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# GENDER-BASED DISCRIMINATION AND LABOUR IN ALBANIA



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# **GENDER-BASED DISCRIMINATION AND LABOUR IN ALBANIA**

By Mirela Arqimandriti, Megi Llubani, Olsi Çoku and Esmeralda Hoxha

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# ACRONYMS

ADC	Anti-Discrimination Commissioner
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHR	Commission on Human Rights
CoE	Council of Europe
CoM	Council of Ministers
CPD	Commissioner for Protection from Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
DWCP	Decent Work Country Program
EC	European Commission
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
ESS	Employment and Skills Strategy
GADC	Gender Alliance for Development Centre
GBD	Gender-based Discrimination
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organisation
LGBTQIA+	Lesbian, Gay, Bisexual, Trans, Queer/Questioning, Intersex, Asexual
LGE	Law on Gender Equality
LC	Labour Code
LPD	Law on Protection from Discrimination
KWN	Kosovo Women's Network
MIA	Ministry of Internal Affairs
MHSP	Ministry of Health and Social Protection
MoJ	Ministry of Justice
NCL	National Council on Labour
NCGE	National Council on Gender Equality
NGO	Non-governmental organization
NHRI	National Human Rights Institutions
NLC	National Labour Council
NSDI	National Strategy for Development and Integration
OI	Ombudsperson Institution
UN	United Nations
UNDP	United Nations Development Programme

# EXECUTIVE SUMMARY

This report examines gender-based discrimination and labour, as part of a regional initiative to address such discrimination in six Western Balkan countries, supported by the European Union (EU). The research aimed to provide information about shortcomings in the relevant legal framework; the prevalence and nature of gender-based discrimination related to labour; the extent to which people have filed claims; and how institutions have treated such cases. Conducted in 2018, the research involved mixed methods, including a desk review, online survey and interviews.

The legal and policy framework related to gender-based discrimination and labour in Albania seems rather comprehensive, particularly considering that much of the law is drafted in accordance with EU law. The Constitution contains broad protections, and several specific laws deal with gender-based discrimination in relation to labour. However, the inharmonious legal framework, with overlapping and differing definitions and sanctions, may contribute to significant confusion and legal uncertainty in courts. There is also some room for confusion considering the different administrative routes towards filing claims with courts. The Labour Law requires further amendments to fully harmonize it with EU directives related to gender equality. The lack of relevant case law makes assessment and implementation difficult, though justice institutions can make reference to EU legal rules of procedure to facilitate understanding and practical implementation of the Albanian anti-discrimination and gender-related legal framework.

Most women and men survey respondents seemed aware that gender-based discrimination is illegal. While several knew that such discrimination should be reported to employers (45%), police (22%) or the Labour Inspectorate (14%), only 12% knew of the Anti-discrimination Commissioner office. Low awareness contributes to minimal reporting of gender-based discrimination to relevant institutions. Other factors include workers' concerns over anonymity, fear of job loss, bureaucratic procedures, and difficulties documenting cases and, for some, distrust in institutions.

The institutions responsible for addressing gender-based discrimination at work lack data about its prevalence. However, evidence shows that gender-based discrimination exists, particularly in hiring, promotion, maternity leave and sexual harassment at work. Survey findings suggest that such discrimination particularly affects women in the private sector, those receiving lower salaries and persons ages 40 to 49. Minimal information exists about work-related gender-based discrimination among persons with different abilities, minority ethnic groups and persons with various gender identities and sexual orientations.

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



# INTRODUCTION

This report examines gender-based discrimination, defined as discrimination that affects a person *because of her or his gender*. Gender-based discrimination can affect women and men. However, as evidence in this report suggests, it tends to affect women more than men. Therefore, the report focuses on gender-based discrimination affecting women. Meanwhile, the terms 'discrimination against women' and 'discrimination against men' clarify who gender-based discrimination has affected.

Decreasing unemployment and increasing labour force participation rates, including among women, has been a key policy priority of European Union (EU) officials, governmental representatives and civil society actors alike. Some research has suggested that discrimination has affected disproportionately women's labour force participation. Comprehensive and continuous research on gender-based discrimination in the labour market in Albania is lacking. Most existing research tangentially touches upon issues of discrimination, labour market conditions and gender. However, statistical data suggests that there is a discrepancy between women's participation in higher education, which is higher than men's, and women's subsequent participation in the labour market. For instance, in the 2016-2017 academic year 64% of women compared to 36% of men were enrolled in higher education.<sup>1</sup> According to the labour force survey, women are less likely to participate in the labour market. Men employment in the 15-64 years old population has been relatively stable, while women's participation in the labour market in 2017 has increased to 58 % compare to 50 % in 2013.<sup>2</sup> Employment rate for the population aged 15-64 is 64 % for men and 50 % for women<sup>3</sup>. The structure of employees shows that 42 % of women in the labour force are employed in paid positions while 23 % of them engage in unpaid work in the family business. For employed men, these figures are respectively 37 % and 12 %. However, a significant percentage of men-namely 36%- in the labour force are self-employed, compared to 23.0% of women<sup>4</sup>.

Albania's shift from a communist regime, in which almost everyone worked in socially-owned enterprises, to a market – based democracy, contributed to many women returning to domestic, family life, rather than public life and work. The closure of many factories previously owned by the government affected women first and foremost. Previously free of charge social services like childcare disappeared after the 1990's, prompting women to dedicate their time to chores, and caring for children and other family members. Recent data from the Legatum Prosperity Index (LPI) shows that women's labour force participation in Albania is well below the average in Organisation for Economic Co-operation and Development (OECD) countries and the EU, standing at approximately 50% compared to over 65% for the latter.

As statistics show, women are disproportionately affected by unpaid work. In 2011, the Institute of Statistics revealed that 95% of women and only 39% of men were engaged in housework, childcare, preparing meals, shopping and other activities on weekdays.<sup>5</sup> As such 'unpaid care work is the exclusive domain of women' and combining both paid and unpaid

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<sup>1</sup> INSTAT. 2018. *Women and Men in Albania 2018*. Online: <http://www.instat.gov.al/media/4349/burra-dhe-gra-ne-shqiperi-2018.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> INSTAT. 2011. *Gender Perspective in Albania: Censuses Analysis 2011*. At: [http://www.instat.gov.al/media/2332/perspektiva\\_gjinore\\_n\\_shqip\\_ri.pdf](http://www.instat.gov.al/media/2332/perspektiva_gjinore_n_shqip_ri.pdf).

work means that women work an average of two hours more per day compared to men; this poses a considerable barrier for entering the labour market.<sup>6</sup>

Discrimination and unequal treatment in the labour market based on gender are not uncommon phenomena<sup>7</sup>. Verbal abuse is widespread, as evidenced by two separate studies from the Gender Alliance for Development Centre (GADC) and the Institute for Democracy and Mediation (IDM). According to IDM's survey, 68% of employees in industry and 78% of construction sector employees report that verbal abuse occurs regularly.<sup>8</sup> GADC's extensive interviews with women workers in textile and shoe factories, primarily women, paint a similarly grim picture of verbal abuse from middle management and supervisors. Sexual abuse also has been reported. A field study conducted by GADC in 2016 revealed a plethora of concerns raised by workers in shoes and textile factories related to working conditions, contracts and wages. Lack of cooling and heating systems, poor health services within the premises of factories, as well as verbal and physical abuse were common place.<sup>9</sup> The workers interviewed also reported that men usually received much higher salaries than women with the justification that the former operate heavy machinery which requires physical strength.<sup>10</sup>

A recent report by the Ombudsman regarding the implementation of CEDAW in Albania revealed several issues relating to discrimination against women in employment relations. As noted in the report: During the examination of complaints, some of which by women, about the social right to work, the Peoples Advocate (PA) Institution found that, in addition to violations in terminating employment contracts, employers have violated repeatedly employees' right to work. In these cases, in addition to damaging the legitimate socioeconomic rights of individuals (through salary reduction or dismissals), the mental health and psychological dignity also have been affected, which leads to poorer performance or even harms the individual's physical and mental health.<sup>11</sup>

Since 2010, Albania has had anti-discrimination legislation, which currently is undergoing revision. However, information regarding the implementation of the relevant legal framework and case law were scarce when research began related to this report. Information regarding people's awareness and attitudes about gender-based discrimination related to labour was unavailable. Thus, insufficient evidence existed to tackle gender-based discrimination in the labour market effectively.

At the beginning of 2018, five women's rights civil society organizations from Western Balkan countries, including GADC and led by the Kosovo Women's Network, started cooperating towards furthering women's labour rights, focusing on addressing gender-based

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<sup>6</sup> Gardner, J. (2017). *Time Use Surveys and Policy Case Study: Albania*. Retrieved on November 20, 2018 from <https://www.data2x.org/wp-content/uploads/2018/03/Data2x-TUS-Case-Studies-Albania.pdf>.

<sup>7</sup> Andrea Bassanini, Anne Saint-Martin. *The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity*. 2008. ffhalshs-00312794f

<sup>8</sup> Institute for Democracy and Mediation. (2017). *Labour Standards in Albania: Research Report*. Retrieved on November 20, 2018: [http://idmalbania.org/wpcontent/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wpcontent/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

<sup>9</sup> Arqimandriti, M., Llubani, M., & Ljarja, A. (2016). *Wage and Labour Conditions of Shoe and Garment Workers in Albania*. Friedrich Ebert Stiftung. Tirana.

<sup>10</sup> Ibid.

<sup>11</sup> Ombudsman. 2016. *Report on the Implementation of CEDAW Convention in Albania*. Retrieved on November 20, 2018: <http://www.un.org.al/sites/default/files/CEDAW-Avokati-EN.PDF>.

discrimination in the labour market. As a first step, they undertook this research, which will serve as a baseline to inform their future advocacy and outreach towards decreasing and better addressing gender-based discrimination in the labour market.

In order to address the aforementioned shortcomings in information, GADC conducted this research with the aim of establishing a baseline regarding the nature of gender-based discrimination in the labour market, the extent to which discrimination claims are being filed and to gather additional information regarding how institutions are treating such cases. As one of the more long-term aims of GADC is to hold institutions accountable, implement strategic litigation and advocate for anti-discrimination legislation to be implemented, this research will provide the needed evidence to inform such efforts effectively.

More specifically, this research aimed to answer the following research questions:

1. To what extent is the legal framework complete?
2. How many work-related discrimination cases have been reported to different types of institutions from 2008-2017, by year?
3. For what reasons have few discrimination cases been reported and/or filed?
4. How have relevant institutions treated discrimination cases to date?

## Methodology

In order to answer the research questions enlisted above, GADC conducted research from March to December 2018. The research involved mixed research methods. *First*, a legal analysis was conducted to examine and assess current anti-discrimination legislation in place in Albania, including any shortcomings in aligning national legislation with the Acquis Communautaire, with a specific focus on gender equality related legislation. It examines international laws, treaties and conventions, the Constitution of the Republic of Albania, Albania's relevant national laws and secondary legislation. The legal analysis also has served to identify relevant institutions, their roles and responsibilities.

*Second*, existing literature of available data on discrimination was reviewed. *Third*, existing data related to discrimination cases, disaggregated by gender, was requested and collected from several institutions that have a legal responsibility related to addressing discrimination, including: the Anti-Discrimination Commissioner, Ombudsperson Institution (OI) of Albania and Inspectorate of Labour. *Fourth*, representatives from these institutions, selected using variation sampling, were interviewed using a semi-structured interview guide to measure their knowledge, awareness and experience with gender-based discrimination related to labour.

*Fifth*, an anonymous online survey in two languages (Albanian and English) was launched using Lime Survey with the aim of collecting input from diverse women and men regarding their knowledge of discrimination legislation, attitudes and personal experiences with discrimination, whether such cases were reported and the reasons as to why they did not report discrimination when it occurred. The survey was promoted broadly, also targeting under-represented groups, including through media, email and Facebook boosting. A total of 1502 participants clicked the online questionnaire and 942 participants (63 %) completed approximately 90% of the questionnaire. Of them, 67 % were women and 33 % men<sup>12</sup>. 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 research team. The

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<sup>12</sup> Considering that the number of respondents to each question differed, the precise number of respondents is presented in the findings ('n').

research thus involved triangulation of researchers, methods and sources, towards enhancing validity.

The main limitations of this research relate to the online survey, which was not statistically representative of the population. Hence, a short-coming includes potential bias in general interpretations, given the overrepresentation of certain social groups. For example, from the survey there is an overrepresentation of: women (69% of respondents were women and 38% men); respondents 39 years old and younger (59%); respondents with high levels of education, namely master's degrees and PhD (48 %); and respondents located in the capital city (23%) or other cities (76%). Despite limitations in generalizability, the research team believes that the survey provided useful qualitative data regarding people's interpretations of their experiences with gender-based discrimination, which otherwise may have been difficult to collect via random sampling, given the sensitivity of the topic and the need to access persons who believed they had suffered discrimination. For further information about the methodology, please see Annex <sup>2</sup>.

## **About This Report**

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

# LEGAL ANALYSIS

## International Agreements and Instruments

According to the Constitution, the Republic of Albania applies all binding international laws.<sup>13</sup> Any ratified international agreements constitute part of the internal legal system once published in the Official Journal of the Republic of Albania.<sup>14</sup> Moreover, if any domestic laws are incompatible with ratified international agreements, international agreements take precedent over domestic laws.<sup>15</sup> Albania has signed dozens of conventions and treaties addressing fundamental human rights and freedoms, non-discrimination and labour rights.

Additionally, Albania and the EU signed the Stabilization and Association Agreement on June 12, 2006, which obliges the state to guarantee equality between men and women. Following obligations arising from the EU Accession process, Albania must approximate its legislation with the EU Acquis. Non-discrimination and equality principles are among the objectives and founding principles of the treaty for establishment of European Council and substantial rights of the European Union. Albania's obligations to integrate gender and non-discrimination issues derive from five key areas that are required before EU

accession: advancing public administration reforms; the protection of human rights; the battle against corruption; tackling organised crime; and implementing judicial reforms.

For the most part, international instruments and conventions have been transposed in Albanian legislation. Thus, many Albanian laws are phrased well, including important aspects related to human rights and non-discrimination. However, implementation and reinforcement of the Albanian Law on Protection from Discrimination (LPD), Law on Gender Equality (LGE) and Labour Code, remain weak in Albania.

### BOX 1. International Legal Instruments Ratified by Albania, relating to Anti-discrimination

- Universal Declaration of Human Rights.
- International Convention on the Elimination of All Forms of Racial Discrimination.
- International Covenant on Civil and Political Rights.
- Optional Protocol to the International Covenant on Civil and Political Rights.
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
- International Covenant on Economic, Social and Cultural Rights.
- Convention on the Elimination of All Forms of Discrimination against Women.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
- Convention on the Rights of the Child.
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Convention on the Rights of Persons with Disabilities (the New York Convention).
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Council of Europe Framework Convention for the Protection of National Minorities.
- Beijing Platform for Action.
- Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the 'Istanbul Convention')

<sup>13</sup> Article 5.

<sup>14</sup> Articles 122 and 123.

<sup>15</sup> Article 122.

Since 2014, Albania has been a candidate country for joining the EU. The European Commission continuously has emphasised that in order to open accession negotiations, Albania needs to meet several key priorities related to: public administration and judicial reform (focusing on professionalism and de-politization); the fight against corruption and organized crime; and protection of human rights, including property rights.<sup>16</sup> European Commission progress reports for the country have continued to request that Albania harmonize its legislation by transposing those legal acts that are related to working conditions, notably on health and safety at work (HSE) and equal opportunities. Albania has adopted the Council Directive on equal treatment in employment and occupation, which provides better access to employment; access to vocational guidance and training; better employment and working conditions; and membership in various decision-making bodies, towards more involved workers.<sup>17</sup>

The LPD covers the following grounds as a basis for discrimination:

*'race, ethnicity, politics, religious or philosophical beliefs, disability, age, sexual orientation, gender, colour, language, gender identity, economic, education or social situation, pregnancy, parentage, parental responsibility, family or marital condition, civil status, residence, health status, genetic predispositions, affiliation with a particular group or any other reason'.*

All of these are included in reference to the following European Council directives:

- **Council Directive 2000/43/European Council** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- **Council Directive 2000/78/ European Council** establishing a general framework for equal treatment in employment and occupation.
- **Council Directive 2004/113/European Council** implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- **Directive 2006/54/ European Council** of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

The amended Labour Code, which entered into force in June 2016, has transposed various EU directives covering non-discrimination at work, parental rights, right to information, employer-employee relations and teleworking<sup>18</sup>. Further, recent amendments to the Labour Code marked improvements regarding non-discrimination, which made the latter fully compliant with the aforementioned directives. This included implementing the principle of equal treatment of persons regardless of racial or ethnic origin, as well as the Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The recent amendments also increased the minimum working age from 14 to 15, in line with International Labour Organisation (ILO) conventions. However, according to the European Commission<sup>19</sup> provisions on forced labour remain vague.

One of the most important international instruments ratified by Albania, in 1994, is the Convention 'On the Elimination of All Forms of Discrimination against Women' (CEDAW), and it's 'Optional Protocol', recognized worldwide as the 'Constitution of Women'. The Commission on the Status of Women (CSW) is a commission of the United Nations Economic and Social Council (ECOSOC). It is the main global policy-making body focused exclusively on gender

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<sup>16</sup> European Commission. 2013. Progress report of Albania.

<sup>17</sup> European Commission. 2014. Progress Report of Albania

<sup>18</sup> European Commission 2016. Progress report of Albania

<sup>19</sup> Ibid.

equality and the advancement of women. Article 11 of CEDAW focuses on the right to work, the right to equal compensation, social insurance, job tenure, protection from gender-based discrimination and discrimination at work.

Albania reports regularly on CEDAW, and the committee has reached Concluding Observations. In July 2016, Albania received CEDAW concluding observations on its Fourth Periodic Report. In reference to the field of employment, the CEDAW committee expressed the following concerns:

*'The Committee welcomes the reform of Albania's legislation concerning the employment of women, namely, the amendment of the Labour Code defining and reversing the burden of proof in cases of sexual harassment. The Committee notes with concern, however, women's concentration in the informal labour market, especially in the textile and shoe industries, without adequate labour and social protection, and the lack of disaggregated data on the number of women in the informal economy. It is also concerned that the gender wage gap, notwithstanding reported positive developments, remains significant, in particular in the private sector, and that the minimum wage remains extremely low (approximately \$180 a month), disproportionately affecting women. The Committee is further concerned about the limited access to the formal labour market for women belonging to ethnic and linguistic minorities and women with disabilities, as well as about the lack of sex-disaggregated information on labour migration to third countries<sup>20</sup>.'*

Exploitation of children at work persists in Albania. Child labour still occurs in some extremely hazardous occupations, such as agriculture, construction, footwear, the garment industry and the service sector.<sup>21</sup>

During its membership in the ILO, Albania has ratified 54 conventions, including the Convention regarding Discrimination in Respect of Employment and Occupation. Albania is responsible for reporting on the advancement of labour rights and labour conditions to international mechanisms, established by relevant international acts ratified by the Albanian Parliament or adhered to by Albania. Specifically, Article 1 of the Convention concerning Discrimination in Respect of Employment and Occupation, which entered into force in 1960, considers discrimination as:

*'Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation' and calls upon signatory parties 'to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof'.*

Albania has ratified all main ILO labour conventions. Overall, Albania has ratified:

- ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention, included in the Labour Code.
- ILO Convention No. 100 on Equal Remuneration.
- Convention No. 111 on Discrimination (Employment and Occupation).
- ILO Convention No. 138 on the Minimum Age.
- Convention No. 182 on the Worst Forms of Child Labour. The criteria for employment of persons under 18 are well defined in the Labour Code.
- ILO Convention No. 29, the Forced Labour Convention.
- Convention No. 105 on the Abolition of Forced Labour. The law prohibits trafficking, forced and compulsory labour, including by children.

