gender-based discrimination	Bihać	14.10.2018.
BCC023	Almer Midžić	Judge Bihać Municipal Court	Bihać	15.10.2018.
BL024	Remzija Suljić	Lawyer	Bihać	15.10.2018.
BU025	Muhamed Mahmutović	Cantonal Committee of the Autonomous Trade Unions Confederation of USC	Bihać	16.10.2018.
BLI026	Sena Družić	Chief cantonal labour inspector of USC	Bihać	16.10.2018.
BEO027	Nadija Sijamhodžić	Employment office of USC	Bihać	16.10.2018.
BN028	Majda Halilović	Atlantic Initiative	Sarajevo	17.10.2018.
BCC029	Anonymous	Judge Mostar Municipal Court	Mostar	18.10.2018.
BV030	Anonymous	Women who have experienced gender-based discrimination	Mostar	18.10.2018.
BV031	Danijela Gušić	Women who have experienced gender-based discrimination	Mostar	18.10.2018.
BV032	Anonymous	Women who have experienced gender-based discrimination	Mostar	18.10.2018.
BN033	Aleksandra Vuković	Međunarodni centar za promociju ljudskih prava	Trebinje	19.10.2018.
BLA034	Zdravko Vuković	RS Centre for Provision of Free Legal Aid – Trebinje office	Trebinje	19.10.2018.
BV035	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	19.11.2018.
BV036	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	20.11.2018.
BU037	Lejla Čatić	Independent trade union of forestry	Sarajevo	23.11.2018.
BN038	Zulka Baljak	CGS Livno	Livno	23.11.2018.
BN039	Emina Cero Šehić	LI Women	Livno	23.11.2018.
BV040	Anonymous	Women who have experienced gender-based discrimination	Sarajevo	30.11.2018.
BV041	Anonymous	Women who have experienced gender-based discrimination	Banja Luka	6.12.2018.
BU042	Ilija Kalajdžić	Trade Unions Confederation of the Brčko District	Brčko	15.11.2018.
BN043	Željko Lazarević	Beba više	Brčko	15.11.2018.
BM044	Borislav Radić	Agency for Peaceful Settlement of Labour Disputes Banja Luka	Banja Luka	16.10.2018.
BML045	Ernis Imamović	Ministry of Labour FBiH	Sarajevo	9.10.2018.

Code	Name	Institution	Place	Date
BO046	Vanja Dandić	Ombudsman Institution BiH	Sarajevo	18.9.2018.
BV047	Anonymous	Women who have experienced gender-based discrimination	Bos.Krupa	19.11.2018.
BLI048	Muhamed Pašukanović	Chief FBiH labour inspector	Sarajevo	14.12.2018.
BML049	Mira Vasić	Ministry of Labour RS	Banja Luka	5.10.2018.
BL050	Elmin Plećan	Lawyer	Sarajevo	30.10.2018.
BL051	Tanja Hadžagić	Lawyer	Sarajevo	18.12.2018.

ANNEX 2. INTERVIEW GUIDE EXAMPLE

Civil Courts

1. 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

Demographics

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

Knowledge

13. In general, what do you think about gender-based discrimination against women in the labour market?
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?
22. To what extent do you think that the Anti-Discrimination Law is being implemented in the labour market?
23. To what extent do you think that the Law on Gender Equality is being implemented in the labour market?
24. Other comments related to this:
Filter: Gender-based discrimination cases reported
25. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008?
25.1.1 Yes
25.1.2 No
[Skip the following questions if the answer is No, and ask:]
26. For what reason do you think few discrimination cases been reported and/or filed?

Gender-based discrimination cases reported

27. Please tell me about the cases you have dealt with?
27.1 If yes, how many approximately?
27.2 What was the gender of persons who suffered discrimination [women, men, both]?
27.3 What was the gender of the alleged perpetrator?
27.4 Have you observed whether discrimination tended to happen more to people in any of the following groups: ethnicity, sexuality, age, ability, geographic location? Please elaborate.
27.5 Have you seen any cases in which multiple discriminations were claimed, such as on the basis of both gender and disability OR gender and ethnicity?
27.6 What types of discrimination did you encounter?
27.7 In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.
28. How many were investigated based on appeals that employees have submitted?
29. What steps have you taken?
30. Were any disciplinary measures taken?

31. If so, which?
32. What was the biggest challenge?
33. In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.
34. What are the strengths and weaknesses of data collection practices related to logging these cases?
35. Do you have any other comments or things you'd like to add?
36. [Researcher notes (reflexivity)]

ANNEX 3. SURVEY

Survey Sample

A total of 1378 participants clicked the online questionnaire and 547 participants (39.7%) completed approximately 90% of the questionnaire. The majority of the participants were women (81.4%). Regarding ethnic self-identification, 49.3% are Bosniaks, 35% were Serbians and 14.3% are Croats. Of the respondents, 87.3% were employed. Most worked in the public administration (40% of women and 33% of men) and nearly every third worked in the private sector (32.1% of women and 31.3% of men).

