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GENDER-BASED DISCRIMINATION AND LABOUR IN BOSNIA AND HERZEGOVINA



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WOMEN'S RIGHTS CENTER
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GENDER-BASED DISCRIMINATION AND LABOUR IN BOSNIA AND HERZEGOVINA

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CONTENT

EXECUTIVE SUMMARY	9
Introduction	10
Background	10
Aims	10
Methodology	10
LEGAL ANALYSIS.	12
Constitutional Framework	12
Legislation at the State Level	14
Law on Gender Equality	17
Other Laws at the State Level	18
Entity Laws; Laws of Brčko District	19
Labour Laws.	20
Criminal Codes	23
Laws on Job Placement and Social Security of the Unemployed	24
Non-legislative Measures	24
Institutional Mechanisms	26
Response to the COVID-19 Pandemic	26
Conclusion	27
AWARENESS AND ATTITUDES TOWARDS GENDER-BASED DISCRIMINATION.	29
Awareness	29
Attitudes	31
Reporting	32
Conclusion	35
PREVALENCE AND EXPERIENCES WITH GENDER-BASED DISCRIMINATION	36
General Findings related to Gender-based Discrimination	36
Discrimination based on Specific Protected Grounds	41
Age	41
Gender-based Discrimination against Persons with Different Abilities	42
Gender-based Discrimination against LGBTQIA+ Persons	43
Gender-based Discrimination based on Ethnicity, Political Affiliation and Religion	45
Woman in Social Isolation	46
Different Forms of Gender-based Discrimination.	47
Discrimination in Hiring	47
Discrimination in Promotion	49
Contracts and Pay.	51
Working Conditions	53
Pregnancy and Maternity Leave	54
Paternity Leave.	56
Sexual Harassment at Work	56
Impacts of Gender-based Discrimination	59
Conclusion	60

THE INSTITUTIONAL RESPONSE TO GENDER-BASED DISCRIMINATION	62
Institution of Human Rights Ombudsman of Bosnia and Herzegovina	62
Courts	65
Labour Inspectorate	68
Legal Aid Providers	70
Mediation.	71
Labour Unions	72
Civil Society Organisations	76
RECOMMENDATIONS.	80
For the Legal Framework	80
For A ll Institutions	80
The Institution of Human Rights Ombudsman of Bosnia and Herzegovina	81
Courts	81
Labour Inspectorates	81
Free Legal Aid provided by Public Institutions	81
Labour Unions	81
Employers	82
CSOs.	82
WORKS CITED	83
Web pages.	86
International documents and Laws	87
ANNEXES	89
Annex 1. Methodology.	89
Annex 2. Demographic Information about the Sample	91
Annex 3. Survey Instrument.	92
Annex 4. Sample Interview Guide	106

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	Centre for Judicial and Public Training Federation of Bosnia and Herzegovina
CEST RS	Centre for Judicial and Public Prosecutorial Training Republika Srpska
CMS	Automatic System for case management in courts
CSO	Civil society organisations
CWRZ	Centre of Women's Rights Zenica
EC	European Commission
ECHR	European Convention on Human Rights
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
GAP	Gender Action Plan
GBD	Gender-based discrimination
HCA BL	Helsinki Citizens' Assembly Banja Luka
HJPC BiH	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTQIA+	Lesbian, Gay, Bisexual, Trans*, Queer, Intersex, Asexual, and other identifying persons
MHRR	Ministry for Human Rights and Refugees of Bosnia and Herzegovina
OSCE	Organisation for Security and Co-operation in Europe
PLN	Paralegal Network
PWD	People with different abilities
RS	Republika 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 Republika 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 labour in Bosnia and Herzegovina (BiH) is the second report published as part of a regional initiative aiming to address GBD in six Western Balkan countries. The research combined a variety of methods, including a literature review, legal analysis, online survey, interviews with relevant protection mechanisms and in-depth interviews with women who have experienced such discrimination at work or in hiring. The interviews reflect the real situation when it comes to the presence of various forms of GBD in the labour market, such as sexual harassment, gender-based harassment, or mobbing as the most common forms of harassment at work.

Additionally, the research has found persisting low knowledge of basic labour rights, inconsistent application of legal regulations related to GBD at work, and a continuing lack of case law.

Similarly, as reported in 2019¹, the research has found that awareness about GBD has remained extremely low among both employees and employers. This is reflected in the identification, reporting and processing of GBD cases. Little data has existed 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 refer cases to competent institutions. Low reporting, in turn, has contributed to insufficient statistical data regarding the extent of GBD and lack of trust in institutions responsible for treating GBD cases.

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 of the relevant court proceedings have been conducted in accordance with entity labour laws, which suggests insufficient understanding and implementation of the Law on Prohibition of Discrimination and Gender equality law. Additionally, long and exhausting processes have further discouraged victims from reporting workplace discrimination. Meanwhile, the almost non-existent case-law has continued to pose a challenge in the processing of discrimination cases. Due to legal restrictions, free legal aid institutions and public mediators in labour disputes do not have the authority to support peaceful settlement of GBD cases, which could help avert lengthy court proceedings.

The COVID-19 pandemic has further complicated the position of women in the labour market, especially in sectors where women are overrepresented (e.g., service, textile and footwear sectors).

Civil society organisations have provided legal assistance to women whose labour rights were violated, including during the pandemic. Organisations have increased their capacities for these purposes since 2018. Meanwhile, trust in labour unions and knowledge of the legal aid that unions provide has remained low.

1 Gačanica, L., Gender-based discrimination and labour in Bosnia and Herzegovina, Helsinki Citizens' Assembly Banja Luka, Sarajevo, 2019, Available in English at: <http://hcabl.org/wp-content/uploads/2019/05/GENDER-BASED-DISCRIMINATION-AND-LABOUR-IN-BOSNIA-AND-HERZEGOVINA-FINAL.pdf>.

INTRODUCTION

Background

The aim of this research on gender-based discrimination (GBD) in labour in BiH is to analyse the presence of discrimination on the grounds of sex and gender in labour relations; the performance of institutions responsible for implementing protection mechanisms, and other existing protection mechanisms that persons who suffered GBD may use. The prohibition of discrimination in labour and labour relations is determined by the entity labour laws and the labour law of Brčko Distrikt, the Law on Gender Equality in BiH and the Law on Prohibition of Discrimination.

Although it is noticeable that in the past three years there has been more initiatives aiming to raise awareness about some specific forms of gender-based discrimination, women still hesitate to report GBD if it happens. The participation of women in the labour market is higher in the service sector, the textile and footwear industry, and it is the sectors that were most affected by the COVID-19 pandemic and crisis staff measures.

This research examines the understanding and application of existing legal frameworks that regulate gender-based discrimination in labour in BiH, awareness and attitudes towards GBD, the prevalence of GBD and the functioning institutional and non-institutional protection mechanisms.

Finally, the research offers a set of recommendations aimed at improving the position of women in the labour market and strengthening protection mechanisms, including civil society organisations and trade unions.

Aims

This research seeks to address the existing situation regarding gender-based discrimination and to inform future advocacy and outreach towards decreasing the prevalence of GBD in labour. Research questions that this research aimed to answer are:

- I. To what extent is the legal and policy framework relating to gender-based discrimination complete in accordance with relevant EU directives and adequate protections?
- II. How many work-related gender-based discrimination cases have been reported to different types of institutions in 2018-2020?
- III. For what reasons have few discrimination cases been reported and/or filed? Related, to what extent are people aware of various forms of discrimination and how to report them, and how has this awareness changed over time?
- IV. How have relevant institutions treated discrimination cases to date, and how has this changed over time, if at all?

Methodology

In order to answer the aforementioned questions, hCa conducted research from March to December 2021. 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 examined 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 responsible institutions, selected using variation sampling, were interviewed using a semi-structured interview guide to measure their knowledge, awareness, and experiences with GBD in the labour force. 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 16 women who experienced GBD or/and mobbing. The interviews were anonymous and included persons from eight cities (rural and urban areas), of different ages, educational levels and fields of employment.

Sixth, an anonymous online survey was launched using Lime Survey aiming to collect input from diverse women and men regarding their knowledge of discrimination legislation, attitudes, awareness, and personal experiences with discrimination.

The survey was promoted broadly through regular media, social media, and email. The promotion of the survey also targeted under-represented groups. A total of 3,125 participants clicked the online questionnaire and 683 participants (22%) completed approximately 90% of the questionnaire. Most of the survey participants were women (84%), living in urban areas (87%), ages 30-49 years old (73%) and highly educated, with 58% of the sample holding Bachelor, Master's degree or PhD. Only 16% of participants were men. For further information regarding the demographics of the sample, see Annex 2. Comparisons were drawn, based on the survey findings in the prior edition of this report, *Gender-based discrimination in labour in BiH*, conducted in 2018 and published in 2019.

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 were 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.

LEGAL ANALYSIS

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. The state structure of Bosnia and Herzegovina (BiH) consists of two entities: the Federation of BiH (FBiH) and Republika Srpska (RS) and the District Brčko (BD). All three units have different internal structures. Therefore, the 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.

According to the European Commission's (EC) *Bosnia and Herzegovina 2020 Report*², limited progress was achieved when it comes to adoption of legislation on labour law. In order to fully meet the standards of the European Union (EU) in this area, the legal framework still requires further improvement. Particularly, it requires improvement with regard to the protection of workers, which includes protection against discrimination. Moreover, the issue of maternity leave benefits remained unresolved– it should be introduced a uniform minimum level of maternity leave benefits and protection throughout the country, starting by harmonising the definitions of maternity, paternity and parental leave.³

Meanwhile, implementation of labour laws remains inadequate. Although labour laws within the country address the issue of non-discrimination at work, there are no strategies or action plans in place specifically developed for employment-related discrimination. It is recommended to adopt the employment strategy at Federation level and the countrywide strategy on employment as a policy framework, while providing for additional capacities for implementation and monitoring.

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 education).⁴

The **European Convention on Human Rights** (ECHR) is directly applicable in BiH and has priority over all other law, according to Article II/2 of the Constitution.⁵ Courts in BiH may apply the rights contained in the ECHR without the adoption of implementing legal acts. Article 14 of the ECHR 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. In contrast, Protocol 12 of the ECHR contains a freestanding general prohibition of discrimination. 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

2 European Commission. *Bosnia and Herzegovina 2020 Report*, SWD (2020) 350 final Brussels, 2020. Available in English at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf.

3 Ibid.

4 Petrić, A., 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.

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

and Culture Rights and the 1979 Convention on the Elimination of All Forms of Discrimination against Women. While these 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.⁶

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** guarantees the right to work; promotion; equal pay with no exceptions, especially for women who have the same working conditions as men and thus should be paid equally; labour union organisations and strikes; specific rights of women related to motherhood; and other labour rights. The Committee on Economic, Social and Cultural Rights acknowledged in its 2013 Concluding Observations on BiH⁷ many inconsistencies in implementing the ICESCR in BiH, such as: low employment rate of women, a disproportionately high rate of unemployment of women and the prevalence of occupational segregation by gender, both horizontal and vertical, which all reflect stereotypical perceptions of roles of men and women in the family and society.

The Committee urged the Government to undertake comprehensive reforms to empower women through gender-sensitive labour policies aiming at hiring of women in non-traditional professions, enhancing their access to vocational and technical education and ensuring equal conditions of work but also to analyse determining factors of women's entry and stay in the labour market, including in the informal economy, and sociocultural factors affecting women's professional choices. When it comes to minorities rights, the European Commission's 2020 Report on BiH also emphasizes that legislative the system does not regulate the social and economic rights of same-sex couples, including the right to family life.

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.⁸ Official reports in BiH are submitted with Alternative Reports of Civil Society Organisations.⁹

In the Concluding Observations 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 'grey economy', including agreements on labour with fixed-term contracts.¹⁰ The Committee's 2019 Concluding Observations repeated its concerns regarding the continued low representation of women in the labour market, including the persistent gender pay gap and horizontal and vertical occupational segregation; the disproportionately high number of women who are engaged in unpaid work in agriculture and domestic work; a lack of specific

6 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, N., et al. *Ustavno pravo Bosne i Hercegovine*, p. 18).

7 UN Committee on Economic, Social and Cultural Rights, State Party Report: Bosnia and Herzegovina, 24 January 2013, E/C.12/BIH/CO/2.

8 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.

9 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.

10 Helsinki Citizens' Assembly Banja Luka and Rights for All, *Alternative CEDAW Report – Report of Civil Society Organizations on Implementation of Conclusions and Recommendations of CEDAW Committee for Bosnia and Herzegovina 2013-2017*, 2016, p. 81-87.

employment strategies directly targeting women, particularly those belonging to disadvantaged groups; disparities in maternity benefits; unpaid social contributions by employers, that jeopardize women's pension and health insurance benefits; and sexual harassment in the workplace.¹¹

The **Constitutions of the Federation of BiH and the Republika 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.

Box 1. Legal Analysis

In 2019, the International Labour Organization (ILO) adopted the Violence and Harassment Convention (No. 190)¹² and its accompanying Recommendation (No. 206). The framework set out in these instruments provides a clear roadmap for preventing and addressing violence and harassment in the world of work including gender-based discrimination and sexual harassment. It defines violence and harassment as "a range of unacceptable behaviors and practices" that "aim at, result in, or are likely to result in physical, psychological, sexual or economic harm".¹³ This covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among others.¹⁴ BiH started the process of considering ratification of Convention 190. However, this process had not been completed as of early 2022.

Legislation at the State Level

Law on Prohibition of Discrimination

The **Law on Prohibition of Discrimination**¹⁵ defines direct¹⁶ and indirect¹⁷ discrimination, as well as instruction, assistance and incitement to discrimination. The influence of EU law is expressly mentioned in the 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.

11 Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, 2019, Available at: https://arsbih.gov.ba/wp-content/uploads/2019/11/CEDAW-C-BIH-Concluding-Observations-6_AsAdopted.pdf.

12 International Labour Organization. Violence and Harassment Convention 2019 (No 190). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C190:NO.

13 Violence and Harassment Convention, Article 1.1.

14 ILO Brief, ILO Violence and Harassment Convention, 2019 (No. 190): 12 ways it can support the COVID-19 response and recovery, 2020, Available in English at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_744782.pdf.

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

16 '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).

17 '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).

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.¹⁸

Prohibition of discrimination applies to all public bodies, all natural and legal persons, in the 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, and segregation. By amending the Law in 2016, the prohibition of victimization is included in the legal text and is regulated by Article 18.¹⁹

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 recognises mobbing (Article 4.3) as a form of non-physical harassment in the workplace that consists of 'repeating certain actions that have a humiliating effect on the victim, the 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 organisations, including membership in organisations of workers and employers or any other organisation whose members have a specific profession, and involvement in such organisations.

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 concerns as to whether decision makers in anti-discrimination proceedings will have the necessary knowledge, or relevant information, for the correct application of this article.²⁰

18 Article 2.1. 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 (Amendments to the Legal Framework for Protection against Discrimination in BiH: Achievements and Necessary Improvements, p. 4).

19 Victimization as a form of discrimination is prohibited and constitutes any form of adverse treatment towards persons who reported or intend to report discrimination, attend or testify to discrimination, reject the order for discriminatory treatment, in any way participated in the procedure for protection against discrimination, provided or had the intention to inform the public of the information or documents required in the procedure for protection against discrimination or on discriminatory treatment.

20 Kovac, V., *When can different treatment be justified? Exceptions to the principle of equal treatment in the law of Bosnia and Herzegovina in the light of the jurisprudence of the European Court of Human Rights and the rights of the European Union*, p. 2. Only available in BHS languages.

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:²¹ 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.²²

Among others, the Law exempts positive action measures created to prevent or to compensate for 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 in the Law 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, Article 5 of the Law is inconsistent with the meaning of positive action in EU law.²³

According to Article 11, every person or group of persons who considers that he/she/they have experienced discrimination shall be able to seek protection for his/her/their rights through existing judicial and administrative proceedings. In cases when a violation of the 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 may 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; and 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 a decision of the Human Rights Ombudsman of Bosnia and Herzegovina (hereafter, 'Ombudsman') is used as evidence, the court is obliged to discuss the proposals of the Ombudsman.

A collective lawsuit (Article 17) may be brought by associations, bodies, institutions and other organisations, 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 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

22 Simonović E., and Selanec, G., *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, 2015, p. 24-26.

23 Ibid, p. 29.

The **Rules of Procedure on Collecting Data in Cases of Discrimination in Bosnia and Herzegovina**²⁴ must be implemented in compliance with the provisions of the Law on Prohibition of Discrimination according to which the competent institutions²⁵ 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 ten years after the Rules entered into force, and despite the legal obligation on the MHRR to establish a central database on discrimination, the database has not been completed.

In 2016, the Council of Ministers of BiH adopted the **Report on Discrimination in Bosnia and Herzegovina** with an Action Plan for implementing proposed measures for preventing discrimination in BiH. 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 [the] Human Rights Ombudsman of Bosnia and Herzegovina on the occurrences of discrimination'.²⁶

Law on Gender Equality

The **Law on Gender Equality in Bosnia and Herzegovina**²⁷ provides a definition of GBD in Article 3.1.²⁸ 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'); 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 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 intentionally, is also discrimination. The Law specifically prohibits GBD in employment, work and access to all kinds of resources (Articles 12-16).

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

25 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.

26 Parliamentary Assembly of Bosnia and Herzegovina, Joint Commission for Human Rights, Report on Discrimination in Bosnia and Herzegovina with Action Plan for the Implementation of Proposed Measures to Prevent Discrimination in Bosnia and Herzegovina, 2016, Available in BHS languages: <file:///C:/Users/pc/Downloads/Izvjest.o%20pojavn.diskrim.u%20BiH%20s%20Akcionim%20planom%20za%20realiz.predl.mjera%20za%20sprc.poj.diskr.uBiH-27.5.16.-B.pdf>.

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

28 Discrimination on grounds of gender shall be putting any person or groups of persons into less favourable position based on gender due to which rights of some persons or groups of persons are protracted or enjoyment and realisation of human rights and freedoms are not recognized.

While the Law on Prohibition of Discrimination prohibits GBD in a general manner, the Law on Gender Equality 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, and the prohibition of different treatment on the grounds of pregnancy, childbirth or exercising the right to maternity leave.²⁹

In order to ensure equal opportunities regardless of gender, collective agreements must be harmonised 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 (Article 14). Judicial protection of the rights guaranteed by the 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 prosecution of criminal offenses and misdemeanours established by the Law is to be handled as a matter of urgency and has priority in the work of the competent authorities.

The Law obliges all state bodies to collect gender-disaggregated data (Article 22). The State Office of Statistics has complied and published annually gender-disaggregated data in a publication entitled 'Women and Men in Bosnia and Herzegovina'.³⁰

In October 2019, the Agency for Gender Equality of BiH (ARS BiH) issued a *Recommendation to employers and competent bodies regarding gender equality in work and employment*. It draws the attention of employers in the private and public sectors, as well as competent administrative bodies and the public, to the fact that disadvantaging workers on the basis of gender, such as pregnancy and motherhood, is an expression of direct discrimination, and is legally prohibited and punishable. The Recommendation calls on competent authorities, with a special focus on inspections, law enforcement and the judiciary, to step up efforts to protect the rights of women, mothers and pregnant women in employment, as well as to train staff to work on gender-based discrimination in labour relations and employment.³¹

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**³² includes a 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 to the equal treatment principle.

29 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.

30 Agency for Gender Equality of Bosnia and Herzegovina, Thematic newsletter 03, *Women and Men in BiH 2020*, Sarajevo, 2020. Available in BHS languages at: https://arsbih.gov.ba/wp-content/uploads/2020/02/Mu%5Ca1karci-i-%5C5%beene-u-BIH_2020.pdf.

31 Available in BHS languages at: <https://arsbih.gov.ba/preporuka-poslodavcima-i-nadleznim-organima-u-vezi-ravnopravnosti-spolova-u-radu-i-zaposljavanju/>.

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

Box 2. Legal Analysis

The ARS BiH has issued *Information on mechanisms for effective prevention and protection against gender-based harassment and sexual harassment in the BiH institutions*³³ with a *Guide to taking effective measures to prevent gender-based harassment and sexual harassment in the BiH institutions*.³⁴ In October 2019, the Council of Ministers of BiH adopted these documents and ordered the institutions at the BiH level to adopt a zero-tolerance policy towards acts of sexual and gender-based harassment by the end of 2020, in accordance with the above-mentioned guide. The institutions should have made it available to all employees, including through mediums such as their websites. The guide also instructed the institutions to appoint counsellors for the prevention of sexual and gender-based harassment in the workplace, and the ARS BiH was instructed to continuously conduct a training program on sexual and gender-based harassment in the workplace for civil servants at the institutional level.

So far, 45 state institutions have made decisions to adopt a zero-tolerance policy on sexual harassment and appointed counsellors to prevent it. In cooperation with the Civil Service Agency, ARS BiH organized training for 30 appointed advisors in December 2020.

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.

The *Criminal Law of BiH* includes a crime related to discrimination in Article 145:³⁵ 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.

Sexual harassment and other sexual crimes are regulated at the entity level.

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.

33 Agency for Gender Equality of Bosnia and Herzegovina, 2019. Available in BHS languages at: <https://arsbih.gov.ba/wp-content/uploads/2019/10/Informacija-o-mehanizmima-za-efikasnu-prevenciju-i-zaštitu-od-uznemiravanja-na-osnovu-spola-i-seksualnog-uznemiravanja.pdf> .

34 Agency for Gender Equality of Bosnia and Herzegovina, 2019, Available in BHS languages at: <https://arsbih.gov.ba/wp-content/uploads/2019/10/VODIC-ZA-PREVENCIJU-UZNE MIRAVANJA1-1.pdf> .

35 "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.

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 FBiH,³⁶ the Law on Labour of RS,³⁷ and the Law on Labour of BD.³⁸ 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 employees 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 Laws can be interpreted as a limitation or diminishment of the right to initiate a criminal or civil action. A comparative analysis of the Labour Laws with the Law on Prohibition of Discrimination confirms that these particular forms of discrimination are consistent.

The scope of the Labour Laws 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. Laws strictly forbid differences in pay based on gender, by stating that both genders must have equal pay for equal work.³⁹

An exception to 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 on the basis that 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).

The Labour Laws of FBiH and RS include sections on protection of motherhood.⁴⁰ Both provide women with the right to one-year of uninterrupted maternity leave and, the most important aspect of this protection, a guarantee of employment upon return. In RS, mothers may take up to 18 months for twins, as well as every third and additional child, without

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

37 "Official Gazette of Republika Srpska", No. 1/16.

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

39 '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 of FBiH.

40 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.

interruption. Parents of the child may agree that the leave after the expiration of the legal minimum 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) is 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.⁴¹

The right of fathers to use parental leave in both entities is not regulated as a non-transferable right. In terms of harmonising legislation with the EU Directive on work-life balance for parents (2019/1158),⁴² labour legislation should provide adequate provisions on non-transferable and compensated paternity and parental leave (for fathers as well as equivalent second parents).

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 minimum 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: for one hour for breastfeeding, until the child reaches the age of one (twice a day in RS). 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 the laws of FBiH and RS, 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. Existing solutions are not fully aligned with the work-life balance Directive.

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 standardising 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.⁴³ 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 restrict mobility of women/parents and could cause unfair results; if a woman decides to move for employment between an entity or a canton, she may lose parental leave compensation entitlements.

Further labour legislation harmonisation regarding the work-life balance directive would require provisions on flexible working arrangements (reduced working hours, flexible working hours and flexibility in place of work) to all working parents of children up to at least 8 years old, and all carers. Existing legislation also will need to be harmonized with regard to the provision of paid leave in cases not currently regulated (caring for a family member or a person living with them) and the adjustment of working conditions.

Namely, the labour laws regulate the possibility of unpaid leave, while the special conditions in the entities and the BD BIH are regulated in detail by collective agreements.

41 2018 *Alternative Analytical Report on the Application of BiH for EU Membership: Political Criteria*, p. 30.

42 Available in English at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158#PP4Contents>.

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

Certain collective agreements prescribe that an employee may be granted unpaid leave for the care of a family member for up to 30 days, i.e. up to one year.⁴⁴ However, the regulation of leave for careers should be an integral part of the law binding on all employers.

The Law on Gender Equality prohibits any unfavourable treatment of parents or guardians in reconciling obligations from family and professional life. The BiH Gender Action Plan from 2006 especially emphasised the importance of this through the area called "Reconciliation of professional and family life". The Third Gender Action Plan of BiH (2018) further emphasizes the need to encourage measures to reconcile private and professional life, such as, among other things, the development of business practices that respect family life and are equally accessible to women and men.

Regarding the enforcement of workers' rights and cases of alleged discrimination, labour laws in the entities have different limitation periods. In FBiH a specific procedure is foreseen for cases of discrimination. A request must be issued from the employee to the employer 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. The competent court cannot be required to protect the violated right by an employee who did not submit a claim to the employer first, except in cases of termination of the employment contract.

Meanwhile, in RS, an employee who thinks that his/her employer has violated a right deriving from employment may request that the employer ensure the exercise of the right. An employer is obliged to decide on the employee's request within 30 days from the day he/she submitted the request. Still, an employee who thinks that the employer has violated her/his right deriving from an employment contract shall be entitled to file a complaint to the competent court for protection of the right.

The right to file the complaint is not conditional upon addressing the request for protection of the right to the employer previously. The employee shall file the complaint for protection of right within one year after having learnt of the violation of the right and not later than three years after the violation. In accordance with the Law on Prohibition of Discrimination, the employer has the burden of proving that no discrimination occurred once the employee establishes facts which make it probable that the actions of the employer constituted discrimination in employment (Labour Laws, FBiH – Article 12.3 and RS 25.2).

The Labour Laws of both FBiH and RS 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 acknowledges that a right has been violated. Where the 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 and employed persons cannot be discriminated against on the basis of 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.

44 Petrić, N. *Presentation of the Directive on the reconciliation of professional and private life - Directive (EU) 2019/1158*, Helsinki Citizens' Assembly Banja Luka, 2020, Available in BHS languages at: <http://hcabl.org/wp-content/uploads/2020/08/Direktiva.pdf>.