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<sup>20</sup> Committee on the Elimination of Discrimination against women. 2016. Concluding observations on the fourth periodic report of Albania.

<sup>21</sup> Gender Alliance for Development Centre. 2015

In relation to gender and employment, reference must be made to ILO conventions. Although Albania's domestic legal framework already has adopted different pieces of international legislation regarding gender in labour relations, laws are not entirely harmonized. The ILO has four key gender equality Conventions: Equal Remuneration Convention, 1951 (No. 100); Discrimination Convention (Employment and Occupation), 1958 (No. 111); Workers with Family Responsibilities Convention, 1981 (No. 156); and Maternity Protection Convention, 2000 (No. 183). Conventions No. 100 and No. 111 are among the eight fundamental Conventions. The principles and rights enshrined in those conventions can be found in the ILO Declaration on Fundamental Principles and Rights at Work (1998). The Equal Remuneration Recommendation, 1951 (No. 90) provides detailed guidance on the implementation of Equal Remuneration for Work of Equal Value. The ILO mandate on gender equality is reinforced by related resolutions adopted by its highest decision-making body, the International Labour Conference. The most recent of these is the Resolution concerning Gender Equality at the Heart of Decent Work, adopted in June 2009; and the Resolution concerning the Promotion of Gender Equality, Pay Equity and Maternity Protection, adopted in June 2004.

## **The Constitution of the Republic of Albania**

The Albanian Constitution strengthens the protection of human rights with a specific clause on anti-discrimination, including gender as a prohibited ground for discrimination<sup>22</sup> The overarching principle of non-discrimination, including with regard to labour relations, is enshrined in the Albanian Constitution. Article 18 stipulates that 'all are equal before the law' and 'No one may be discriminated against on the grounds of gender, race, religion, ethnicity, language, political, philosophical and religious beliefs, social, educational and economic situation, and parental status.' The same constitutional principles apply to national minorities and non-Albanian citizens. The Albanian Constitution establishes comprehensive rights for citizens and provides protection from discrimination in general, including discrimination on the grounds of gender; however, it does not specifically provide protection on the grounds of sexual orientation or gender identity (SOGI)<sup>23</sup>. Only later, when the LDP was approved in 2010 was discrimination on the basis of SOGI prohibited.

In addition, the Constitution is formulated in non-gender sensitive language<sup>24</sup>. Professions in which either women or men may work are stated linguistically, solely for men. The titles of professions such as minister, mayor or director of a directorate remain in the male gender. However, this occurs only in the official acts appointing them because in everyday life people tend to use the female gender linguistically to refer the title. Nevertheless, using a narrow linguistic interpretation of specific articles of the Constitution, these articles can be regarded as neutral in terms of gender.

CEDAW ratified by Albania in 1993, states in the Article 11 that: 'State parties shall take all necessary measures to eliminate discrimination against women in employment, in order to provide the same rights on the basis of equality of men and women.' Therefore, women have the right to freely choose their profession and work, the right to be promoted, to have constant job security, professional preparation and training, among other rights. Gender equality may only be achieved when, as a result of the law's application, both men and women have the same gains, rights and responsibilities. It is of the utmost importance to

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<sup>22</sup> USAID & UNDP. 2017. *"Being LGBTI in Eastern Europe". Albania country report: reducing Inequalities and exclusion and combating homophobia & Transphobia experienced by LGBTI people in Albania.*

<sup>23</sup> Ibid

<sup>24</sup> GADC. 2018



understand that the empowerment of women and gender equality are not merely issues isolated only to one gender, but rather relate to respect for human rights. Hence, discrimination against women must be treated as a human rights violation.

In line with international standards, the right to employment is sanctioned in the provisions of the Albanian Constitution under Article 49: 'Everyone has the right to earn the means of living by lawful work that he has chosen or accepted himself.' According to Shtylla (2016), this constitutional provision guarantees any person the right to labour, regardless of gender, race, ethnicity, language, political party affiliation or religion. Accordingly, the right to work involves the right to choose a profession, place of work, as well as the system of professional qualification aimed at earning a means of living by lawful work.

In Constitutional Court decision no. 20/2006, it is stipulated that:

*'The definition provided by Article 49 of the Constitution should be considered of its double meaning. It implies a positive obligation that requires state commitment to create the conditions for its realization, but also a negative obligation, which requires that the state does not intervene so as not to violate this right.'*

Additionally, the Albanian Constitution recognizes the economic freedoms and fundamental rights of employees to seek social protection related to labour, as well as to organize in unions to protect their work-related interests.

## **The Labour Code**

In December 2015, the Albanian Parliament passed Law no. 136/2015 introducing important amendments to the Albanian Labour Code no. 7961 dated 12.07.1995. The aim was to harmonize the Law with the EU *Aquis* on employment. This included minimum standards for labour, equality, health and safety at work and non-discrimination. Amendments also promote social dialogue at the European level. Certain aspects are novelties, introduced for the first time into the Albanian legislation, such as temporary employment of foreign citizens, the temporary-work agency and parental leave. The amendments came into force on 22 June 2016. With respect to gender-based discrimination in labour, recent amendments include three important, novel principles that employers must consider during the employment relationship: non-discrimination; protection of personal and sensitive data; and informing and consulting.

For example, termination of an employment contract in violation of the 'non-discrimination' principle now is considered termination of a contract for no reasonable cause, which leads to compensation for the employee. Amendments provide for changes to the definition of discrimination by including any exclusion or preference related to sexual orientation, pregnancy, residence or HIV/AIDS disease. All employees should be treated equally and the employer should take all necessary measures to ensure the adaptation of the workspace for employees with different conditions (e.g. person with different abilities). Additionally, Article 9 was amended to establish, for the first time, the employee's right to file a claim with the Commissioner of Protection from Discrimination following well-defined procedures in the LPD.

The employer, in the course of an employment relationship, shall not collect information on the employee, save for when such information is related to the professional capability of the employee or when such information is necessary for the implementation of the employment contract. The employer is obliged to ensure protection of employees' personal data and specifically sensitive data that are processed by the employer, in accordance with legislation on protection of personal data.<sup>25</sup>

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<sup>25</sup> Article 33 of the Labour Code.

The 'informing and consulting' principle defines for the first time the employer's obligation to communicate with the employees' representative, especially prior to taking important decisions, such as posting employees, reorganizing the enterprise and changing employment conditions.<sup>26</sup> The employer must inform the employee in writing with the purpose to receive the opinion and eventually consent of the latter. Meanwhile, the amended article 32 forbids malicious, sexual, racial and general harassment of employees at work. It obliges the employer to follow a set of rules and obligations aiming at guaranteeing the dignity, personal and mental health of the employee.

In addition, 2015 amendments also apply to maximum hours of work, working conditions, working overtime, vacation time, annual leave, night work, non-discrimination and consultation with employees.

### **General Provisions within the Labour Code for All Workers**

Amendments to the Labour Code that entered into force in 2016 regulate: labour relations between employee and employer: payment for hard work and late hours; maternity leave; health at work; and temporary employment. These changes make the Labour Code a modern document that provides more protection for employees. The following sections examine various aspects of the Labour Code that may related to gender-based discrimination at work.

### **Employment Contract**

Amendments to the Labour Code define the form and content of the employment contract<sup>27</sup>. As of their effective date, the conclusion of an employment contract and amendments to the employment contract shall be made only in writing. From now on, employment contracts must be duly amended to contain changes provided for in the recently amended law. A new element that must be integrated into employment contracts is a description of the disciplinary measures and procedures applied by the company as a component of grounds for termination of the employment contract. In addition, the conclusion of fixed-term contracts must be justified by objective reasons regarding the temporary nature of the duties assigned to an employee. Failure to comply with this obligation shall not affect the validity of the contract. Pursuant to article 202 of the law, failure by the employer to observe the above requirements is subject to a fine of up to 30 times the minimum monthly salary defined by law. In comparison to the existing provisions, the employer and the employee must formalize the employment contract in a written form within seven days from the commencement of employment. Previously, the obligation to have an employment contract in a written form was not specifically foreseen by the Labour Code.

All contracts usually include the probationary period presumed from the time the labour contract is concluded. When the employee cannot work because of illness, the employer gives him/her no less than 80 percent of the salary for a period of 14 days uncovered by social security.<sup>28</sup>

If an employer does not register an employee in the social security scheme, the employer shall pay all expenses belonging to the employee as a result of an accident or occupation-related disease, as well as all damages generated by not registering the employee in the scheme.<sup>29</sup>

### **Rest Breaks**

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<sup>26</sup> Article 33/1.

<sup>27</sup> Article 12 of the Labour Code.

<sup>28</sup> Article 23, paragraph 1 and Article 25 of Law No. 7703, date 11.5.1993 On social security in the Republic of Albania.

<sup>29</sup> Article 39.3 of the Labour Code.

Amendments to Article 54 define rest breaks<sup>30</sup> between daily working hours. An employee working for nine consecutive hours has the right to at least 40 minutes of non-payable breaks. An employee that has worked for more than six consecutive hours is entitled to at least 20 minutes of non-payable breaks to be taken at least after every third hour of work. After the ninth hour of work, the employee is entitled to 20 more minutes of rest break. During pregnancy, the pregnant employee is entitled to at least 30 minutes of rest breaks every three working hours. The employer and employee must agree on the duration and timing of the daily rest break in the employment contract.

### **Maximum Working Time and Overtime**

Article 90 of the Labour Code sets out that overtime work must not exceed 200 hours per year<sup>31</sup>. Further, the amendment reduced the weekly working time from 50 hours to 48 hours. Overtime for pregnant women, mothers up to one year after birth and disabled persons is prohibited.

### **Annual Leave and Other Payable Leaves**

Annual leave<sup>32</sup> cannot be compensated with a cash payment, except when the employment contract is terminated and the untaken leave must be compensated to the employee.

### **Parental Leave**

Parental leave<sup>33</sup> is a new concept introduced by the recent amendments. An employee that has worked for more than one year for the same employer is entitled to unpaid parental leave (not exceeding four months, to be given until the child reaches the age of six). The leave can be divided in not less than one week per year. The duration of parental leave is agreed in writing between the parties. In case of adoption, parental leave may be given within six years from the adoption, but not after the child is 12 years old. Parental leave is an individual right for each employee and may not be transferred by the mother to the father or vice-versa.

### **Birth Leave**

Amendments have extended the prohibition for women to work after giving birth from 42 to 63 days. From the 63rd day after giving birth, until the child reaches the age of one, in agreement with the employer, a woman is entitled to two hours of paid leave during working hours in order to feed her child.<sup>34</sup> The employer cannot order a pregnant woman or a woman with a child up to the age of one year to work at night if such work is harmful for the safety of the woman and/or the child.

### **Termination of Employment Contract**

Recent amendments have significantly changed the termination of employment contracts. Employers now must determine and include in the written notice reasons for termination. Such reasons may be related to the lack of capabilities of the employee, his/her behaviour or operational needs of the enterprise. Reasonable causes for termination are explicitly specified to avoid abusive or unlawful dismissals. During the notice period, if the employment contract is terminated by the employer, the employee is entitled to at least 20 hours of paid leave per week to seek a new job. Amendments also have affected notification

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<sup>30</sup> Article 54 of the Labour Code.

<sup>31</sup> Article 90 of the Labour Code.

<sup>32</sup> Article 93.4 of the Labour Code.

<sup>33</sup> Article 132/1 of the Labour Code.

<sup>34</sup> Article 105 of the Labour Code.

terms for the termination of an employment contract; no longer may notification terms be changed through a mutual agreement.

### **Other Amendments**

Other changes in the Labour Code relate to the organization of syndicates and employees' unions; general and solidarity strikes; the creation of a regional three-party council; collective dismissal; enterprise transfer; and collective agreements, among other themes.

### **Maternity Leave and Other Protection of Women Employees**

Both the Labour Code and the Law on Social Security foresee special protection for women. The Law on Social Security provides for maternity leave<sup>35</sup>. Pursuant to this Law, a pregnant woman is entitled to pay maternity leave of 365 calendar days, including a minimum of 35 days prior to childbirth and 63 days after childbirth. After completing the minimum mandatory maternity leave, 63 days after childbirth, a woman may decide if she wants to work or benefit from social security. If she selects the latter, she avails herself of the maximum period of maternity leave.

In the event of the birth of more than one child, the duration of this period is extended to 390 days. During this period, employees shall receive payment from the Social Security Institute amounting to: 80% of the daily average of their salary over the last calendar year, applicable for the first 150 days of maternity leave; and 50% of the daily average of their salary in the last calendar year, applicable for the remaining days of maternity leave. Maternity leave is paid by the Institute and not by the employer.

When a pregnant, a woman who has recently given birth and/or a woman with a baby at home decides to return to work after the period mentioned above, but the previous job position is not considered appropriate, as defined by legislation on health and safety at work, the employer takes the necessary measures to ensure the temporary adaptation of working conditions and/or hours of work to avoid any risk to the employee and/or the child.<sup>36</sup> If the adaptation of working conditions or working hours is technically and/or objectively unfeasible, or cannot be requested on duly justified causes, the employer transfers the employee to another similar job for which she is deemed suitable.

In order to ensure a preventive action, the Labour Code defines a penalty of up to 10 times the minimum monthly wage for the employer. The income earned during maternity leave shall be paid, including: the income on pregnancy; the income on the compensation for the pregnancy, in case there is any change in the work place; and child birth remuneration.<sup>37</sup>

In addition, the Labour Code prohibits the employer from requiring pre-employment pregnancy tests, unless the workplace requires working in conditions that may adversely affect pregnancy or which may harm the life or health of the mother or child.<sup>38</sup> During pregnancy, the woman, in agreement with the employer, is entitled to allowances for medical examinations when these must be performed during working hours.

If the employer terminates the employment contract when the woman is at work during pregnancy or has returned to work after maternity leave, the employer must prove that the cause of dismissal was neither the pregnancy nor the birth of the child.

The Labour Code provides special provisions for night work, including forms of reward. If a pregnant or breastfeeding woman who returns to work 63 days after the birth is uncomfortable working at night, following a medical report, but is suitable and comfortable

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<sup>35</sup> Articles 104, 105 and 105/a and 107 of the Labour Code.

<sup>36</sup> Article 107.1 of the Labour Code.

<sup>37</sup> Law No. 7703 on Social Security in the Republic of Albania, dated 11.5.1993.

<sup>38</sup> Article 105/1 of the Labour Code.

working during the daytime, she is to be transferred to similar work for which she is deemed suitable.

The employer must assess the risk of agents, processes or work conditions based on the nature, scale and duration of exposure within the company and workplace where pregnant women, breastfeeding women or women that have recently given birth perform their work and activities. Risk assessments shall assess all elements that generally violate employees' safety and health in the workplace and specifically potential effects on reproductive health, pregnancy and breastfeeding. Safety and health protection for groups that are risk-sensitive shall not constitute any grounds for generating unfavourable circumstances for women in the labour market.<sup>39</sup>

The above paragraph encompasses the employee protection provision set out in the Labour Code which can be treated also as a direct protection for reproductive health of women in cases of exposure to radioactive radiation, some categories of chemical substances, and workplace stress. This includes if exposure to the above-mentioned elements has negative effects even once the baby is conceived.

On such grounds, the Labour Code forbids:

- Women and pregnant women to be exposed to any kind of hazardous and dangerous radiation, especially to radioactive radiation.
- Women to work with chemical substances or within premises and environments involving chemical vapours, dusts and fumes harmful to their health.
- Pregnant women to work 35 days before baby delivery and 63 days after baby delivery.
- Pregnant women and breastfeeding mothers to be employed in hazardous or hard work that harm children's and mother's health.
- Pregnant women to work night shift (hours).
- Prohibits breastfeeding mothers and pregnant women to lift weights.
- Prohibits that they be asked to start working before 05:00 in summer time (or 06:00 during winter time), or to continue work after 20:00.

In addition, it allows for pregnant women and breastfeeding mothers to enjoy paid breaks amounting to at least 20 minutes for every three hours of work per day, if their condition justifies these breaks.

### **Childcare for Dependents**

If an employee needs to care for dependents<sup>40</sup>, the employee is entitled to her/his salary, during up to 12 days of absence from work annually. Employees with children up to three years of age are entitled to 15 days of paid leave if the child is proven sick by a medical report. Employees have the right to be absent from work for an additional unpaid period not exceeding 30 days per year. The leave is granted to the parent who is effectively engaged in caring for the child. Otherwise, the mother and father may take turns. The employer can verify the report on childcare by appointing another doctor.

## **Criminal Code**

The Criminal Code qualifies as criminal offences any forced sexual intercourse without consent. The Criminal Code also has adopted provisions for protecting women from violence and, specifically, qualifying sexual harassment as a criminal offence. Sexual harassment is defined to include sexual behaviour violating human dignity with any means or in any form,

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<sup>39</sup> Article 48 of the Labour Code.

<sup>40</sup> Article 132 of the Labour Code.

resulting in a threatening, hostile, degrading, humiliating or offensive environment. As such, sexual harassment is punishable by one to five years of imprisonment.<sup>41</sup>

## **Case Law related to Gender-based Discrimination**

No consolidated case law exists related to gender-based discrimination in Albania. Therefore, this analysis contemplates the necessary grounds for judges to justly rule, thereby addressing discrimination and enforcing equality in Albania. This would lead to the formation of so-called case law, involving contributions from various court decisions from all levels.

Most legislation mentioned in this chapter have various provisions in common that relate to the enforcement of gender equality and anti-discrimination rights. The Albanian Labour Code, in particular, sets forth principles on equal pay and treatment regardless of gender, race, origin or other differences.<sup>42</sup> Apparently, these provisions have not been easy to implement. Due to the supremacy of the Labour Code compared to other work-related laws, its equal pay and treatment provisions prevail in case of conflict with other legislation. Further, several provisions have direct effect, which means that they can be relied upon in litigation before national courts and applied by these courts in any proceedings. The European Court of Justice has decided that national courts have the duty to interpret their national law in conformity with the relevant directive, i.e. doing everything possible to achieve, through the interpretation of national law, the result at which the directive aims.<sup>43</sup>

Whenever a gender equality or anti-discrimination law is relied upon in national courts, they must be able to determine the position of the discriminated parties by creating an adequate legal environment and duly interpreting these laws.