When statistical significance is not significant

Statistical inference means to generalize the findings from a sample to a population using significance tests. Having in mind that the survey sample is a non-probability sample and that the participants are self-selected, the findings that refer to 'statistical significance' should be interpreted as 'suggestive' but not conclusive and in no way generalizable. Statistical tests are used as heuristics to differentiate 'large enough' differences or correlations to be commented upon.

The homogeneity of the sample

Most participants were women (81.4%), ages 30-49 (66.8%) and highly educated, with 59.6% of the sample holding a Bachelor or Master's degree. This means that: the percentages reported do not reflect the prevalence of the phenomena in the general population in Bosnia and Herzegovina and that the variability of the 'sampled' experiences may be restricted. The possibility to compare and contrast is limited.

Gendered lens

All variables are cross tabulated with gender, not only because this is a key variable but also because the sample is highly imbalanced in terms of gender. This means that the observed distributions of answers in the sample reflect mainly women's responses. The huge disproportion of men and women obstructs the comparisons and constrains the possibility of observing gender based differences. However, if indicative, gender based differences are interpreted although the inference is 'restrained' in terms of generalizability.

Demographic

More than half the respondents lived in cities in BIH (61.9%), and slightly more than every third respondent lived in Sarajevo (34.5%). Only 3% of respondents lived in rural place; and 2.7% were from abroad. Thus the sample overrepresents the perspectives and experiences of urban respondents while underrepresenting that of people living in rural areas.

Employment status

The majority, 79% of the sample, were employed full-time. Part-time employed respondents comprised 4.5% of the sample and self-employed 2.6%. Unemployed persons comprised 11.6% of the sample. Additionally, 1% were students, 0.8% were pensioners and 0.6% conducted unpaid work (unemployed officially). A comparatively larger percentage of women were unemployed and looking for work (11.1%) than men (4%). Although the sample is too small to be conclusive, a larger percentage of men said that they are self-employed (8%) than women (1.5%).

The majority of the employed respondents were working in public administration, including public schools, health institutions, etc. (40% of women and 33% of men). In publicly-owned enterprise, 16.5% of men and 8.9% of women respondents worked. The difference in proportion is statistically significant. Nearly every third employed respondent was working in the private sector (32.1% of women and 31.3% of men). The rest of the employed persons in the sample were working in local civil society organizations (7.9% of women and 10.4% of men) and international civil society organizations (4.5% of women and 2.6% of men). A smaller percentage conducted freelance work (4.1% of women and 7.8% of men) or worked in media (2.4% of women and 5.2% of men).

Although the sample is not representative, the observed distributions reflect the stereotypical gender based 'occupational segregation'. Compared to every tenth man (9.9%), every fifth woman (20.8%) in the sample worked in the field of education. Also, women in the sample are comparatively more represented in the field of health (7.5% of women and 0.9% of men), whereas more men work in information and communication, including media (3.6% of women and 12.6% of men), professional, scientific and technical activities (2.8% of women and 7.2% of men) and research (1.9% of women and 6.3% of men). Again, notably the sample of men is too small to be conclusive. In administrative and support services work, 15.6% of respondents worked (16.1% of women and 13.5% of men), 9.7% were employed in wholesale and retail trade such as shops (10.7% of women and 5.4% of men) and 8% work in in civil society or as human rights activists (9% of women and 3.6% of men).

ANNEX 4. SURVEY INSTRUMENT (SAMPLE)

Survey on Discrimination at Work

Thank you for taking part in this important survey, which aims to identify ways to better address different forms of discrimination that can occur in relation to work. Understanding your thoughts and experiences can support us in identifying actions that can help prevent discrimination, as well as contribute to improved access to justice for discrimination when it occurs. The survey will take approximately 10 minutes. Be assured that all of your answers will be kept strictly confidential. No one will know who you are.

If you have any questions or concerns about this survey, please contact: Helsinki Citizens' Assembly (hCa) Banja Luka, e-mail: lgacanica@hcabl.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.

Serbian

Bosniak

Croatian

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.)
Media
Freelancer
Other (please write)

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
- More than a year, but less than 4 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
- I have never had a written contract

In your workplace, who tends to have longer contracts?

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

Since 2008, 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 convertible mark)?

- 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.



**GENDER-BASED DISCRIMINATION
AND LABOUR IN
BOSNIA AND HERZEGOVINA**



Gender Alliance for Development Center
Qendra Aleanca Gjimore për Zhvillim