At the cantonal level, Canton Sarajevo⁴⁵ and Canton 10⁴⁶ 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 of discrimination. Both laws should be aligned with the federal Labour Law.

The **Law on Volunteering FBiH**⁴⁷ and **Law on Volunteering RS**⁴⁸ prohibit discrimination (Article 8 FBiH; Article 12.1 RS) against volunteers. The organisers of volunteering are obliged to treat volunteers in accordance with the principle of equal opportunities for all persons, regardless of their gender, sex, sexual orientation, marital status and/or family obligations.

Box 3. Entity Laws; Laws of Brčko District

In Republika Srpska, at the end of September 2021, the **Law on Protection from Harassment at Labour**⁴⁹ was adopted. This law regulates protection against harassment at work and in connection with work, the procedure for exercising the right to protection against harassment at work and in connection with work and other issues of importance for protection against harassment at work and in connection with work (Article 1). Article 6 defines harassment as is any behaviour towards a worker, group of workers or employer, which may cause harm of a physical, mental or sexual nature.

Although it prohibits collecting and processing data on family or marital status and family planning (which is most often the case with women in employment), the Law itself defines harassment at work that can cause harm of a physical, mental and sexual nature but still fails to recognise specific forms of gender-based harassment and violence in the labour force.

Criminal Codes

Criminal codes at the entity level regulate criminal offenses against sexual freedom including rape, attempted rape, sexual harassment, sexual intercourse by abuse of position. In the FBiH, sexual harassment is not regulated by a single legal provision that would constitute an independent criminal offense. Criminal liability is provided by the RS Criminal Code - it prescribes sexual harassment as a criminal offense.

As for gender-based discrimination, the Criminal Code of FBiH⁵⁰ (Article 177) and the Criminal Code of BD⁵¹ (Article 174) include the criminal act known as '*Infringement of the Equality of Individuals and Citizens*'. The Criminal Code of RS⁵² 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.

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

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

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

48 "Official Gazette of Republika Srpska", No. 89/13.

49 "Official Gazette of Republika Srpska", No. 90/21.

50 "Official Gazette of Federation of BiH", 36/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017).

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

52 "Official Gazette of Republika Srpska", No. 64/17, 104/2018, 15/2021.

Criminal codes contain penal provisions for violations 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 people with disabilities 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 FBiH the sentence is a fine or imprisonment up to one year; in RS it is a fine or imprisonment up to three years. In RS, as mentioned above, the Criminal Code prescribes a criminal offense in cases of termination of an employment relationship due to pregnancy, 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.

In February 2021, the draft Law on Amendments to the Criminal Code of RS was adopted, which increased the statute of limitations for criminal prosecution, the statute of limitations for the execution of sentences, and increased the minimum prison sentences for certain crimes. However, there were no changes that are relevant for the analysis of this report. 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.

Laws on Job Placement and Social Security of the Unemployed

The Law on Job Placement and Social Security of the Unemployed FBiH⁵³ and the Law on Intercession in Employment and Rights During Unemployment RS⁵⁴ 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 prohibits gender-based discrimination in various aspects of access to employment (Article 5). The possibility of utilising 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, as of 2021, no nationwide strategies on these topics have been adopted.

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.⁵⁵

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

54 "Official Gazette of Republika Srpska", No. 30/10, 102/12.

55 Agency for Gender Equality of BiH, *Gender Action Plan of Bosnia and Herzegovina for the period 2018 to 2022.*, p.21.

During 2020, **local gender action plans** for the period 2019-2021/2 were adopted in several cantons or municipalities. For example, the Sarajevo Canton Gender Action Plan⁵⁶ defines access to the labour market as a priority area and envisages measures to reduce the gap between women and men in the labour market, such as: introducing zero tolerance for harassment and sexual harassment; equal opportunities for women and men in all recruitment announced by the Cantonal institutions; promoting the use of parental leave by fathers; and developing entrepreneurship for the underrepresented sex.

The **Strategy for Employment in BiH from 2010 to 2014** had a section entitled 'Gender Dimensions', which identified gender differences in employment levels, significant gender differences in sectors of employment and a gap in benefits and measures to improve the employment of men and women. Regarding employment policy, there is still no countrywide employment strategy in place. On the entity level, RS had a **Strategy for Employment of RS 2016-2020**; its measures included women among the most vulnerable groups. FBiH has not yet adopted any strategy on employment.

In 2020, the Council of Ministers adopted a "Plan on Guidelines for Labour Market Policies and Active Employment Measures in Bosnia and Herzegovina for 2020".⁵⁷ The document presented the guidelines of labour market policies and active employment measures planned by the competent state and entity institutions. Measures for FBiH included the principle of equal access to the labour market; promotion of gender equality; harmonize the field of labour and employment with the framework of the strategic documents; and adopt principles of gender responsive budgeting. The target groups were, among others: women; young people; victims of violence; Roma women; people older than 40; and people with different abilities.

Box 4. Non-Legislative Measures

According to the *Report on the implementation of the Gender Action Plan of Bosnia and Herzegovina 2018 - 2022*⁵⁸ new strategies were published. These strategies were made to function at entity level in 2019:

- The Government of FBiH adopted the Action Plan for the Development of Small and Medium Enterprises in FBiH for the period 2019-2020, where one of the strategic goals was to encourage entrepreneurship of target groups, with a priority for women and youth.
- In RS, the Strategy for the Development of Women's Entrepreneurship in the Republika Srpska for 2019-2023⁵⁹ has been developed. Among the expected outcomes of the strategy are: improved access to finance for women entrepreneurs; increased use of capital funds; increased innovation; support for women entrepreneurs at the local level; stronger existing women's associations and support for the formation of new associations; and the establishment of an e-platform for women entrepreneurs.

56 Available at: <https://www.gcfbih.gov.ba/vlada-kantona-sarajevo-usvojila-gender-akcioni-plan-kantona-sarajevo-2019-2021/>.

57 "Official Gazette of BiH", No. 80/20.

58 Agency for Gender Equality of BiH, *Report on the implementation of the Gender Action Plan of Bosnia and Herzegovina 2018 – 2022* (reporting period: November 2018 - September 2019), Available in BHS languages at: <https://arsbih.gov.ba/wp-content/uploads/2020/07/Izvestaj-GAP-2018-19.pdf>.

59 Government of Republika Srpska, *Strategy for the Development of Women's Entrepreneurship in the Republika Srpska for 2019-2023*, 2019. Available in BHS languages at: <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpp/stratdok/Documents/Strategija%20razvoja%20preduzetnistva%20zena%20Republike%20Srpske%20za%20period%202019-2023.pdf>.

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.

In accordance with Article 22 of the Law on Gender Equality of Bosnia and Herzegovina, 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, ARS BiH 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 **Centre for Gender Equality – Gender Centre** of RS, the **Gender Centre 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 organisations in accordance with domestic laws and international conventions and agreements ratified by BiH. These institutions also receive complaints, including for GBD.

Competences arising from the Law on Prohibition of Discrimination are exercised by the Human Rights Department of the Ministry of human rights. The ministry does not have a specialized anti-discrimination department.

GBD's institutional mechanisms are also Ombudsmen and labour inspectorates. The central institution responsible for protection against discrimination is the Institution of the Human Rights Ombudsman of Bosnia and Herzegovina. Labour inspections monitor the application of labour regulations. Includes federal or cantonal labour inspectors in the FBiH and labour and administrative inspectors in the RS. More about the competencies and functioning of these mechanisms in practice is elaborated in the section Institutional responses to discrimination.

Response to the COVID-19 Pandemic

BiH took legal measures to respond to COVID-19. In accordance with the organisation of competencies within BiH, the entities and the BD BiH declared an emergency state, and passed measures, orders, and other acts in order to reduce the number of infected. This entitled executive authorities to pass normative acts without submitting them to the respective assemblies for approval.

Most measures were ad hoc. Prohibition of public gatherings, closing of schools, suspension of public city transport and enhanced border control were some of the first measures adopted. The measures that followed became stricter over time.⁶⁰ An analysis of protective measures found that they were almost completely gender neutral. Principles of proportionality and constitutionality were missing, while many measures have had a disproportionately negative effect on vulnerable groups. Additionally, in some cases, the laws, decrees, and actions taken in response to the pandemic violated human rights. Some did not take the needs of women, minorities, and vulnerable people into account.

For example, women in marginalised groups (Roma, single parents, LGBTQI+, with disabilities, survivors of sexual violence, war torture, and gender-based violence) faced worsened conditions during COVID-19.⁶¹

60 OSCE Mission to Bosnia and Herzegovina, *Human rights in COVID 19 era. Detected deficiencies in exercising human rights in Bosnia and Herzegovina, Banja Luka-Sarajevo, 2020, p.7*. Available in BHS languages at: <https://www.osce.org/files/f/documents/3/2/470670.pdf>.

61 The Initiative for Monitoring the European Integration of Bosnia and Herzegovina. Human rights papers 60. Alternative report on the application of Bosnia and Herzegovina for membership in the European Union 2019-2020: Political criteria, Sarajevo, 2021. Available in BHS languages at: https://eu-monitoring.ba/site/wp-content/uploads/2021/07/HRP_inicijativa_bhs_web_1207.pdf.

Additionally, service providers (e.g., commerce shops) or low-profit industry sectors (textiles, leather, footwear) and trade, where women comprise the majority of the workforce, did not have sufficient protective equipment. Therefore, women were particularly endangered both as workers and as breadwinners.⁶²

Moreover, the lack of adequate gender representation inside the bodies that were responsible for devising the emergency response contributed to the lack of a gender-responsive or transformative approach.

Numerous CSOs, experts and media reports dealt with this topic in different ways, while more concrete analysis was presented in two following studies on impact and consequences of the pandemic.

The COVID-19 Pandemic - A Gender Perspective⁶³ analyses the ways in which the current pandemic contributes to the deepening of gender inequality in the field of, among others, productive and reproductive work. A complete or partial suspension or cessation of economic activity has led to an increase in unemployment. The suspension of work particularly affected the services sector (tourism, hospitality, catering), and small and medium-sized enterprises (hairdressers, beauty salons, etc.) in which women make up the majority of employees. Forecasts have suggested that women will be more affected by job losses and rising unemployment in the future.

Women are more dominant in exempt activities, such as grocery stores and bakeries, which has increased their risk of contracting the coronavirus, partly due to direct contact with clients and an inability to maintain the prescribed social distance, and partly due to inadequate protection measures (insufficient supply of protective masks, gloves and disinfectants). Fearing that they will lose their jobs, these women have not been able to afford not to come to work or take sick leave, so they have continued to work in conditions that put them at increased risk of infection.

The Organisation for Security and Co-operation in European (OSCE) Mission to Bosnia and Herzegovina published a report entitled *Responses to COVID 19 pandemic – Human Rights and Gender Analysis*⁶⁴, examining whether gender and human rights were sufficiently taken into account in the development of the crisis response. It looked into the negative consequences of certain measures on vulnerable communities. One of the analyses sections was economic hardship where findings have shown that additional household burden was a significant factor in exhaustion or stress. Also, the governments in both entities missed an opportunity to address childcare, particularly for vulnerable groups of women, such as essential workers in the health sector (e.g. nurses), and single mothers who were left with no alternatives.⁶⁵

Conclusion

In conclusion, the national legal and policy framework related to gender-based discrimination and labour in BiH is fairly in line with relevant international standards and in accordance with EU law. Even though sex is highlighted as one of the prohibited grounds for discrimination within the Constitution of BiH, the Constitution does not include any specific provisions on gender discrimination in labour relations. However, various additional laws at the state level include specific provisions on gender discrimination in labour; the Law on

62 Interviews BN001, BLA021, BU024.

63 Sarajevo Open Centre, Friedrich Ebert Stiftung, *Third feminist forum: The COVID-19 Pandemic-A Gender Perspective*, 2020, Available in BHS languages at: . https://bosnia-and-herzegovina.fes.de/fileadmin/user_upload/documents/FEF_2020_F_rodna_perspektiva_covid-19_Preporuke_FINAL.pdf .

64 OSCE Mission to Bosnia and Herzegovina, *Responses to COVID 19 pandemic - Human Rights and Gender Analysis*, 2020. Available in BHS languages at: <https://www.osce.org/files/f/documents/0/e/470655.pdf>. <https://www.osce.org/files/f/documents/0/e/470655.pdf>.

65 Ibid.

Prohibition of Discrimination prohibits GBD in a general manner, while the Law on Gender Equality specifically identifies all kinds of discrimination that are prohibited in working relations.

BiH prohibits every type of discrimination related to labour and employment according to existing labour regulations (Law on Labour of FBiH, the Law on Labour of RS, and the Law on Labour of BD) and collective agreements. However, in general, implementation of the labour laws remains inadequate, especially when it comes to social dialogue, protection for workers and the enforcement of labour inspection to respond on GBD complaints.

On the other hand, limited progress was achieved when it comes to adoption of legislation on labour laws. More specifically, in order to fully meet EU standards in this area, the legal framework still requires further improvement, especially when it comes to the protection against discrimination of workers, including gender-based discrimination in hiring, promotion and in contracts and pay.

Similarly, maternity benefits must be uniform throughout the country while legislation on maternity, paternity and parental leave must be harmonise with Directive on work-life balance for parents (2019/1158). Additionally, labour legislation should provide adequate provisions on non-transferable and compensated paternity and parental leave (for fathers as well as equivalent second parents).

In order to ensure equal opportunities regardless of gender, collective agreements must be harmonised with the provisions of the Gender Equality Law as well.

Database on Cases of Discrimination in Bosnia and Herzegovina was still not established despite the legal obligation on the MHRR to establish a central database on discrimination. Therefore, there is no consolidated data on victims of gender-based discrimination in one place.

The COVID-19 pandemic further highlighted the unequal position of women in the labour market, and mainly protective measures were gender neutral. Additionally, in some cases, the laws, decrees, and actions taken in response to the pandemic particularly affected marginalized groups of women such as women with disabilities or Roma women.

AWARENESS AND ATTITUDES TOWARDS GENDER-BASED DISCRIMINATION

This chapter examines people's awareness and attitudes towards gender-based discrimination in relation to labour, and reasons behind (not) reporting such discrimination to relevant protection mechanism. Findings in this and the following chapter draw from online surveys and in-depth interviews conducted in 2018 and 2021. As survey participants were self-selected it enabled access to persons who have experienced gender-based discrimination, may experience some form of discrimination or violation of other labour rights in relation to gender. Therefore, in-depth interviews with victims of gender-based discrimination and other relevant mechanisms for protection were conducted aiming to get more detailed information on reasons for (not) reporting potential cases, and moreover on institutional response to address such cases. Additionally, any increases or decreases in awareness since 2018 do not necessarily reflect changes in knowledge or experiences within the overall population.

In both 2018 and 2021 men have remained underrepresented among survey participants (19% of men in 2018 and 16% in 2021). In addition to the non-probability sampling used, men's minimal participation in the survey further limits comparisons between women and men's knowledge and experiences. Survey responses are disaggregated by gender, and potential relationships between gender and knowledge or experience are discussed, but these differences are not necessarily generalisable to the general population.

Besides, readers should consider that in both surveys' women and men with higher levels of educational attainment, full-time employment, and from urban areas are over-represented. Persons from minority ethnic groups are under-represented. Small sample sizes restricted further analysis of relationships between gender, socio-demographic differences, and knowledge or experience, but educational background was mainly highlighted in in-depth interviews quotes to highlight that gender-based discrimination occurs with highly educated women as well. Annex 1 contains further information regarding the social and demographic distributions of the two survey samples.

Despite the aforementioned limitations, findings do shed light on people's awareness and attitudes towards gender-based discrimination in relation to employment and labour in Bosnia and Herzegovina, meaningful qualitative indications of its continued existence.

Awareness

Gender-based discrimination often begins in childhood, when a girl is far more likely than a boy to be denied her rights, kept from school, forced to marry and subjected to violence - her voice undervalued, if heard at all.⁶⁶ Therefore, it is unsurprising that in societies in transition, such as BiH, discrimination often takes root and continues to follow girls and women later in their lives, access to training and careers. Research findings in 2021 indicated that women workers in BiH still are unaware of the existing legislative framework pertaining to gender-based discrimination,⁶⁷ and most importantly, they did not recognise gender-based discrimination as a concept.⁶⁸ However, survey participants did express that

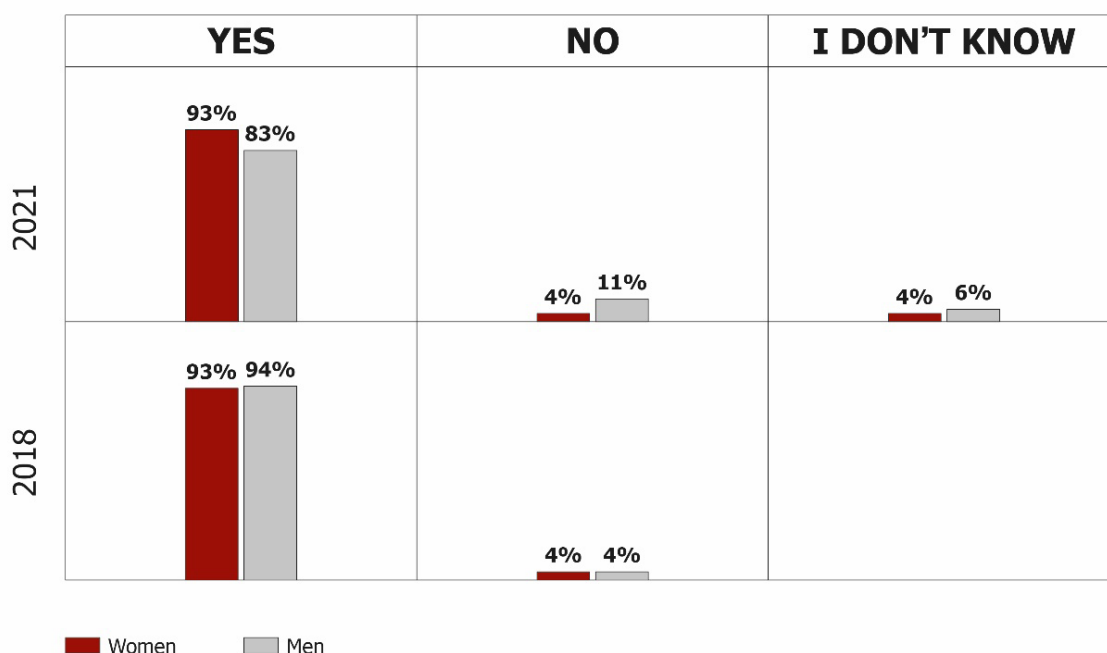
66 See: <https://www.savethechildren.org/us/charity-stories/how-gender-discrimination-impacts-boys-and-girls>.

67 Interviews BN001, BV002, BN009, BA026, BML028, BU035.

68 Interviews BN009, BML028, BU035, BCC037.

gender-based discrimination is not allowed. For instance, 93% of women and 83 % of men believed that gender-based discrimination is illegal in BiH. Therefore, a major challenge is recognising GBD in relation to discrimination or violations of labour rights,⁶⁹ which has contributed to insufficient awareness regarding to whom and how to report violations of rights in the workplace.

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



Some people who have experienced gender-based discrimination have sought help from their union representatives. According to these union representatives, people hesitate to report gender-based discrimination because they fear they might get fired; further victimisation; as well as being judged by their environment. One union representative said "even if the discrimination occurred, women usually do not admit they suffered from it and sometimes they say it happened because of their age and so on".⁷⁰ Another representative mentioned that victims lack strength to report the gender-based discrimination: "... those persons are very introverted and have no courage and strength to open up to us completely; this is one of the biggest problems."⁷¹

When asked where they could report gender-based discrimination, towards measuring their awareness of responsible institutions, the most online survey respondents mentioned the Labour Inspectorate (51% of women, 49% of men). The second most identified institution was the Ombudsperson Institution (39% of women and 39% of men). Employers were the third most identified actor by respondents (31% of women and 29% of men). A comparatively smaller percentage of respondents mentioned the police

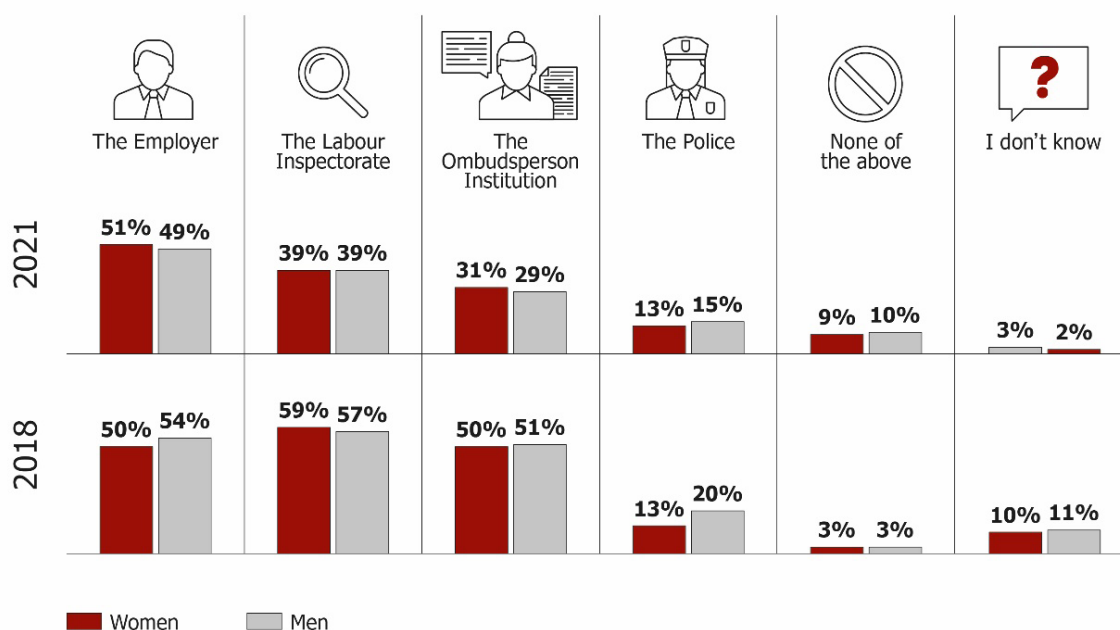
69 Interviews BL043, BU049, BU050.

70 Interview U024.

71 Interview U025.

(13% of women and 15% of men). Concerningly, every one in ten respondents (9% of women and 10% of men) did not know where to report gender-based discrimination if it occurs.

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



Compared to 2018, 55% of men and 50% of women survey respondents identified employers as a second institution for reporting. Most mentioned the Labour Inspectorate (57 % of man and 59 % of women).

This suggests there is distrust in the functionality of internal mechanisms and procedures. Similarly, knowledge in the Ombudsperson is also limited compared to a 2018 analysis which reported that a bit more than a half of all survey respondents would show confidence and turn to this institution if labour rights are violated.

Several efforts were made in the past three years to raise awareness and educate the public, especially by civil society organisations (CSOs).⁷² Nevertheless, free legal aid representatives, lawyers, CSOs, judges, the Ombudsman and gender mechanisms who took part in interviews all expressed concerns that women's awareness about gender-based discrimination in labour has remained low, further validating the online survey findings.

Attitudes

Patriarchal and deeply divided BiH society still prevents women from having their fundamental rights guaranteed by international mechanisms and internal laws. A recurring sentence has been: "It is normal for your boss to yell at you...why are you complaining?"⁷³

⁷² Interviews BN001, BN003, BN008, BN017, BN036.

⁷³ Interview BV013.

Another recurrent theme was that “women are somehow easier prey than men”⁷⁴ because of their position within patriarchally structured families, greater care responsibilities, and household duties, which ultimately make women more vulnerable than men.

According to CSO representatives, there have been enough opportunities in the public sphere for people to discuss gender-based discrimination and rights violations in the labour force. They stated that gender-based discrimination has existed in online discussions as well; this has been accompanied by an increase in hate speech and gender-based discrimination online.⁷⁵ Moreover, there is a general distrust and intolerance towards women who share their experiences of gender-based discrimination.⁷⁶

It is of importance to have legislation that regulates this ⁷⁷ such is sanctioning insulting comments, any hate speech and incitement to violence through criminal law. Thus, the proposal to amend the Criminal Code of BiH⁷⁸ prescribes, among other things, a fine or up to three years for all those who publicly call, provoke or provoke incitement ... contents that call for violence or are hatred directed towards an individual or a group of people because of their gender, sexual orientation, gender identity, etc. The annual report of the Ombudsman from 2018 also states that the number of complaints they received during that year, relating to online gender-based harassment, had increased.⁷⁹



Overall, the position of women in labour is very inconvenient (from issues such as care for children

when there is not enough space in kindergartens; when we have no adequately regulated maternity leave, especially in the Federation of BiH and its cantons; but also in general; for example, if the compensation for the employer is refunded from the funds of the entity government, the owner of the business who waits for this compensation will find a way to avoid it because he/she does not want to invest his/her money into something that is uncertain and that he/she has to wait for). And therefore, one step at a time, we create an environment where you [women] are, at the end, completely disabled at every term.

- Jasminka Džumhur, The Institution of Human Rights Ombudsman of BiH

Reporting

Reporting is perhaps the most important link in combating gender-based discrimination at work because if cases are not reported, then they cannot be treated and receive justice. Therefore, this research sought to understand linkages between awareness and reporting.

Though there is a distinct improvement, since certain topics are more present in the public, such as sexual harassment in a public space⁸⁰, people still have no trust in institutions. This, in turn, is an additional obstacle for reporting gender-based discrimination.

⁷⁴ Interview BCC045.

⁷⁵ Interviews BN001, BN003, BN009, BN022.

⁷⁶ Interview BN022.

⁷⁷ Ibid.