Law no. 8116 /1996 On the Civil Procedural Code of the Republic of Albania (as amended) provides for the binding obligation of having equal regulations for adjudicating civil disputes related to it, without conditioning the enforcement of these regulations for individuals, on the basis of gender, age, ethnicity or race.

Article 1 of law no. 7859 /1994 On the Civil Code of the Republic of Albania (as amended) provides for every natural person full and equal civil rights and obligations within the limits provided for by the law, without any limitation thereof due to ethnicity or social origin, gender, race, colour, sex, age or faith.

Recent amendments to the Law no. 7895 /1995 Criminal Code of the Republic of Albania have introduced specific offences with increased sanctions against trafficking of human beings, domestic violence, stalking, marital rape, violation of protection orders, child abuse and neglect.

Case law has yet to be implemented in Albanian courts as relates to diverse provisions of anti-discrimination and gender equality-related legislation. The method of enforcing laws must be further strengthened.

### **Burden of Proof in Court Proceedings**

Rules on the burden of proof in civil complaints may shift from one party to another, according to the Albanian Civil Procedures Code.<sup>44</sup> However, courts must consider that the defendant must provide an objective justification, apart from the claimant who needs to

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<sup>41</sup> Articles 107/a, 108/a , 121, 130/a of the Criminal Code.

<sup>42</sup> Articles 9 and 115.

<sup>43</sup> The judgment of the ECJ in an equal treatment case has been ground-breaking in this respect. See ECJ 10 April 1984, Case 14/83 Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen [1984] ECR 1891 (Von Colson), at para 26.

<sup>44</sup> Law no. 7850, dated 29.7.1994, The Albanian Civil Code.

provide proof for the claim. For instance, if a woman worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men working in the same job, the employer then must prove that this practice related to wages is not discriminatory.

In the 2014 Progress Report on Albania, the European Commission recommended aligning the Labour Code with the EU acquis in relation to the burden of proof.<sup>45</sup> Accordingly, the Albanian Parliament adopted amendments to the Labour Code in 2016, introducing changes to prohibit discrimination on the grounds of gender in employment and profession. The anti-discrimination-related articles of the Labour Code have transposed effectively the provisions of the Equal Treatment Directive pertaining to the shift of the burden of proof in discrimination cases from the complainant to the respondent. Notably, these rules do not apply to criminal proceedings, which are carried out pursuant to different principles.

### **Defending Rights**

All courts have the obligation to ensure that judicial procedures are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment. In accordance with the criteria laid down in the law, organisations and associations that have a legitimate interest in employers' compliance with provisions of equal treatment directives have *locus standi*: the right or capacity to bring an action or to appear in a court. Such organisations, such as women's rights associations or trade unions, may engage either on behalf or in support of the complainant, with his/her approval, in any judicial or administrative procedure towards the enforcement of obligations under the Civil Code and gender-based legislation.

However, neither the Labour Code, nor other pieces of legislation, lay down any procedural rules for proceedings designed to ensure respect for the principles of equal pay and equal treatment of women and men. In the absence of any specific provision regarding the nature of evidence that should accompany a discrimination claim, the evidence that is submitted by the claimant should comply with the criteria set out by the Code of Civil Procedure. However, the practical effectiveness of the shift of the burden of proof would be affected adversely if the Court would base its admission on evidence only in the Civil Procedure Code.

### **Victimization**

The Labour Code protects against dismissal or adverse treatment in reaction to a complaint. Moreover, some courts have proven very sensitive to such situations, mostly ruling for the protection of employees.<sup>46</sup>

## **The Law on Gender Equality in Society**

Law no. 9970 On gender equality in society (LGE), dated 24.07.2008, stipulates the main principles of equality between men and women in public and private life. It aims to ensure efficient protection against discrimination on the grounds of gender; defines safeguards for equal opportunities between men and women, in order to eliminate gender-based discrimination; defines the responsibilities of state bodies in supporting gender equality; and defines protection against discrimination and harassment by providing special measures for guaranteeing at least 30% representation of the under-represented gender in political and

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<sup>45</sup> Point 4.19.

<sup>46</sup> Prof. Dr. Mariana Semini- Tutulani, *Judicial conflicts related to labour issues seen under the gender equality perspective*, 2014, pg. 53.

public decision-making positions for the least represented gender.<sup>47</sup> Additionally, the Law foresees gender equality in education, employment and media. LGE, as its main purpose, 'provides effective protection from gender discrimination and any other form of behaviour that encourages gender discrimination', as well as 'defines measures that provide equal opportunities among women and men, eliminating any form of gender discrimination'.<sup>48</sup> This stipulation sets the ground for a proactive and reactive approach, where public institutions have the responsibility to react to any case of gender discrimination, as well as the duty to prevent proactively any discrimination from happening.

The LGE defines gender equality, gender, gender-based discrimination, gender mainstreaming, equal gender representation, temporary special measures, employees dealing with gender issues, equal value for equal work, gender-based harassment and sexual harassment.<sup>49</sup> However, this set of definitions cannot be considered complete since it does not include any definition of sex, which relates to the biological features of a person, compared to gender, which the LGE defines as opportunities and social attributes related with being a woman or a man, as well as the relations between them. Moreover, gender stereotypes and gender identity are not defined. In addition, the definition of gender requires improvements.

The Law defines gender-based discrimination as 'any gender-based distinction, exclusion or restriction aiming at or resulting in damaging, failure to recognize, enjoy or exercise equally, by both genders, the fundamental human rights and freedoms provided by the Constitution and the legislation, in the political, economic, social, cultural and civil fields'.

LGE and LPD are intersectional in covering both gender-based and sexual harassment. Gender-based harassment is defined as "any kind of unwelcomed conduct related to the person's gender aiming at/or resulting in violating personal dignity or creating a threatening, hostile, humiliating, disparaging or insulting environment". While sexual harassment is defined as 'any kind of unwelcome conduct by means of words or actions, physical or symbolic, of a sexual character, which aims at or leads to the violation of personal dignity, especially when creates a threatening, hostile, humiliating, disparaging or insulting environment.'

Further, LGE introduces incentives to increase the equal participation of women in public and political life.<sup>50</sup> While such incentives are understood as a mechanism to increase the number of women in official positions, the Law also expressly refers to employment by stipulating an increase in equal economic representation in terms of status and employment.

Efforts and policies to increase participation of the less represented gender (women) in economic life shall cease upon reaching the desired quota. However, while policies to empower women economically exist, the indicators are similar to those used in political representation: 30% and 50%, respectively, at the national and local level. Few incentives exist for other sectors.

Special measures also exist in this Law for the protection of pregnant women, mothers and young parents, ensuring their comfort at work, social insurance and health insurance.

The Law also regulates compensation, which can encourage reporting of discrimination: 'A compensation for any damage material or moral, caused by the violation of provision of this law including the recovery of the violated rights, shall be made through the court based on the Civil Code Article 20'.<sup>51</sup>

The LGE also addresses gender equality and protection from discrimination in education, employment and media. It explicitly mentions the need for an estimate of the unpaid labour force.<sup>52</sup> Article 13.2.d establishes the mechanism for enforcing and

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<sup>47</sup> Article 1 combined with article 2 of the LGE.

<sup>48</sup> Article 2.

<sup>49</sup> Article 4.

<sup>50</sup> Article 8.

<sup>51</sup> Article 29.

<sup>52</sup> Article 23.



implementing the LGE, outlining the institutional framework that will address gender equality issues.<sup>53</sup>

## Law on Protection against Discrimination

Albania has established protection for addressing discrimination by adopting Law no. 10221 on 'protection against discrimination' on February 4, 2010<sup>54</sup>, the so-called the Anti-discrimination law (LPD). The Law appears to have transposed appropriately; definitions of various forms of discrimination are consistent with EU law<sup>55</sup>. However, the present definition of direct discrimination does not explicitly permit the use of hypothetical comparators, which are explicitly permitted under the definition of direct discrimination in relevant EU laws.<sup>56</sup> As such, this presents a proactive challenge in permitting the use of hypothetical comparators to ensure a consistent legal basis in accordance with EU law.<sup>57</sup>

To its merit, the Albanian LPD extends the scope of protection from discrimination beyond that which is provided for under EU law in two important aspects. First, it stresses that denial of reasonable accommodation is discrimination.<sup>58</sup> EU member states currently are debating implementing this approach amid negotiations for a new EU Equality Directive.

Second, the LPD builds on the jurisprudence of the European Court of Justice by explicitly stating that 'discrimination because of association' is a prohibited form of discrimination.<sup>59</sup>

Given the broad nature of the LPD, it assures the rights of every person to: a) be considered as equal before the law and be granted equal protection of the law; b) have equal opportunities and possibilities to exercise rights, enjoy freedoms and take part in public life; and c) be granted effective protection from discrimination and from every form of conduct that encourages discrimination.<sup>59</sup> This wide scope of application is complemented by a focus on areas where discrimination is particularly evident, such as employment, education and the supply of goods and services, including housing and health.

Article 11 allows for positive action, which it defines as a 'particular temporary measure that aims at speeding up the real establishment of equality'. The article states that this measure must be suspended or considered as concluded upon achievement of the equality objective.

Concerning employment, Article 12 covers cases where any distinctions, limitations or exclusions based on the protected grounds are prohibited in the field of employment. This includes cases where adverse treatment is related to job opportunities, the recruitment of staff and the treatment of staff within the workplace. Article 12 (2) also emphasizes that all types of harassment, particularly sexual harassment, are prohibited in the workplace.

Article 13 provides a range of positive obligations for employers to encourage the principle of equality and facilitate its promotion within the workplace. The Article sets forth the duties that employers shall have to investigate any complaints of discrimination made by

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<sup>53</sup> For further information, see the chapter on 'The Institutional Response to Discrimination'.

<sup>54</sup> USAID & UNDP. 2017. *"Being LGBTI in Eastern Europe". Albania country report: reducing Inequalities and exclusion and combating homophobia & Transphobia experienced by LGBTI people in Albania.*

<sup>55</sup> Council Directive 2000/43/EC (Racial Equality Directive), Article 2 (2)(a).

<sup>56</sup> This would involve progressive interpretation of Article 3(2).

<sup>57</sup> Article 3(7).

<sup>58</sup> In LPD, Article 3(4). Regarding the European Court of Justice, see *Coleman v. Attridge Law and Steve Law* (Case C-303/06), at <http://www.equalrightstrust.org/news/albanian-president-signs-comprehensive-anti-discrimination-law>.

<sup>59</sup> Article 2 of the anti-discrimination law.

their employees within one month of receiving them. As noted, prohibited grounds of discrimination are included related to SOGI.<sup>60</sup> Employment discrimination, moral and sexual harassment and derogatory comments against employees on the grounds of SOGI are prohibited by the Antidiscrimination Law and the Labour Code. The Law on Pre-University Education also prohibits discrimination based on SOGI, while providing free legal aid to anyone who is subject to discrimination, if such a discriminatory practice has been recognized by a decision of the Commissioner for the Protection against Discrimination (CPD).

In addition, Article 14 vests institutions such as the Council of Ministers, the Minister of Labour, Social Issues and Equal Opportunities and the Interior Minister with proactive duties. Each Ministry has a duty to take positive measures to fight discrimination in connection with employment rights. Moreover, this governmental duty has been transposed by raising consciousness of employees and employers by, among other things, providing information about protection against discrimination; and establishing special and temporary policies, based on the characteristics mentioned in Article 1, for organizing campaigns on encouraging equality, in particular between men and women, as well as between fully physically able persons and those who are of restricted or different abilities.

The labour union representatives interviewed believed that the legal framework on discrimination in the labour market is complete, with the exception of one who believed the legal framework is totally incomplete and more efforts are required to change the current law on anti-discrimination. The majority identify implementation as the Achilles' heel, which is in line with all the arguments provided by the other stakeholders interviewed.

In the Draft Law 'On some Amendments to Law no. 10221, dated 04.02.2010 'On Protection Against Discrimination', the Gender Alliance for Development Centre recommended that this law should include definition of the term 'disability'. This recommendation is necessary for changes to be made in other laws, to adapt and include EU disability directives. This would contribute to improving and strengthening Albanian anti-discrimination law. Also, for the same draft law, the Albanian Disability Rights Foundation has proposed amending the terminology used in Article 28, point b 'Cases of dismissal from the commissioner's office' when the commissioner is mentally incapacitated or physically to exercise his functions.

Furthermore, GADC recommended the addition of the concept of ill-treatment and harassment. Harassment or ill-treatment should be added as a concept to the law on protection against discrimination. Given that the concept of harassment essentially falls entirely within the scope of the anti-discrimination law competencies many EU countries recognize as 'creating an intimidating, hostile, humiliating, degrading, offensive, degrading or offensive environment and having or to have the purpose of violating human freedoms or dignity.'

## **Equality Bodies and Sanctions Imposed by Law**

The provisions on equal treatment set out in the anti-discrimination law aim to establish equal opportunities for all citizens to exercise all rights and obligations. The tasks for employers, imposed by law, include the promotion, analysis, monitoring and support of equal treatment. The Commissioner for Protection against Discrimination is entitled to impose financial sanctions amounting up to 600,000 Albanian Lekë. Meanwhile, if the Labour Inspectorate finds that an employer has breached equal treatment provisions including the right to employment and occupation, it may impose a fine amounting up to 1,200,000 Albanian Lekë.

Additionally, the Albanian Labour Code prohibits discrimination in employment on grounds of race, skin, colour, sex, age, religion, political beliefs, nationality, social origin,

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<sup>60</sup> Article 1.

family relations or physical or mental disabilities.<sup>61</sup> Discrimination may be sanctioned at a maximum limit of up to 50 monthly minimum wages.

## Enforcement through Court Decisions

The LPD provides for cases of discrimination to be brought before civil courts, as an alternative to filing a complaint with the Commissioner.<sup>62</sup> Such cases are subject to limitations such as set periods of five years from the time of the alleged occurrence of discrimination, or three years from the time that the damaged party gained knowledge of discrimination. The procedural requirements in relation to the burden of proof are: 'After the plaintiff submits the evidence on which he [*sic*] bases his claim and on the basis of which the court may presume discriminating behaviour, the defendant is obligated to prove that the facts do not constitute discrimination according to this law.'<sup>63</sup>

Due to linguistic issues in the adoption of text, it is unclear whether 'evidence' in this case has the same meaning as 'facts', which is the wording used in EU law and which would therefore require a shift in the burden of proof to the alleged discriminator once a *prima facie* case had been established. This is implied through the use of the word 'facts' in the latter part of the aforementioned article. Nonetheless, Albanian courts will need to create a precedent and firmly establish that this is the correct interpretation to be given for such cases. This is particularly important considering that burden of proof requirements have been among the main barriers to drawing a distinct line and fighting discrimination in European courts.

If it is proven and approved by the Court that any discrimination has taken place, the Court can order restorative measures aimed at ensuring that the plaintiff is placed in the same position as they were prior to the discrimination occurrence.<sup>64</sup> They may also provide compensation for the injured party.

For employment issues, there are three potential ways for any person to claim or report discrimination. For cases of discrimination or equality, the interested individual can file a discrimination complaint to his/her employer, the Commissioner for Protection from Discrimination (CPD) or the court. However, the LPD calls for special institutions to be created in various sectors of employment, if the sector has a need for such special institutions or if a different law provides for such institutions to be established.

According to the LPD, measures imposed by the court based on such laws do not exclude the addition of other regulations as they might be provided by other legal frameworks. Such unstable boundaries can lead to an overlap of responsibilities and procedures between different legal mechanisms.

According to the LPD, every employee has the right to notify and complain to the employer, the CPD or the Court if he/she believes that he/she has been discriminated against.<sup>65</sup> If choosing to notify the employer as a first option, both the employee and employer may settle the claim between them before starting any administrative or court procedure. During the examination of the complaint, the employee has the right to continue working as per the terms of the respective employment contract based on the possibility that both parties may reach an understanding or settlement even after the relevant discrimination claims have been raised.

If the employer does not take action or any concrete measures to investigate and resolve the complaint of discrimination, the employee who raised the complaint has the right

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<sup>61</sup> Article 9.

<sup>62</sup> Article 34.

<sup>63</sup> Article 36(6).

<sup>64</sup> Article 38.

<sup>65</sup> Article 15.

to stop working without losing his/her salary, for as long as it is necessary to be protected from discrimination arising in the workplace. The employee must refund the received amounts of money in case the Court rules out all claims made in regard to discrimination. Pursuant to the above, if the discrimination claims of the employee are found as based in law, he/she may require to be reinstated in the previous position or may require indemnification for material or non-material damages, or any other appropriate measures.<sup>66</sup> Part-time employees are entitled to the same rights to protection from discrimination as full-time employees.

More specifically<sup>67</sup>, the European Council recommends for the protection of the rights of LGBTI people, while also relating to measures on SOGI, constitutes the basis for protection of the rights of LGBTI people. Also, the application of the universal declaration on human rights and international human rights conventions provide a solid basis for the protection of human rights, while also relating to and in conjunction with SOGI<sup>68</sup>. According to Yogyakarta Principles<sup>69</sup>, the protection of LGBTI people does not require the creation of new or special rights for LGBTI people, but it clearly requires enforcement of universally-applicable principles of non-discrimination in a legal framework.

Albania has achieved significant progress in the protection of LGBTI people's rights, both on a legal and optical level, including the drafting of a National Action Plan on LGBTI People (2016-2020), adopted by the government in 2016, which constitutes the main policy document for protecting the human rights of LGBTI people<sup>70</sup>. The Albanian Constitution establishes comprehensive rights for citizens and promotes equality without discrimination. In addition, discrimination in employment, as well as moral and sexual harassment and derogatory comments against the employee on the grounds of SOGI, are prohibited by the Labour Law<sup>71</sup> and the Law on Pre-University Education.

## Procedures and Fines

The LPD lays out civil court procedures for addressing discrimination cases, as well as respective fines for non-complying parties. The involvement of the Commissioner is left to the discretion of the injured party, as they can submit the lawsuit before the court or to the prosecution office without engaging the commissioner. With the consent of an injured party, the Commissioner can represent the complainant before the court. Primarily, cases of discrimination are civil cases regulated by the Code of Civil Procedure. However, the Law also foresees possible criminal prosecution. It is rather vague in which cases a discrimination lawsuit can be criminally prosecuted, as the law states that 'every person or a group of persons ... may submit a lawsuit to the competent court according to the definitions of the Code of Civil Procedure ... or, as the case may be, to make a criminal denunciation before the competent organs for criminal prosecution'.