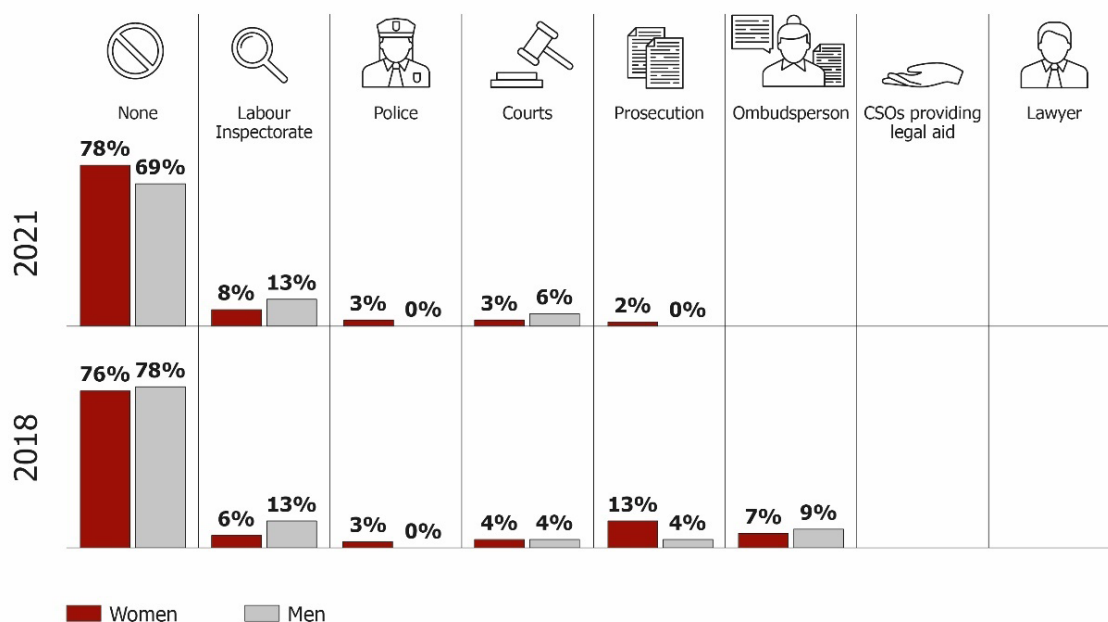
⁷⁸ Adopted in the first reading at the session of the House of Representatives of the BiH Parliament on June 15, 2021.

⁷⁹ The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *Annual report on the results of the activities of institutions of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina for 2018*, Banja Luka, 2019, Available in BHS languages at: https://www.ombudsmen.gov.ba/documents/obudsmen_doc2019030109434379bos.pdf.

⁸⁰ The avalanche of testimonies for sexual abuse at universities in BiH through the Facebook group #nisamtrazila and media writing on this topic especially contributed to this.

According to the 2021 survey findings, 46% of women and 15% of men said that they have experienced gender-based discrimination at work. However, from the people who experienced gender-based discrimination, 78% of women and 69% of men did not report it to a competent institution. Further, 8% of women and 13% of men contacted the Labour Inspectorate; and 8% of women and 19% of men contacted the Ombudsman. Only seven women initiated a court action related to discrimination at work.

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



Long-lasting court proceedings, sometimes lasting up to five years, and the lack of internal mechanisms⁸¹ make it even more difficult to report such cases.⁸²

In general, statistics on the number of judgments in favour of workers has not supported or encouraged others to report cases of GBD at work. The public may have the impression that if cases are not reported, they do not exist.⁸³ This may deter other persons from reporting cases. Victims thus remain invisible, and their cases are only documented in the reports of CSOs and relevant bodies.⁸⁴ "People would rather endure than report".⁸⁵



I have lost trust in institutions. Many times, I wanted to turn to someone at the federal level (FBiH) because at the cantonal level I obviously could not have done anything, and then I told myself: 'You have no money for that, you have no connections, your father can be fired,' and then I gave up.

- Woman, 29 years, Orašje

81 For instance, 52 institutions from the level of BiH have adopted Decisions on Zero Tolerance Policy and appointed advisors for the prevention of sexual harassment and gender-based harassment. Training for 30 appointed counsellors on recognising sexual harassment and their role as counselors was organised by the BiH Agency for Gender Equality in December 2020. In addition to state-level institutions, sexual harassment prevention counselors were also appointed in judicial institutions in BiH and in a number of higher education institutions in BiH.

82 Interview BO034.

83 Interview BL043.

84 Interviews BU035, BLA031.

85 Interviews BCC045, BU049.

Additionally, according to women respondents, women who suffered GBD at the workplace often “only have moral support from their colleagues”,⁸⁶ which further discourages them from reporting violence.

Another survey conducted in 2021 by the institute for Youth “KULT” indicated that 40.3% of the respondents were only partially aware of the procedures that can be initiated against companies when their rights are violated. Moreover, approximately a third of the participants answered that they are not familiar with such procedures at all.⁸⁷

Different ideas exist as to why persons who have suffered gender-based discrimination have not initiated court proceedings. A recurring theme among respondents that they do not trust the judiciary.⁸⁸ “I did not trust judiciary institutions because my boss has already been charged due to abuse of power and nothing happened”⁸⁹, and “institutions do not work in favour of the parties or workers, but for institutions themselves because they belong to the state”.⁹⁰ These were merely a fraction of the statements made by interview respondents in which they recurrently voiced distrust in institutions, which, they said, hindered them from reporting gender-based discrimination.”

According to one judge, gender-based discrimination cases have involved “complex proceedings”.⁹¹ More often than not, victims are in a difficult financial situation, the judge said; they usually lack resources to engage lawyers and eventually pay the legal fees.⁹² Potential court costs in labour or discrimination disputes were a recurrently mentioned issue among respondents as well.⁹³ Additionally, the lack of court practice and the small number of final court decisions based on gender-based discrimination have been added factors, demotivating respondents from reporting cases.⁹⁴

The Office of the Ombudsman of BiH, which is competent to act in lawsuits involving discrimination, said that “more frequent reporting to courts would increase the number of verdicts and thus deter potential perpetrators from further discrimination”.⁹⁵ Although procedures for reporting cases to the Ombudsman are essentially free of charge, and can be anonymous, research results suggested that gender-based discrimination victims distrust this institution, as well. Interview respondents similarly perceived it as “political”,⁹⁶ and one judge who participated in an in-depth interview characterised their decisions as “unimportant”.⁹⁷ This could make it more difficult to report such cases to this Institution, thought the institution itself in order to raise awareness and opportunities for protection in 2016 developed Procedure and Guidelines for Filing a Complaint in Discrimination Cases (fusnota 98), and the procedure may also be conducted anonymously, respecting the interests of the complainants at every stage of the proceedings.⁹⁸ This could hinder reporting of cases to this institution as well.

When it comes to labour inspectors many respondents expressed distrust in the work and engagement of the labour inspections:

86 Interviews BV007, BV018, BV012, BV023.

87 Šljivo, S., *Analysis of the results obtained by researching the opinions of citizens about respect for human rights in the economic sector*, Sarajevo, 2021, p. 21, Available in BHS languages at: <https://mladi.org/v2/phocadownload/Analiza%20o%20stavovima%20gradjana.pdf>.

88 Of 50 in-depth interviews conducted, 36 respondents who had suffered discrimination pointed to distrust in the institute of justice and slow treatment of court cases (which can last up to five years) as the main reason for unreported cases. See also, OSCE, *Assessment of the Work of Bosnia and Herzegovina Institutions in Combating Discrimination 2019*. Available in English and BHS languages at: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/414674>.

89 Interview BV004.

90 Interview BV017.

91 Interview BCC037.

92 Ibid.

93 Interviews BN003, BLA021, BLA031, BA026.

94 Interviews BO034, BN039, BL043, BCC027, BCC037.

95 Interview BO034.

96 Interviews BV015, BV007.

97 Interview BCC027.

98 Guidelines are available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101709461593eng.pdf.

"All inspections visit them (employer, op.a.) but they always somehow find the way out ... sometimes it all [inspections] goes without problems, and sometimes they pay a penalty, and everything goes smoothly afterwards".⁹⁹

"We would report her (the head of the company, op.a.) if we knew that the inspection would come [and] that all will not end with 'a warning' and some financial penalty ... or that all will be just an ordinary visit, where the labour inspector and employer will solve the problem while drinking coffee somewhere, which is common practice."¹⁰⁰

Mistrust in labour inspection institutions was a similar recurring theme among respondents.¹⁰¹ Interview respondents said that labour inspectors have refused to work on reports related to GBD in labour. They also have shown close relations with employers, respondents said, which has discouraged workers from reporting this type of discrimination.

Another recurring theme among respondents was that women often encounter threats and blackmail if they report the case to the responsible inspector or court. For example, an interview respondents said: "There was a situation where the company manager called me in his office and told me that he knew that I filed the lawsuit against him, and that I should withdraw [the lawsuit] if I wanted to keep my job".¹⁰²

Besides distrust in institutions, another recurring theme voiced by interview respondents was fear of losing their job.¹⁰³ The Union of Civil Servants and Employees in State Bodies also emphasised that GBD occurs even after completing proceedings; respondents there observed that the question remains: when the worker returns to his/her workplace, "How will this person be treated after all [the proceedings] and what will be his/her position if the employer is not adequately punished".¹⁰⁴ Despite its illegality, the risk of further victimisation, including potential job loss, likely serves as a strong deterrent, which prevents people from reporting gender-based discrimination.

Conclusion

In general, most women and men appear to be aware that gender discrimination is illegal in BiH. While the majority of respondents in 2018 believed that such discrimination should be reported to the labour inspectorate, then in the Ombudsman institution and the employer, in 2021 there is a decline in trust in the Ombudsman institution and internal protection mechanisms by the employer.

This research suggests existing lack of knowledge on how to report gender-based discrimination at work, and the existence of gender prejudice and low awareness among judicial institutions¹⁰⁵ when it comes to gender discrimination, which makes it very difficult to conduct proceedings and prosecute perpetrators. Lack of case law and lengthy litigations further discourage employees from reporting GBD, while other persisting factors may include concerns over anonymity, fear of job loss, long bureaucratic procedures and difficulties documenting cases.

99 Interview BV013.

100 Interview BV019.

101 Interviews N001, BV002, BN003, BV013, BV014, BV015, BV019, BLA021.

102 Interview BV006.

103 Interviews BV019, BA026, BLA028, BLI033.

104 Interview BU025.

105 Interviews BCC045, BCC046.

PREVALENCE AND EXPERIENCES WITH GENDER-BASED DISCRIMINATION

This chapter questions legal competences and number of work-related gender-based discrimination cases that have been reported to relevant protection mechanisms. Besides in-depth interviews and the online survey, this research involved sending questionnaires and requests for access to information to relevant institutions, free legal aid providers, gender equality mechanisms, labour inspectors, CSOs and the Ombudsman for Human Rights of BiH. Initially, it presents general data related to the prevalence of gender-based discrimination in labour.

General Findings related to Gender-based Discrimination

Based on information from the **Federal Ministry of Internal Affairs**, from 2018 to 2020,¹⁰⁶ police had eight offenses reported that entailed abuse or harassment at work. Mean while, the Federal police administration had one reported case in 2020, when a man filed a report involving the criminal offense of harassment at work (Article 182, Abuse in the performance of the service, FBiH) FBiH are kept according to the number of reported criminal offenses and therefore gender-disaggregated data are not applicable.

The **Ministry of Internal Affairs of RS** provided data for 2018 to 2020,¹⁰⁷ which included 45 reported cases of sexual harassment (43 victims were women) and seven reported cases of sexual blackmail (all were women). These cases cannot necessarily be linked to violations of labour rights, as they involved criminal offenses against sexual integrity. Additionally, there were 14 reported cases of labour rights violations (40 victims were women as in 2018 four women reported violations, in 2019 five and in 2020, 31 women reported labour rights violations). No cases of violations of other labour rights were reported.

Requests for information also were sent to 52 **first-degree basic and municipal courts**, requesting data for the period of 2018 to 2020. In total, 41 (79%) delivered data on cases of gender-based discrimination in labour and employment, including 24 municipal courts from the territory of the Federation of BiH and 18 basic courts from the territory of Republika Srpska.

In general, courts do not keep records of cases of discrimination on the grounds of sex and gender. The existing method of recording cases in the Automatic Case Management in Courts database (CMS database) only allows the recording of cases based on the relevant legal article. Given this, and that some courts provided data on cases of discrimination in general and others on cases of discrimination in the field of labour and employment, it is very difficult to determine the exact number of completed and current cases before the courts in BiH concerning gender-based discrimination in labour and employment. Therefore, data has remained unavailable regarding the grounds according to which discrimination was committed in employment, as well as the gender of the perpetrator.

Only one court, the Municipal Court in Mostar, reported the existence of gender-based discrimination cases. These are cases involving a lack of implementing appropriate measures, effective mechanisms of protection against gender-based discrimination, mobbing and sexual harassment. The Municipal Court in Sarajevo had the most cases of discrimination in the field

106 Letter from the Federal police administration office, October 4, 2021.

107 Letter from the Ministry of Internal Relations of RS, October 11, 2021.

of employment, labour and employment applications during this period. In total, 124 cases (some still ongoing) were reported: 23 cases related to employment, profession and self-employment access; 34 cases related to working conditions; 47 cases related to benefits; 11 cases related to promotion; and 9 cases related to losing a job under certain conditions. Cases were not classified based on gender or grounds for discrimination, so it was not possible to know the number of gender-based discrimination cases, if any existed.

Statistics from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC of BiH) on existing GBD cases at higher instances showed that 56% of all cases in second instance courts were still in process, while some cases were more than two years old. Mobbing is the most common form of discrimination treated by courts; 30% of all completed court cases dealt with mobbing.

The Institution of the Ombudsman for Human Rights of BiH also provides the opportunity for anonymous and direct reporting from legal and civil parties and can take ex officio actions to address cases. It also can address cases related to dysfunction or violations of human rights committed by any institution of BiH, its entities and Brčko District. According to the Ombudsman's annual reports from 2018 to 2020, this Institution received 667 "discrimination" cases and published 107 related recommendations. There was a visible increase in the number of complaints received in 2020 (275) compared to 2019 (196). Additionally, it had 847 cases involving right's violations in "labour relations".

According to the Ombudsman for Human Rights, Jasminka Džumhur,¹⁰⁸ the three most common forms of GBD are related to:

- *Ensuring equal salaries for women and men.*
- *"Achieving other rights in labour relations, such as day leave, holiday leave, etc. presents specific challenges "especially for women who are the dominant working force in the service industry."¹⁰⁹*
- *Violence against women exists in labour relations, especially related to sexual harassment, mobbing and the related law concerning deadlines for lawsuit.¹¹⁰*

Although the Institution of the Ombudsman does not officially classify its data based on gender, according to data collected in interviews with representatives of the Ombudsman, they had 147 reports related to mobbing during this period.¹¹¹ This marked a significant increase in



When it comes to reporting, it is important what kind of message is sent from the court, through the verdict.

It is important to properly understand and interpret the law, to properly assess all the facts, when it comes to labour disputes. For example, related to mobbing, it is important to properly assess the facts and apply the law, so that the decision that leaves the court has a message for citizens ... the task of the court is for judges to be responsible and professional in their work".

- Adisa Zahiragić, Judge, Sarajevo Cantonal Court

¹⁰⁸ Interview BO030.

¹⁰⁹ Ibid.

¹¹⁰ Deadlines for filing lawsuits according to Law on Prohibition of Discrimination, including mobbing as special form of discrimination, are longer in comparison to deadlines in accordance with the Law on Labour.

¹¹¹ This included 60 cases in 2018, 52 cases in 2019 and 35 cases in 2020.

reporting compared to the 2010-2018 period, during which 422 cases were reported. The Institution also had two cases of sexual harassment and nine cases of harassment.¹¹² A more detailed analysis is presented in the chapter on the institutional response to gender-based discrimination.

The Civil Service Agency of BiH, in accordance with its jurisdiction, provides statements regarding complaints of candidates to application procedures and complaints to nominating, appointing and dismissal of state officials. In 2018-2020, it received five complaints/requests¹¹³ regarding rights related to labour relations, which were filed on dismissal decisions. During this same period, the Agency initiated a disciplinary procedure against a man regarding breach of

official duty and also Article 54, paragraph (2) of the Law on Civil Service in Institutions of BiH (discrimination, violence based on gender and sexual orientation, gender-based harassment and sexual harassment, as well as any other type of discrimination in accordance with the law). In this same case, a second-degree procedure was conducted before the State Appeals Service Board based on the solution from the disciplinary procedure. The individual was charged with breach of official duty and was given a preventive suspension from work. The State Appeals Service Board emphasised that in the period from January 2018 to December 2020 there were no procedures initiated related to gender-based discrimination and labour as the primary ground of appeal. In some cases, appellants determined the possibility of gender-based discrimination and mobbing, but did not state this as the main reason for the complaint.¹¹⁴

The **Labour Inspectorate** has been proclaimed incompetent¹¹⁵ in providing protection in cases of discrimination related to employment or labour. It has tended to forward such reports or refer appellants to courts, so the inspectorate does not have registered cases in this field. Based on the data from Zenica-Doboj Canton and Cantonal Administration for Inspection Issues, they received 802 requests for protection of rights in the field of labour relations. However, the data were not classified based on gender because the Inspection does not have such a practice. Therefore, no assessment related to gender was possible.

Labour Unions regularly record the number of reported cases. They tend to forward those that cannot be solved by mediation, which is usually the first step,¹¹⁶ to legal services or paralegal service for further procedures. According to the Commerce Trade and Services Trade Union of BiH,¹¹⁷ where most employees are women, in 2018-2020 para-legal assistance



If two persons of different genders in the same working positions were paid equally, often it does not mean that men and women receive equal salaries. Usually, men hold more positions in fields with higher salaries. In addition, they tend to occupy management roles. Considering these contextual factors, women in BiH are paid less than men."

- Jasminka Džumhur, Ombudsman for Human Rights

112 Interview BO034.

113 Letter No. 03-50-7-1/21 from 31/3/2021.

114 Letter No. 01-1-07-3-3/2-21 from 7/7/2021.

115 The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, *Special Report on the Role of Inspection Bodies in the Protection of Human Rights in Bosnia and Herzegovina*, 2020, p. 104. For example, acting in accordance with complaints filed with the Ombudsman, to protect labour rights and due to discrimination at work, the competent labour cantonal inspection (Cantonal Administration for Inspection Issues of Sarajevo Canton) proclaimed to be incompetent or dismissed the complaint of the appellant due to incompetence. The Ombudsman stated that it is incompetent for providing protection for individual worker's rights or that they need to seek protection of labour rights in court proceedings. However, in a similar legal situation, in another case, due to the protection of labour rights, the Cantonal Administration for Inspection Issues of Zenica-Doboj Canton conducted inspection control. Available in BHS languages at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020123109153761eng.pdf.

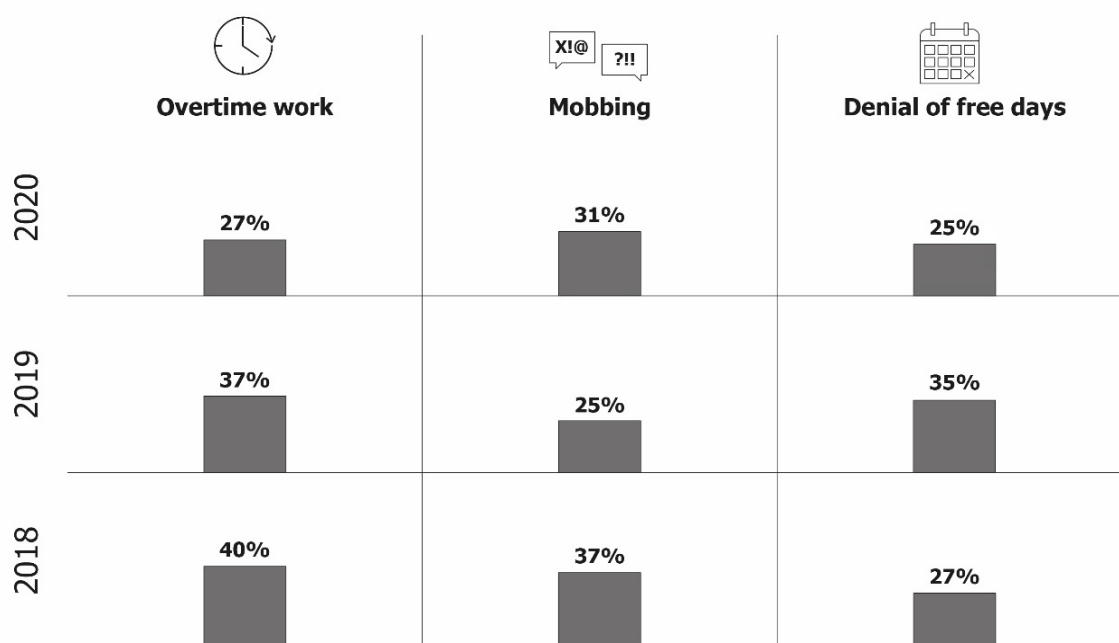
116 Interviews BU017, BU025.

117 More about this Union is available at: <http://stbih.ba/>.

had 1,059 requests (49.6% more requests in 2020 than in 2019), which they attributed to COVID-19. In 80% of all cases, the appellants were women.

In 2020, in 10 recorded cases, workers have reported some form of discrimination in addition to other violations of their rights (four cases related to discrimination based on age and six cases included other types of gender-based discrimination). Additionally, due to the coronavirus pandemic, the most commonly reported violation when resigning and lay-offs in 2020 was lack of severance pay. There also were reported cases of rights violations related to pregnancy and illegal salary reductions. Annually, 70% of all reported cases were resolved in favour of the workers, according to Unions.

Graph 4. Top three issues 2018-2020
Commerce Trade and Services Trade Union of BiH, april 2021



According to **the lawyers** interviewed, who had cases related to GBD, the most common examples of labour rights violations concerned rights to maternity leave and completion of the contract in case of pregnancy or maternity leave.¹¹⁸

The **Agency for Gender Equality of BiH** "has the ability to develop and process requests for violations of the provisions of the Law on gender equality that can be submitted electronically or in person".¹¹⁹ In 2018-2020, it had 18 reports of violations of the Law on Gender Equality, including nine were related to violations in the area of labour, employment and access to resources.¹²⁰ The Agency has an obligation to give a recommendation or opinion on case, which is not binding on the employer but is often accepted. "Every time we give an opinion, we note that statistics must be disaggregated by gender, that projects that are done must have gender-related indicators, that representation should be at least 40% in bodies, authorities, committees, and [that] developed policies must be gender sensitive," said Branislava Crnčević from the Agency for Gender Equality of BiH.

¹¹⁸ Interviews BL042, BL043.

¹¹⁹ Interview BA047.

¹²⁰ Email correspondence with the Agency from October 25, 2021.

At the end of 2019, the Agency issued a *Recommendation to employers and competent authorities regarding gender equality in hiring and labour relations*¹²¹ in which they called on the competent administrative authorities, with a special focus on inspections, law enforcement and the judiciary, to step up their efforts to protect employment rights for women, mothers and pregnant women, as well as to train staff to work on gender-based discrimination in hiring, during labour and in labour relations.

The Gender Centre of FBiH stated that in recent years they have witnessed a declining trend in the submission of requests for examining violations of the Law on Gender Equality of BiH in the field of labour and employment.¹²² From 2018-2020, there were only seven inquiries or cases referred to the FBiH Gender Centre.

The Association of Police Officers Network of BiH, which involves female officers from 16 police institutions, emphasised that they did not receive any reported cases of GBD in 2018-2020 but that this is not a relevant indicator of the situation in police structures of BiH. "By working with women, we received information that discrimination is very present but not reported," a representative said.¹²³ They noted the need for continuous education of female police officers. They also observed the need for more work with and education of the internal control department, which are usually the first instance that female workers approach in the police service when they learn that their rights have been violated.

The 2021 manual "Gender Equality in Police Structures of BiH in Bosnia and Herzegovina" stated that women are often placed in certain positions that are "more suitable" for women, meaning "office" jobs, which do not require night shifts, overtime engagement and alike, because, in this way, women are "protected". The manual thus implied that women in the police need additional "protection".¹²⁴ This new manual thus likely reinforced gender roles and norms, according to which women can face gender-based discrimination regarding their access to employment and promotion, rather than contributing transforming traditional gender norms.

Considering the data obtained from courts, the Ombudsman, Trade Unions, the Agency and other relevant actors, one can conclude that the data on GBD in labour relations are inaccurate. Cases in courts are not clearly classified by gender, so the data received does not help explain the extent to which gender-based discrimination is present or at least reported to relevant institutions. Moreover, prevalence cannot be assessed based only on the number of cases reported.

An examination of union complaints, reports and court cases suggests that mobbing is the most common form of gender-based discrimination, followed by sexual harassment and discrimination based on age. More details on specific cases and data are given in the chapter on the Institutional Response to Gender-Based Discrimination.



If two persons of different genders in the same working positions were paid equally, often it does not mean that men and women receive equal salaries. Usually, men hold more positions in fields with higher salaries. In addition, they tend to occupy management roles. Considering these contextual factors, women in BiH are paid less than men."

- Jasminka Džumhur, Ombudsman for Human Rights

121 Recommendation to employers and competent authorities regarding gender equality in work and employment. See: <https://arsbih.gov.ba/preporuka-poslodavcima-i-nadleznim-organima-u-vezi-ravnopravnosti-spolova-u-radu-i-zaposljavanju/>.

122 Interview BA041.

123 Interview BN017.

124 Jozić, K., *Manual 'Gender equality in policing structures in Bosnia and Herzegovina - training program'*, Association of Woman Police Officers Network, Sarajevo, 2021, Available in BHS languages at: <https://udruzenjemps.ba/assets/files/1RPdCN1ABb-css-umps-prirucnik-finalnopdf.pdf>.

Discrimination based on Specific Protected Grounds

Multiple discrimination involves any combination of different types of discrimination against persons based on gender, ethnicity, religion, belief, disability, age, sexual orientation, gender identity or other characteristics and discrimination against those who have or are found to have these characteristics.¹²⁵ Therefore, this section examines data and experiences of women who experiences age-based discriminations; persons with different abilities; lesbian, gay, bisexual, transgender, intersex, queer and differently identifying persons (LGBTIQ+); discrimination based on ethnicity, political affiliation and religion; and discrimination of women that are in social isolation.

Age

Generally, the survey and interviews suggested that all women are more likely than men to face discrimination at work, regardless of their age. According to participants' responses the most frequently reported form was actually age-based discrimination (43%). Age-based discrimination was most commonly reported in relation to hiring (44% of women and 42% of men).

Several middle-aged men and women reported facing discrimination related to promotion and salary. Age-based discrimination in promotion was reported by 12% of women and 18% of surveyed men. According to the Commerce and services trade union of BiH, women ages 30 to 40 years old tended to be more involved in the trade and catering sectors;¹²⁶ they often have face constant fear and challenges of being fired and frequently suffered mobbing at work because they are "easily replaced"¹²⁷, while women older than 50 years reportedly were often "put aside because they are not attractive".¹²⁸ Illustrative examples include:

Since the male colleague has a family, he was told that he could be late with his tasks and, on the other hand, while the colleague and I are much younger than others, and according to some patriarchal principles, and as we do not have a husband, we have time to work longer and more.¹²⁹

[I]t was understood that the new, younger woman would do all sorts of things like cleaning the office, going shopping, doing the dishes, even though I was employed there with a university degree.¹³⁰

In my experience as an experienced lawyer, up to the age of 45, women go to seminars, travel, advocate ... as they get older, they lean aside because they are not attractive. So, it is about attractiveness and not about knowledge and experience.¹³¹

To conclude, age-based discrimination seems to take different forms, depending on age. It mainly occurs during hiring processes, where younger women are more likely to receive questions about marriage and potential pregnancy. Meanwhile, middle-aged women are more likely to face discrimination in terms of promotion and pay, especially in the private sector. At the same time, women of the third age reportedly faced challenges related to their physical appearance and have been side-lined, regardless of their education.

125 Gender Equality Vocabulary, See: <http://hcabl.org/eige-ov-rjecnik-i-leksikon-rodne-ravnopravnosti-eiges-gender-equality-glossary-and-thesaurus/rjecnik-rodne-ravnopravnosti-lat/#1624198784345-6dc638a6-5c52>.

126 According to data from the commerce trade and services trade union of BiH, 37% of all workers in the field of trade and service activities are between 30 and 40 years old. Available at: <http://stbih.ba/>.

127 Interview BU035.

128 Interviews BA026, BU035, BCC046.

129 Interview with woman, age 29, Sarajevo, college degree.

130 Interview with woman, age 35, Banja Luka, college degree.

131 Interview BA026.

Gender-based Discrimination against Persons with Different Abilities

People with different abilities, especially women with disabilities, are a particularly marginalised group in BiH, suffering from multiple and intersectional discrimination; they also have a higher risk of being neglected by society.¹³² They often face additional obstacles that exacerbate gender inequalities, such as equal access to gynaecological institutions or education¹³³, which prevents them from participating fully in all aspects of life.

According to data from the Alternative Report on the Application of BiH for European Union Membership for 2019-2020: Political Criteria, in the period of 2018-2020 there was no significant progress in furthering the rights of women with disabilities in regards to access to sexual and reproductive health and starting a family. They faced many difficulties with architectural unavailability to health institutions, insufficient education of medical personnel as well as inadequate access to the gynaecological office and a lack of necessary support services.¹³⁴

Both the FBiH and Republika Srpska entity have adopted strategies for Improving the Rights and Position of Persons with Disabilities¹³⁵ and laws on vocational rehabilitation, training and employment of persons with disabilities,¹³⁶ where they place special emphasis on women with disabilities and anticipate improvements in the recruitment and employment process, self-employment and entrepreneurship of women with disabilities. However, employers still seemingly look at women with disabilities with compassion and mercy.¹³⁷

In the online survey sample from this research, 9% of the survey, participants considered themselves persons with disabilities. There is no exact data on the number of employed persons with disabilities in FBiH or agreement on how to collect these data. Based on a letter sent by the Federal Employment Agency, data should be collected by the Fund for Professional Rehabilitation and Employment¹³⁸ but the Fund claims it has no such information. Therefore, it is unsurprising that there is no accurate data on the income of persons with disabilities in relation to persons without disabilities either.

According to human right's activists, women with disabilities are usually employed under a contract of service and these labour relations are often not continuous,¹³⁹ so, it is very difficult to determine the exact number of employed women with disabilities.



Generally, women with disabilities are not given any chance for marriage and family life, and therefore practice shows why women with disabilities are not more exposed to interview questions related to pregnancy or marriage.

- Vera Zih Bošković, activist and a person with a disability

132 UN Women, *Country Gender Equality Profile of Bosnia and Herzegovina, Sarajevo 2021, Available in English and BHS languages*: https://eca.unwomen.org/en/digital-library/publications/2021/7/country-gender-equality-profile-bih?fbclid=IwAR2o_dH1U-INdyD_xs3blmgWJ4KEqxqVHDs9Jqw_ySmFufM95ibtLyZl1so.

133 The illiteracy rate is higher among marginalised women, women in rural areas, Roma women and women with disabilities. UN Women, *Gender Equality Profile of Bosnia and Herzegovina*.

134 Alternative Report on the Application of Bosnia and Herzegovina for Membership in the European Union 2019-2020: Political Criteria.

135 Strategies for Improving the Rights and Position of Persons with Disabilities in the FBiH (2016-2021) and the Strategy for Improving the Social Position of Persons with Disabilities in the Republika Srpska (2017-2026)

136 Law on professional rehabilitation and employment of persons with disabilities RS ("Official Gazette of RS", No. 36/2009 and 32/2013), Law on professional rehabilitation, training and employment of persons with disabilities FBiH ("Official Gazette of FBiH 09/10).

137 Interviews BN001, BV002, BV032.

138 Correspondence in possession of the research team of hCa BL.

139 Interview BV02.

The labour market has remained unadjusted to the needs of persons with disabilities, and employers often do not wish to put any additional effort into adjusting the workplace to meet their diverse physical needs. Women who have children with disabilities also often face discrimination, and respondents recurrently emphasised this as a huge challenge in finding and maintaining adequate, consistent work.¹⁴⁰

Another obstacle is the continued lack of a unique state system for collecting and analysing data classified by age, sex, type of disability and other data on persons with disabilities, which would ensure inclusion of different sub-groups of persons with disabilities in different activities of the society,¹⁴¹ including labour market trends.

Additionally, there are no associations which exclusively provide legal assistance to persons with disabilities. This is one of the reasons why women with disabilities do not file for court proceedings¹⁴². As a result, there is an obvious lack of the court practice that could help the judiciary understand how to treat persons with disabilities, especially woman with disabilities.

Gender-based Discrimination against LGBTQIA+ Persons

Gender-based discrimination facing lesbians, gays, bisexual, trans*, queer, intersexual, asexual, and other identifying persons (LGBTQIA+) in hiring and the labour force has continued. It has tended to occur as a consequence of stereotypes, prejudices and social stigmatisation of these persons. According to the online survey, discrimination based on sexual orientation and/or gender identity in labour has continued; 7% of respondents reported being asked questions related to their sexual orientation and/or gender identity during job interviews.

For two years, the Ministry for Human Rights and Refugees of BiH and civil society have worked on drafting the *Action Plan for Improving Human Rights and Fundamental Freedoms of LGBTIQ Persons* in BiH in the period 2021-2023.¹⁴³ However, the Plan has yet to be adopted. The Action Plan emphasises that along with manifestations of discrimination and hate crimes, certain rights of LGBTI persons, such as rights in the field of employment, are not ensured. This document includes several strategic goals such as Training of Experts in the field of health care, education, social care, labour and employment on the rights and freedoms of LGBTI persons. The responsible actors are entity agencies for employment as well as the corresponding institutions in Brčko District.

The annual reports of the Ombudsman for Human Rights for the period 2018-2020 show that this institution received eight complaints related to sexual orientation; two related to sexual characteristics; and one related to gender identity. Social inclusion of intersexual and transgender persons needs to be improved. This can contribute to improving their position in the labour force and decrease their participation in the grey economy. Transgender persons, who often suffer mobbing as well as violence on social networks, are especially vulnerable due to their visual appearance.¹⁴⁴

The report *Socio-Economic Position of Lesbians, Gays, Bisexual, Transgender and Intersexual Persons in Bosnia and Herzegovina*:

shows that when employing LGBTI persons are faced with open homophobic questions and comments and think that they should not answer and be quiet if they want to be hired. This practice continues in further labour relations where they are exposed to sexual harassment more than average persons, facing comments that 'they are sick';

140 Interviews BN001, BN003, BLA02.

141 Alternative Report on the Application of Bosnia and Herzegovina for Membership in the European Union 2019-2020: Political Criteria.

142 Interview BN039.

143 Action plan for the promotion of human rights and fundamental freedoms of LGBTI people in Bosnia and Herzegovina for the period 2021-2023. Available in BHS languages at: [AKCIJSKI PLAN ZA UNAPRJEĐENJE LJUDSKIH PRAVA I ...https://ekonsultacije.gov.ba > downloaddocument.](https://ekonsultacije.gov.ba)

144 Interview BN009.

they are verbally and physically abused, are sexually blackmailed and often in fear they will be seen as different from their peers (at the workplace and outside).¹⁴⁵

Box 5. Gender- based discrimination against LGBTQIA+ Persons

Sarajevo Open Center conducted a survey in June-September 2020 with 1,300 respondents, including 300 LGBTI respondents) and 1,002 from the general population. The survey results found that:

- 44% of LGBTI persons are unemployed
- 23% of LGBTI persons had working experience in their profession
- 16% of LGBTI persons are working in “the grey economy” while 56% have legal and illegal working experience
- 44% of LGBTI persons were asked personal questions when applying for a job
- 17% of the general population does not wish to work with LGBTI persons
- 73% of the general population has never worked with LGBTI persons
- 42% of LGBTI persons did not share about their sexuality or gender identity at the workplace, and 40% of them did not do so due to fear for personal security
- 52% of LGBTI persons who shared about their sexuality or gender identity at the workplace experienced vicious comments from their peers regarding their sexual orientation and gender identity
- 4% of LGBTI persons are union members.

From: *Socio-economic position of lesbian, gay, bisexual, transgender and intersex people in BiH*, Lejla Gačanica, Sarajevo, 2021

Sarajevo Open Centre, which provides support, psychological assistance and counselling for LGBTQIA+ persons, stated that discrimination against LGBTQIA+ persons in employment processes and related to labour has remained very present; moreover, several work “illegally”, without contracts, in the grey economy.¹⁴⁶

Although this organisation has provided advice and psychological support, none of the victims of discrimination that they have assisted have wanted to initiate court proceedings. An additional challenge is improvement internal mechanisms of protection at their workplaces, which have to be strict and transparent.¹⁴⁷

According to Darko Pandurević, LGBTQIA+ persons strongly distrust the judiciary and its general inefficiency in making decisions, as shown by widespread delays in courts’ treatment of cases of discrimination, which extensively have broken deadlines. At the same time, respondents felt that labour unions, the labour inspectorate and police generally need to show more sensitivity towards members of this population towards reducing their participation in the grey economy and increasing their access to justice in courts.



For them, the job is the only way out because they live in problematic family communities, and, if they lose their job, then they have to return to these families. This is why LGBT persons do not want to report discrimination at the workplace”.

- Dalila Hasanbegović Vukas, Sarajevo Open Center

145 Gačanica, L., *Socio-Economic Position of Lesbians, Gays, Bisexual, Transgender and Intersexual Persons in Bosnia and Herzegovina*, 2021, p. 6. Available in BHS languages at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-polozaj-LGBTI-osoba-u-BiH-web.pdf>.

146 Interviews BN008, BN009.

147 Ibid.

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

Gender-based discrimination related to ethnicity and religious affiliation also has occurred in the process of promotion; 6% of women and 16% of men believed that ethnicity was a reason as to why they were not promoted. The experiences of interviewed persons suggest similarly.

Ethnicity relates closely to political party orientation in BiH, and the survey also suggested the continued practice of employing persons with particular political party membership. When participating in a job interview, almost 37% of all survey participants (35% of women and 49% of men)¹⁴⁸ were asked about their political preferences. Unions and organisations providing free legal assistance also said that the political situation is not in favour of workers who are not political party members and are not particularly religious. Especially in smaller communities, other members of the community often judge them.



The director turned his head away when I would say hello and when the family gathering for the employees

were organised, everyone would bring their children, and I was asked not to take my children with me because they are from a mixed-marriage.

- Interview with woman, 56 years old, Sarajevo, High school degree

Similarly, almost 21% of all involved in the questionnaire were asked about their religious affiliation during interviews. The Centre for Civic Cooperation Livno, which is active in four cantons and has provided free legal assistance to workers since 1996, that situation has worsened in the past several years due to the increasing power of right-wing political parties and politicians in the government, which have further divided the already divided society.¹⁴⁹ Representatives of this organisation also emphasised that, when seeking employment, women often have faced unequal treatment based on political party membership, but they rarely report it (due to lack of trust in legal institutions).

The Centre of Legal Assistance for Women Zenica, which work in this field, also has received questions and provided advice based on complaints related to discrimination due to ethnic and religious affiliation. However, during conversations with the parties involved, it determined that this has not been the only ground for discrimination and that multiple discrimination often has been present, including gender-based discrimination.¹⁵⁰

In summary, evidence suggests that gender-based discrimination related to ethnicity, political affiliation and religious affiliation remained present in the process of hiring and promotion. Based on the CSOs experiences women often have faced unequal treatment based on ethnicity and political party membership, but cases have not been reported seemingly due to lack of knowledge and distrust in institutions.

¹⁴⁸ Although men seemed more vulnerable to discrimination based on their political preference (35% of women and 49% of men), the sample of men was too small to draw conclusive findings as to whether it may face women or men more.

¹⁴⁹ Questionnaire U01/2021.

¹⁵⁰ Interview BLA038.

Woman in Social Isolation

The Report on Progress in Implementing Beijing Declaration and Platform for Action in BiH within the process Beijing +25¹⁵¹ has drawn attention to women at risk of social isolation. Such women primarily live in remote areas, are mothers of children with disabilities, and elderly women who are restricted in terms of access to the labour market. The report emphasises that these groups require more support in employment and should be targeted with strategic documents so that their specific needs are addressed in hiring and labour processes.

A specific at-risk group is women undergoing in vitro fertilization. For instance, regulations on in vitro fertilization (WTO) differ in the entities and the Brčko District of BiH, and there is no common regulation at the state level that regulates this right. The issues that women who are under WTO treatment face are different from regular pregnancy challenges. According to the president of the association Beba više from Brčko District, which works in the field of support for parents who are struggling with infertility, women often hide from employers that they want or are preparing for the WTO. He said:

The employer knows that if this procedure succeeds and the pregnancy is at high-risk, that the woman will not come to work for two, two and a half years ... or might take sick leave on several occasions during the procedure... if he suspects that she wants or she is under WTO already, he fires her.

Given the different ways that entities treat such women, they may not have equal access to employment and rights that other women on maternity leave have.

The Women's Network BiH, which provide counselling in the field of violence against women and gender-based discrimination, stated that it has noticed an increase in the rate of complaints from women at risk of social isolation, particularly amid COVID-19. For instance, they received cases of "parents of children with disabilities who according to the Law on Labour have the right to work 4 hours per day" and who reported "bullying by the employers", among other violations.¹⁵² Selma Hadžihalilović from the Network stated that this is direct discrimination by the institutions because some tax offices do not provide proper or full information to parents of children with disabilities and that this information often depends on the expertise of the bookkeeping services which work on the payroll".

Women in social isolation have faced additional risks of further victimisation due to their circumstances or position. Emergencies (e.g., floods or epidemiological measures) often accompany non-gender-sensitive measures and affect women who are caregivers or elderly women who are at health risk to work due to unfavourable health circumstances. Protection mechanisms have not considered sufficiently solution to protect these vulnerable groups.



As a parent of a child with a disability, in October 2020 I filed a request for part-time work because my older son has autism. I had all necessary documents for achieving this right, from disability categorisation to opinion from the doctors working in the Health Institution in Banja Luka which proposed to provide me with such rights. The request was initially granted, but withdrawn a month later because apparently evidence was issued by the authorities coming from RS, and I work in a state institution or institution of BiH, whereas the labour laws prescribes that this right can only be realised by single parents.

- Woman, public sector, 45 years old, Banja Luka, University degree

151 BiH Agency for Gender Equality, *The Report on Progress in Implementing Beijing Declaration and Platform for Action in BiH within the process Beijing, 2019*. Available in BHS languages <https://arsbih.gov.ba/wp-content/uploads/2019/05/Izvjestaj-o-napretku-Peking25-Bosna-i-Hercegovina.pdf>. <https://arsbih.gov.ba/wp-content/uploads/2019/05/Izvjestaj-o-napretku-Peking25-Bosna-i-Hercegovina.pdf>.

152 Interview BN001.

Different Forms of Gender-based Discrimination

This section examines different forms of gender-based discrimination related to labour, including discrimination in hiring, promotion, contracts, pay, working conditions, maternity leave, paternity leave, and sexual harassment at work, respectively. Additionally, it reflects on experiences of women workers and labour mechanisms aiming to indicate prevalence of various models of GBD in labour relations.

Discrimination in Hiring

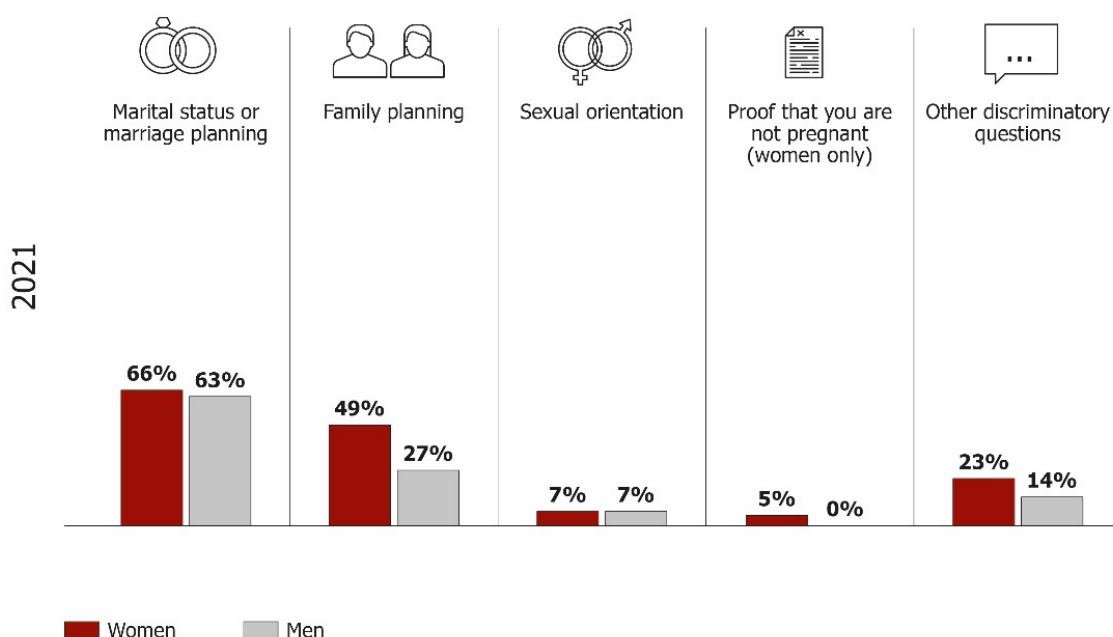
In general, comparatively more women than men reported experiencing gender-based discrimination in hiring. Approximately 70% of the survey respondents who have attended more than one job interview indicated to have experienced questioning that might imply gender-based discrimination (71% of women and 65% of men). The situation has remained unchanged since 2018. The most respondents (65%) reported being asked questions about their marital status or marriage plans during job interviews (66% of women and 63% of men). Several research participants were asked about their plans to have children or if they have children (49% of women and 27% of men). Alarming, 5% of the women were asked for medical proof indicating that they were not pregnant. Although the sample of men responding to the survey is disproportionately smaller, it could be observed that women were significantly more likely than men to be asked about whether they have children or plan to have them. Compared to the 2018 report findings.



It all begins with some casual story and questions on how mothers take care of the child, whether they need kindergarten and the like...

- Representative of the Ministry of Labour, War Veterans and Disabled Person's Protection of Republika Srpska

Graph 5. Frequently asked questions when hiring



Findings suggested that gender-based discrimination in hiring particularly has affected young women.¹⁵³ Interviews confirmed this finding, as respondents explained that women with three or more children have few chances to secure jobs due to employers' fears that they could be absent from work often to care for children.¹⁵⁴

Discrimination in hiring especially impacts specific groups of women (for example Roma women, women with disabilities and women who have suffered domestic violence).¹⁵⁵

Discrimination in hiring is present in the public sector, and according to the representative of the Independent Union of Civil Servants and State Employees in Civil Service Bodies, Judiciary and Public Institutions in FBiH, when hiring employees in any public institution in BiH, a certain set of rules must be followed to exclude discrimination on any basis. Even so, cases have existed of gender-based and other forms of discrimination in hiring in the public sector, the representative said. For instance, Mr. Kurtović from the Union of Civil Servants and State Employees in Civil Service Bodies in FBiH explained:



I went to a job interview and though I expected that this conversation would be focused on my previous working experience, I realized that it all went in another direction. As I was presenting and talking about some of my achievements, the director asked me if I was in a relationship, is it serious and whether I will marry soon or something like that...when do I plan to have children ...which confused me in the beginning because I had not expected it. Only when the interview for the job ended did I realize what he actually asked me.

- Woman, 27 years old, Derventa, University degree



Women victims of violence are especially discriminated against in hiring. If they said that they are victims of violence in the process of finding employment itself, if they would seek compassion or if we want to employ such women through some of our campaigns, employers were very sceptical...and this is usually due to the situation where former spouses who were perpetrators of the violence would come to the job of the victim and make problems, were waiting for them after job and alike. An additional problem is that most of the victims have children, and if they get sick, women have to take sick leave, and these are the most common reasons why employers are complaining...or firing women because they often can be absent from work.

- Lana Jajčević, Legal Consultant, Foundation United Women Banja Luka

We had a case in Lukavac when the director of the public institution chose a second rated candidate, while the first scored the maximum points but was of another ethnicity. She appealed, among other things, on the basis of gender and ethnicity, and in that case, the Board of Appeals called for ethnicity and gender structure and ordered the mayor to hire that person.

On the other hand, number of employers asking workers to sign blank statements and Annexes to their contracts is concerning.¹⁵⁶ These documents declaratively oblige women to refrain from becoming pregnant for a certain period of time. Women that sign these types of contracts are made aware that before being hired they are already differentiated.

153 Interviews BN039, BV032.

154 Interviews BLA027, BN036, Online survey, 2021.

155 Interviews BU025, BO034.

156 Interviews BV002, BV019, BU024, BN039, BL042, BL043.

Discrimination in Promotion

When asked if their employer(s) have given both them and other employees an equal opportunity to be promoted, 76% of the survey participants stated that some employees are treated differently from others.¹⁵⁷ More than every tenth (14%) thought that all employees have had an equal opportunity to be promoted while 6% had mixed experiences, such as promotion opportunities differing depending on the employer for which they worked. Participants stated different reasons as to why they thought discrimination in promotion has existed, such as “political reasons and affiliation to political parties”¹⁵⁸, “manipulating with annual [performance] grades in order to degrade the employee”¹⁵⁹, “personal disputes among supervisor and employee”, “damaging [employee’s] reputation to stop promotion”¹⁶⁰, and “intimate relationship between supervisor and female employee”.¹⁶¹ The box contains some examples that illustrate promotion-related issues.



When signing the contract, I was forced to promise that in the next five years I will not seek another job in any of the similar institutions and one of my colleagues was forced to sign the annex of the contract thereby stating she will not get pregnant.

- Woman, 35 years, Banja Luka,
College degree

Box 6. Discrimination in Promotion

“Due to personal reasons some high-positioned official said that I will never be promoted if he is the one to be asked about it.”

- Woman, public sector, Bužim, 40 years old, High school degree, online questionnaire

“I had offers to get promoted if I provide my pictures and so on.”

- Woman, public sector, Sarajevo, 40 years old, University degree, online questionnaire

“Though my male colleagues and I had the same level of education and the same title, male colleagues were always called by the title, and I was called by the name.”

- Woman, private sector, Visoko, 41 years old, online questionnaire

More women survey participants felt that they had faced discrimination related to promotion than men; 14% of women compared to only 3% of men thought that they were not promoted because of their gender. In addition, 11% of women compared to 1% of men felt they were discriminated against related to promotion because they had or were planning to have children.

¹⁵⁷ Overall, 36,2% of the participants that are currently employed or been employed in the last ten years indicated that they have been discriminated in promotion.

¹⁵⁸ Online survey, 2021.

¹⁵⁹ Online survey, 2021.

¹⁶⁰ Online survey, 2021.

¹⁶¹ Online survey, 2021.

Though most people think that discrimination in promotion cannot be present in the work of state institutions because the *Manual on Evaluating the Work of Civil Servants in Institutions of BiH* strictly regulates the manner of evaluation of employees¹⁶², the survey findings suggested that discrimination still occurs in public institutions, as well. The respondent from the Independent Union of Civil Servants and State Employees in Civil Service Bodies, Judiciary and Public Institutions in FBiH stated that every year they have many disciplinary procedures within institutions where the supervisor reportedly tried to degrade or put pressure on a person to forfeit a promotion through a disciplinary procedure or similar internal mechanism.¹⁶³ Victims reportedly have the additional fear of victimisation while awaiting the conclusion of such procedures. Therefore, they often do not initiate procedures.¹⁶⁴

An additional challenge is accessing advanced training and professional improvement; this often offered to male participants with the accompanying explanation that women have no time to attend additional education due to family obligations.