Time limitations also apply in bringing a discrimination case before the court. The injured party must bring the case no later than five years after the act has happened and no later than three years after the injured party has gained knowledge of the behaviour. While the injured party has no obligation to notify the Commissioner about a discrimination case,

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<sup>66</sup> Labour Code, articles 146 and 155.

<sup>67</sup> European Council. 2010.

<sup>68</sup> USAID & UNDP. 2017. *"Being LGBTI in Eastern Europe". Albania country report: reducing Inequalities sand exclusion and combating homophobia & Transphobia experienced by LGBTI people in Albania.*

<sup>69</sup> USAID & UNDP. 2017. *"Being LGBTI in Eastern Europe". Albania country report: reducing Inequalities sand exclusion and combating homophobia & Transphobia experienced by LGBTI people in Albania.*

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

the court must report to the Commissioner every lawsuit that is presented. Failure to comply with this Law results in fines, which are deposited into the State Budget. The fines are as follows:

- 10,000 – 60,000 Albanian Lekë for natural persons.
- 60,000 – 60,000 Albanian Lekë for legal persons.
- 30,000 – 80,000 Albanian Lekë for a natural person within a legal person.
- 30,000 – 80,000 Albanian Lekë for a person exercising a public function.

## Strategies and Policies

The Decent Work Country (DWC) Program (2017 – 2021) is a framework that guides ILO work in Albania. It is in line with the country's strategic priorities, as defined by different national strategies and policy documents, such as the National Strategy for Development and Integration (NSDI II – 2014-2020). The current DWC Program emphasizes gender considerations in its aims to enhance awareness, knowledge and to promote and facilitate a gender-responsive transition to the formal economy (ILO, 2017). Considering that, despite efforts made by the Albanian government, women's access to the formal economy remains an important challenge in promoting decent work conditions, DWC foresees publishing a gender-responsive trade union position paper on the informal economy in one of the economic sectors by the end of 2019.

NSDI II 2015-2020 recognizes the existence of gender discrimination in different areas of public and political life and thus commits to ensure that gender disparities are properly addressed. A key priority is 'ensuring the economic empowerment of women by addressing gender disparities leading them to poverty and by promoting their social inclusion and economic independence'<sup>72</sup>

The Employment and Skills Strategy (ESS) (2014-2020) focuses on gender disparities and aims at 'taking an explicitly gender sensitive and inclusive approach by devising policy responses and programs that ensure that benefits of reform equally accrue to different categories of women and men, girls and boys in Albania'. Specific interventions foreseen by the ESS include removing barriers by facilitating access in training and employment; encouraging participation in the formal labour market; addressing women's low participation in the labour market; and strengthening capacities to integrate gender equality goals into policy formulation, planning and deliverables.

The first Strategic Objective of the National Strategy for Gender Equality (NSGE, 2016-2020) seeks women's economic empowerment by addressing the inherent gender inequalities that lead to poverty. The Strategy does not explicitly focus on gender-based discrimination in the labour market; it makes subtle references to the existing situation where women are disadvantaged and often discouraged from even participating. For instance, the Strategy refers to closing the gender employment gap, increasing employment among women and decreasing unpaid work for women. These aspects affect gender-based discrimination in access to employment, according to the Strategy. The Strategy could have referred to reducing discrimination affecting women in the labour market.

## Conclusion

This chapter analysed the most relevant laws related to protection from gender-based discrimination in relation to labour. This includes the Constitution, the Labour Code, the LPD and the LGE. Elements of other legislation have been considered insofar as they relate to gender-based discrimination and labour or other issues pertinent to this legal analysis.

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<sup>72</sup> ILO. 2017

Protection against discrimination is guaranteed by the Albanian Constitution, ratified international conventions, the Labour Code and special laws, such as the LPD and the LGE. One of the most important barriers to accessing justice is the lack of effective legal remedies, including compensation, for victims of discrimination. Lack of sufficient financial means to follow a case is closely related to the lack of adequate representation. In most countries, legal representation is either mandatory or at least indispensable in practice due to the complexity of the procedures and the legal framework.

Despite all the laws, bylaws and measures taken to prevent discrimination, discrimination and gender inequalities in labour relations persist in Albania, as evidenced by the chapters that follow.

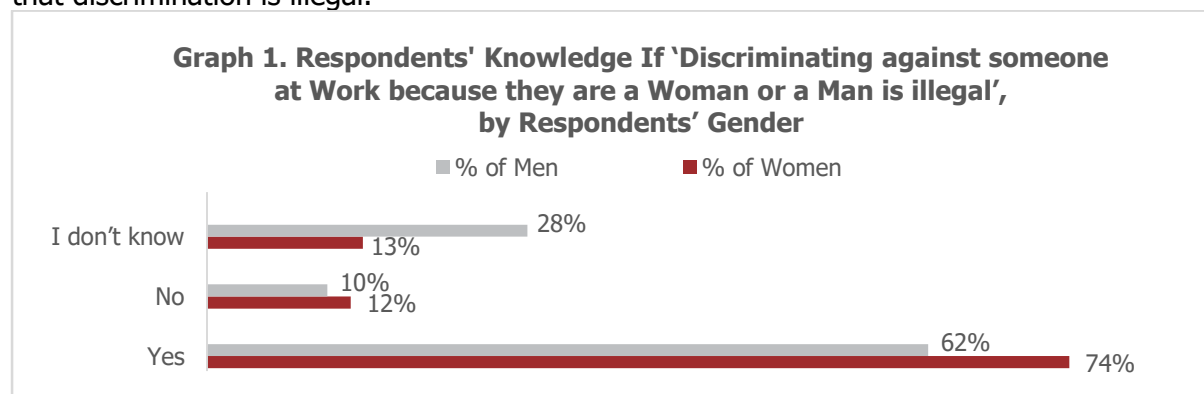
# PEOPLE'S AWARENESS, ATTITUDES AND REPORTING OF GENDER-BASED DISCRIMINATION

This chapter examines the extent to which people are aware about gender-based discrimination and the relevant legal framework. Further it is discussed the people's attitudes on gender-based discrimination and how to report discrimination if it occurs. The findings draw from interviews, as well as the online survey.

## People's Awareness about Gender-based Discrimination

Of the 1,087 survey respondents that answered the question whether discriminating against someone at work because they are a woman or a man is illegal, the vast majority (75%), agreed that gender-based discrimination is illegal in Albania. However, every tenth respondent (11%) did not think it is illegal, and more than every tenth did not know (14%).

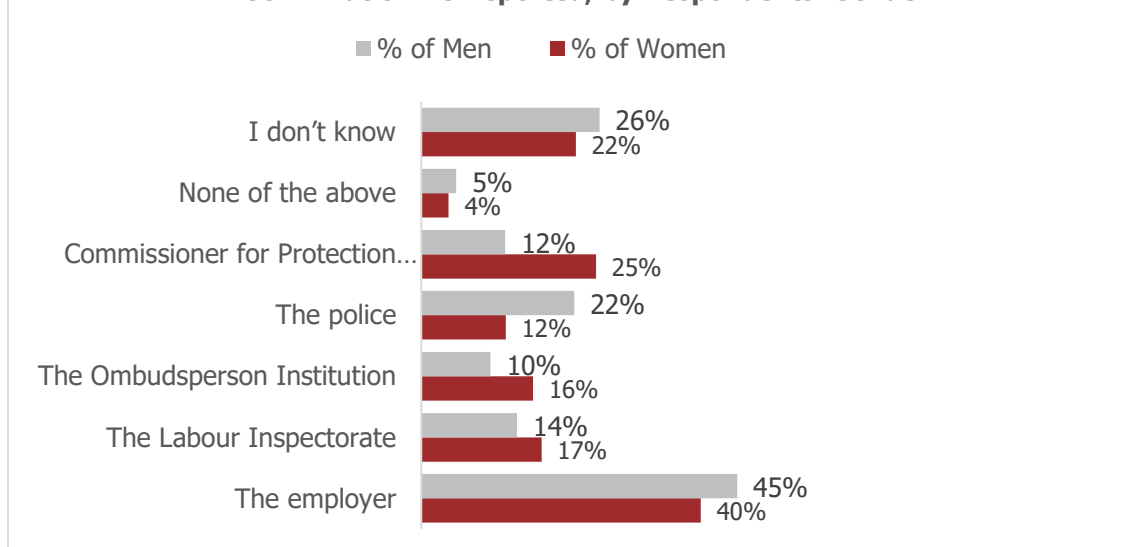
Thus, most survey respondents knew that Albania's legal framework regulates this. Little difference existed between women and men (see Graph 1); 74% of women and 62% of men respondents knew gender-based discrimination is illegal. Even so, roughly one in ten respondents, of both genders, thought discrimination was legal, whereas 13% of women and 28% of men did not know. Overall, this suggests that one in five people may not be aware that discrimination is illegal.



Regarding people's knowledge of relevant institutions, if gender-based discrimination occurs at work (Graph 2), 40 % of women and 45 % of men respondents thought that it should be reported to the employer. The Commissioner for Protection from Discrimination was recognized by every fourth woman (25%) and 12% of men. The Labour Inspectorate as a legal mechanism was identified by 17% of women and 14% of men. Every fifth man (22%) thought that discrimination at work should be reported to police, compared to 12% of women. The Ombudsperson Institution was identified by 16% of women and 10% of men.



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



This suggests that people may know more about internal procedures for reporting gender-based discrimination, but less about other procedures they may undertake in accordance with the legal framework. Insufficient awareness regarding what constitutes gender-based discrimination also may contribute to low reporting to institutions, interviews suggest.

“ Citizens' awareness ... on reporting discrimination is very low and almost inexistent, especially in small municipalities and rural areas.

- Representative of Albanian Helsinki Committee

Interviews with institutions reaffirmed that people have minimal awareness about the term 'discrimination', the relevant legal framework or how to report discrimination if it occurs. Representatives of institutions tended to observe that the low level of knowledge is more visible among citizens residing in rural areas, minority ethnic groups, persons with low or no education and persons with low-income. Even if people have general information about discrimination, many do not know where to go to complain, representatives of institutions said. Even interviewees within institutions sometimes did not know which institutions are responsible for addressing gender-based discrimination.

## Attitudes towards Gender-based Discrimination

Attitudes towards gender-based discrimination also could prevent people from reporting it, the research team hypothesized. Qualitative interviews suggested that diverse attitudes exist towards gender-based discrimination among different authorities, as well as within the same institution. Some interviewees, including police, argued that there is no gender-based discrimination and that it is not tolerated in their work environments. Attitudes that deny the existence of such discrimination may contribute to people not reporting it, as they may fear that others in the society may not believe their stories.

More commonly, a general perception seemed to exist that gender-based discrimination, mostly against women, is not only present but tolerated and normalized, given women's perceived roles in society.



For example, respondents argued that sometimes men do not leave much space for fair competition with women and often become an obstacle for them, a process that is generally justified by society, which considers men superior. 'Generally, people think that women work more than men, but get paid much less and this is justified', a labour union representative observed.

In addition, women are often harshly judged by the way they dress and their appearance, which could lead to normalization of discrimination, especially sexual harassment, respondents said. Attitudes, including false assumptions about women's capacities, may prevent women from working in leadership positions, contributing to discrimination in promotion. That women

“ *The issue of gender-based discrimination at work is a complex issue that is related to a person's education as much as social and democratic norms in our society.*

- NGO representative

“ *The attitude of people about discrimination is a specific matter. There are many people who think women reach certain positions because they have influential [family] names. Some people think that women cannot have a career. The judiciary is generally dominated by women. But when it comes to the leadership positions this is another issue, which needs discussion.*

- The People's Advocate

suggests an opinion that political interference in the judicial system may contribute to people's lack of trust in institutions and therefore low reporting. Insufficient evidence also could contribute to low reporting of cases.

“ *For example, if a person claims to have been discriminated against at work because she is a woman and in this case most of the reports are filed after the woman is being dismissed, because she is afraid of the consequences to file earlier, after the person has been dismissed, it is more difficult to prove the allegations raised.*

- The Commissioner for Protection against Discrimination

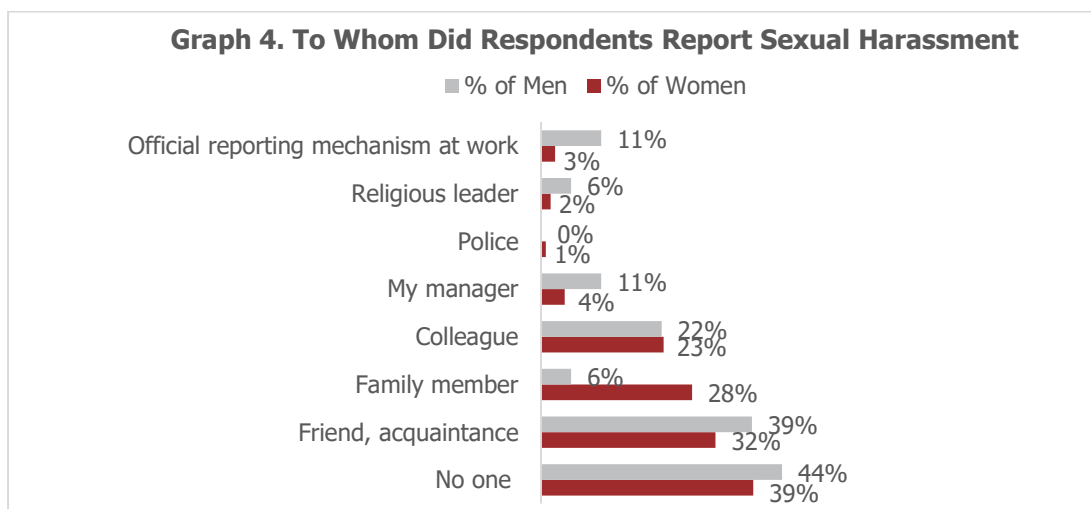
However, such comments suggest weak understanding of the concepts of victimization as well as the burden of proof.

## Reporting Gender-based Discrimination

The online survey sought to estimate the extent to which people may report gender-based discrimination in relation to labour, as well as to analyse why people may or may not report it. Of the survey respondents who said they had experienced gender-based discrimination at work, most women (97 %) and all men (100 %) did not report it to any institution (Graph 3).



As Graph 4 illustrates, of the survey respondents who said that they had faced sexual harassment at work<sup>73</sup>, 39% of the women and 44% of men did not share or report their experience. Most survey respondents who had experienced sexual harassment told a friend (32% of the women and 39% of the men); and 28% of women and 6% of men % shared the experience with a family member. Very few reported their experience to their employer: 4% of women and 11% of men told their manager, whereas 11% of men and 3% of women used an official reporting mechanism at their workplace<sup>74</sup>. Less than 1% informed police%.



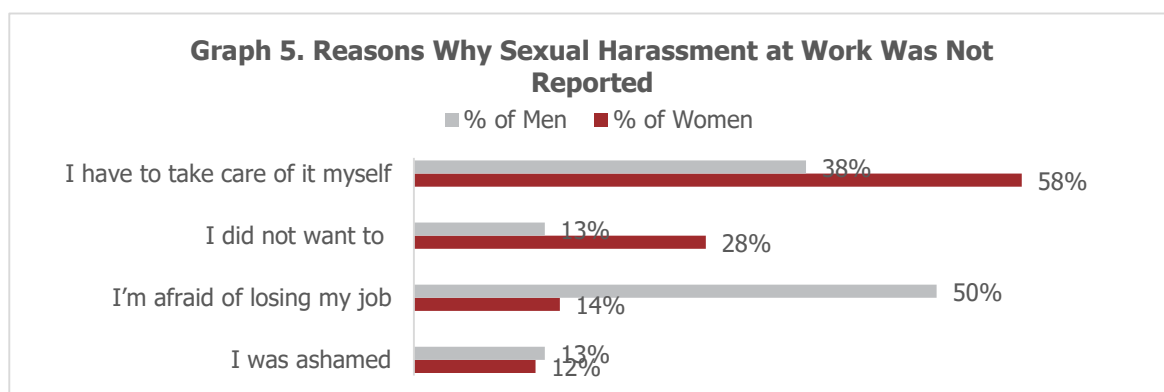
Rather than reporting sexual harassment at work, respondents tended to state that they should handle harassment by themselves (58% of women and 38% of men).

<sup>73</sup> N = 456.

<sup>74</sup> N = 20.

More women than men tended to think that they had to take care of the situation themselves. Meanwhile, most men who experienced sexual harassment did not report it due to fear of losing their jobs (50 % of men compared to 14 % of women). More women did not want to report their case (28 %) than men (13%).

Again, underreporting of this particular form of gender-based discrimination may be attributed in part to Albania's fragile economic situation; people who fear losing their jobs may endure discriminatory working conditions, representatives of different institutions tended to



agree.

The concern of the labour union representative was corroborated by a representative from the Ombudsperson's Office, who cited fear of job loss, prejudice and disbelief as the main reasons why discrimination cases are little reported. Further, the latter argued that this

“ *There is a fear among teachers, for instance, of losing their job, which influences their decision not to report cases of discrimination*’  
- Representative from a labour union

happens because Albanians have a serious lack of trust in the justice system, not only in the court, but in the state administration in general.

In conclusion, interview respondents tended to agree that few people report gender-based discrimination to institutions due to insufficient awareness regarding

discrimination and labour rights; general discouragement over long bureaucratic procedures in relevant institutions; difficulty documenting discrimination cases; and a fear that anonymity will be breached.

The Commissioner for Protection from Discrimination (CPD) recognized that its institution should disseminate information about gender-based discrimination to the population. Despite the work done so far by this institution, the CPD admitted that more needs to be done. Citizens, especially women, sometimes have no idea that they are being discriminated against. Representatives of non-governmental organisations (NGOs) agreed with the need to conduct more awareness-raising campaigns to educate citizens on the types of protection from discrimination provided by the law.