According to data from the analysis *Participation of Women in Managing Structures of Public Companies in Ownership of Bosnia and Herzegovina from 2020*¹⁶⁵, FBiH, Republika Srpska and Brčko District have 36 companies in which the owner is the state, entity or district. In two companies, which are majority-owned by BiH, women are 23% of the managing structure while in both companies the function of the general director is in the hands of men.

When it comes to entities, out of 14 companies that are majority owned by FBiH, the function of the directors in every company is in the hands of men, and, in Republika Srpska, of 18 companies that are majority owned by the entity, a woman is the executive director in only one of them. In Brčko District, there are two public companies which are majority or absolutely owned by BD BiH and a woman is the executive director in one of them.¹⁶⁶

That men are mainly present in leading positions also was illustrated by *Participation and Engagement of Women at Leadership Positions in Public Companies in Ownership of FBiH* in 2021,¹⁶⁷ according to which 41% of the companies have no women in managing bodies while 36% have one, 5% have two and only one company has more than three women in the managing positions (2%). These findings, that is the mere fact that women are under-represented in leadership positions in BiH, may suggest that discrimination in promotion exists.



At the beginning I thought that this is male chauvinism, but, as time passed, I realised that this is

continuous and it will not stop because in the inspection department I have two female colleagues and two male colleagues. I understood the whole situation when I saw that male inspectors work real inspection jobs and go in the field and female colleagues stay in the office and work secretary jobs, no matter that we had the same education and categorization of the jobs.

- Woman, 47 years old, public service, University degree, Sarajevo

162 Official Gazette of BiH, No. 24/21.

163 Interview BU025.

164 Ibid.

165 Sarajevo Open Center, Representation of women in management structures public enterprises owned by Bosnia and Herzegovina, the Federation Bosnia and Herzegovina, Republika Srpska and Brčko District of BiH, 2020, Available in BHS languages at: <https://soc.ba/site/wp-content/uploads/2020/11/paper-54-final2.pdf>.

166 Ibid.

167 Participation and Engagement of Women at Leadership Positions in Public Companies in Ownership of FBiH. Economic faculty of Sarajevo. 2021. Available in BHS languages at: http://www.efsa.unsa.ba/ef/sites/default/files/publikacija_izvjestaj_o_rodnoj_analizi_bos_final.pdf.

Box 7. Discrimination in Promotion

"In BiH, there are no women in the highest positions within the police authority, which means that in 16 police agencies in BiH there are no women who are directors or commissioners or their deputies. (...) There are no female police officers with ranks of the main general inspector and there are only a few of them who are main inspectors."

Manual "Gender Equality in Police Structures of BiH in Bosnia and Herzegovina" – training program, 2021, p. 9¹⁶⁸

These findings evidence that discrimination in promotion seemingly has continued to exist, particularly affecting women; otherwise, more women would be in decision-making positions.

Contracts and Pay

According to plata.ba, the average salary for women in BiH was 1167 BAM and for men it was 1315 BAM as of July 2021. Thus, men, on average, earn 12.7% more than women.¹⁶⁹ Gender segregation based on profession greatly contributes to this situation; most women work in the service sector and gender stereotyped professions such as education and healthcare, while more men work in management and better paid positions.¹⁷⁰

Based on the data from the Agency for Statistics in the first quarter of 2021¹⁷¹, in Bosnia and Herzegovina, the number of the working force was 1.377 million persons whereas 1.115 million (81%) were employed and 262 thousand (19%) were unemployed. Of all the employed persons, 708 thousand (63.5%) were men and 406 thousand (36.5%) were women, and of all the unemployed persons, 130 thousand (49.7%) were men and 132 thousand (50.3%) were women.

The difference in salary based on gender exists regardless of qualifications, education or age, and even though legislative provisions prohibit discrimination in pay, as stated in the *Gender Equality Profile in Bosnia and Herzegovina*¹⁷², which UN Women published in 2021. Similarly, gender pay gap is often presented but it is not discussed, as often women are not familiar with the salary range of their male colleagues¹⁷³.

Some of our questionnaire respondents highlighted that they are aware that women usually have lower salaries than their male counterparts who do the same job, but the issue is rarely on the topic among their management.

When it comes to salaries, "legal manipulations" in paying employees have presented challenges, especially in the informal economy; employers provide minimal salaries to pay less taxes and then give the difference to the employee in cash.¹⁷⁴ Almost 15% of working survey respondents (14% of women and 22% of men) indicated that their employer does not declare

168 Manual: 'Gender Equality in Police Structures of BiH in Bosnia and Herzegovina'.

169 See: <https://www.plata.ba/plate-u-zemlji>.

170 According to the page plata.ba, the average salary in certain positions, which includes higher management, is 2.500 BAM-3.800 BAM while the average salaries of cashiers, salesmen in groceries, hair dressers, traders and healthcare providers is 606 BAM-711 BAM, which is four times lower than management salaries in the bank sector, IT sector or entrepreneurship.

171 Agency for statistics of Bosnia and Herzegovina, Demography and social statistics, Labour Force Survey, I quarter, Available in English and BHS languages at:

https://bhas.gov.ba/data/Publikacije/Saopštenja/2021/LAB_00_2021_Q1_1_BS.pdf

172 UN Women, *Gender Equality Profile in Bosnia and Herzegovina*, p. 42.

173 Interviews BV013, BV016, BV020.

174 Interview BN039.



In BiH, only 6% of women, out of all employed, are among the best employed workers in comparison to 13% of men. In addition, our data shows that women choose professions which are traditionally seen as female, but which are less paid in comparison to so-called male professions. [Women are engaged in] care for others, teacher, jobs where they can work with clients such as secretary, assistant, nurse, waitress, social worker... which is why men, on average, have higher salaries by 30%. For example, according to our data from February 2020, the difference in salaries in Sarajevo is 25 % in favour of men. The salary in IT sector for men is 1,700 and for women it is around 1,300 BAM.

- Predrag Raosavljević, Institution of Ombudsman of BiH

to state authorities the actual, real salary that they receive and 11% did not know if this is the case. Meanwhile 7% of the employed survey respondents said that they had been asked to return part of their salary to their employer (7% of women and 9% of men).

Fear from losing a job and victimisation, coupled with distrust in labour inspection reportedly were some of the reasons preventing workers from reporting such cases to the responsible institutions.¹⁷⁵

An additional challenge has been unpaid care work in households, performed by women. This has been recognised as a starting point in gender inequality and is directly related to inequalities in salaries, lower income, educational attainment and factors concerning stress that impact the physical and mental health of women.¹⁷⁶ According to data from the Agency for Statistics, almost 2.5% of the population in BiH has involved unpaid persons who provide care for family members and most of them are women. In most cases, due to household work and care for family members (mostly children and the elderly), women have had to leave education and professional improvement, which limits their presence in the labour market.

No relevant studies in BiH have dealt with unpaid work and the gender consequences of work in the non-formal economy. That is the reason why it is not possible to precisely determine the economic consequences of unpaid work in BiH. Regarding contracts, of all survey respondents who had worked in the last three years, 18% have been asked to work regularly without a contract (including in family businesses): 17% of women and 24% of men. Of the currently employed persons surveyed, 4% did not have an employment contract.

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Of the participants who worked for some period in the last three years or are currently employed, 27% indicated that at least once they had been asked to sign



All employers make a deal with employees in contracts regarding one part of the salary and another part varies so that the inspector cannot trace it...In the real sector there are such cases and we cannot say this is the rule in larger companies. However, this variable part is part of the interpersonal agreement and it is not in the work contract but implies realized profit or percentage realization.

- Zoran Mikanović, Republika Srpska
Labour Inspectorate

¹⁷⁵ Interviews BV019, BLA021, BU035, BLA038.

¹⁷⁶ UN Women, *Rapid Gender Estimation of the Situation caused by Pandemic COVID-19 in Bosnia and Herzegovina*, Sarajevo, 2020, Available in English and BHS languages: <https://bosniaherzegovina.un.org/en/103730-rapid-gender-assessment-shows-impacts-covid-19-crisis-are-increasing-gender-inequalities-bih>.

an employment contract without being allowed to read and understand the terms of the contract. A comparatively larger percentage of men confirmed that this had happened to them (26% of women and 34% of men). Additionally, 29% of respondents said that their salary was decreased as a result of COVID-19. Moreover, 13% of the survey participants had lost their jobs because of COVID-19 (44% of women and 40% of men lost their job as their employment contract was not renewed).

In conclusion, research suggests that labour violations have continued with regard to pay and contracts, with employers sometimes using "legal violations" to avoid specific taxes or regulations. The abovementioned wage differences, as well as unpaid care and domestic work suggest that women in some professions in BiH have a salary that does not meet their basic needs and creates preconditions for poverty.



We had the case of a teacher who worked for nine years under a fixed-term employment contract. Those are contracts for three months. At the end of every school year, she was fired and then at the beginning of every new school year she had a new contract. This is discrimination based on contracts, common within education institutions where workers are often kept in uncertainty and fear.

- Zulka Baljak, Center for Civic Cooperation Livno

Working Conditions

More than half (57%) of the employed, stated that they work overtime; 50% usually work 41-60 hours per week and 8% work more than 61 hours per week. Less than half (39%) of the employed in the sample work between 21 and 40 hours per week and only 3% between 1 and 20 hours per week.

More than half (61%) were not compensated for overtime work, 14% said that they received time off, and 11% were paid for their overtime work. Consequences of overtime work usually affected women on several levels, especially those employed in textile and shoe industries. A survey by the Helsinki Citizens' Assembly Banja Luka on conditions in the textile industry has shown that overtime work is unpaid or paid under legislative minimum (30% increase in comparison to regular work). In most cases, this work is obligatory and not voluntary.

Another research entitled "The textile and footwear industry of Bosnia and Herzegovina"¹⁷⁷ states that workers (mainly women) are often unaware that working on Saturdays is overtime, which leaves a lot of space for employers to manipulate employees and leaves workers at a great disadvantage. According to this research, 22% of workers replied that have been working all Saturdays in the past three months.



Holidays have always been a problem and I have always worked or been on standby to return from vacation, as well as from sick leave ... I became mentally ill after 15 years of working in an insurance group and was forced to resign.

- Woman, 38 years, Cazin

177 Jurić-Marjanović, A; Šestić A. and Kljajić, D. *The textile and footwear industry of Bosnia and Herzegovina*, December 2020.

Meanwhile, even more formal employers, such as the state, which should serve as an example for the private sector, do not provide gender sensitive conditions for work. For example, parliaments lack conditions for childcare, such as family or breastfeeding rooms.¹⁷⁸ Similarly, the online survey suggested that gender-based discrimination has existed in the technical conditions for work, such as regarding the lack of a sufficient number of toilets for women in companies predominantly employing women.



Overtime hours and compensation for them are usually not shown in the recapitulation. Saturdays are often work and mandatory and often unpaid. The number of overtime hours during the week is over the legal maximum.

- Survey on the situation in the textile industry of BiH, 2020, Helsinki Citizens' Assembly Banja Luka

Pregnancy and Maternity Leave

Women workers have faced different treatment due to family planning, pregnancy or exercising the right to maternity leave, depending on the sector in which they are employed. Of the surveyed women, 12% were pregnant while employed in the last three years. Of them, 30% were denied the right to paid maternity leave; they were neither paid nor received a government benefit during the maternity leave. This was approximately 10 percentage points less than in 2018, though this may be attributable in part to the different, longer period of reference covered in the prior 2018 report.



In the fourth month of my pregnancy, I was declared redundant because of Corona, even though I had an indefinite contract. The dismissal was not handed to me personally, but I received a decision, after which I turned to the organisation that provides free legal aid, which referred me to the inspectors.

The inspection issued a decision that I must return to work. The boss called me to "make a deal". As he came out to meet me, I would receive a fee from the bureau (unemployment office) in the amount of 400 BAM. In principle, I did not want to agree with his proposal because I spent 4 years working in his company. I never got away with it and in principle I did not want to accept 'the bureau offer'.

- Woman, 25 years old, private sector, Modriča

Women have been more likely to use maternity leave if they have permanent employment contracts, which is more pronounced in the public sector.¹⁷⁹ In contrast, in the private sector, if it is the woman has a fixed-term contract, the employer has tended not to want to renew the contract if the woman becomes pregnant.¹⁸⁰ Additionally, if the contract was for an indefinite period, the employer often knows how to declare the worker redundant, thus

178 Helsinki Citizens' Assembly Banja Luka, Estimation of Gender Sensitivity of Entity and State Parliaments, 2020, p. 6, Available at: <http://hcabl.org/wp-content/uploads/2020/07/Procjena-rodne-osjetljivosti-entitetskih-i-drzavnog-parlamenta.pdf>.

179 Sarajevo Open Center, Orange Report 6: Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020, Sarajevo, Available in BHS languages at: <https://soc.ba/en/orange-report-6-report-on-the-state-of-human-rights-of-women-in-bosnia-and-herzegovina-in-2020/>. <https://soc.ba/en/orange-report-6-report-on-the-state-of-human-rights-of-women-in-bosnia-and-herzegovina-in-2020/>.

180 Interviews: BN001, BN003, BLA021, BU024, BML028, BLA031, BLI033, BLA038, BN039, BL042, BL043.

directly violating the provisions of the labour law. The COVID-19 pandemic seems to have been used as an excuse for discontinuing pregnant employees' contracts, as the quote box illustrates. A lawyer with experience in labour disputes emphasizes that the employer is often unaware of the legal framework and therefore often hastily or intentionally distributes dismissals.

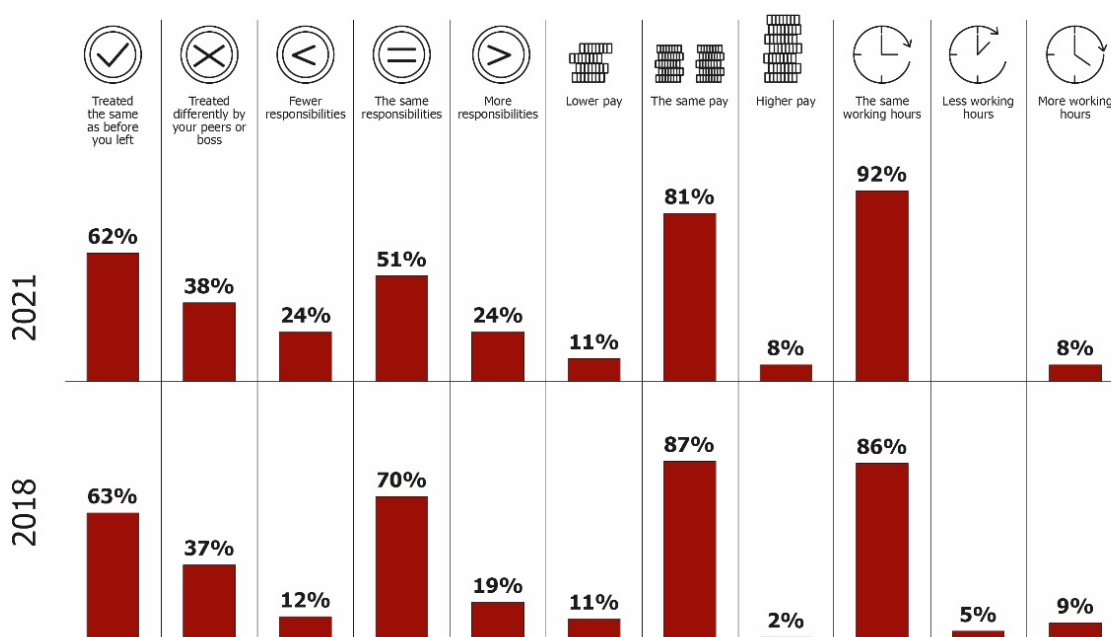
When asked specifically about the treatment before and after maternity leave, 24% of women believed that they had fewer and 24% thought that they had more responsibilities when they returned; 11% said that they had lower pay after they took the leave; and 8% said that they had more working hours when they returned (See Graph 6)



They are often guided by the opinions of people who manage their finances (accountants) and who are not lawyers. Employers often terminate fixed-term employment contracts or declare a worker redundant during the period when the pregnant woman is on maternity leave, which is not in accordance with the law.

- Lawyer

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



After their maternity leave, 51% of the women returned to their previous place of employment, and 25% indicated that they were pressured to return to work earlier than planned.

Due to the expansion of the labour market and economic migrations of the population, pregnant women also have faced institutional barriers to accessing their maternity leave benefits. The Ombudsman Institution explained, "If you have a pregnant woman from RS who works in FBiH, she cannot enjoy the right to maternity benefits because in RS this is based on the principle of the employer's residency and her residency is in the Federation, while in

this entity the maternity benefit is based on residence, so she is outside the system”¹⁸¹. Thus, the unique system of government in BiH has contributed to women not being able to realise their rights to maternity leave benefits in practice. In 2019, the Ombudsman Institution forwarded a recommendation to the Government of the Federation of Bosnia and Herzegovina and the Government of Republic of Srpska, in cooperation with competent ministries, requesting that they find an effective mechanism to overcome difficulties for women to enjoy the right to maternity benefits in situations when the workplace and residence of the employee are in different entities¹⁸².

Still, enjoying the right to maternity leave remains a privilege for many women in BiH. Unequal maternity allowance for women in the FBiH further discourages women from actively enjoying this right, and employers inconsistently apply legal regulations to achieve greater financial gain, at the expense of mothers.



In 2019, after maternity leave, I was not returned to my workplace. They found a replacement, and I was demoted. In the first two weeks, I did not have a work table and computer. Due to these pressures I had to find another job.

- Public sector, Tuzla

Paternity Leave

No clear data exists in BiH on the use of paternity leave. According to data from the Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020, in the Republika Srpska only 63 fathers, or 1% took paternity leave, and according to the Union of Employers of RS, it does not exceed 0.6% annually¹⁸³. The cantonal ministries of labour and social policy do not record such data.

On the other hand, of the employed men in the survey sample, more than half (40%) think that their employer would give them paid paternity leave. Of the men survey participants, 13 i.e. 12%, had a new born child while employed in the last three years. Of them, 11 had from two to ten days off, when their child was born, one had 15 days, and one had 30 days off.

Most men survey participants who answered the question on paternity leave (69%) agreed that men should have more paid time off for paternity leave, but 15% disagreed. Sixteen participants (17%) did not know.

Paternity leave has continued to be perceived as an exclusive right that only a small number of men can use. However, survey findings suggest that men generally favour having rights to longer, paid paternity leave, which suggests that public support exists for harmonising BiH legislation with the EU Work-Life Balance Directive.

Sexual Harassment at Work

Women are significantly more likely to be victims of sexual harassment at work than are men. Compared to 21% of surveyed men, 40% of women indicated that they have been a victim of at least one form of sexual harassment. Compared to the 2018 report, this survey suggested a slight increase in cases of sexual harassment, though the findings cannot be generalised to the population.

Regarding specific forms of sexual harassment at work, more women survey participants were subjected to sexual gestures, jokes, or sounds (38% of women and 20% of men);

¹⁸¹ Interview BO030.

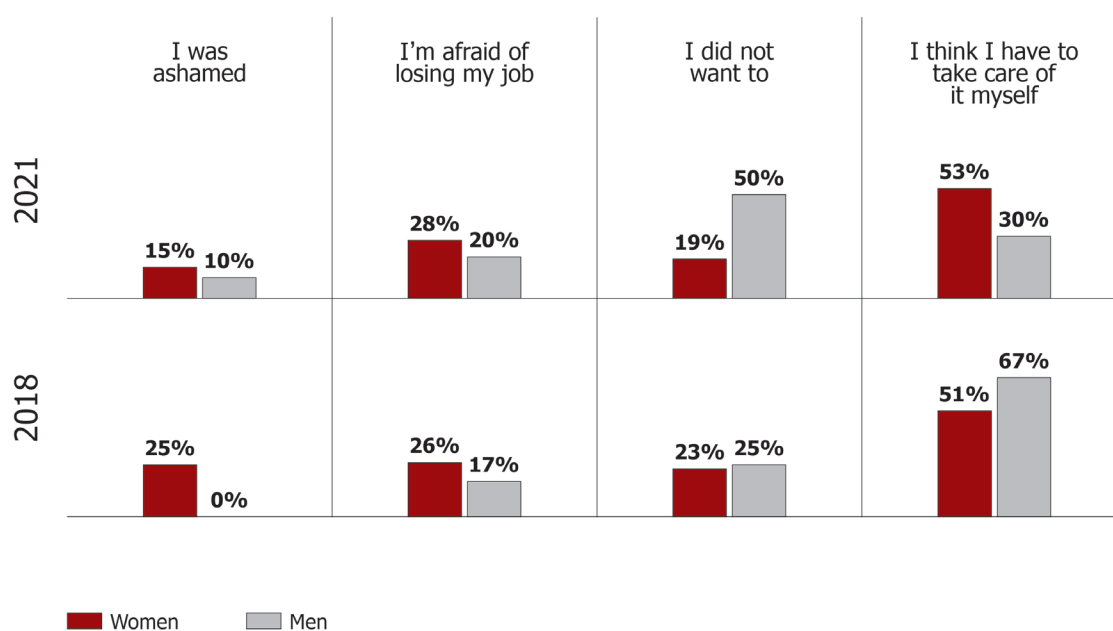
¹⁸² Recommendation P-105/19, Annual Report of Ombudsman 2019.

¹⁸³ Orange Report 6: Report on the State of Human Rights of Women in Bosnia and Herzegovina in 2020.

more women (13%) also received emails or text messages of a sexual nature than men and 5.5%) (see Graph 8). This marked an increase in the percentage of women reporting that they had received explicit content compared to the previous report. While the sample is not generalizable to the population, this may indicate an increase of gender-based harassment online and with the use of modern technologies.

In practice, women who have experienced sexual harassment have not reported these cases to the relevant institutions. The most common reasons that women identified for not reporting included fear of stigmatisation, fear of losing their job, distrust in institutions and not knowing their rights or how to report harassment. (See graph 7)

Graph 7. Reasons Why Sexual Harassment at Work Was Not Reported, by Gender



Women survey respondents presented several examples that illustrated the harassment they had faced, such as: "attempt of intimate contact during teambuilding where the boss afterwards claimed that he was drunk"; "sending kisses and asking for sex"; "inappropriately touching my back when saying hello"; "inappropriately sharing sexual content"; "commenting on my physical appearance and sexual allusions by the boss"; and "misogynistic and sexist comments by the supervisors", among others.

Of all women who said they faced sexual harassment at work, 83% stated that the perpetrator was a man and 15% had



My boss used to come behind my back, put his nose in my hair, and say "you smell nice." I felt horrible.

- Female worker, 38 years old, Tuzla, University degree

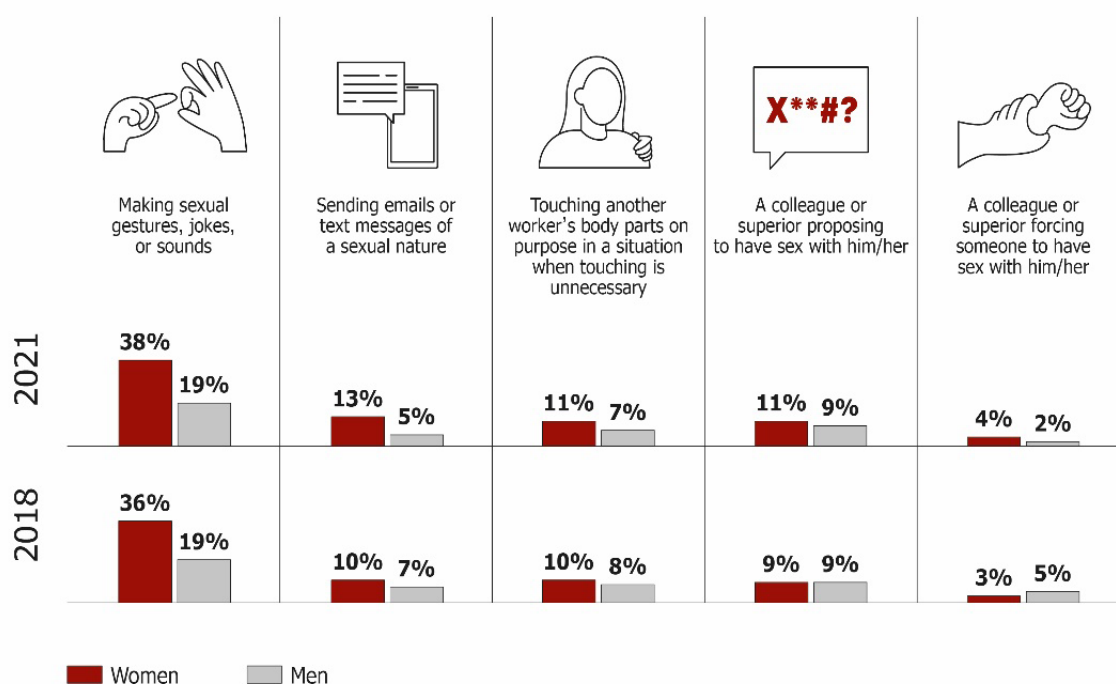


Once my boss came into my office, considering that we have different offices, and spent eight hours sitting in the chair and staring at me...not saying anything.

- Woman, 29 years old, Orašje

experience with both men and women as perpetrators. Only 2% said that the perpetrator was a woman. The sample of men subjected to sexual harassment at work was really small (only 24 participants); half stated that women had harassed them and seven (36%) were harassed by both women and men perpetrators.

Graph 8. Survey Respondents' Experiences with Different Forms of Sexual Harassment at Work, by Gender



When asked about the working position of the perpetrators, 74% of women and 54% of men stated that they were victimised by persons who work in higher positions than them; 44% of women and 63% of men) were sexually harassed by person in the same position; and 13% of women and 17% of men said that the perpetrator was in a lower position than they were.

Sexual harassment at the work, although widespread, has remained a taboo topic for discussion in BiH society. Of all the women who experienced sexual harassment at work, 37% have not shared or reported the experience; 33% told a friend or acquaintance; 33% told a colleague and 28% shared the experience with a family member. A smaller portion of the women reported the experience to a more formal instance; 8% told their manager, 7% used the official reporting mechanism at their workplace and 1% went to the police.



My colleague 'makes a joke', calling me by names such as: 'freak', 'wasted investment', 'mentally unstable' and alike.

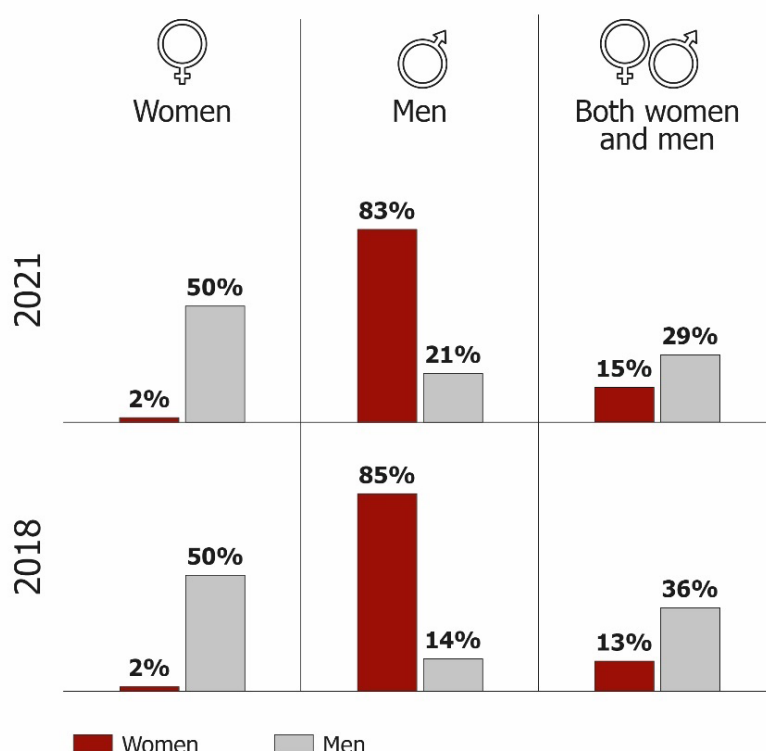
- Woman, 39 years old, Bijeljina, University degree



My employer offered me sex to extend my contract.

- Woman, Sarajevo, 31 years old, University degree

Graph 9 . Gender of Perpetrators of Sexual Harassment, by Respondents' Gender



Although the sample of victimized men was too small to be conclusive, notably nearly half (10 of 24 participants) told no one about their experience with sexual harassment.

While the sample may not be representative of the population, it does clearly indicate that sexual harassment has continued to occur in BiH, affecting both women and men but particularly women. Persons in positions of power have tended to perpetrate harassment, misusing their positions. Persons suffering harassment have tended not to report the harassment, particularly to official institutions.

Impacts of Gender-based Discrimination

Gender-based discrimination can have negative consequences for women's health, causing stress and very often post-traumatic stress syndrome.¹⁸⁴ As Marija Senjak, a psychologist from the Women's Room Croatia explained, if a more severe form of gender-based discrimination or mobbing happens:

"within a month, an acute stress reaction occurs, accompanied by symptoms such as reactions that cause insomnia, constant anxiety, constant anticipation of danger, increased agitation, avoiding meeting the person who caused the violence, avoiding going to work, opening sick leave or on another occasion, and related to the disease that the victim is being treated to get out of the situation ... so all these symptoms are diagnosed within a month as an acute stress reaction, and after that period these

¹⁸⁴ Interview BN044.

symptoms are diagnosed as post-traumatic stress disorder. These conditions remain to last for a certain number of months and can last for a longer period (even for years) in a chronic form.”

Women rarely have requested psychological support when initiating disciplinary procedures against colleagues or supervisors. Therefore, they also faced higher risks of additional victimisation at work.

Box 8. Impacts of Gender-based Discrimination

“I returned home, and I felt very bad. My heart was beating. I was sweating, and I thought it was very wrong of me to let him win, to let everything end up like this... I did not find my way through because everything happens suddenly and at the workplace. I simply did not expect it”.

- Woman, public sector, 53 years old, Bosanska Krupa, University degree

“When the alarm rings in the morning and I have to go to work, sometimes I even throw up... it is just that bitterness and heaviness because I do not know what he [my boss] will do next. Sometimes I called my sister to come to my office because I was afraid of him ... I also went to see a psychiatrist. My boss told me openly that he has been treated and simply has some issues, and he does not know what to do about it”.

- Woman, private sector, 29 years old, Orašje

“I was an employee for 20 years, and after a new boss came, he started bullying me. I was working in the company where I was the only woman and he started verbally and physically attacking me. This is when I had to seek help from the psychiatrist and psychologist. I was told I cannot work with a university degree, but with a high school degree, and all that time I was on sick leave. I reported everything to the inspection, and they refused to help me. The pressure was so high that I could not take it anymore. At the same time, I was using strong meds and I was forced to resign to avoid further humiliation. This probably had political notions as well. I felt like I was discriminated because I am a woman. Now I have a child from my first marriage who lives with me, and I have to provide for him because he is not capable of taking care of himself, and I am jobless.”

- Woman, 40 years old, Prijedor

As the quotations in this section illustrate, an abused person usually feels helpless and cannot find the way to defend herself/himself from the abuser. Such persons are in constant risk and fear of losing their reputation, professional identity and even career.

Conclusion

This report identified several forms of gender-based discrimination at work. These included discrimination in employment (e.g., related to issues of marital status and pregnancy, signing blank contracts that oblige a woman not to become pregnant for a certain period of time), discrimination in promotion due to various factors (age, political affiliation, religion, sexual orientation, etc.), and discrimination in contracts and pay. These have been primarily

present in the private sector, but in-depth interviews and survey analysis suggest that they are also present in the public sector.

Little attention has been paid to the consequences of gender-based discrimination at work. Worryingly, people who have experienced gender-based discrimination may suffer from post-traumatic stress disorder, which adversely can affect their work, but also their general functioning. Employers need to make greater efforts to provide psychological assistance to people who have suffered some form of gender-based discrimination and mobbing, through unions or rehabilitation therapies . As gender-based discrimination is possible in fast-growing sectors, such as the IT sector , special attention and resources should be allocated to human resources tackling this issue .

THE INSTITUTIONAL RESPONSE TO GENDER-BASED DISCRIMINATION

This chapter discusses the institutional response to reports of gender-based discrimination and violations of women's labour rights. It is organised by each responsible institution, discussing their knowledge, attitudes and treatment of discrimination cases. This includes 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 in 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 receives complaints and initiates *ex officio* investigations in cases where potential violations of rights are found, originating from the European Convention on Human Rights and Fundamental Freedoms, International Convention on Elimination of all Forms of Racial Discrimination, Convention on Elimination of all forms of Discrimination Against Women, Framework Convention for Protection of National Minorities and especially in cases of any form of discrimination based on race, skin colour, gender, language, political or any other opinion, national or social origin, and/or material status.¹⁸⁵

One of the key roles of the Institution is to receive individual and group complaints related to discrimination. 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.¹⁸⁶

The Department for Elimination of all forms of Discriminations has jurisdiction to, as per their website:

- Provide assistance to persons and groups of persons who lodged an appeal about discrimination while initiating a court proceeding;
- Analyse individual complaints and initiate a court dispute;
- With permission of clients, carry out a procedure of conciliation with possibility to reach an agreement;
- Collect and analyse statistical data with regards to cases of discrimination;
- Submit annual and, when needed, extraordinary reports on phenomena of discrimination to the BiH Parliamentary Assembly;
- Warn the public about discrimination;
- Carry out investigations in the field of discrimination;
- Give opinions and recommendations to the BiH Council of Ministers and to the BiH parliamentary Assembly with an aim to prevent and combat discrimination; propose corresponding legislative and other solutions;

185 See: <https://www.ombudsmen.gov.ba/Default.aspx?id=19&lang=EN>

186 The Institution of Human Rights Ombudsman of Bosnia and Herzegovina. Ombudsman's Handbook for human rights of Bosnia and Herzegovina in cases of discrimination, 2016. p. 8. Available in BHS languages at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2016101419280006bos.pdf.

- Analyse and show key samples of the malfunctioning of authority structures in adoption of decisions related to discrimination;
- Remove obstacles to consistent application of international conventions ratified by BiH;
- Follow global acts to create legal circumstances for realization of rights prescribed in international agreements;
- With special attention, work to prevent discrimination;
- Cooperate with civil society organizations that deal with protection of human rights and organizations that deal with protection of groups exposed to high risk of discrimination;
- Support of media activities promoting principles of non-discrimination as declared in international conventions¹⁸⁷.

During the period 2018-2020, the Ombudsman reported treating 667 complaints involving discrimination (of all 9,194 complaints received on various issues). Gender-based Discrimination complaints related to harassment, sexual harassment, mobbing, sexual orientation, sexual characteristics, and gender identity:

According to institutional data, mobbing has been the form of discrimination most frequently reported to this Institution.

Representatives of this Institution emphasised that, when it comes to initiated official cases, it had one case related to harassment, one mobbing case and three cases related to gender discrimination. According to Ombudsperson, employers often have posed a special challenge in the investigation process because they often justify their actions by general acts, stating that everything is done in accordance with the rules of procedure of the institution or society and that the employer has the right to propose or adopt solutions that are best for the work process.¹⁸⁸

Institution representatives have stated that preventing gender-based discrimination and all other forms of discrimination at work must include adopting sub-legal acts, as well as using laws on mediation more often. These are in the jurisdiction of the Ombudsman. However, they have not been sufficiently legally regulated. If discrimination is found to have occurred, the Ombudsman issues recommendations to the competent authorities to take measures to remedy violations. From 2018 to 2020, the Ombudsman provided three recommendations related to gender-based discrimination, 14 for mobbing and two for harassment.¹⁸⁹

Recommendations of the Ombudsman are not binding but oblige the court to initiate proceedings if a party has filed a complaint with the Ombudsman. The fact that recommendations are not obligatory may be a reason why people may choose to not use this institution, observing that it actually does not have any formal power.¹⁹⁰ Moreover, as mentioned in prior sections, persons who have experienced gender-based discrimination in employment often have faced further victimisation after they have decided to report discrimination to competent institutions. Additionally, despite the legislative obligation of institutions to act in accordance with the recommendations of the Institution of the Ombudsman, the number of recommendations that entered into force in recent years has decreased.¹⁹¹

Representatives of this institution state that whoever turns to the Ombudsman can expect that within seven days this institution will start a procedure in accordance with the

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

188 Ibid.

189 Interview BOO34.

190 Interview BV032.

191 The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, *The role and importance of independent institutions: The Institution of Human Rights Ombudsman of Bosnia and Herzegovina*, Sarajevo, 2020, Available in BHS languages at https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2020121715362648bos.pdf.

case they received and that the procedure itself lasts six months. Complicated procedures last longer, especially if certain circumstances are to be investigated. "The rule in our institution is not to have one case older than two years," said Predrag Raosavljević from the Institution of Ombudsman. Several complaints filed by citizens have related to the work of courts and inappropriate length of proceedings before courts (from two to five years), which is why victims often continue to suffer discrimination at work and give up on the lawsuit.

Of the total 88 *ex officio* cases¹⁹² initiated in the period 2018-2020, 12 cases related to discrimination, five cases to labour,¹⁹³ one case to harassment, one to mobbing, and three to gender-based discrimination.¹⁹⁴ 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 Ministry of Human Rights and Refugees; all BiH citizens can use it.¹⁹⁵ 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.¹⁹⁶

In 2018-2020, via the LYRA Platform, there were 26 complaints related to discrimination and the Institution did not initiate misdemeanour proceedings in the period 2018-2020.¹⁹⁷ Although initiating misdemeanour proceedings and intervening in such cases are under the jurisdiction of the Ombudsman, this option has not been used often due to limitations in the human resources capacities of this Institution.¹⁹⁸ In the period 2018-2020, the Institution only has intervened in cases related to violations and failing to meet legal deadlines in family violence cases.¹⁹⁹

Another jurisdiction of the Ombudsman is mediation or mediating between parties during proceedings, towards finding amicable settlements to disputes and peaceful, effective and qualitative solutions to cases. The Institution of Ombudsman believes that this jurisdiction should be extended, which would decrease the number of cases before courts and promote the role of Ombudsman as a mediator in disputes.

In addition, classifying data on different grounds is necessary to improve the situation related to gender-based discrimination. Therefore, in the beginning of 2021, in cooperation with the OSCE Mission in BiH, the Institution of Ombudsman began classifying complaints and cases on different grounds, such as education, labour, and access to public services.

An interview respondent observed that the Institution of Ombudsman is often characterised as "political", and this contributes to citizens' distrust of this institution.²⁰⁰ Nevertheless, if gender-based discrimination at work happens, 39% of both women and men surveyed online through this research knew that they could report it to the Institution of Ombudsman. Moreover, 8% of women and 18% of men respondents reported having actually contacted the Ombudsman for assistance.

192 An *ex officio* case is initiated when, based on the information, the Ombudsman of BiH assesses that the case involves a serious violation of human rights, or basic freedom of an individual, or mass violation of rights, or freedoms, or that citizens are discriminated against on a prohibited basis, and citizens out of fear or other justified reasons do not want to file a complaint; and when, based on the information, the Ombudsman of BiH assesses that there is a violation of someone's basic rights and freedoms, and there is a physical impediment to the endangered person filing a complaint.

193 E-mail correspondence with the institution from August 2, 2020.

194 Interview BO0034.

195 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'. See: <http://prijavi-diskriminaciju.ba/>.

196 *Gender-based Discrimination and Labour in Bosnia and Herzegovina*, p. 59.

197 The Ombudsperson Institution did not initiate misdemeanour proceedings in the period 2018-2020.

198 Interviews BO030, BO034.

199 Interview BO034.

200 Interview BV007.

Although the Ombudsman's recommendations are not binding, another interview respondent observed that the institution does have some kind of authority and respect in the public that can point to misconduct in gender-based discrimination cases²⁰¹ and provide recommendations for employers on how to improve insufficiencies.

In conclusion, the Institution of Ombudsman as an independent monitoring institution can use its capacities and expertise to promote and monitor the implementation of human rights guarantees, which can be important for preventing gender-based discrimination in labour. Although critiques exist of this institution, and there is space for improving its work and efficiency, the

significance of the Ombudsman is indisputable in terms of strengthening the responsibility, transparency, and efficiency of the public administration. In addition, it plays an important role in promoting and protecting specific human rights and freedoms, such as the rights of women to dignified salaries and work.



My greatest disappointment is the Institution of Ombudsman. And I was ready for the consequences of my complaint filed with this institution. However, I was not ready for the situation where my complaint was accepted as well-founded, and then left in a drawer for three years. This is institutional discrimination.

- Woman, public sector, 47 years old, Sarajevo

Courts

Courts remain the most important instance in formal proceedings for protection against gender-based discrimination related to labour. Still, due to the previously mentioned reasons (e.g., fear of job loss, victimisation, and long, expensive processes) most victims never take cases as far as the courtroom. The first instance courts in the Federation of BiH are the 27 municipal courts. In the Republika Srpska, they are the 19 basic courts. The first instance courts have the territorial jurisdiction to try the accused for criminal offenses for which a fine or imprisonment of up to 10 years is prescribed as the main punishment. These courts, among other things, decide on employment rights.

Box 9. The Institutional Response to Gender-Based Discrimination

"Anti-discriminatory guarantees from the Law on Gender Equality of BiH and Law on Protection from Discrimination of BiH are characterized as so called 'laws with standard provisions' as they provide certain guidelines for decision makers like implementation authorities (courts) which should create practice that will protect social groups. In comparison to Law on Civil Procedure (BiH, FBiH and Brčko District), Law on Prohibition of Discrimination, as lex specialis, includes specific provisions regarding certain actions and institutes and they are related to type of lawsuits, burden of [proof], participation of third persons, parity deadline and enforceability, right to seek revisions, local jurisdiction and collective lawsuit. This is also a great challenge both for legal representatives of employees and judges in civil proceedings."

- Lejla Gačanica in Analysis of Verdicts in the Field of Labour, 2021

201 Ibid.

The System for Automatic Case Management in Courts (CMS database), which is the official electronic information system for the judiciary in BiH, has not yet been established. Therefore, accessing data related to ongoing and official cases in the field of gender-based discrimination is difficult. In the online survey conducted through this research, only seven women stated that they had initiated a court proceedings related to discrimination at work.

According to the OSCE report *Assessment of the Work of the Institutions of Bosnia and Herzegovina in the Fight against Discrimination*,²⁰² since 2019, almost two-thirds of all recorded court cases of discrimination related to labour rights (61%). However, data collected from municipal and basic courts in BiH suggests that women have remained reluctant to report gender-based discrimination cases to courts.

Data collected from first degree courts showed that of the 41 of 52 courts that responded to requests for information on gender-based discrimination cases, only one court had a case of discrimination based on gender, sexual orientation and sex characteristics (Mostar) in the period 2018-2020. Meanwhile, 10 courts recorded cases of mobbing as special forms of discrimination, including one case of harassment. This represents a slight increase in cases compared to the last report covering the period of 2010-2018, when no case of discrimination was recorded on the basis of the gender or sexual orientation. No data exist on the sex of perpetrators of these acts. The sex of the person who filed the complaint was provided for only one court case in Zvornik, but it remains unclear if the case involved GBD. Thus, generally conclusions could not be reached with regards to whether women or men are more likely to file cases of discrimination with courts, or to perpetrate discrimination based on these grounds.

As it is not possible to obtain additional indicators from the data generated in the Automatic Case Management System in courts, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC of BiH) was contacted, as well. They provided more concrete statistics on discrimination cases in the field of labour for district courts,²⁰³ cantonal courts,²⁰⁴ and supreme courts of FBiH,²⁰⁵ the RS,²⁰⁶ and the Court of BiH²⁰⁷. Data were not completely disaggregated, and, for most cases, it was not possible to determine the type, grounds, and forms of discrimination. Limited data on the sex of the persons initiating cases was provided.

The HJPC provided information regarding cases of discrimination in labour and employment completed before courts in BiH from 2018 to 2020. Of 254 cases, 129 (51%) related to discrimination in employment, labour and labour relations, including 39 cases of mobbing (15%) (see Table 1). According to available data of all initiated proceedings that are gender-based, eight women have initiated proceedings related to mobbing, 16 men have, and in 15 cases, the sex was not recorded. Two cases of harassment were recorded (in the Municipality Court in Banovići and Zenica). However, no cases of gender-based discrimination were recorded.

202 See: <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/414674>.

203 There are five district courts in the RS: Banja Luka, Bijeljina, Doboj, Trebinje and Istočno Sarajevo. They have territorial jurisdiction for the territory covered by two or more basic courts.

204 Each of the 10 cantons has a cantonal court. The 10 cantonal courts have jurisdiction in their respective cantons. They are situated in: Bihać, Orašje, Tuzla, Zenica, Goražde, Travnik, Mostar, Široki Brijeg, Sarajevo and Livno.

205 The Supreme Court is the highest court of appeal in the FBiH, including appeals from cantonal courts, in respect of matters involving questions concerning the Constitution, laws or regulations of the FBiH and others, as provided for in the legislation of FBiH – except those within the jurisdiction of the Constitutional Court.

206 The Supreme Court of the RS has, as the highest court in the RS, territorial jurisdiction over the entire territory of the Entity.

207 The Court of BiH was established with the principal aim of ensuring the effective exercise of the competences of the State and the respect for human rights and the rule of law in the territory of BiH. The Court of BiH has jurisdiction over the entire area of BiH.

Table 1. Discrimination Cases Treated by Courts in BiH

Courts	Total cases related to discrimination in labour and employment	Completed cases	Ongoing cases (as of 31 December 2020)	Mobbing cases	Harassment cases	Sex (if known)
Basic courts	254	129	125	39 (16 m, 8 f, 15 NA)	2 (1 m, 1 NA)	In 157: 65 f, 92 m
District/ Cantonal	130	58	73	7 (2 f, 2 m, 3 NA)	0	In 94: 47 m, 37 f
Supreme Court of FBiH	20	19	1	Not recorded	0	In 12: 6 m, 6 f
Supreme Court of RS	5	4	1	2 (1 f, 1 m)	0	In 3: 2 f, 1 m
Court of BiH	6	3	3	Not recorded	Not recorded	In 6: 4 f, 2 m
Brčko District	0	0	1	Not recorded	Not recorded	Not recorded

When it comes to higher instances (district and cantonal courts), from 2018 to 2020, there were 130 cases, of which 45% were completed. This included seven cases of mobbing and one case of harassment. More than half of the cases (56%) were ongoing, and some of them had lasted longer than three years. Notably, the initiators of proceedings in 70% of all cases were men.

In the Supreme Court of RS, five cases related to discrimination in labour and employment. This court completed four cases, including two related to mobbing (filed by men and women). The Supreme Court of FBiH completed 19 cases, while the Court of BiH completed three of six cases. Women filed four of six such cases related to discrimination in labour and employment.



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

Though, it is not of great importance who made a mistake.

- Judge, Mrkonjić Grad

The practice of filing lawsuits based on violations of provisions of the Law on Labour continue, while significantly fewer, if any, cases are filed based on the Law on Prohibition of Discrimination, contributing to its insufficient implementation.²⁰⁸ Considering that so few

208 Interviews BLA021, BN039.

cases are filed, the lack of court practice in treating gender-based discrimination cases remain one of the great challenges in court procedures.²⁰⁹ Partially as a result of their lack of practice, the level of awareness of judges pertaining to cases involving gender-based discrimination has remained low.²¹⁰

Few cases of proceedings and verdicts related to violations of the Gender Equality Law have taken place, as well. According to some opinions, the cause of the small number of cases is partly unclear jurisdiction between the Court and the Prosecutor's Office of Bosnia and Herzegovina, ie lower courts and prosecutors to process cases based on violations of the Law on Gender Equality.²¹¹



I had to file a lawsuit before the Administrative Court of BiH, in which proceedings will last a year and a half for sure, which is why my proceeding has no purpose; a request to work only four hours [per day], as a parent of a child with a disability, is filed only once a year, which means that the time for filing another request will come before it is expected for the court of BiH to deliver a verdict.

- Woman, public sector, 45 years old, Banja Luka, University degree

Labour Inspectorate

In BiH, the Labour Inspectorate exists within the entity, cantonal and municipal jurisdictions. The competences of inspectorates are defined by labour laws, according to which they perform controls, monitoring the implementation of the relevant law. In accordance with its prescribed competencies, the Republic Labour Inspectorate controls:

- conclusion and application of employment contracts,
- calculation and payment of salaries and allowances,
- working hours, rest and leave,
- termination of employment,
- conditions for the work of trade unions and workers' councils,
- organization of safety at work and implementation of safety measures at work and
- other requirements prescribed by law.²¹²

The Federal Labour Inspector "shall perform direct inspection supervision in companies, enterprises and institutions of interest to the Federation".²¹³ Some of the competences of labour inspection in labour relations include:

- performing inspection supervision over the application of laws and other regulations adopted on the basis of laws, which regulate the field of labour relations and in accordance with the powers and competencies prescribed by law, and in the manner and procedure prescribed by law;
- acting on written or oral petitions, ie requests for inspection supervision in connection with violations of employment rights and regulations over which inspection supervision is performed within the limits of its competence.²¹⁴

209 Interviews BN003, BLA021, BN022.

210 Interviews BL043, BCC045, BCC046, BCC048.

211 Interview BA041.

212 Web site Labour Inspectorate. See: <http://www.inspektorat.vladars.net/stranica/94/pregled>.

213 Web site BiH Law. See: <https://www.bih-pravo.org/nadleznost-inspektora-rada-t1582.html>, Article 160.

214 Cantonal Administration for Inspection Affairs Website. See: <https://www.kuiprk.ba/index.php/inspektorat-rada-zastite-na-radu-i-socijalne-zastite/inspekcija-rada-za-oblast-radnih-odnosa/nadleznosti.html>.

Notably, labour inspectors focus only on the implementation of labour laws and do not monitor the implementation of the Law on Prohibition of Discrimination.²¹⁵

For this research, two entity labour inspectorates were contacted, and the FBiH inspector suggested contacting the cantonal inspectorates because, in the previous two years, the FBiH inspector did not have any valid experience related to gender-based discrimination in labour. The researcher contacted the Labour Inspectorate of the Canton Sarajevo and the Canton Tuzla, but received no response. Therefore, limited information was available upon which to draw conclusions regarding the awareness, attitudes, and experiences of labour inspectors in treating cases of gender-based discrimination.

Based on the information received from the Cantonal Labour Inspectorate of Zenica-Doboj Canton, in 2018-2020, it received 802 requests for protection of employment rights. Regarding gender-based discrimination and labour, it stated that no one in the inspectorate is authorised to determine and submit measures related to discrimination, mobbing and sexual harassment; rather, it stated that these rights can be claimed through the competent court.²¹⁶

The interview with the RS Labour Inspectorate similarly suggested that the Inspectorate is not competent for matters of discrimination in employment, as the work of the Inspectorate is determined by labour laws not the Law on prohibition of Discrimination.

Thus, the recurring response received from labour inspectors was that discrimination is outside their jurisdiction.

In the online survey, eight women (30%) and 12 men (50%) who had experienced gender-based discrimination contacted the Labour Inspectorate. Again, although the sub-sample sizes are too small to be conclusive, it is interesting that a higher proportion of men than women contacted the Labour Inspectorate.