“ *During all these years of work, what I have personally witnessed is that people in general don't know a lot about this. There is a need to organize different awareness campaigns to educate citizens on what the law provides in terms of protection from discrimination, but we need to stress that sometimes even judges are not very well informed.*

- Woman representative from the Center for Civic Legal Initiatives

Interview respondents unanimously agreed that people lack information and often are not aware of redress mechanisms. As a labour inspector observed,

consistent with the view of other inspectors interviewed: *"Information is lacking from different institutions, including ours. We] should do more to increase the level of awareness and knowledge among workers on the existence of different mechanisms where cases of discrimination can be reported."*

As one judge observed:

*'In terms of the legal framework, I think people are aware, but I can't say if they know which specific law they have to refer to. However, I believe they don't have information on the specific processes for addressing and resolving a discrimination case.'*

The interviewed officials and experts tended to agree that the main reason why few cases of discrimination are reported is due to people's lack of trust in institutions, that the case reported will be appropriately addressed by the pertinent authorities. Other main reasons for low reporting include people's fear of losing their job, and their lack of knowledge on how to report gender-based discrimination. The NGO representatives interviewed agreed that lack of information on the law and legal remedies, low confidence in institutions and difficulties finding evidence required by courts to prove that discrimination occurred are among the main challenges to reporting discrimination.<sup>75</sup> For example, a representative from the Albanian Helsinki Committee observed:

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*People sometimes do not believe in a solution to discrimination because there are cases when they even complained. Employers paid the fine, upon which the case was closed, and the women did not return to work.*

- Tjeter Vision  
- NGO representative

*People have no confidence in institutions [...]. Also, the costs to take such cases to court, followed by the fear of the political power of the employer, have caused a decline in the discrimination cases reported in the last five years. Although the legal framework appears to be complete in Albania, the lack of sub-legal acts (bylaws) makes it difficult to guarantee state protection to citizens. From another point of view, often the employer's relationship with politics has made reported cases of discrimination decline significantly in the last five years.*

## Conclusion

Generally, most women and men respondents seemed aware that gender-based discrimination is illegal in Albania. Most believed that such discrimination should be reported to the employer. However, awareness seems minimal regarding other institutions that may deal with gender-based discrimination cases. Less than one-fourth of the respondents identified the Commissioner for Protection from Discrimination and the Labour Inspectorate as legal mechanisms that could assist with addressing discrimination. Low awareness seems a factor contributing to minimal reporting to relevant institutions. Attitudes that normalize discrimination, given the traditional gender roles of women and men, also may mean that women do not recognize gender-based discrimination when it occurs or they may fear social stigmatization if they report it. Other factors contributing to very low reporting of discrimination to institutions include concern over anonymity, fear of job loss, long bureaucratic procedures, difficulties documenting cases and low trust in institutions.

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<sup>75</sup> Interview with representative from LGBTQIA+ rights NGO Aleanca.

# PREVALENCE AND EXPERIENCES WITH DISCRIMINATION

As the last chapter suggested, the precise prevalence of gender-based discrimination cannot be known given that many cases are never reported. Moreover, the many different forms in which discrimination may manifest itself in the labour market are not known to everybody. The general lack of awareness of what constitutes gender-based discrimination and which rights employees have contribute to low reporting to relevant authorities.

This chapter draws from mixed methods and data sources in investigating how many work-related gender-based discrimination cases have been reported to different institutions in the last decade. In addition to examining data maintained by various institutions, it draws from the online survey and interviews with diverse actors to better understand people's experiences with different forms of gender-based discrimination in Albania. It first presents general findings related to the prevalence of gender-based discrimination in labour. Then, it examines potential discrimination against people based on the protected grounds previously outlined in the Legal Analysis. Finally, the section discusses various forms of gender-based discrimination in relation to labour.

## Overall Prevalence

Overall, 18% of women and 6% of men survey respondents stated that they have experienced gender-based discrimination at work<sup>76</sup>. When asked what institutions they contacted regarding what happened to them, 80% said that they have not contacted any of the listed institutions. None of the men and only three women (3%) contacted the Labour Inspectorate, whereas two women were involved in court actions regarding gender-based discrimination at work. Additionally, one woman reported the case to police and one to the prosecution office. The fact that few survey respondents believed they had experienced gender-based discrimination does not mean that discrimination does not exist, but rather that people may not be aware of what constitutes discrimination or may fear reporting it, as discussed in the last chapter.

## Institutional Data

The officials interviewed tended to report that they had not seen or treated any cases of discrimination in their experience between 2008 and 2018. Some interviewees reportedly witnessed approximately one case per year. An NGO representative had dealt with three discrimination cases during the aforementioned timeframe. A labour inspectorate representative could not give a specific number of cases, but reported that very few cases were addressed. -

According to reports from the anti-discrimination commissioner, around 100 cases were reported to them between 2008 and 2017, but not all related to discrimination at workplace.<sup>77</sup>

During the period of 2008 - 2017, the Commissioner for Protection from Discrimination addressed 12 cases related to gender discrimination in employment. In 2011, two complaints were processed, of which one was found to involve discrimination and one was dismissed. In

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<sup>76</sup> N= 456.

<sup>77</sup> Response to request for information, submitted to the Commissioner against Discrimination on 8 February 2019.

2012, the Commissioner found such discrimination in relation to one complaint. In 2014, five complaints were processed, of which three involved discrimination, one was denied and one withdrawn. In 2016, four such complaints were handled, resulting in one involving discrimination, one not, one withdrawal and one denial. For the aforementioned, nine complaints were filed against public institutions and three against private entities.

Labour union representatives reported treating the most discrimination cases, which considering the nature of their work is understandable. Regarding the gender of individuals who suffered discrimination, in line with survey results, interview respondents tended to report that women faced discrimination. Interestingly, none of the interviewees believed that men are subject to gender-based discrimination. All interviewees reported that men tended to perpetrate discrimination.

## **General Findings related to Gender-based Discrimination**

GADC's 2019 research provides evidence that gender-based discrimination at the work place exists. Among the online survey respondents, 18% of women and 6% of men assessed that they had experienced gender-based discrimination at work. The odds of experiencing gender-based discrimination at work are 3 times greater for women than for men. Moreover, the chances of experiencing gender-based discrimination are four times higher if you work in the public sector (compared to the private sector). Meanwhile, evidence exists that discrimination has occurred in the private sector, as well. The probability of experiencing gender-based discrimination at work is three time higher for persons with monthly net salary between 40,001 to 55,000 lekë than the others. Regarding geographic location, the odds of experiencing sexual harassment at the workplace for those who live in Tirana are three times as large as the odds for those who live in another city in Albania.

## **Discrimination based on Specific Protected Grounds**

Data from qualitative interviews suggested a perception that gender-based discrimination did not tend to affect people from certain groups more than others, such as based on ethnicity, sexuality, age, ability or geographic location. For the exceptional interview respondents who believed discrimination does affect some specific groups more, they tended to agree that discrimination may affect persons based from minority ethnic groups, individuals with different abilities and LGBTIQ+ persons. This section examines the gender-based discrimination based on specific protected grounds, focusing on discrimination against persons with different abilities, LGBTIQ+ and persons from minority ethnic groups.

### **Gender-based Discrimination against Persons with Different Abilities**

Among the survey respondents, 3% (29 participants) self-identified as persons with different abilities. The responders said that discrimination remains one of the main problems that people with different abilities face in security for employment. It seems that the 'different' treatment of people with different abilities derives from the fact that employers lack awareness and information about them.<sup>78</sup> Without positive examples or practices of employing people with disabilities or knowledge of the need to

“ While discrimination happens in all groups, it is even more present among vulnerable groups. The difference is that when it happens to these groups, it is not easily noticeable and difficult to measure.

- NGO Representative, Tirana.

<sup>78</sup> Albanian Disability Rights Foundation (ADRF).



adapt work premises, so that they are physically accessible, employers lack interest or commitment to employ people with different abilities<sup>79</sup>. All categories of people with disabilities face unemployment, regardless of their educational level<sup>80</sup>. People with different abilities often are offered jobs as a charity, which inherently impacts their treatment later on. They are given 'light' jobs that do not necessarily reflect their preferences or capacities<sup>81</sup>.

In its 2018 report, the Commissioner for Human Rights of the Council of Europe underlined that accessibility is a prerequisite for full realization of the rights of persons with different abilities and their involvement in Albanian society.<sup>82</sup>

The National Association of Workers Invalids of Albania has reported that 274 people with different abilities were employed in the public sector and 312 in the private sector in 2017. Meanwhile, the total number of persons with different abilities of working age was 62,412 persons in urban areas and 7,304 persons in rural areas.<sup>83</sup>

The Committee on the Rights of Persons with Disabilities, established under the Convention on the Rights of Persons with Disabilities (CRPD), has expressed its concerns and provided recommendations regarding the use of derogatory, offensive and/or prejudicial terminology, including related to the definitions of persons with disabilities in national legislation of states. The Committee on the Rights of Persons with Disabilities has consistently requested that States that have ratified the CRPD modify the terminology they use in legislation to refer to persons with disabilities and to align their legislation in accordance with the content of the Convention. This includes obligations to eliminate the use of inappropriate terminology and pre-emptive language. In this case, the term 'mentally or physically incompetent' used in LPD, contradicts the CRPD and the recommendations of this committee.

## Gender-based Discrimination against LGBTIQ+ Persons

Consequently, access to employment tends to be more difficult for LGBTIQ+ people. Isolation, lack of self-confidence and a lack of basic skills hamper their involvement in the labour market<sup>84</sup>. Notably, among the LGBTIQ+ people who are employed, they tend not to explicitly express themselves regarding their sexual orientation or gender identity, as they feel threatened that they may lose their job or suffer mockery, insults or rumours spread by colleagues<sup>85</sup>.

“*Employment continues to be a challenge, especially for transgender people. Bullying contributes to LGBTQIA+ persons dropping out of school, affecting low levels of education.*

- Representative from Alliance against discrimination of LGBT

The Alliance against Discrimination LGBTI and the SOS LGBTI platform provide services to 734 LGBTIQ+ people. Their experiences working with LGBTIQ+ people, as well as responses to the online questionnaire, suggested that an estimated 231 LGBTIQ+ people are employed, including four employed by the LGBTI Alliance

against Discrimination. However, based on this limited sample of LGBTIQ+ persons, this suggests that most remain unemployed.

<sup>79</sup> Ibid

<sup>80</sup> Woman, Age 49

<sup>81</sup> Ibid

<sup>82</sup> Council of Europe. September 2018. Report by Dunja Mijatovic. At: <https://rm.coe.int/report-on-the-visit-to-albania-from-21-to-25-may-2018-by-dunja-mijatov/16808d2e22>.

<sup>83</sup> Ibid.

<sup>84</sup> Alliance against discrimination of LGBT (Aleanca LGBT)

<sup>85</sup> Ibid

In 2018, the Anti-Discrimination Alliance LGBTI, received 39 reports of discrimination at work. Of them, 25 cases were reported by persons working in customer services and 14 cases by persons working in other sectors. Employed LGBTI persons have reported experiencing mockery, insults and gossip from colleagues or their employers<sup>86</sup>. LGBTIQA+ persons often have not come out to their family members regarding their sexual orientation. This combined with fear of dismissal from work mean that LGBTIQA+ persons tend not to report gender-based discrimination to state institutions. In 2018, there were three cases in which a LGBTIQA+ person lost his/her workplace as a result of discrimination<sup>87</sup>.

“ Discrimination towards the LGBTIQA+ community continues in Albania, and it is most visible for lesbian and bisexual women.

- Representative from Alliance against discrimination of LGBT

Transgender persons in Albania, including persons frequenting the Alliance against Discrimination LGBTI, in particular, have faced difficulties finding a job. This is directly linked to prejudice and gender-based discrimination against transgender persons in Albania.<sup>88</sup> Some transgender persons consider working as a sex worker a means of survival, enabling them to provide income for themselves and their families. Unaware of the type of work of their children, their family members are pleased with the financial assistance they offer, particularly for those living in small towns where employment opportunities are scarce. Under these conditions, the financial assistance provided by their transgender children is a main source of the family income. Working in this profession involves multiple risks, such as homophobia and violent clients.

As it was noted by some of the interviewees that LGBTQA+ people who differ, find it harder to find work. And this causes them to be discriminated at the time of interviewing for a job, and it is impossible to them to be hired<sup>89</sup>

According to a recent study by the Headhunter in Albania, from the more than 100 companies that participated in the survey, only 32% had in place specific policies for LGBTIQ individuals, referring to equal opportunities for all employees, as well as a specific focus on LGBTIQ employees.<sup>90</sup> While this was considered an improvement compared to previous years, it remains low. Moreover, Headhunter found that only 9% of surveyed companies had a staff member with specific mandate to include LGBTIQ personnel in the company's human resource structure and policies. While 99% of the companies reported that they do not ask potential employees any questions related to sexual identity, only 9% had employed an LGBTIQ person in the reported period (2018). Most concerning, only 17% of surveyed companies have management staff trained on responding to complaints related to discrimination based on gender and/or sexual identity.<sup>91</sup>

Qualitative interviews revealed that discrimination against LGBTIQA+ individuals exists. Police representatives observed that they face prejudice from the rest of the

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<sup>86</sup> Ibid

<sup>87</sup> Woman, age 34

<sup>88</sup> Interview with representative from Alliance against Discrimination LGBTI.

<sup>89</sup> Woman, age 34

<sup>90</sup> The Headhunter, *LGBTIQ Employment Equality Index: 2018 Annual Report Findings*, Albania: 2018, at: [https://www.headhunter.al/uploads/files/2018/October/30/annual\\_report\\_english-61540916957.pdf](https://www.headhunter.al/uploads/files/2018/October/30/annual_report_english-61540916957.pdf).

<sup>91</sup> Ibid.



population; therefore discrimination is bound to happen<sup>92</sup>. LGBTIQ+ persons also face discrimination by institutions and service providers.

Discrimination occurs in every country in Albania, interview respondents from institutions tended to agree. In general, the greatest discrimination they said is against minorities, especially minority women, LGBTIQ+ persons, women in rural areas, persons with different abilities and elderly people.

### **Gender-based Discrimination against Minority Ethnic Groups**

Minority rights are part of the five key priorities of the EU for opening of negotiations with Albania. The European Commission has acknowledged the important steps taken to improve the legal framework for the protection of minorities and that Law on the Protection of National Minorities, adopted in October 2017, which 'abolished the differentiation between national and ethno-linguistic minorities and has introduced the principle of self-identification'.<sup>93</sup> According to being a Roma is in itself a penalty when looking for a job<sup>94</sup>. Compared to an Albanian person with the same level of education, age and sex, a Roma person is significantly more likely to be unemployed<sup>95</sup>. A relatively high percentage of Roma have declared %experiences of discrimination *because of their ethnicity* (40%), compared to 7% of Albanians. They said that this discrimination occurred mainly when seeking work (46% of Roma respondents) or when using healthcare services (43%).<sup>96</sup>

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*Roma people often understand the discrimination, but they do not react, because they are sure that will not achieve much. We have reports of Roma people discriminated in the health or education institutions, but as marginalized groups, they lose the momentum of reaction of reporting.*

Representative from Roma Active Albania

## **Different Forms of Gender-based Discrimination**

This subsection examines different forms of gender-based discrimination related to labour, including discrimination in hiring, promotion, contracts, pay, working conditions, equal treatment, maternity leave, paternity leave and sexual harassment at work, respectively.

### **Discrimination in Hiring**

Nearly half of the survey respondents (43%) had participated in more than one job interview; 28% had no experience with job interviews. A comparatively larger percentage of men (44%) than women (23%) had never been to a job interview. Moreover, significantly more women had attended more than five interviews (19% of women and 10% men). That

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<sup>92</sup> Police officer, men age 42

<sup>93</sup> European Commission. 2018. Albania Report. P. 30, at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-albania-report.pdf>.

<sup>94</sup> UNDP & INSTAT. 2015. *Roma and Egyptians in Albania: a socio-demographic and economic profile based on the 2011 census*.

<sup>95</sup> Ibid

<sup>96</sup> UNDP & INSTAT. 2015. *Roma and Egyptians in Albania: A socio-demographic and economic profile based on the 2011 Census*. At: <http://www.al.undp.org/content/dam/albania/docs/Census%202011%20Profile%20of%20Roma%20and%20Egyptians%20final.pdf>.

women seem to attend more interviews than men, on average, suggests that they may potentially face discrimination in hiring when compared to men.

More specifically, 73% of the survey respondents who had attended interviews (75% of women and 65% of men) had experienced discrimination during an interview. Most frequently, this involved questions about their marital status; 67% of the women and 59% of the men reportedly faced these kinds of questions in job interviews. Several participants were asked if they have children (32% of women and 17% of men) or plan to have children (18% of women and 10% of men). Moreover, 4% of the women respondents said that they were asked for medical proof that they were not pregnant.

Most respondents encountered age-based discrimination in hiring (29% of women and 32% of men). Men tended to state that they faced discrimination based on their political preference more often than women did (22% of women and 36% of men).

Survey respondents frequently cited political reasons for discrimination in hiring and firing. As one woman mentioned:

*'I was fired from my job without any justification. From this moment on I continuously checked with the Regional Education Directory, presenting all my diplomas and CV. Job positions were filled by political militants, as they were a priority, despite their education level. Some of my male colleagues also suffered unemployment but it was easier for them to find another job, albeit in another field.'*<sup>97</sup>

Thus, while discrimination based on political affiliation affected both women and men, it seems that women may suffer greater consequences given the added challenges they face in securing a job due to their gender.

In a reported case of age-based discrimination an interviewee reported that he was fired from his job of 30 years without any justification and upon winning the case in court it was still difficult to get to the same job position. As he said:

*'Even though you can be very good at your profession, being fired at my age meant in fact leaving the labour market, which is the biggest denigration a person can go through.'*<sup>98</sup>

### **Discrimination in Promotion**

Overall, 43% of the survey participants that have been employed in the last ten years indicated that they have been discriminated against in promotion. When asked if their employer(s) gave both them and other employees an equal opportunity to be promoted, 42% stated that some employees were treated differently than others (41% of the women and 44% of men). Every fifth (21%) has had mixed experiences, depending upon their employer, and more than every fifth (23%) thought that all employees have an equal opportunity to be promoted. A comparably larger percentage of men (23%) than women (11%) stated that they do not know if all employees have equal opportunities for promotion.

Interview respondents from different institutions agreed that discrimination in promotion exists, particularly for women. 'It is difficult to be promoted if you are a woman', a respondent said<sup>99</sup>. Moreover, 'There are some cases of firing based on gender, though employers try to hide this fact. It is also very difficult to collect evidence that proves this action,' another respondent said<sup>100</sup>. A third respondent observed:

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<sup>97</sup> Woman teacher, age 40, Peshkopia.