Discrimination is addressed by all three labour laws (in RS, FBiH and BD). Therefore, labour inspectorates have a clear jurisdiction to react in accordance with reports of gender-based discrimination in labour and to undertake inspections related to such reports. For example, the Labour Law of Republika Srpska, states that harassment and sexual harassment, gender-based violence, as well as systematic abuse of workers by employers and other employees are not allowed, and that in cases of discrimination, the person seeking employment, as well as the employee, *may initiate* before the competent court a procedure for exercising the right and compensation of damages from the employer in accordance with the law.²¹⁷ The Labour Law states that in cases of discrimination based on sex, sexual harassment and mobbing, a worker may seek protection of her/his rights in court, but the law neither prescribes nor defines any measures or sanctions that a labour inspector could apply. The Labour Inspectorate is not an investigative body; it does not have the authority to conduct investigative work to prove physical, mental or sexual harassment or abuse, hearing witnesses and the like; nor can the inspector take on the role of the court.²¹⁸

Thus, inspectorates may perform controls and monitor the implementation of labour laws only, without taking actions to address discrimination.

Meanwhile, inspectors reportedly have refused to act in accordance with these competencies, stating that “determining whether or not gender-based discrimination actually



Within the inspection procedure, we practically do not get involved in that [gender-based discrimination cases] because these are things that are not within the competence of the labour inspector.

- RS Labour Inspector, Zoran Mikanović

215 Interview BLI048.

216 Letter from Cantonal Administration for Inspection Affairs of Zenica-Doboj Canton no. 18-30-03400/21 from April 12, 2021.

217 Labour law Republika Srpska. Official gazette RS no. 1/2016 and 66/2018, articles 24 (1) and 25 (1).

218 Letter from the RS Labour Inspection no. 24.004/054-80-2/21 from April 5, 2021.



Aimed to ensure this active work, the government establishes different mechanisms and the most important mechanism is inspection monitoring. In cases when this mechanism has not been established or is not effective enough, this results in a violation of human rights. Weakness of Inspectorates that affects the efficiency of the work is the small number of inspectors. The greatest obstacles that impact the work of Inspectorates are legislation, insufficient number of inspectors and lack of the salary supplement for inspectors. ... Furthermore, inability to conduct inspection monitoring due to the lack of experts means lack of legal protection of citizens in general.

- Ombudsman of BiH, Special Report on the Role of Inspection Authority in Protecting Human Rights in Bosnia and Herzegovina in 2020

happened is on courts, and the burden of proof is on the employer. We are not competent to impose a measure on the employer.”²¹⁹

Thus, it can be concluded that the practical experience of labour inspections has not changed since 2018. Understanding when and how they can intervene to address reports of gender-based discrimination or refer victims to the appropriate points of contact at courts, has remained a challenge for labour inspectors, suggesting the need for further training on their roles and responsibilities related to gender-based discrimination in labour. Insufficient human capacities, namely the lack of sufficient inspectors, also has remained an obstacle to their timely response to violation of labour rights, especially sensitive issues concerning discrimination at work.

Legal Aid Providers

Several public institutions are responsible for providing free legal aid in BiH: Republika Srpska 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 (with offices in Orašje and Domaljevac), 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. All regulations governing free legal aid in RS, BD, and cantons contain similar provisions.

For instance, free legal aid is intended for persons in socially vulnerable categories who are not in a position to cover the costs of representation in proceedings for the exercise of their rights and law-based interests before the courts. The right to free legal aid according to financial criteria is exercised by unemployed persons, persons of poor financial status, beneficiaries of the right to an old age and disability pension, and victims of domestic violence. If financial changes occur during the procedure, beneficiaries are required to report changes and pay the costs of legal aid provided, which often poses a potential financial risk to victims who contact the competent centres.

Five of nine institutions responded to the request for information: Republika Srpska Center for Provision of Free Legal Aid, Legal Aid Office of Brčko District, Cantonal Institute for Free Legal Aid Tuzla, and Posavina County-County Institute for Legal Aid-Odžak, Cantonal Institute for Free Legal Aid Široki Brijeg. None of the five before mentioned institutions had had any cases involving gender-based discrimination and labour.

An interview also was conducted with a lawyer from the Office for Free Legal Aid in the BiH Ministry of Justice²²⁰. The Office for Provision of Free Legal Aid of the Ministry of Justice

²¹⁹ Interview BLI033.

²²⁰ Interview BA026.

also stated that in the past two years, they have not had any legal aid requests related to gender or employment violations.

The respondent observed that it is noticeable that poor knowledge of the existence of free legal aid institutions also contributes to the lack of registration.²²¹ Insufficient access has been further compounded by the lack of free legal aid offices throughout BiH and insufficient promotion of the existing institutions. Considering the above-mentioned challenges for workers and unemployed women to seek support in gender-based discrimination cases, it is unsurprising that no known cases have been reported to these institutions.



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

- Ljiljana Preradović, Ministry of Justice,
Office for Provision of Free Legal Aid

Mediation

The Public Institution Agency for Peaceful Settlement of Labour Disputes Banja Luka was established in 2010 and represents the first institution in RS dealing with the peaceful settlement of labour disputes (individual and collective). This provides an alternative to the settlement of disputes between parties (employees and employers, or the participants involved in concluding a collective agreement) through the involvement of third parties, such as 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. The mandate of this Agency derives from the Law on Peaceful Settlement of Disputes and Labour Law of RS,²²² and, most recently, the Law on Protection from Harassment at Labour. It has the mandate to hear any dispute, including cases of discrimination and specific forms of discrimination.

From 2018 to 2020, the Agency received 2,093 requests, 2083 referred to individual disputes while nine involved collective disputes and one arbitration.²²³ As the Agency is not responsible for discrimination issues on any grounds, including gender, the Agency does not operate in this area. Thus, the Agency often rejects responding to such disputes, declaring itself incompetent. Instead, it refers parties to relevant institutions. Thus, it does not have gender-disaggregated data pertaining to such cases.

Jovana Borjan Lazeta, Senior Expert Associate of this institution stated that BiH currently does not have an efficient mechanism for protecting women in employment. She stated that discrimination cases are not within their jurisdiction, yet. Most of their cases have related to issues with salaries, severance pay, termination of employment, transportation costs, jubilee awards, payment of childbirth allowance, imposition of other sledges, salary reductions, written warnings, and several cases of syndicate disputes, initiated by a representative of a trade union. However, the Agency has dealt with cases of violations of women's labour rights. For example, she said, "We had a case when the mother's maternity leave was expiring and she wanted to return to work, so there were some problems."²²⁴ Yet, their experience with such cases has been limited.

²²¹ Ibid.

²²² "Official Gazette of Republika Srpska" No. 91/2016.

²²³ Official note from the Institution, no. 01-120-204-1/21 from March 23, 2021.

²²⁴ Interview BM029.

In FBiH, the Law on Peaceful Settlement of Labour Disputes in the FBiH was adopted in end of April 2021²²⁵, and the Law regulates the procedure for peaceful settlement of labour disputes (individual and collective), the manner of appointing conciliators and arbitrators and other issues of importance for the peaceful settlement of labour disputes in FBiH, unless addressed through another law. The enactment of this Law is a continuation of the reform of labour legislation, given that the FBiH Labour Law also provides for the enactment of a special law on the peaceful settlement of labour disputes. The enactment of the Law will significantly expedite procedures for resolving labour disputes, bearing in mind that the court proceedings often last several years. Meanwhile the deadline for completing procedures before the peace council is 30 days from the day of submitting the request. If eventual proceedings are initiated before the arbitration council, the deadline is an additional 30 days. In the BD, there is no institution for peaceful settlement of labour disputes (mediation).

In summary, while BiH has some mediation services available, they do not reach all parts of the country and do not assist with gender-based discrimination cases, though this may change in the future. While they have had a few cases of labour rights violations affecting women, overall, their relevant experience and practice remains fairly limited. Therefore, it cannot be determined how they may treat such cases.

Labour Unions

For this research, several trade unions were contacted and four trade union representatives were interviewed. The Confederation of Independent Trade Unions of Bosnia and Herzegovina (CITUBiH²²⁶) includes 24 branch unions or syndicates. At the same time, there are seven cantonal boards of CITUBiH active in the territory of nine cantons in FBiH. The Women's Forum and Youth Section are also active within the Confederation. The Women's Forum is an executive body within the CITUBiH, which advocates for equality of men and women in all spheres of social life and for achieving greater protection of women's rights related to labour relations at the national, regional and international levels. The Women's Forum focuses on promoting the significance of protecting women's rights, especially motherhood; women's fight against all forms of discrimination and mobbing; and improvements in the economic and social position of women. CITUBiH has not provided data on reports that it has received from workers regarding gender-based discrimination, sexual harassment and mobbing, if any exist. The Union of Leather, Textile and Footwear Industry of FBiH operates within this union, and the representative of the Union pointed out that workers in companies operating in the textile, leather, footwear and rubber sector in FBiH have the lowest salaries compared to other industries in the economy. An additional challenge since the outbreak of the coronavirus pandemic in 2020 has been the decline in production.²²⁷

The Confederation of Trade Unions of the Republika Srpska (CTURS)²²⁸ includes branch unions: the Trade Union of Health, Trade Union of Education, Science and Culture of RS, and Trade Union of Media and Graphic Artists. CTURS is a general union's organization in RS. CTURS implements its activities within RS and has 15 branch unions and more than eight union centres (Banja Luka, Prijedor, Doboj, Bijeljina, Zvornik, Istočno Sarajevo, Višegrad, Trebinje) and four union offices (Foča, Gradiška, Teslić, Bratunac). Based on the data that CTURS provided,²²⁹ from 2018 to 2020, there were six cases related to mobbing and no cases related to gender-based discrimination. The general secretary of the Union stated that the CTURS continuously has worked on awareness campaigns and promoting labour laws among all union members.²³⁰

225 Published in the Official Gazette of FBiH on June 23, 2021. No.49/21.

226 See: <https://www.sssbih.com/>.

227 Interview BU049.

228 See: <http://savezsindikatars.org/?script=lat>.

229 Official email correspondence with CTURS from December 24, 2021.

230 Interview BU050.

The Trade Union of the Brčko District (TUBD) and their branch, the Trade Union of Education did not have publicly available information about their work in this area, and did not respond to questions regarding the work of union in the field of gender-based discrimination and labour.

As of 31 May 2020, the Commerce Trade Union of BiH (CTUBiH)²³¹ had 13,092 members. Overall, 37% of the union's members were between 30 and 40 years old and 25% were under 30. Its program of para-legal assistance was created as a pilot project to provide legal assistance for workers, and it became self-sustainable, available 24 hours for its users. Sixteen legal experts (11 women and 5 men) currently provide para-legal assistance. According CTUBiH data, most reports have related to discrimination in the form of mobbing. In 2018, female workers reported cases related to mobbing 48 times. Of all these cases, one related to discrimination based on nationality and five related to age discrimination. In 2019, there were 27 cases of mobbing, including one case of discrimination related to the worker's engagement in the union and one case of discrimination due to sexual orientation. In 2020, there were 45 cases of mobbing. This includes two cases of age discrimination. This suggests an increase in the number of reports of mobbing and age discrimination compared to the previous period.



It happened that women between 35 and 45 who are in full force, in the previous year had to stay at home due to the Coronavirus. Those are the years when employers prefer to give jobs to someone younger, which is an additional pressure for those women, and they suffer mobbing and are quiet about it because they are easily replaced.

- Željka Rubinić, para-legal assistance
CTUBiH

Compared to 2019, the union has witnessed an increase in the number of persons being illegally fired from work; this was coupled with issues resulting from the COVID-19 pandemic²³². The most reported irregularity when workers were fired in 2020 was denial of compensation. Cases also were reported of women being fired while pregnant and employers illegally decreasing salaries. The top three problems treated by this union in 2020 were COVID-19 related issues (79 cases), overtime work (63 cases), and mobbing (56 cases). Limited information was available as to whether it was gender-based.



This is about public institutions, which are protected by certain regulations. And all those employers look at this form of discrimination in a little different way and try to use segments of regulations, such as provisions of disciplinary procedures in a certain manner. They usually use this procedure to discredit a certain individual and then separate him/her from the institution that should provide assistance. I can say that this year we had almost 100 such disciplinary procedures, and we managed to protect victims in 95% of all cases.

- Samir Kurtović, Trade Union of Civil Servants and State Employees in Civil Service Bodies,
FBiH

The Independent Trade Union of Civil Servants and Employees in Institutions of FBiH²³³ is an independent, voluntary, and non-political organisation of workers. It includes

231 See: <http://stbih.ba/>.

232 Interview BU024.

233 See: <https://sdsz.ba/home/>.

state officials and civil servants employed in institutions and other organisational forms of labour at federal, cantonal and municipal bodies of state service, judiciary, public institutions, penitentiary institutions, and centres for social care. It upholds the principle of democratic manifestation of the will of its members. One of the members' goals is achieving rights to free legal assistance and representation in achieving rights in the field of labour. The union did not provide precise data on the number of gender-based discrimination reports it has received or assisted.

Although unions' activities are useful for workers and society, the role and importance of unions' ability to address gender-based discrimination in labour perhaps has been underestimated by workers, employers and some union representatives. There are several reasons. First, joint support and cooperation among unions at the level of BiH does not exist, which diminishes their significance. Second, a recurring theme was that unions have been seen as "political institutes"²³⁴ and politicization may make them unapproachable by workers when they face rights violations. Third, unions do not always produce significant results, especially when it comes to women (e.g., related to equal salaries, overtime work, achieving equal rights, maternity benefits, and realising rights to sick leave).²³⁵ Comments made by women also suggested that in some instances when unions were informed about rights violations, they dismissed such cases "as a joke" (see box).

Fourth, unions have lacked gender sensitive policies of action in addressing these issues and supporting their members. Only two unions have Women's Groups fighting for women rights and promoting gender responsible policies. Fifth and related, women generally have been underrepresented in the leadership of unions. A survey conducted by Friedrich Ebert Foundation, *Women in Unions of BiH*²³⁶, illustrated that out of 24 city unions within CITUBiH, only four women held leading positions (17%). In CTURS, of 15 branch unions, women led only two (13%). Women's underrepresentation in leadership of unions may contribute to underrepresentation of women's interests within unions and their work.

Among the survey respondents in this research, 37% did not think that any labour union in BiH represents their interests, and 22 (9%) did not know if any such union exists.



When the general director, head of the tax office and director of the cantonal tax office visited the Tax

Office, I talked in the hall with the director of the cantonal tax office and while passing by the hall he (general director) told me to whisper in his ear everything I discuss with the cantonal tax officer. This form of communication is inappropriate and such sexism. Though I have working experiences lasting for 20 years in comparison to those who have a lower level of education, I have never experienced such comments. Having in mind that all other attendees were my supervisors and no one did anything about it, I filed a complaint in person to the union and they characterised such comments "as a joke", though they all know that such behaviour is common in our collective, both among employees and candidates who apply for the job.

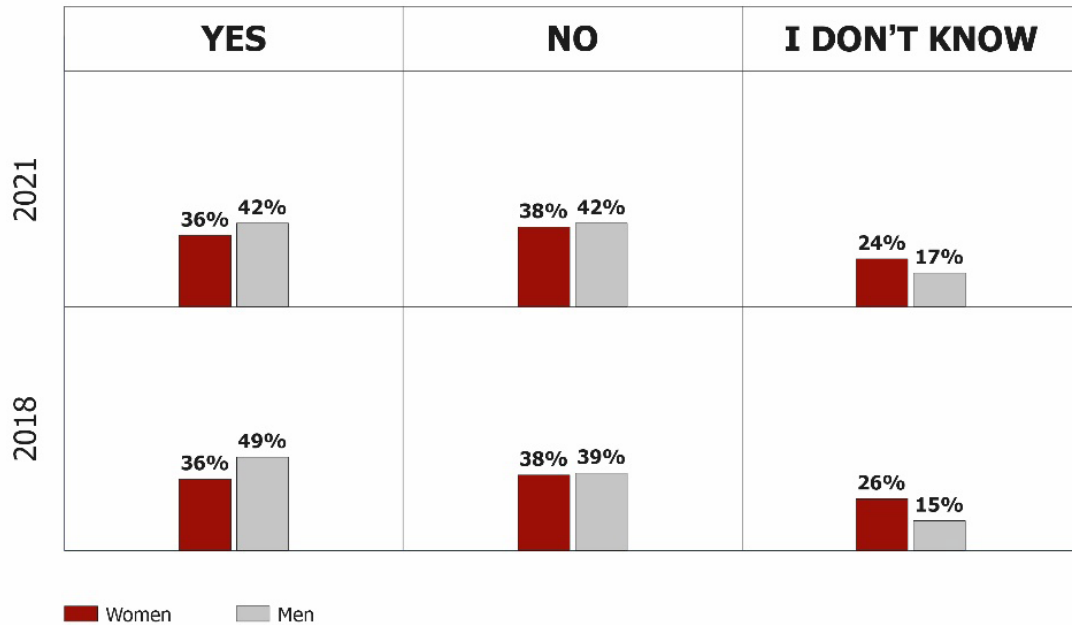
- Woman, Bachelor, Zenica, public sector

234 Interviews BV019, BLA031, BN039.

235 Interviews BN003, BV005, BLA021.

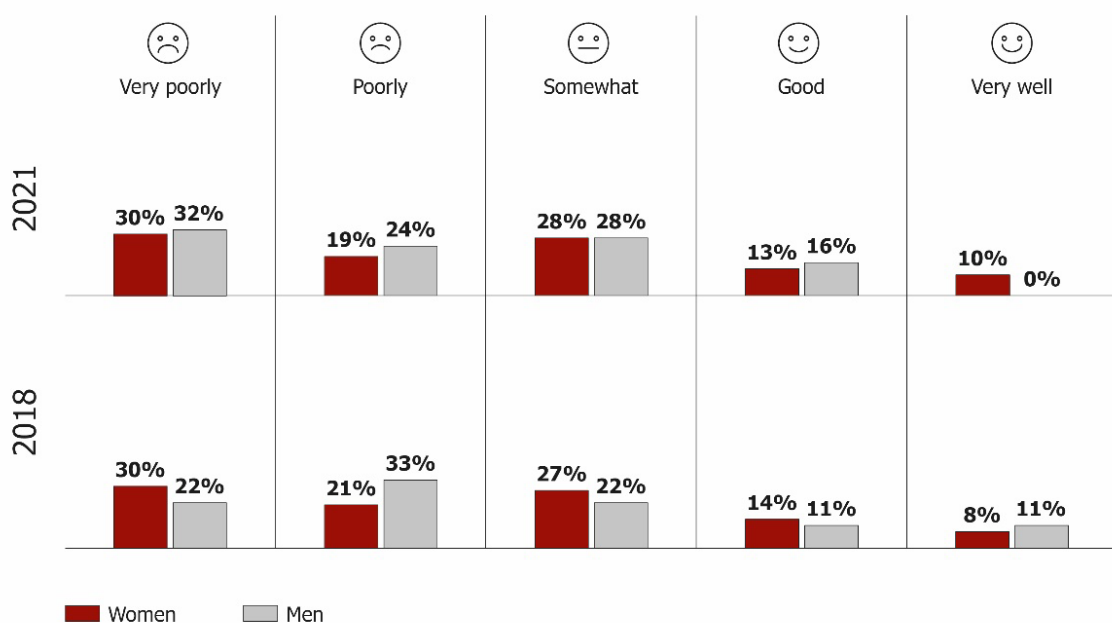
236 Friedrich Ebert Stiftung, *Women in Labour Unions*, 2021, Available in BHS languages at: https://bosnia-and-herzegovina.fes.de/fileadmin/user_upload/documents/infografika_-_zene_u_sindikativima_2020_1_6a.pdf.

Graph 10. Do Any Workers' Unions Exist, which Could Represent Your Interests, by Gender



Of those who confirmed that there are workers' unions that represent their interests, half were members of a union. Of those who are members of workers' unions, half thought that their interests were represented very poorly or poorly, while every fifth thought that workers' unions represented well or very well their interests (Graph 11).

Graph 11. How Well Do You Feel that Your Workers' Union Represents Your Interests, by Gender



In summary, with a couple notable exceptions, unions generally have provided very little to no protection to workers from gender-based discrimination. This is a lost opportunity, as unions have the ability to file individual and joint lawsuits on behalf of workers. Insufficient awareness among some union representatives about gender-based discrimination at work and its treatment coupled with insufficient trust in unions have contributed to unions having few such cases brought to their attention. As a result, most unions have continued to limited experience assisting such cases.

Civil Society Organisations

Civil society organisations (CSOs) have been important actors in preventing gender-based discrimination in labour. Moreover, they provide legal assistance and legal counselling, assisting individuals most in need. Organisations hold educational trainings, workshops, debates, and activities aimed at raising awareness among citizens regarding various forms of gender-based discrimination. Since the last research and then, the number of organisations working on these issues has increased. They provide legal counselling and psychological support for victims of discrimination, including sexual harassment and mobbing.

For example, the Women's Network of BiH promotes and refers parties to organisations that provide counselling and legal assistance for persons who have suffered gender-based violence,²³⁷ including sexual harassment at work. In BiH, of 11 organisations that work with women victims of violence, only few provide Center of legal assistance for Women, Zenica, Foundation United Women Banjaluka, Budućnost, Modiriča). Most provide free counselling and some type of individual and group psychological help and support for victims. However, few provide legal assistance and representation in courts in cases of gender-based discrimination related to labour.

Thus, in 2020, as one of the results of the regional project "Empowering woman labour rights" an initiative was launched: "Improvement of the Position of Women in Labour Relations and Prevention of Gender/Sex based Discrimination in BiH" in order for women's organisations dealing with labour rights to strengthen their capacities in providing support to workers whose rights were violated. It included non-governmental organisations that have free legal advisory centres: "Centre of Legal Assistance for Women" Zenica, "Future" from Modriča, Foundation "Lara" from Bijeljina, Association of Women "Bridge" from Višegrad and "Foundation of Local Democracy" from Sarajevo. Cooperation has been manifested through education in the field of labour and gender/sex-based discrimination and by providing free legal assistance to women whose rights were violated and who faced discrimination related to labour. Foundation United Women



We had several questions regarding gender-based discrimination in labour, and we referred parties

to our partner organisations. It is not up to us to ask whether and in what amount someone received assistance because we have no capacity to provide legal assistance if something specific is needed. However, we know that our colleagues work so much voluntarily and on a humanitarian basis. We never received feedback if someone ever was refused legal assistance from all of the parties we have sent to them [our partners].

- Selma Hadžihalilović,
Women's Network of BiH

237 For a list of member organisations of the Women's Network of BiH, which provide support for persons who have experienced sexual harassment or rape in the BHS language, see: <https://zenskamreza.ba>.



Last year we conducted a project dealing exclusively with gender-based discrimination, and we had a lot of questions considering that this year was very specific due to the Coronavirus pandemic. We enabled people to contact us via our online page. We had around 60 questions and the same number of answers.

From the beginning of 2021, we had two cases of gender-based discrimination. One girl was unable to get a shift change because she was divorced and became a single parent, addressed as a children's provider; she has not yet received an answer and the appeal procedure is ongoing. In the meantime, several of her colleagues had shift changes, which is why this is an evident example of discrimination.

- Lana Jajčević, Foundation United Women Banjaluka

from Banjaluka²³⁸ has led the initiative, which was initially supported by the regional project "Empowering CSOs in Combatting Discrimination and Furthering Women's Labour Rights" within which this research was conducted as well.

Example

"A woman who was not offered an extension of her fixed-term employment contract after maternity leave applied for legal assistance, and the contract was regularly extended quarterly before the pregnancy. She was employed for a year and three months totally. During that period, she was on maternity leave for almost 9 months due to a high-risk pregnancy. After maternity leave, she received a decision to terminate her temporary employment due to reduced workload as a result of the COVID-19 pandemic. There was no possibility to provide adequate legal aid because the dismissal was explained as a result of a reduced load of work due COVID 19 and it cannot be proven that the biggest problem was her pregnancy actually."

Lana Jajčević, Foundation United Women Banja luka

Through this joint initiative, from March to September 2020, legal counsellors in organisations provided free legal advice and free legal assistance for 82 users from 13 cities across BiH.²³⁹

Foundation "United Women" Banja Luka²⁴⁰ has enormous experience providing psychological support to women and children victims of violence via the SOS phone for women victims of violence, established in early 1997. Their legal advisory centre provides gender sensitive legal assistance for women who suffer or are currently suffering domestic violence and other forms of gender-based violence. Services are free of charge, confidential, and this is a place for women who need support, information, counselling, and advice in relation to gender-based violence.

Most of the reported cases regarding violations of labour rights and gender-based discrimination were in Zenica (19 cases). For a long period, Centre of Women's Rights (CWR)

238 See: <http://unitedwomenbl.org>.

239 Gačanica, L. *Protection of workers women's rights in Bosnia and Herzegovina: Analysis of judgments and legal aid in areas of labour relations with a focus on gender-based discrimination*, 2021. Available in BHS languages at: <http://unitedwomenbl.org/wp-content/uploads/2021/05/Analiza-presuda-u-oblasti-radnih-odnosa-FINAL-WEB.pdf>.

240 See: <http://unitedwomenbl.org>.

has been active in Zenica.²⁴¹ This is a legal and advocacy organisation dedicated to enhancing the position of women and children in all social relations. Since 2015, this organisation has intensified its advocacy and providing free legal assistance to all victims of discrimination based on gender, sex, sexual orientation, ethnicity, disabilities, race, and discrimination in the field of labour. The Centre staff stated that the term “discrimination” often has been misinterpreted. Most of their clients initially claim discrimination, but further insight into their cases often determines that violations occurred based on some other grounds. The Banja Luka Centre for Human Rights²⁴², which provides legal assistance, stated that they received many questions related to discrimination every year, and from 2018 to 2020, and they had five queries gender-based discrimination in labour.

The Centre believed that sexual harassment is the most persistent form of discrimination in the labour market, and women often are discouraged by the actions of institutions; they often believe that they cannot receive any protection if they report the perpetrator. The Centre has worked to convince them otherwise and to support them in bringing forward cases to the appropriate institutions. Additionally, the Centre has been critical when it comes to the work of institutions, emphasising that institutions that work to combat discrimination and improve the position of women should be the first line of advocacy and the first line of defence when it comes to human rights.

CSOs and especially women’s rights organisations have a major role to play in raising awareness about gender-based discrimination, empowering women to report it, and providing legal assistance and representation in court. CSOs thus remain important actors in preventing and addressing gender-based discrimination in labour, having assisted and supported several cases in seeking justice, who otherwise may not of known how or trusted that it could be possible to initiate such procedures. However, considering that most organisations depend on donors’ resources, they cannot always work with the same intensity in this field. The aforementioned Action also supporting this report has provided them with the resources to have broader outreach and support more cases, thereby increasing their work in this area in recent years. This analysis revealed that in the last two years, the areas of activity of some women’s rights organisations dealing



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

- Tea Prpoljac, Centre of Women’s Rights
Zenica, interview



When she received information that she had to take sick leave due to a risky pregnancy, the employer required her to stay at the job at least ten days more under the excuse that ‘all other female employees do the same in the company; first they must get the job done and then use their sick leave afterwards’. Having her circumstances in mind (risky pregnancy), we advised her to have a meeting with the director and created some form of legal letter. [Then] the employer understood that he had discriminated against her, and he was not aware of that. He let her take a sick leave finally.

- Dejan Lučka, Banjaluka Centre for
Human Rights

241 See: <https://cenppz.org.ba/?lang=en>.

242 See: <https://www.blchr.org/en/>.

with violence against women have extended to address issues related to labour rights. First, due to the needs arising from the COVID-19 pandemic, but also due to expanded work capacities of organizations created partially as a result of this project. The analysis of the existing literature also shows that efforts have been made by CSOs to obtain information on the position of women in the labour market, the challenges they face and litigation before courts.

RECOMMENDATIONS

For the Legal Framework

- Incorporate into the Constitution a comprehensive definition of the prohibition of discrimination against women, which covers direct and indirect discrimination in public and private spheres.
- Align labour laws with the ILO Convention and the EU Directive on work-life balance (2019/1158) by introducing at least ten paid working days of paternity leave, at least two months non-transferable parental leave, leave for caregivers, and flexible working conditions.
- Regulate sexual harassment as a single legal provision within the FBiH Criminal Code that would constitute an independent criminal offense.
- Harmonise penalties for violations 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 people with disabilities or when the prohibition of overtime or night work denies or limits employees' rights within Criminal Codes of FBiH and the RS.
- Adopt proactive mechanisms to address the challenges that women registered in one entity and working in another entity face when it comes to maternity benefits.

For All Institutions

- Institutionalise obligatory training to familiarise all officials in public institutions with gender-based discrimination, workers' rights and mechanisms available for protecting those rights.
- Adopt Decisions on Zero Tolerance Policy and/or other internal mechanisms for preventing and treating sexual harassment and gender-based harassment in labour.
- Increase the availability of free legal services and psychological support for persons suffering gender-based discrimination.
- Improve COVID-19 and other emergency response: Ensure protective measures are in line with international standards and have at least a gender responsive if not a gender transformative approach, mitigating effects on vulnerable women including those in social isolation (e.g., in remote areas, mothers of children with disabilities, elderly women, and employed women under in vitro fertilization, etc.). In accordance with the law, all state bodies should collect gender-disaggregated data (including also labour unions, free legal aid providers and the Ombudsman) to obtain more precise data on gender-based discrimination in labour.
- Ensure the application of legally required gender classification, including data on discrimination for all state bodies, but also for trade unions, free legal aid providers and institution of ombudsmen.
- Implement the Rules of Procedure on Collecting Data in the Cases of Discrimination in Bosnia and Herzegovina in compliance with the provisions of the Law on Prohibition of Discrimination. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina (MHRR) should establish a Central Database on Cases of Discrimination in Bosnia and Herzegovina.
- Enhance efforts of inspectors, law enforcement and the judiciary to protect the rights of women, mothers, and pregnant women in employment.

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

- Provide the Ombudsperson Institution with greater powers regarding mediation.
- Strengthen the capacity of the Department for the Elimination of All Forms of Discrimination to initiate misdemeanour proceedings in discrimination cases.

Courts

- Reduce fees for court costs in labour disputes.
- Strengthening the capacity to initiate misdemeanour proceedings is quite enough for reducing court cases and increasing trust.
- Given that cases of gender-based discrimination in the field of labour and employment have priority and are resolved by urgent procedure, it is necessary to engage additional executors to resolve backlogs in labour disputes and discrimination cases, so that provisions on urgent treatment are implemented in practice.
- Treat the prosecution of criminal offenses and misdemeanours as a matter of urgency and prioritise such cases.
- Encourage the use of the Law on Prohibition of Discrimination and the Law on Gender Equality in proceedings dealing with gender-based discrimination at work.

Labour Inspectorates

- Clarify the legal responsibilities of labour inspectors at all levels to monitor and provide support in cases of potential or reported gender-based discrimination.
- Provide regular institutionalised training for labour inspectors at all levels on gender-based discrimination, sexual harassment, and mobbing.

Free Legal Aid provided by Public Institutions

- Authorise representation of centres of free legal aid for parties in gender-based discrimination cases regardless of their financial situation through the entire court process, acknowledging the fact that victims of gender-based discrimination usually are in a vulnerable position, at risk of losing their livelihood, and need such support.
- Strengthen the capacities of the Centres and their cooperation with CSOs.

Labour Unions

- Make activities more accessible to particularly marginalised groups like women with disabilities and LGBTQIA+ persons.
- Provide better education to members on gender-based discrimination, the relevant legal framework, relevant mechanisms for reporting, and assistance available from labour unions in addressing gender-based discrimination against women in labour.
- Consider providing psychological assistance to members suffering from gender-based discrimination, sexual harassment, and mobbing.
- Harmonise collective agreements with the provisions of the Labour Law to ensure equal opportunities regardless of gender.
- Improve cooperation with CSOs, which can support the aforementioned efforts.
- Increase the participation of women in unions' administration bodies and leadership.

- Review union policies and activities to integrate a gender-transformative perspective and policies into the work of unions.
- Strengthen the trust of workers in unions and continuously promote worker's rights and gender dimensions of these rights.

Employers

- Incorporate, through internal mechanisms (e.g., work regulations, codes of ethics), provisions on the prohibition of discrimination on the grounds of sex, procedures for reporting gender-based discrimination to the employer and the treatment of such cases.
- Establish regular and mandatory education of employees on gender-based discrimination and how to report it to the company's internal mechanisms.

CSOs

- Continue providing psychological counselling as part of legal aid programs for women victims of gender-based discrimination in labour.
- Better promote support and legal counselling programs related to gender-based discrimination in labour.
- Further improve cooperation with responsible institutions and labour unions, especially in promoting rights related to gender-based discrimination and labour.
- In cooperation with donors, provide continuous financial support to women victims of gender-based discrimination, especially amid pandemics, natural disasters and disasters that further endanger women's jobs. Advocate together for sustained state funding to support these services.

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Constitution of Federation of BiH

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ANNEXES

Annex 1. Methodology

This appendix provides additional information regarding the research methodology that was used for the purpose of this study. In order to answer the research questions presented in the introduction, the research included mixed methods, as follows:

- 1) review of the relevant legal framework, with special focus on laws related to gender equality,
- 2) literature review,
- 3) collection of existing data related to cases of discrimination, disaggregated by sex, from institutions,
- 4) semi-structured interviews with representatives of institutions (selected through the use of sampling variations) that have the legal responsibility to address discrimination in order to assess their knowledge, awareness and experience of gender-based discrimination in the labour market,
- 5) in-depth interviews with persons who have had experience gender-based discrimination in labour relations,
- 6) an anonymous online survey using Lime Survey, launched with the aim of gathering information from various women and men. The following sections provide additional details.

Legal Analysis

Legal analysis of the existing legislation in BiH regarding labour relations, discrimination and gender equality is considered, including the shortcomings and harmonization of national legislation with the *Acquis Communautaire* ("acquis communautaire of the European Union" in the field of gender equality, discrimination and protection of labour rights). The analysis also identified relevant institutions and protection mechanisms in this area, as well as other international protection mechanisms (agreements, conventions, bylaws that BiH has signed, or that exist at the cantonal level). The legal analysis sought to find the answer on following questions: How is discrimination defined in domestic legislation? What are all the measures in place to protect against discrimination as well as gender-based discrimination? What are existing gaps in the legal framework? What are the relevant institutions for protection against gender-based discrimination in labour in BiH?

Literature Review

A review of the existing literature provided additional data on gender-based discrimination that was available to complete the study, especially in sections not covered in detail by the questionnaire / survey or in-depth interview.

Data Collection

The first research included data related to cases of gender-based discrimination in labour relations from 2008 to 2017, while the second edition of the research covers the period from 2018-2020. Data was requested disaggregated by gender, from: Ministry of Interior of Republika Srpska, Federal Ministry of Interior, Ombudsman Institutions, Labor Inspection of Republika Srpska, several cantonal inspections, various unions and institutional and non-

institutional free legal aid providers, Agency for Peaceful Settlement of Labour Disputes, relevant gender mechanisms (BiH Gender Equality Agency, FBiH Gender Center and RS Gender Center). This included sending official data requests to these institutions.

The Survey

The survey sought to gather information from women and men regarding their knowledge of anti-discrimination legislation, personal experiences with gender-based discrimination, and reports of gender-based discrimination to relevant protection mechanisms. The Lime Survey survey was set up on March 29-11, 2021. For demographic data on respondents, see Annex 2, and a copy of the survey is available in Annex 3.

Interviews

For the purposes of the research, interviews were conducted with institutions, civil society organizations, trade unions, women who have experienced gender-based discrimination as well as other relevant protection mechanisms.

Some institutions refused oral interviews and offered written answers. RS Gender Center never responded to any of the requests for interviews we sent.

List of Interview Respondents (50 interviews in total)

Selma Hadzihalilovic, Womens Network BiH
Ana Kotur, woman who experienced GBD, exp. in the field of human rights, woman with disability
Diana Šehić, Rights for all
Dalila Hasanbegović Vukas, Sarajevo Open Centre
Darko Pandurević, Sarajevo Open Centre
Inga Dujmović, GBD victim, Sarajevo
Kristina Jozić, President of the Female Police Officers Network Association
Lana Jajčević, Foundation Uniter Woman Banja Luka
Majda Halilović, Atlantic initiative Sarajevo
Mersiha Beširović, Commerce Trade Union of BiH (CTUBIH)
Samir Kurtović, Independent Trade Union of Civil Servants and Employees in Institutions of FBiH
Ljiljana Preradović, Ministry of Justice, Office for Free Legal Aid
Milorad Mitrović, RS Ministry of Labour and Veterans' Affairs / Head of the Department for Normative and Analytical Affairs, Department of Labour and Employment
Jovana Borjan Lazeta, Agency for the peaceful settlement of disputes
Jasminka Džumhur, Ombudsperson for Human Rights BiH
Judge, Basic court Mrkonjic Grad (anonymous)
Zulka Baljak, Center for Civic Cooperation Livno
Vera Zih Bošković, activists, woman with disability, legalist
Zoran Mikanović, Labour inspectorate Republica Srpska
Predrag Raosavljević, Head of Department for elimination of all forms of discrimination, Ombudsperson for Human Rights
Željka Rubinić, Commerce Trade Union of BiH (CTUBIH), para legal aid
Željko Lazarević, Association Beba više
Sefkija Plasto, judge, basic court Sokolac
Tea Prpoljac, Women's Rights Center Zenica
Dejan Lučka, BL Center for human rights
Mirela Geko, Institute for Youth Development KULT
Belma Ramić, Gender center Federation of BiH
Aleksandar Stanojević, lawyer Banja Luka

Todor Duvanjak, lawyer Banja Luka
Marijana Senjak, psychologist BiH/Croatia
Adisa Zahiragić, judge, Cantonal court Sarajevo
Judge, Basic court Srebrenica (anonymous)
Branislava Crnčević, Agency for gender equality Sarajevo
Judge, Basic court Banja Luka (anonymous)
Zlatibor Kojičić, Trade union of leather, textile and footwear workers FBiH
Goran Stanković, Federation of Trade Unions of RS
GBD victims from Bosanska Krupa, Orašje, Derventa, Tuzla, Banja Luka, Modriča, Sarajevo (anonymous)

Data Analysis

The researcher coded qualitative data as a result of in-depth interviews, and according to research questions. Partnering organisation, Reactor from Northern Macedonia, performed a statistical analysis of the survey data using SPSS, which was reviewed and further analyzed by the researcher.

Validity

The researcher sought to improve the validity of the findings through additional inquiries and requests for clarification / access to information sent to the relevant mechanisms that took part in the research or had already provided the requested data. The review of the findings by individuals dealing with discrimination, gender equality and trade union organization also sought to identify potential shortcomings and mistakes before finalizing the research itself.

Annex 2. Demographic Information about the Sample

The analysis from 2018 (research published in 2019) included 547 respondents (39.7%) who completed approximately 90% of the questions from the survey questionnaire (out of a total of 1378 persons who clicked on the survey, but completed less than 90 %). The majority of respondents were women at that time (81.4%), ages 30-49 (66.8%) highly educated, and 59.6% of the sample have a degree or master degree. 8.4% or 46 respondents stated that they have some form of disability, and 92% of respondents came from urban areas.

In 2021, a total of 3125 started survey but completed less than 90 % , of which 683 of them (22%) completed approximately 90% of the questionnaire. The majority of participants are women (84%), living in urban area (86.5%), aged between 30-49 (72.9%) and highly educated: 57.9% the sample has a diploma, master's degree or doctorate. Of the sample, 9.4% or 64 respondents consider themselves persons with disabilities.

On the other hand, 87.3% claimed employed in the data processed in 2018. Of these, 80.2% are full-time employees; part-time 3.7%; the self-employed is 3.4%; 12% are unemployed; 9.2% are looking for a job; not looking for a job 0.9%; 0.9% of students and 0.9% of retirees. Unpaid work (officially unemployed) 0.7%.

Analysis of demographic data from 2021 showed that 84% of respondents are employed (83% women and 85% men). Most of them work in public administration (40% women and 39% men), and almost one in three works in the private sector (30% women and 37% men).

In 2018, 45.2% of respondents received a monthly net salary in the amount of 501 - 1,000 KM, while 30.4% received more than 1,000 KM, but less than 1,500 KM. 13.3% had net salary higher than 1500KM, and 11.2% less than 500KM. On average, men and women in the sample they did not differ significantly in terms of the monthly salary they receive. Only 2.4% of employees in the sample received a minimum wage or less than the minimum wage in Bosnia and Herzegovina (less of 400 KM).

On the other hand, in 2021, 1.6% of employees receive a minimum wage or less than the minimum wage in Bosnia and Herzegovina (less than 400 KM). Less than 1,000 KM receives 50.6% of survey respondents, 31.3% receives between 1,001 - 1,500 KM, while 18% has a monthly net salary of more than 1,500 KM.

Annex 3. Survey Instrument

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

Thank you for taking part in this important survey, which aims to identify ways to better address different forms of discrimination that can occur in relation to work. Understanding your thoughts and experiences can support us in identifying actions that can help prevent discrimination, as well as contribute to improved access to justice for discrimination when it occurs. The survey will take approximately 10/15 minutes. Be assured that all of your answers will be kept strictly confidential. No one will know who you are.

If you have any questions or concerns about this survey, please contact: smarkovic@hcabl.org.

By clicking "Next", you consent to participate in this important research. Thanks so much!

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

GENERAL INFORMATION

Where do you live?

BiH

Abroad

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

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

Do you live in urban or rural area?

Urban

Rural

What is your gender?

Woman

Man

Other

In which year were you born?

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

Serbian

Bosniak

Croat

Other (please write) _____

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

Primary or incomplete primary education

Secondary school

Vocational education on the basis of secondary education

Vocational higher education

Bachelor degree

Master's degree

PhD

What is your current marital status?

Single

Engaged

Married

Divorced

Co-habiting

Widowed

How many children do you have under age 10?

Do you consider yourself to have a disability?

Yes

No

EMPLOYMENT INFORMATION

Are you currently:

Employed full-time

Employed part-time

Self-employed

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

Unemployed

Looking for work

Unemployed, not looking for work

Unemployed, still studying

Unemployed officially, but I do unpaid work outside the home such as farming, caring for animals like cows or chickens, etc.

Other (please write)

[If unemployed/family worker are you]

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

Not registered in the employment agency, but looking for work

Not looking for work

Unemployed, still studying

Unemployed officially, but I do unpaid work outside the home such as farming, caring for animals like cows or chickens, etc.

[If not looking for work]

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

You are waiting to be invited to your previous employment

Seasonal type of work

Illness (your personal)

Disability (your personal)

Takin care of children

Taking care of adult disabled person

Other personal or family obligations

School education or training

Retired person

You think that there is no available job

Other reason (specify)

In the last three years (so since 2018), has any of the following been true for you? Please check all that apply:

I was unemployed and not looking for work

I was unemployed and looking for work

I was employed part time

I was employed full time

I was in school/university

I was self-employed

I worked without pay for a family business or farm

Where do you work? Please check all that apply.

Private sector (business, including family business or farm)

Government (including ministry, municipality, health institution, public school, university, etc.)

Local civil society organization

International civil society organization

Other international body (EU, UN, UN agency, foreign embassy, etc.)

Which of the following best describes your current position?

Entry-level position (e.g., assistant, worker)

Mid-level position (e.g., coordinator)

Senior-level position (e.g., manager, director)

I'm my own boss

Other (please write)

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

When I was sick with COVID-19

When a fellow household member was sick with COVID-19

When I was sick for another reason

For personal leave (e.g., death in family)

For national holidays

For vacation/ annual leave?

COVID-19

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

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

0 days (workplace never closed)

1-7 days

8-15 days

16-30 days

30+ days

Not applicable to me

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

I was not paid

I was paid at reduced salary

I was paid at actual salary

Not applicable to me

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

Yes

No

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

Caring for persons who had COVID-19 or other illnesses in my family

Caring for children (e.g., during the lockdown of schools and kindergartens)

Caring for persons with disabilities

Caring for elderly persons

Living and working in a small space with others

Not having enough electronic devices in my household for everyone's needs

Not having strong enough internet for everyone's needs

Difficulties concentrating

Psychological violence at home

Physical violence at home

Difficulties going offline and disconnecting (such as due to work pressure)

Stress

Accessing safe transportation to get to/from work

Other (please write)

I did not face any challenges

Have you had COVID-19?

Yes

No

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

Yes

No

How many days did you take off? _____

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

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

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

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

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

Yes
No

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

Yes
No

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

General layoffs of all workers
I had no contract so employer said to stop working
My employment contract was not renewed
I had to take care of my children and my employer pressured me to quit/fired me
I was a woman
Other reasons (please write)

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

Not applicable: I did not qualify for any of benefits
Paid absence from work for parents with children under age 10
Additional salary (e.g., for essential workers)
Unemployment benefits
Other (please write)

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

Not applicable: I did not qualify for any of benefits
Double payment of the social scheme value for all beneficiaries of social schemes for March, April, and May
Withdrawal of 10% of the funds saved in the Pension Trust for contributors
A salary bonus in the amount of €300 for employees of essential sectors (fieldworkers who are directly exposed to the risk of infection in their line of work) for two months
Extra payment in the amount of €100 for employees of grocery stores, bakeries, and pharmacies in April and May
Monthly assistance amounting to €130 for citizens who lost their jobs due to the public

health emergency for April, May, and June

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

Government payment of monthly assistance in the amount of €130 for citizens with severe social conditions, declared as unemployed by the competent institution, who are not

beneficiaries of any monthly revenue from the budget of Kosovo for April, May, and June

Other (please write)

CONTRACTS AND PAY

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

Yes

No

Do you currently have a written contract?

Yes

No

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

Three months or less

4-6 months

7-12 months

More than 1 year, but less than 3 years

4 or more years

Indefinite

I have never had a written contract

In your workplace, who tends to have longer contracts?

Women

Men

It's the same for both

Not applicable (only men or only women work here)

I don't know

Since 2008/2018, have you ever been asked to sign an employment contract without being allowed to read and understand the terms of your contract before signing it?

Yes

No

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

1-20

21-40

41-60

More than 61

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

Less than or equal to 129

130 – 170

171 - 200

201-300
301-400
401-500
501-800
800 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

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

Health insurance
Social security / pension paid by the employer
Neither of these

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

Yes
No

Usually, how are you compensated for overtime worked? *

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

YOUR VIEWS

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

Yes
No
I don't know

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

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

HIRING

How many times have you been in a job interview since 2018?

Never

Once

2-5 times

More than 5 times

Don't remember

Since 2008/2018, in a job interview have you ever been asked questions concerning:

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

Since 2008/2018, 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 or are planning to		
You shared that you are planning to have children		
Your ethnicity		
Your age		
Your appearance		
Your political preference		
Your place of residence (for example, rural)		
Your sexual orientation and/or gender identity		
Other criteria not related to skills, education or experience		

	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		
Your political preference		
Your place of residence (for example, rural)		
Your sexual orientation and/or gender identity		
Other criteria not related to skills, education or experience		

PROMOTION

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

Yes, all employees have an equal opportunity

No, some employees are treated differently than others

Both - It differs depending on the employer I have had

Don't know

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

Your appearance

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

You were pregnant

You have children or were planning to

Your ethnicity

Your sexual orientation or gender identity

The employer had a personal preference

Your age

Your religion

Your place of residence (for example, rural)

I don't know

None of the above happened to me

Other (please write):

WORKING CONDITIONS

Have you ever been denied the right to take off work for sick leave, national holidays, or annual leave?

Yes

No

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

Yes

No

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

COVID-19

Bad air quality

Dangerous chemicals

Lifting heavy objects

Not being allowed to use the toilet

Other (please write)

PREGNANCY AND MATERNITY LEAVE

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

Yes

No

I am currently pregnant but am not yet on maternity leave

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

Yes

No

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

Yes

No

I am still on maternity leave

Why not? Please mark all that apply.

I did not want to work anymore

I started a new job

The employer terminated my contract/fired me

My contract expired while I was on maternity leave

The employer decided to employ my replacement instead

I have no one to take care of my children or childcare is too expensive

I could not find work

Due to illness or injury

Another reason (please write)

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

Yes

No

When you returned to work, did you have:

More responsibilities
Fewer responsibilities
The same responsibilities

Did you have:

Higher pay
Lower pay
The same pay

Did you have:

More working hours
Less working hours
The same working hours

When you returned, were you:

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

PATERNITY LEAVE

Would your employer give you paternity leave?

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

Since 2008/2018, have you had a new born child while being employed?

Yes
No

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

When you returned from leave, were you:

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

Do you think that men should have more paid time off for paternity leave?

Yes
No

SEXUAL HARASSMENT AT WORK

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

	-Yes, this is sexual harassment. -No it's not. -Depends	-Yes, this happened to me, more than once. -Yes, this happened to me once. -No, this never happened to me.
Making sexual gestures, jokes, or sounds		
Sending emails or text messages of a sexual nature (including after work hours)		
Touching intimate parts of another worker's body (bottom, breasts, etc.)		
Touching body parts on purpose (hand, shoulder, back, etc.) in a situation in which touching is unnecessary		
A colleague or superior proposing to have sex with him/her		
A colleague or superior forcing someone to have sex with him/her		

Were the persons who did this to you:

Women

Men

Both

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

Lower positions than you

Equal positions as you

Higher positions than you

Have you talked about this situation to anyone?

Yes

No

Who did you tell? Please check all that apply.

No one

Friend, acquaintance

Family member

Colleague

My manager

Police

Religious leader

Person in an official reporting mechanism at my workplace

CSO that provides legal help

Someone else, please specify:

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

I was ashamed

I'm afraid of losing my job

I did not want to

I think I have to take care of it myself

Other (please write):

UNIONS

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

Yes

No

I don't know

Are you a member of any workers' union?

Yes

No

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

Very well

Good

Somewhat

Poorly

Very poorly

OVERALL REFLECTIONS

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

Yes

No

If no

Do you have any comments, stories or examples you want to share, including cases of discrimination that may have happened to someone you know? Please provide details?

If yes

Please, can you describe in detail any experience(s) that you have had with discrimination at work since 2018? We greatly appreciate any information you can share. Your identity will remain anonymous.

In which sector were you working when this occurred?

Private sector (business, including family business or farm)

Government (including ministry, municipality, health institution, public school, university, etc.)

Local civil society organization
International civil society organization
Other international body (EU, UN, UN agency, foreign embassy, etc.)
Other:

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

None
Labour Inspectorate
Police
Courts
Prosecution
Ombudsman
CSO that provides legal help
Lawyer
Other (please write)

What happened when you reported discrimination to the relevant authorities?

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

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

Yes
No

FOLLOW-UP

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

Yes
No

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

Phone:
Email:

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

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

Annex 4. Sample Interview Guide

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

(For the Labour Inspectorate)

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

Introduction

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

Demographics

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

Knowledge

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

Attitudes and Perceptions

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

Training

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

Laws and Implementation

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

Filter: Gender-based discrimination cases reported

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

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

[If the answer is Yes, ask:]

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

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

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

Gender-based discrimination cases reported

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

28.1. If yes, how many approximately?

28.2. What was the gender of persons who suffered discrimination [women, men, both]?

28.3. What was the gender of the alleged perpetrator?

28.4. Have you observed whether discrimination tended to happen more to people in any of the following groups: ethnicity, sexuality, age, ability, geographic location? Please elaborate.

28.5 Have you seen any cases in which multiple discriminations were claimed, such as on the basis of both gender and disability OR gender and ethnicity?

28.6. What types of discrimination did you encounter?

29.6. In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.

29. How many were investigated based on appeals that employees have submitted?

30. What steps have you taken?

31. Were any disciplinary measures taken?

32. If so, which?

33. What was the biggest challenge?

34. In your view or experience, how have persons who have experienced discrimination because of the gender been treated by institutions, other than your own? Probe: Please can you provide any specific examples? Please specify the institution.

35. What are the strengths and weaknesses of data collection practices related to logging these cases?

34. What are the current practices of collecting and tracking data related to gender-based discrimination in your institution?

35. Does the institution you work in disaggregate cases based on gender (the victim and the perpetrator)?

36. Do you have any other comments or things you'd like to add?

[Researcher notes (reflexivity)]