<sup>98</sup> Man, age 62, Tirana

<sup>99</sup> Woman, age 39, Vlora

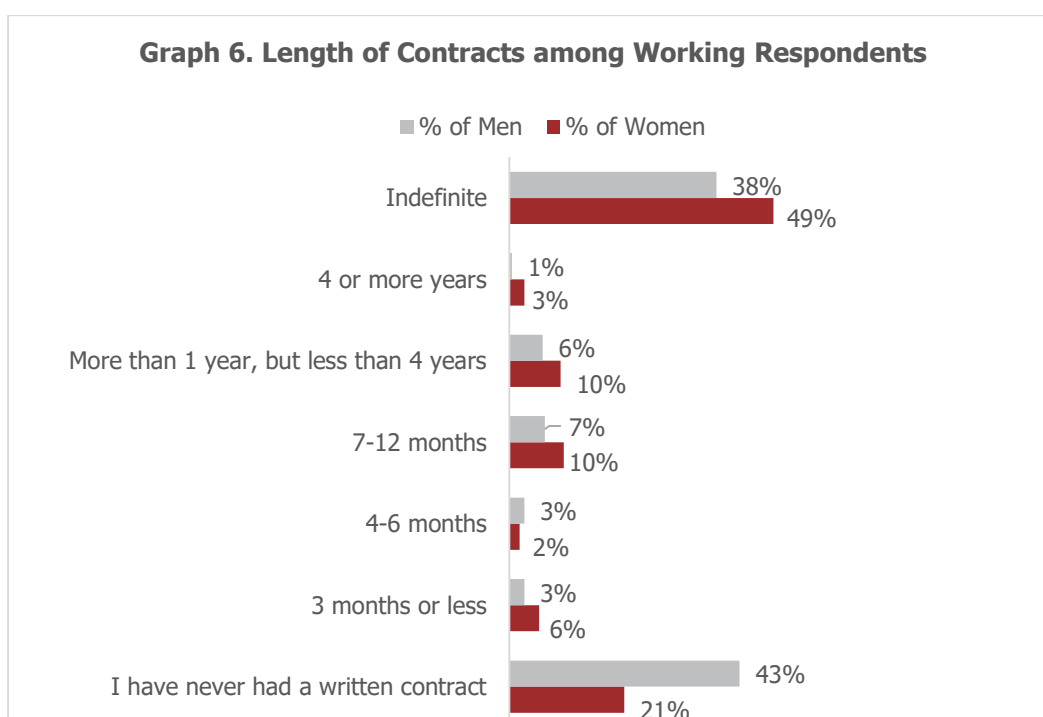
<sup>100</sup> Man, 58, Fier

*I have noticed that men have more opportunities to be in leading positions compared to women. There is differentiation also in salaries. In training and qualification courses, men were more often proposed than women.<sup>101</sup>*

Altogether, this evidence suggests that women may be more likely than men to face discrimination related to promotion, particularly given social norms according to which society tends to believe that men are more suited for leadership positions. This amounts to gender-based discrimination in promotion.

### Discrimination related to Contracts

Of the survey respondents employed in the last ten years, 42% have been asked to work regularly without a contract (including for a family business). Of the currently employed respondents, nearly half of the men (43%) in the sample did not have an employment contract, compared to more than every fifth woman (21%). The rate of workers without employment contracts is highest among respondents with only primary or incomplete primary education (93%). Additionally, persons working in the private sector (45% of private sector employees) were more likely to work without an employment contract than those in the public sector (13%), the civil society sector 5% or another sector. 29% of respondents mentioned termination of employment contracts by employers as a key problem.



Of the participants that have (or had) an employment contract, 49% of men and 38% of women had indefinite contracts; 10% of women and 6% of men had an employment contract with a duration of less than a year. Concerning 43% of working men and 21% of women had never had a written contract. While, based on this data, it is difficult to determine if this relates to gender-based discrimination, these findings may suggest that men may tend to work in sectors that do not use contracts more than women do.

<sup>101</sup> Woman, age 31, Tirana.

Regarding contract length, slightly more than half the employed participants (52%) perceived that the length is the same for both women and men. Every third (34%) did not know. Meanwhile, 4% thought men have longer contracts while 3% thought women have longer contracts. Significantly more women (58%) than men (37%) perceived that contract length is the same for both men and women.

Of the survey participants who had worked in the last 10 years, 18% had been asked to sign an employment contract at least once without being allowed to read and understand the terms of the contract (17% of women and 20% of men).

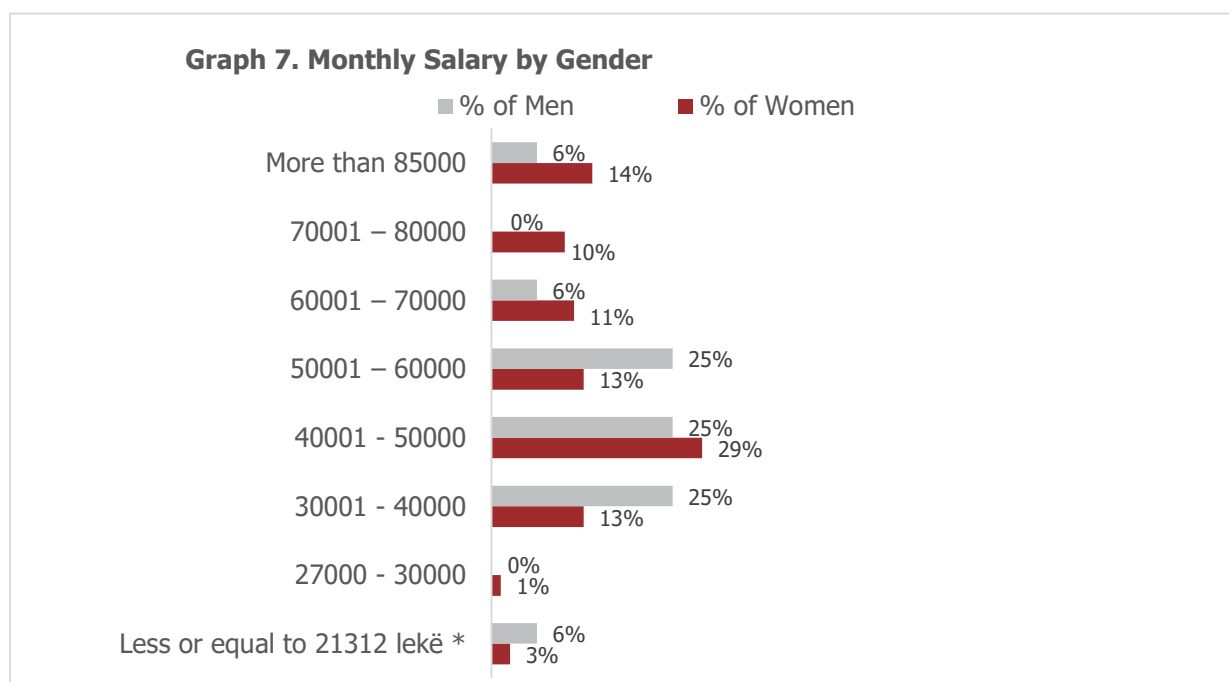
More than half of the surveyed individuals do not work more than 40 hours per week. A comparably larger percentage of men work overtime than women; 47% of men worked 41 to 60 hours per week (compared to 37% of women) and 9% worked more than 61 hours a week (compared with 3% of women). Overtime work seems to occur more often among persons employed in the private sector. Compared to 27% of surveyed persons working in the public administration, 62% of those employed in the private sector worked more than 40 hours per week. Overtime work was commonplace for 46% of respondents employed in civil society organizations.

These findings suggest that violations of workers' rights clearly exist in Albania. However, the evidence does not suggest that these violations necessarily involve gender-based discrimination.

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

As stated, equal pay for equal work is a fundamental value of the EU. Prior research has found that, on average, men have higher wages than women do in Albania. The gender Pay Gap in Albania is 17.4 percent with women earning less than men.<sup>102</sup>

Only 3% women and 6 % men of the employed survey participants said that they receive less than to 21,312 lekë, which was the minimum wage in Albania until 31 December 2018. Among respondents, 25% men and 13 % women received between 30,000 lekë and 40,000 lekë; and 10% women had a net monthly salary between 70000 -80000 lekë. 35 % women compared to 13 % men in the sample had higher salaries over 60000 lekë.



<sup>102</sup> Gender Alliance for Development Centre. 2013. *Gender Inequalities in Pay in Albania*.

*\*Corresponding to the minimum gross wage 24000 lekë, because the online survey was opened for respondents until November 2018.*

When asked about their experiences with incorrectly declared salaries, 7% indicated that their employer did not declare to state authorities their actual salary; and 12% did not know. A comparatively larger percentage of men (17%) than women (10%) did not know if their employer declared their salary accurately to state authorities. Compared to 2% of persons employed in the public sector, 16% of those employed in the private sector had experiences with incorrectly declared salaries. As one woman stated, 'the salary was not declared properly in social security forms.'<sup>103</sup> She also noted that being the only woman in the company the treatment was denigrating, which pushed her to leave the job altogether and settle for lower pay in exchange for better treatment.

The participants who have experience with mis-declared salaries or do not know if their employer declares their actual salary to state authorities, on average have smaller monthly net salaries than other respondents. 16% of the workers that receive less than 30,000 lekë have experience with mis-declared salaries compared with 4% the workers with salary of more than 55,001 lekë. Additionally, 27% of the workers that receive less than 30,000 lekë do not know if their employer declares to the state authorities the actual, real salary they received compared with 3% of the workers with salary of more than 55,001 lekë.

Half of the survey respondents (50%) were not compensated for their overtime work. Only 18% were paid for extra time worked; and nearly every tenth (10%) respondent received time off as compensation. A significantly larger percentage of women (53% of women and 43% of men) do not receive compensation for extra time worked. Meanwhile a larger percentage of men (19%) than women (9%) were paid for the extra time worked (at the same rate as their usual wage).

### **Poor Working Conditions and Equal Treatment**

According to survey respondents, 39% of those who have work experience have been denied the right to take off work for sick leave, national holidays or annual leave at least once. A significantly larger percentage of women experienced this kind of labour rights violation (41%) than men (30%). Compared to 27% of persons employed in the public sector, 50% of those in the private sector had this right denied at least once. Further, every fourth (25%) person who had been employed in the last ten years perceived that her/his health or safety had been at risk at work. Police officers and NGO representatives concurred that poor working conditions is a common situation and it is exhausting when working long hours. A respondent observed that a major problem is 'long working hours, mostly in garment, footwear and fisheries factories.'<sup>104</sup>

More specifically, 60% of respondents pointed to inadequate sanitary conditions as the most common problem in garment, footwear and fishery factories and 66% of respondents in public enterprises.

### **Violations of Pregnancy and Maternity Leave Rights**

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<sup>103</sup> Woman, age 35, Tirana.

<sup>104</sup> Woman, Age 42.

Of the surveyed women, 31% had the experience of being pregnant while being employed. For 20% of those women, the right to paid maternity leave was denied; they neither received a salary from their employer, nor received a government benefit during maternity leave. The probability of not receiving a government benefit during maternity leave was higher for women working in the private sector; 30% of women employed in the private sector neither were paid nor received a government benefit compared to 13% of those employed in the public sector.

After maternity leave, 74% of women returned to their previous place of employment, and 33% indicated that they were pressured to return to work earlier than planned. Moreover, 19% felt that their peers or boss treated them differently because they took the leave. When asked specifically about the 'before and after treatment' 3% thought that they had fewer and 13% thought that they had more responsibilities when they returned; 4% said that they had lower pay after they took their leave. Additionally, 12% said that they had fewer working hours after their maternity leave, whereas 6% said that they had more working hours.

In terms of gender-specific differences in working conditions, a recent report issued by the IDM on labour standards showed that approximately 15% of people interviewed in garment, footwear and fisheries factories and the same percentage in public enterprises, rated pregnant women's treatment 'inadequate' or 'very inadequate'.<sup>105</sup>

Other poor treatment included inappropriate working hours and continuation of hazardous jobs despite being pregnant.<sup>106</sup>

Despite regulations in the Law on Maternity Leave, the private sector often fails to comply, especially in small and unstructured companies<sup>107</sup>. Employees also often lack information regarding pregnancy leave rights<sup>108</sup>. High informality and the use of the minimum salary to calculate maternity leave benefits places women in a precarious position. The People's Advocate suggested that employers should share information with employees more transparently, to avoid over-working pregnant women. Of the 152 women who were pregnant while employed since 2008, 50 said they were pressured to return to work earlier (see Graph 8).

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*While occupational health and safety at work in general and in pregnancy for pregnant women is still a problem that is often raised. There is a need for a general reconsideration and requires cooperation of institutions, it is also necessary to have a policy in place in terms of safety and working conditions.*

- *The Commissioner against Discrimination.*

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*The implementation of the Labor Code in practice and some of the provisions directly affecting women, apply almost entirely to the public sector, while in the private sector the Labor Code provisions are less applicable.*

- *The Commissioner against Discrimination.*

<sup>105</sup> At: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

<sup>106</sup> Ibid.

<sup>107</sup> GADC – work on

<sup>108</sup> GADC

**Graph 8. Types of Different Treatment Women Faced after Returning from Maternity Leave (By Number of Women)**



Interview respondents tended to agree with this evidence from survey respondents, that violations of maternity leave provisions and rights affect women in Albania.

### **Violations of Rights to Paternity Leave**

Of the employed men in the sample, 38% think that their employer will not give them paternity leave and 39% do not know. Nearly every fifth (19%) think that their employer would give them paid paternity leave. Of the men participants in the sample, 16% had a newborn child while employed. Of them, 19 participants (79%) did not receive days off, three (13%) said that their employer allowed them to take three days off. One participant (4%) received two days off and one a week off. According to the labour law, employees are entitled to three days paid paternity leave, which means that most employers in this case either did not comply with this provision and/or the employees were not even aware of their right to days off. When asked how they were treated after the leave, four of five said that they were treated the same.

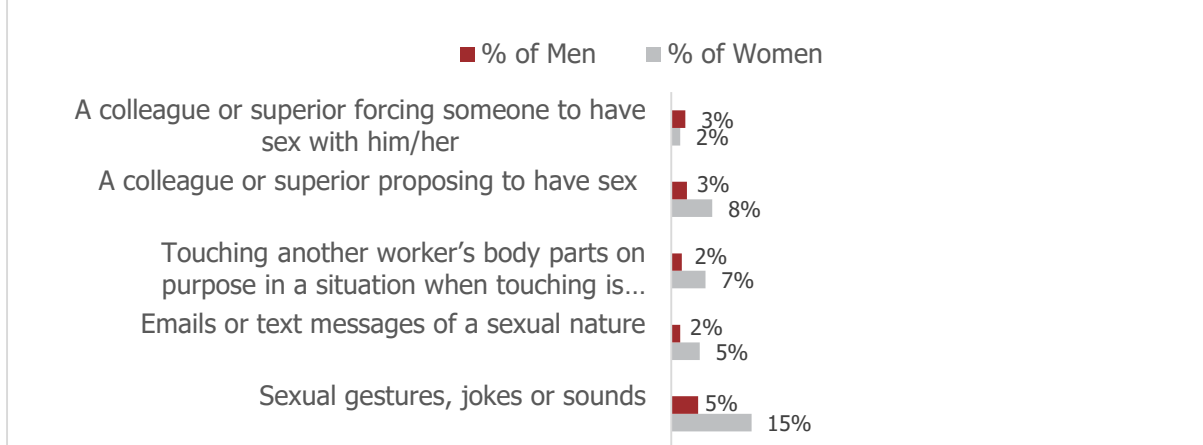
Regarding the potential to increase paternity leave, 44% of the men participants who answered the question agreed that men should have more paid time off for paternity leave, 20% were against and 36% did not know. This suggests that moderate support may exist for extending paternity leave to enable fathers to spend more time with their children, towards transforming traditional gender norms.

### **Sexual Harassment at Work**

Of all survey respondents, 16 % of women and 6% men had experienced a form of sexual harassment at work.

The sample of women and men who did not share the experience is too small to be indicative for the prevalence of the reasons.

**Graph 9. Forms of Sexual Harassment at Work, by Gender**



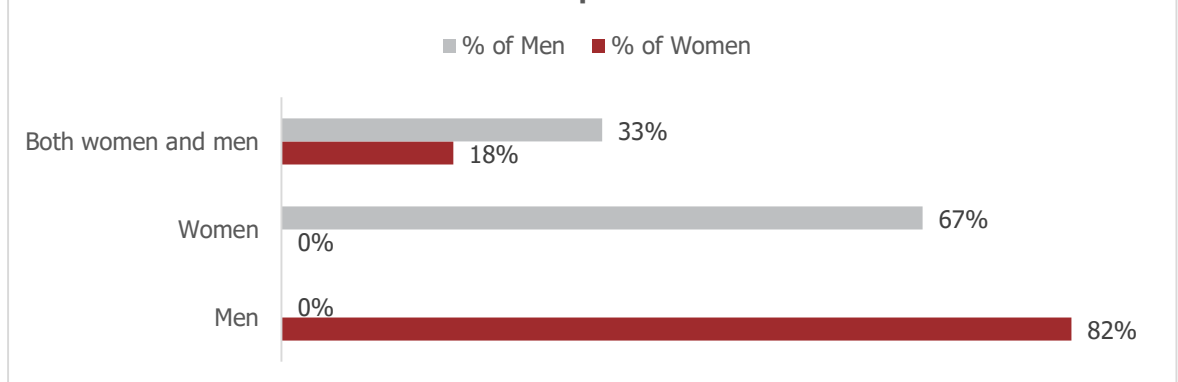
Regarding specific forms of sexual harassment at work, survey results show that 15% of women (compared to 5% of men) have been subjected to sexual gestures, jokes, or sounds; 5% of women have received emails or text messages of a sexual nature from a colleague or supervisor (compared to 2% of men); 7% of women have been subjected to touching, such as their bottom or breasts (compared to 2% of men); 8% of women received a proposal for sex from a colleague or superior (compared to 3% of men) and 2% were forced to have sex by colleague or superior (compared to 3% of the men).

As one woman described:

*In the last project I worked on, a colleague sexually harassed me. I reported the case to human resources and administrative measures were taken. However, revenge started after this. I was moved to another sector, which was not appropriate for my education area with the argument that I had low performance. I had to perform tasks not related to my expertise, until I left the job. During this time, I heard a similar case to mine at the same place.<sup>109</sup>*

This example suggests victimization following the reporting of sexual harassment, which is illegal.

**Graph 10. Gender of Perpetrators of Sexual Harassment, by Gender of Respondent**



Of the women who experienced sexual harassment, 82% stated that the perpetrator was a man, and 18% had experienced sexual harassment from both men and women. The sample of men subjected to sexual harassment at work was comparatively smaller (18

<sup>109</sup> Woman, age 31, Tirana.



respondents). 33% of them stated that both women and men perpetrated sexual harassment against them, while 33% had experience with men as perpetrating harassment.

When asked about the working position of perpetrators, 76% of persons who suffered

“ *There have been cases referring, for example, to sexist jokes in labour places from male colleagues to female ones, but these cases have been closed because nobody has come to raise it as an issue.*

- *The Albanian Helsinki Committee)*

sexual harassment stated that they have been sexually harassed by persons who work in higher positions than them; 35% were sexually harassed by a person at the same level as their position and 11% said that the perpetrator was employed in a lower position than them.

The probability of experiencing sexual harassment is significantly determined by the sector of employment. Compared to only 10% of persons employed in the private sector, every fifth (21%) person employed in the public sector and 25% of respondents employed in civil society or another sector had experienced sexual harassment.

According to IDM's study on labour standards in Albania, the inward foreign direct investment<sup>110</sup> had the highest percentage of workers reporting sexual harassment (over 9%), compared to the construction industry (2%) and mining industry, which did not report any type of sexual harassment.<sup>111</sup>

The survey data was complemented by several interview respondents who described situations of

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*Sexist behaviour in general [exists], and [LGBTQIA+] community people in particular have a problem reporting cases; they do not trust the institutions that have to implement these laws. First, [a person] is afraid they will be 'outed', and second, in the field of employment, [sexual harassment] is a bit concealed. Even if they do not directly discriminate against [a person by asking him/her] to leave work based on their sexual orientation, employers may [perpetrate] discrimination against [LGBTQIA+ persons in] a little more hidden way. work, how much you are obliged to leave yourself, and as a result he has not taken you from work and has not committed any violation. ' LGBT Rights in Albania.*

- Alliance against discrimination of LGBT

sexual harassment at work. Thus, from the survey and interviews, ample evidence exists that sexual harassment is fairly widespread within Albanian workplaces.

## Conclusions

This research underscored the difficulties involved with understanding the prevalence of gender-based discrimination, given that many cases are never reported. Survey data suggest that most people who have experienced gender-based discrimination have not contacted relevant institutions.

Despite the lack of official data, survey data and interviews suggest that gender-based discrimination clearly affects women in hiring and promotion in Albania. More women than

<sup>110</sup> An inward investment (the opposite of an outward investment) involves an external or foreign entity either investing in or purchasing the goods of a local economy. A common type of inward investment is a foreign direct investment

<sup>111</sup> At: [http://idmalbania.org/wp-content/uploads/2016/12/IDM\\_LabourStandards\\_ENG.pdf](http://idmalbania.org/wp-content/uploads/2016/12/IDM_LabourStandards_ENG.pdf).

men seemingly face labour rights violations related to their contracts, overtime compensation, work conditions and rights to paid leave. However, further research would be needed to assess if this necessarily constitutes gender-based discrimination. Violations of maternity leave rights seem widespread. Given the short duration of paternity leave, few violations of this right have been reported. Meanwhile, interest exists to extend paternity leave, which could contribute to transforming traditional gender roles and contribute to a more gender equal society. Sexual harassment occurs at work, but seems underreported. It affects both women and men, but especially women. In these cases, persons in positions of power seemingly tend to misuse their power through sexual harassment.

# THE INSTITUTIONAL RESPONSE TO DISCRIMINATION

This chapter analyses the experiences of different institutions with gender-based discrimination in the labour market, how they dealt with reported cases and challenges encountered. The chapter also assesses their knowledge of the legal framework and procedures for treating gender-based discrimination in the labour market, as well as how they have treated such cases. Each institution is examined separately.

## Commissioner on Protection from Discrimination

The CPD in Albania, established in 2010,<sup>112</sup> is a fully aligned and functioning body in accordance with four European Directives in the field of non-discrimination. The CPD is a public legal person, independent in performing its duties, and the authority responsible for ensuring effective protection against discrimination. The CPD has an 'inquisitory' mandate considering that it has litigation powers in terms of representation in courts and formally deciding on complaints (e.g. decisions or recommendation addressed to the parties), which are legally binding.

**Table 1. Cases Treated by the CPD<sup>113</sup>**

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
Number of inquiries handled per year (all contact even if not resulting in a formal complaint)	4	15	90	166	172	180	120	166	no data
Number of cases handled per year (case files opened and processed according to your procedures)	1	18	110		209	288	239	209	no data

The Commissioner is entrusted with monitoring and evaluating the quality and implementation of strategies for equality policies in the law and proposing the approval of new legislation or the amendment/reform of existing legislation. The Commissioner is required to provide information on the equality law and to take an active role in monitoring the implementation of such laws. Also, the Commissioner should make step by step recommendations for relevant legislative reforms when technical consultancy is required. The Commissioner also is entrusted with ensuring that all interested parties and legal entities are properly informed about their rights to protection from discrimination and the legal remedies available to them.<sup>114</sup>

As Table 1 illustrates, the CPD has dealt with hundreds of cases, with reporting and treatment of such cases increasing significantly after 2013. The cases are not only related to GBD, rather encompassing different types. It should be noted however that close to 40% of the claimants are women, which is not insignificant.

The CPD has created complaint forms, both online and written. In special cases oral testimonies can also be collected but the information needs to be recorded by a representative

<sup>112</sup> The Law 10221/2010 "For the Protection from Discrimination".

<sup>113</sup> At: <http://www.equineteurope.org/CommissionerforProtectionfromDiscrimination>.

<sup>114</sup> Law on Protection from Discrimination, Article 32.

of the CPD.<sup>115</sup> Discrimination in the employment field occupies an important portion of all claims addressed by the institution in 2018 for instance (43% of all cases, ranking second after good and services).<sup>116</sup> It should be noted that the vast majority (88%) of complaints related to employment come from the public sector, which means that employees in the private sector are less willing to file GBD related cases.<sup>117</sup> This could come as a result of lack of information, fear of reprisal and losing one's job which is easier in the private sector or other reasons that are hidden.

In 2018 for instance, the CPD has issued 94 decisions, of which 78 against public subjects and 16 against private subjects. In 26 cases the CPD has found discrimination, in which case the CPD has recommended measures that should be undertaken from the subject that has committed the discrimination case. In most cases this has resulted in the reinstitution of the complainant to the workplace. Furthermore, in 2018 the CPD issued 2 recommendations, 10 mediations and 7 fines against subjects. Vis a vis the court in 2018 the decision of the CPD remained in place in 13 cases when CPD was a defendant compared to 10 cases when the decision of the CPD was overturned by the court.<sup>118</sup>

Since 2015 the CPD has seen a considerable increase in the number of recommendations offered on the existing legal framework, jumping from 3 (in 2015) to 13 (in 2018). In recent years the CPD has increased cooperation with different actors, internal and external, in addressing equality of rights and discrimination in general with partners such as UNICEF, GIZ, Council of Europe, OSCE etc.

The CPD is well acquainted with the internal and external legislative framework on discrimination in Albania. He provided detailed information on the procedures followed by the institution to address cases of discrimination and offered a comprehensive overview of the current legal framework.<sup>119</sup> According to the Commissioner, the legal framework is largely in line with the directives of the European Council and other conventions and recommendations. Therefore, the legislation is well defined and within the framework of the European Union.

The problems lie mostly in implementation of the legal framework, which according to the interviewee manifest themselves in three directions. First, there are problems with issuing bylaws. While a specific law defines broadly the area of intervention, bylaws are needed to materialize and operationalize the law. Often the latter has not happened or there have been delays, which has brought an illusion of rights recognized by the law but not materialized in reality. Second, there are cases when bylaws were wrongly conceived and designed, therefore they were outside the existing legal framework and lastly, there are cases when both the law and bylaws are in accordance and harmony, but there is negligence and lack of proper implementation by the administration.<sup>120</sup> Regarding the protection of pregnant women in the workplace, the interviewee noted that cases usually are reported after women were fired or left their job. Due to a fear of losing one's job, it is uncommon for employees to report these cases while they are still working.

Further, according to a representative of the CPD, there has been a coordinated effort to distribute various brochures and create a website where people can follow up on their complaints online. However, the official recognized that information about these tools has not been distributed widely and more efforts are required to provide this information to a large audience.

In addition, the Commissioner for Protection from Discrimination (CPD) is being supported by UNDP to increase its outreach to vulnerable women and men and transparency.

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<sup>115</sup> CPD Annual Report 2018.

<sup>116</sup> CPD annual report 2018.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Interview with Anti-Discrimination Commissioner, February 2019.

<sup>120</sup> Interview with Anti-Discrimination Commissioner, February 2019.

The CPD annual report provides evidence on the increased number of complaints lodged and increased participation of CPD in judicial processes ensuring better law enforcement & upholding gender equality commitments<sup>121</sup>.

## Police

The Albanian State Police (ASP) is in charge of preventing, discovering and investigating criminal acts and individuals suspected of being involved, in accordance with the Criminal Code and the Code of Criminal Procedure.<sup>122</sup> Therefore, the ASP has a role in addressing all types of gender-based discrimination at work that are criminalized in the Criminal Code, such as sexual abuse at work.<sup>123</sup>

Police representatives interviewed agree that the legal framework in Albania is complete. One of them stated that in general the legal framework in Albania is largely in line with EU requirement and often takes from best practices. However, police tended to believe that the problems lie mostly at the implementation phase. In general, police representatives seemed knowledgeable about the legal framework in place regarding discrimination at workplace, but not the specific tools to address it.

Police and prisons may discriminate against them when they report cases.

The Helsinki Committee also has addressed some cases of discrimination, requesting disciplinary actions against members of the police service from the service for internal affairs and appeals. In addition, administrative measures have been taken regarding these officials' behaviour toward LGBTIQ+ persons.

Almost all police officers interviewed for this report have received some form of general training on gender equality. The training focused on sexual harassment and the reporting of such cases, as related to their responsibilities. One of the interviewees mentioned a training conducted in 2018 on 'Prevention and protection against discrimination based on sexual orientation and gender identity in Albania', organized by the General Directorate of State Police at the Academy for Security. Another training mentioned was a 2016 one-day training on the Law on Protection from Discrimination. This training was led by the inspector of the Directorate of Investigation, Inspection and the Commission for Protection from Discrimination. Nevertheless, respondents stated that there is a need for more training.

Of the survey respondents that had contacted an institution to file a complaint on gender-based discrimination at work, only one man referred the case to a police officer.

The perspective from police interviewees is mixed. Four of the police officials interviewed argue either that there is no such thing as discrimination and have a positive attitude towards it, or that in recent years, with the increase in the number of women joining the police force, their presence has been normalized and led to an intolerance towards enabling attitudes of discrimination. As one police official noted, society and the mentality in Albania is now more open-minded and men do not allow themselves to discriminate based on gender. However, one of the police officials interviewed noted that in their environment women are not seen as equal. Women with the same educational level are mostly assigned to secondary positions and even though there is an increase in the number of women in the police force, they are rarely in leading positions.

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<sup>121</sup> [http://www.al.undp.org/content/albania/en/home/operations/projects/poverty\\_reduction/gender-equality-and-gender-based-violence-programme-.html](http://www.al.undp.org/content/albania/en/home/operations/projects/poverty_reduction/gender-equality-and-gender-based-violence-programme-.html)

<sup>122</sup> Law on State Police, Article 17/c.

<sup>123</sup> Criminal Code of the Republic of Albania, Article 105.

## Prosecution

As detailed in the Criminal Procedure Code, a Prosecutor 'conducts criminal prosecution, investigations, examines preliminary investigations, files charges in court and takes measures for the execution of decisions'.<sup>124</sup> Related to knowledge on discrimination the prosecutors' mentions mostly different types of violence against women and racial/ethnic discrimination. The prosecutors interviewed connects discrimination mostly to stereotyping at work and acting upon those stereotypes. They were not aware of any cases prosecuted in terms of discrimination at work and has not been personally involved in any such case. Interviews with prosecutors suggested that they generally lack specific knowledge regarding the legislation relevant to gender-based discrimination.

Of the survey respondents who had contacted an institution to file a complaint on gender-based discrimination at work, only one man referred the case to a prosecutor.

## Criminal and Civil Courts

According to Article 34 of the LPD, cases of discrimination can be brought before civil courts, as an alternative to filing a complaint with the Commissioner. Such cases are subject to limitations, such as a set period of five years from the time of the alleged occurrence of the discrimination, or three years from the time that the damaged party became aware of the discrimination.<sup>125</sup> The procedural requirements in relation to the burden of proof are set forth in Article 36(6) which states:

*After the plaintiff submits the evidence on which he bases his claim and on the basis of which the court may presume discriminating behaviour, the defendant is obligated to prove that the facts do not constitute discrimination according to this law.*<sup>126</sup>

Due to linguistic issues, it is unclear whether 'evidence' in this case has the same meaning as 'facts', which is the wording used in EU law and which would therefore require a shift in the burden of proof to the alleged discriminator once a prima facie case had been established. This is timely implied through the use of the word 'facts' in the latter part of Article 36(6). Nonetheless, it will be necessary for Albanian courts to create a precedent and firmly establish that this is the correct interpretation to be given for such cases, as the burden of proof requirements have been among the main barriers to drawing a distinct line and fight discrimination through courts throughout Europe.

If it is proven and approved by the Court that any discrimination has taken place, based on Article 38, the Court can order restorative measures aimed at ensuring that the plaintiff is placed in the same position as they were prior to the discrimination occurrence. They also may provide compensation for the injured party.

In particular for employment issues, there are three potential ways that any person can claim or report discrimination. For cases of discrimination or equality, the interested individual can file a discrimination complaint to his/her employer, Commissioner for Protection from Discrimination or the court. However, the law calls for special institutions to be created in various sectors of employment, if the sector has a need for special institutions to be created or if a different law provides for such institutions to be established.

Each individual who believes to have been the subject of discrimination at work has the right to complain to the employer, anti-discrimination commissioner and/or a court.

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<sup>124</sup> Code of Criminal Procedures of Albania, Article 24.

<sup>125</sup> Law on Protection from Discrimination, Chapter VI.

<sup>126</sup> Ibid, Article 36.

Therefore, it is within the responsibilities of the justice system in Albania to deal with cases of discrimination in the labour market.

One of the judges interviewed for this research pointed to a difficulty in treating cases of sexual harassment at work; the court's problem in such cases is that those reporting harassment at work have a high burden of proof. Therefore, due to a lack of evidence, judges face challenges in reaching a fair decision.

Interviewees from courts in several regions of the country also pointed out to the lack of proper implementation of the law on anti-discrimination and labour code, pointing that while the legislation is detailed enough to address gender based discrimination in the labour market, the challenges are mostly related to the ability of different institutions to actually implement its provisions.

One interviewee from the court system stated that in general judges are capable of identifying the problem and addressing it. However, cooperation with other institutions sometimes becomes difficult, even though several institutions have a legal right and responsibility to be involved in cases of discrimination in the workplace.

According to survey data, only two women were involved in court action regarding their gender-based discrimination at work case.

NGO representatives noted the need for similar educational campaigns for judges, who sometimes are also not aware of the specificities of the law on anti-discrimination.

## **Labour Inspectorate**

The mission of the state Labour Inspectorate encompasses all phases from control of labour standards, to recommendations, notification, conflict resolution, prevention and sanctioning.<sup>127</sup> The Inspectorate is in charge of ensuring the implementation of legal provisions pertaining to working conditions, protection of workers, wages, security, hygiene, welfare, etc. It also can inform an employer of the gaps and abuses identified through inspection and propose means of improvement. Moreover, it has a more concrete role as it has a legal right to fine employers for abuses reported to it or observed through regular inspections.

Of the survey respondents who referred work-related discrimination cases to an institution, most approached the Labour Inspectorate. More specifically, 2% of the individuals who answered the question referred their case to the Labour Inspectorate.

According to official statistics provided by this institution, in 2008-2017 only seven cases of discrimination at work were handled by the Labour Inspectorate. Of these, women filed six complaints. The cases dealt with unequal treatment compared to other employees. However, none of the cases mentioned gender, ethnicity or religious affiliation as a reason for such unequal treatment. Therefore, due to the lack of reporting, little information is available regarding how the Labour Inspectorate treats such cases.

Interviewed representatives of this institution seem well aware of the legal framework that guides their work. According to a Labour Inspector interviewed for this research, a memorandum of cooperation exists between the Labour Inspectorate and the Commissioner, whereby both parties have pledged to share information and data when needed. The Labour Code formed the basis of this cooperation and outlined responsibilities on labour-related gender-based discrimination, rather than the Law on Protection from Discrimination. It remains to be seen how this cooperation will influence the treatment of joint cases.

An inspector observed that the low number of gender-based discrimination cases reported by employees to the inspectorate makes it difficult for them to treat such cases. Therefore, more work needs to focus on increasing the number of reported cases and meticulous follow up procedures by the Labour Inspectorate in close cooperation with the Commissioner so that gender-based discrimination is no longer normalized in the workplace.

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<sup>127</sup> Law on Labour Inspection in the Republic of Albania, Article 6.



According to its annual report for 2018, the Labour Inspectorate conducted a total of 12297 inspections in private and public organizations. Of these, the vast majority, more than 90% were programmed and regular inspections. The rest were divided between inspections responding to an accident in the workplace, 467 inspections due to a lodged complain, which resulted in a total of 2568 administrative measures for the subjects inspected. It is not clear from the report what proportion of the inspections stemming from a lodged complain were related to some form of gender-based discrimination in the workplace.

## Ombudsperson Institution

The Ombudsperson Institution (OI), as an independent body, is a promoter of the highest standards of human rights and freedoms in the country. Since a specific organ, the Anti-Discrimination Commissioner, is responsible for addressing discrimination, the OI plays a secondary role. According to the Law on the Ombudsperson, the OI's powers lie in issuing recommendation to pertinent authorities if it finds that there have been violations of human rights in different areas.<sup>128</sup> Promoting the highest human rights standards is among the most important areas of engagement for the OI.<sup>129</sup>

The OI has not received any cases involving gender-based discrimination at work. Nor did any of the survey respondent's state that they had referred a case to the OI.

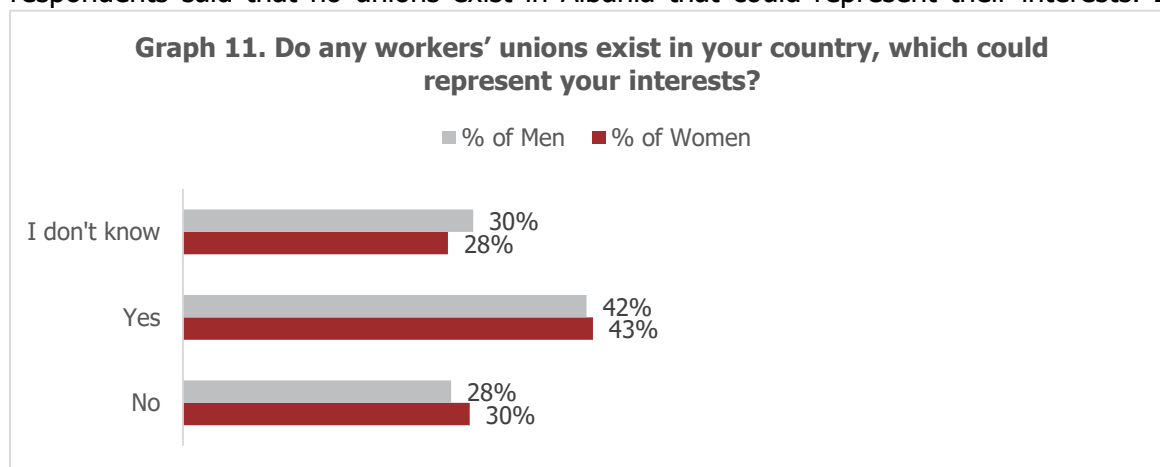
The OI representative interviewed for this research seemed knowledgeable not only about the definition of discrimination, but also the existing legal framework addressing gender-based discrimination at work. The respondent mentioned provisions of the Law on Protection against Discrimination, as well as the Labour Code and several bylaws. The OI representative also noted the lack of training opportunities for the staff of the institution.

The lack of cases treated by this institution makes it difficult to assess the quality of its performance in treating such cases.

## Labour Unions

Labour unions are voluntary organizations of workers (or former workers) with a collective mission of protecting the economic, professional and social interests of its members. They have a mandate to address problems related to wages, social protection, working conditions and/or pensions. Public and private institutions have an obligation to provide all requested statistical data to labour unions.<sup>130</sup>

When asked about labour unions, 30% of women and 28% of men of the online survey respondents said that no unions exist in Albania that could represent their interests. 28%



<sup>128</sup> Law on the Ombudsperson, Article 2.

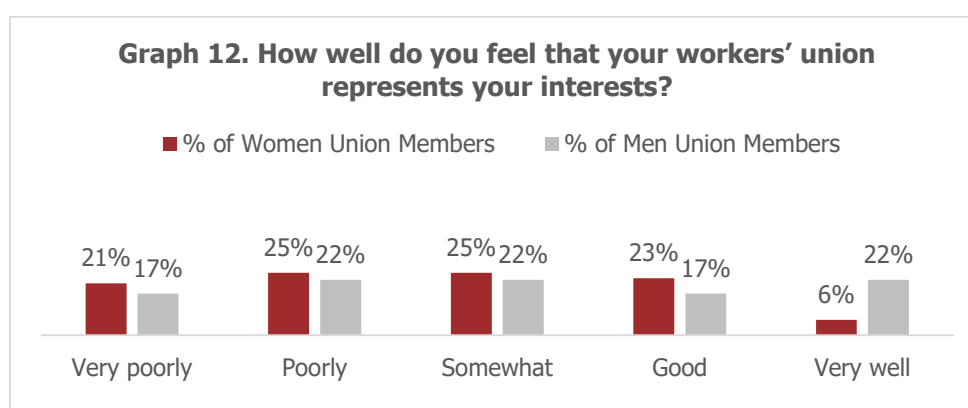
<sup>129</sup> GADC interview with OI, January 2019.

<sup>130</sup> Law on Labour Unions in the Republic of Albania, Article 1.



women and 30% men did not know if such unions exist. This suggests widespread lack of knowledge among people in Albania regarding the role that unions can play in defending their interests, or that they do not feel that existing unions could defend their interests.

Meanwhile, 42% of respondents believed that there are labour unions in Albania that represent their interests. Only 15% of survey respondents were members of a workers' union. Of them, 44% thought that labour unions represent poorly or very poorly their interests, while 32% believed unions represented their interests well or very well. The labour union representatives interviewed for this research said that they had dealt with either none or very few cases of gender-based discrimination in the labour market. Considering the nature of the work of labour unions, it is telling that such cases have not been brought to their attention. This could be an indication of the aforementioned overall low reporting of gender-based discrimination. It could also indicate the need for labour unions to improve their approach towards their members and to increase awareness about the importance of reporting gender-based discrimination at work.



The labour union representatives interviewed felt either very capable or somewhat capable in performing their duties in relation to gender-based discrimination at work. However, they also point to more difficulties in cities and regions outside the capital. They agreed that people do not trust authorities and even when discrimination exists, people do not report it. One interviewee noted that sometimes labour unions represent their members in court for cases of discrimination, but unions usually assign this responsibility to the Commissioner and the Labour Inspectorate for protection against discrimination.

## Civil Society Organizations

Civil society organizations (CSOs), both at the local and central level, are some of the most active actors in promoting and protecting human rights in Albanian society. Women's organizations are especially recognized for their contributions in advancing women's rights in all societal spheres. While CSOs don't have a specific mandate for addressing gender-based discrimination in the labour market, several CSOs address topics related to such discrimination. Organizations working directly with women, people with different abilities, LGBTIQ+, as well as those working directly on issues related to employment face cases of gender-based or multiple discrimination in the labour market almost daily.

Opinions on the quality and completeness of the legal framework diverge among different CSO representatives interviewed for the research. While some believe that the legal framework is only partially complete, others believe it is mostly complete. According to them, challenges remain when it comes to implementation. As one of the interviewees noted, the

LPD is in the process of drafting bylaws and changes and it will definitely improve from this process, since it has been in force since 2010.

According to those who argued that the legal framework is incomplete, the law provides only administrative measures and penalties (fines) for institutions or persons who commit acts of discrimination. Another interviewee added that the legal framework is incomplete due to the focus on administrative sanctions only and further the law is implemented selectively, not equally for all citizens.

Several cases brought to CSOs' attention were related to working conditions, as well as multiple discrimination, especially stemming from ethnicity and sexual orientation.

## **Conclusion**

Interviews with relevant institutions suggested that the Anti-Discrimination Commissioner, Ombudsperson and CSO representatives were fully aware of the antidiscrimination legal framework. Some representatives of police, the prosecution and judicial bodies had limited knowledge. In general, officials from the latter institutions lacked sufficient knowledge regarding their responsibilities to investigate criminal acts involving gender-based discrimination at work. Labour inspectors tended to be knowledgeable about gender-related provisions in the Labour Code. Labour inspectors did not seem to consider treating gender-based discrimination a priority. Few institutions had treated any cases of gender-based discrimination at work. Therefore it was difficult to assess the quality with which they had handled such cases.

Labour unions seek to represent workers' rights, but some union representatives have limited knowledge about gender-based discrimination. This and citizens' minimal knowledge about discrimination coupled with low trust in unions likely has limited their support of workers in addressing gender-based discrimination to date. Persons working in CSOs tended to be knowledgeable about the relevant legal framework, but have assisted few cases directly.

# RECOMMENDATIONS

## For the Legal Framework

### Law on Protection against Discrimination

#### *Simplifying representation and defence*

The availability of free legal aid constitutes an essential requirement to ensure access to justice for victims of discrimination. However, in practice, there are many places where access to free legal aid is very limited or depends on complex procedures based on bodies created by governments (Antidiscrimination Commissioner in the case of Albania). Albania should ensure availability of free legal aid to ensure access to justice for victims of discrimination.

#### *Racial and Ethnic Definition*

National laws have to clearly define and apply the Race Equality Directive<sup>131</sup> by listing characteristics such as colour, national origin, membership of a national minority, language or social origin may be included in the field of 'racial or ethnic origin'. Characteristics as mentioned above must be included as special grounds of discrimination. In the law on Protection from Discrimination.

#### *Disabilities*

Include definition of the term 'disability in the Law. A definition commonly accepted by EU member states<sup>132</sup> is the definition of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD):

*'Persons with **disabilities** include those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis.'*

Instigate further amendments to adapt and include EU disability-related directives.

#### *The concept of violence and harassment*

Add violence and harassment as concepts in the Law on Protection against Discrimination. Many EU countries recognize these as:

*'Violence and harassment are attacks on personal dignity, the right to equal and non-discriminatory treatment and often a person's health. Workers affected by it feel insecure about their work; they are more frequently absent and may even be unable to work, with consequent impacts on productivity and corporate and public costs.'<sup>133</sup>*

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<sup>131</sup> The Race Equality Directive 2000/43/EC is an Act of the European Union, concerning European labour law. It implements the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>132</sup> This approach is also at the core of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), to which the EU is a party. The European Commission's European Disability Strategy 2010-2020, adopted in 2010, builds on the UNCRPD.

<sup>133</sup> Taken from: <https://www.eurofound.europa.eu/publications/report/2015/violence-and-harassment-in-european-workplaces-extent-impacts-and-policies>.

## ***Discrimination in Education***

Given that the legal framework on the regulation of education in the country is wide and touches on different aspects of social life, it is recommended that not only the fact that discrimination is always present in the environmental and human environment of this sphere must to make additions and adjustments to the law on protection against discrimination at least to define and assist in a broader scope for the protection of marginalized groups as students and employees in education.

### **For the Anti-Discrimination Commissioner**

- Organise awareness-raising campaigns, especially for private sector employees on the existence of redress mechanisms and the work of the Anti-Discrimination Commissioner.
- Cooperate with labour unions, CSOs and the Labour Inspectorate in identifying and following gender-based discrimination cases in the labour market;
- Ensure better data collection and transparency with other institutions and CSOs;
- Organize training sessions for employees in the Commissioner's Office as training of trainers as well as peer to peer learning;
- Increase the reach of the Commissioner outside Tirana, especially in rural areas;
- Propose amendments to add harassment, maltreatment and harassment at work into the existing legislation on anti-discrimination in line with international and European best practice.

### **For the Ombudsperson Institution**

- Revise the current OI database to include gender-disaggregated data and marking of cases as to whether they have involved gender-based discrimination at work, facilitating future monitoring and reporting of this information.
- In close cooperation with CSOs, the Labour Inspectorate and labour unions, organize regular awareness-raising campaigns on gender-based discrimination towards increasing citizens' knowledge of what it entails, how they can file claims and what support the OI can provide.

### **For the Labour Inspectorate**

- Increase the number of inspectors and financial resources to carry out their duties, especially in the field of GBD in the labour market;
- Increase cooperation with other institutions and coordinate work with other authorities to ensure a multi-agency approach to tackling this type of discrimination;
- Improve data collection and management practices to keep track of cases addressed by inspectors;
- Increase the number of training sessions for inspectors to increase their knowledge on the legal framework pertaining to gender-based discrimination;
- Increase the number of inspections in the private sector, especially in the sectors identified as most problematic related to gender-based discrimination.

### **For the Courts**

- Increase the number of judges working on gender-based discrimination cases in the labour market;

- Collaborate with specialized institutions (such as the Anti-Discrimination Commissioner and CSOs) to conduct specialized training sessions on gender-based discrimination in the labour market.
- Albanian courts will need to create a precedent and firmly establish the correct interpretation to be given for such cases. This is particularly important considering that burden of proof requirements have been among the main barriers to drawing a distinct line and fighting discrimination in European courts.
- Improve the effective legal remedies, including compensation, for victims of discrimination as one of the most important barriers to accessing justice. Lack of sufficient financial means to follow a case is closely related to the lack of adequate representation.

## **For the Police**

- Organize specialized training sessions for gender-based discrimination in the labour market or include this topic within the framework of gender equality training sessions.
- Improve data collection and management by ensuring that all electronically managed data is disaggregated by the gender of the victim(s); the gender of the alleged perpetrator(s); and the type of location where the crime occurred (e.g., work, home, public space).
- As part of the regular training for police, ensure inclusion of information on the legal framework pertaining to gender-based discrimination at work, focusing on sexual harassment at work according to the new definition in the Criminal Code.

## **For the Trade Union**

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

## **For the Civil Society Organizations**

- Cooperate more closely with the Commissioner for Protection from Discrimination to refer cases of discrimination and follow up;

- Organise awareness-raising campaigns with workers around the country to inform them about the available mechanisms;
- Support anonymous referral mechanisms (possibly online) where individuals can share their stories;
- Better monitor public institutions, especially the Labour Inspectorate, to ensure that inspections and cases are performed in an efficient and fair manner.
- Regularly monitor the work of responsible institutions following cases of gender-based discrimination cases, including the Anti-discrimination Commissioner, courts, police and prosecution;
- Further research the situation of women in the sectorial labour market to better understand of the bigger picture and the conditions conducive to gender-based discrimination.

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# ANNEXES

## Annex 1. National Legal Framework on Gender Equality

Laws affecting Gender Equality and Anti-discrimination	
ear	
<b>995</b>	<ul style="list-style-type: none"> <li>• Law no. 7961, 12.7.1995 'The Code of Labour of the Republic of Albania' (as amended)</li> <li>• Law no. 7995, 20.09.1995 'For the Promotion of Labour' (as amended)</li> </ul>
<b>998</b>	The Constitution of the Republic of Albania
<b>999</b>	Law no. 8454, 4.02.1999 'For the Ombudsman' (as amended)
<b>002</b>	Law no. 8876, 04.04.2002 'For Reproductive Health' (as amended)
<b>004</b>	<ul style="list-style-type: none"> <li>• Law no. 9188, 12.2.2004 'On Some Additions and Changes in the Penal Code'</li> <li>• Law no. 9198, 01.07.2004 'On Gender Equality in the Society' (repealed)</li> <li>• National Strategy on HIV/AIDS 2004-2010</li> </ul>
<b>005</b>	Law no. 9398, 12.05.2005 'On Some Additions and Changes in the Law for the Ombudsman'
<b>006</b>	Law no. 9669, 18.12.2006 'On the Measures for Domestic Violence' (as amended)
<b>007</b>	First National Strategy for Gender Equality and the Elimination of Domestic Violence (NSGE-DV) 2007-2010.
<b>008</b>	<ul style="list-style-type: none"> <li>• Law no. 9914, 12.05.2008 'On Some Changes on the Law no. 9669, 18.12.2006 'On the Measures on Domestic Violence'</li> <li>• Law no. 9970, 24.07.2008 'On Gender Equality in the Society'</li> <li>• Law no. 10019, 29.12.2008 'Electoral Code of the Republic of Albania' (as amended)</li> <li>• Law no. 10039, 22.12.2008 'For juridical assistance' (repealed)</li> </ul>
<b>009</b>	• Law no. 10192, 03.12.2009 'On the Prevention and Elimination of Organized Crime and Trafficking through Pre-emptive Measures on Personal Wealth' (as amended)
<b>010</b>	<ul style="list-style-type: none"> <li>• Law no. 10221, 4.2.2010 'On the Protection from Discrimination'</li> <li>• Law no. 10237, 18.2.2010 'On Health and Security at Work' (as amended)</li> <li>• Law no. 10295, 01.07.2010 'On Pardons'</li> <li>• Law no. 10347, 4.11.2010 'On the Protection of Children's Rights' (repealed)</li> </ul>
<b>011</b>	Law no. 10399, 17.03.2011, 'On assistance and social services' (as amended)
<b>013</b>	Common Instruction No. 21 dated 21.06.2013, between MoLSAO and the Ministry of Finance 'On defining the procedures that must be followed for gender integration in medium term budget program'
<b>014</b>	<ul style="list-style-type: none"> <li>• National Action Plan for Women Entrepreneurship 2014-2020</li> <li>• National Action Plan for the involvement of men and boys as partners of women and girls in actions for gender equality and against gender based and domestic violence.</li> <li>• Employment Promotion Program 'For unemployed jobseekers in difficulty' no. 48, 11.01.2012, amended with no. 192, 02.04.2014.</li> </ul>

Laws affecting Gender Equality and Anti-discrimination	
ear	
	<ul style="list-style-type: none"> <li>• Employment Promotion Program through Job Training. nr. 47, dt. 16.01.2008, amended by no. 193, 02.04.2014.</li> </ul>
<b>015</b>	Amendments introduced to the Electoral Code with the Law 74/2012 to ensure 50% women at local councils at the new LGU.
<b>016</b>	<ul style="list-style-type: none"> <li>• National Strategy on Gender Equality and Action Plan 2016-2020.</li> <li>• Law no. 70 / 2016 'On Craftsmanship in the Republic of Albania' - Adopted by the Assembly of Albania on 30.06.2016.</li> <li>• Legal Framework (Law No. 44/2016, 21.04.2016 'On some Amendments and addenda to Law no. 9355, 10.3.2005,' On Social Assistance and Services ', as amended)</li> </ul>

## **Annex 2. Methodology**

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

### **Key Terms and Delimitation**

The research focused on gender-based discrimination in relation to labour. It did not examine gender-based discrimination that may occur outside the workplace. The key research terms were defined and operationalized as follows. 'Discrimination' included all forms of gender-based discrimination, as defined by law. The term 'labour' was used rather than 'employment' to include study of unpaid and unregistered forms of labour. 'Gender' involved all gender expressions and identities, including but not limited to: women, men, trans\*, gender non-conforming, gender fluid and intersex. 'Gender-based discrimination', then, was defined to involve discrimination affecting persons *because of their gender*.

### **Legal Analysis**

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

### **Literature Review**

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

### **Data Collection**

The research team sought to collect data related to discrimination cases at work for the period of 2008 – 2017, disaggregated by gender, from: the Antidiscrimination Institution, Albania Police, the Prosecution, the Albania Court, the Ombudsperson's Institution, the Labour Inspectorate, labour unions and legal aid providers (state and non-state). This involved sending official data requests to these institutions.

### **The Survey**

The research team sought to collect input from diverse women and men regarding their knowledge of anti-discrimination legislation, personal experiences with discrimination, whether such cases were reported and why they did not report discrimination if it occurred. GADC collaborated with its partner organisations in the region, particularly Reactor Research

in Action (Macedonia), to create the online survey in three languages (Albanian, Serbian and English), using Lime Survey. The survey was promoted broadly, including through social media, boosting on Facebook and email, including an email circulated to public servants and government officials by the Agency for Gender Equality, requesting their participation. The survey was open from 30 October through 30 November. For demographic information about respondents, see Annex 3 and for the survey tool, see Annex 4.

## **Interviews**

In total, GADC conducted 62 interviews. Of these, GADC interviewed 53 representatives from seven institutions responsible for implementing the relevant legal framework, regarding their knowledge, attitudes and experiences in treating discrimination cases to date. GADC also interviewed NGO and Albania Helsinki Committee representatives. GADC interviewed police officers, prosecutors, court judges, labour inspectors, the anti-discrimination body and union representatives. With assistance from the Albania Police headquarters, 14 police officers were selected by region. Six women and eight men were interviewed in urban and rural areas in Tirana, Shkodra, Kukes, Korca, Elbasan, Vlore, Dibra and Fier. The police officers appointed by police headquarters to participate in interviews generally came from the Domestic Violence Investigation Units. In total, two prosecutors were interviewed, including one woman and one man. Researchers faced several difficulties securing these interviews. GADC also faced some difficulties in adhering to the planned variation sampling when scheduling interviews with judges. The five judges interviewed included three women and two men. GADC interviewed six labour inspectors (Tirana, Elbasani, Vlora), four women and two men. For the Ombudsperson Institution, two representatives were interviewed, both women, including the Ombudsperson. Three representatives of the Commissioner for Protection from Discrimination were interviewed (two women and one man), including the Commissioner.

Seven labour union representatives were interviewed (four men and three women), located in Korca, Elbasani, Vlora and Fieri. Thirteen NGO representatives were interviewed (eight women and five men). These NGOs support LGBTQIA+ persons, Roma, women's rights and people with disabilities. GADC also interviewed one representative from the Albania Helsinki Committee. Interviews also were conducted with nine women who said they had experienced gender-based discrimination. Overall, low reporting of gender-based discrimination coupled with low knowledge of what acts may constitute such discrimination were barriers to identifying potential respondents for in-depth interviews.

## **Data Analysis**

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

## **Limitations**

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

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

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

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

## **Reflexivity**

GADC envisions a more gender equal society and, based on experience, believes that affirmative measures, such as those foreseen in the Law on Gender Equality, are necessary to further gender equality in Albania. From this position, the GADC research team conducted research and analysed results from the position of an organisation that seeks to further gender equality. This means that the research team in a few, rare instances chose not to reflect some

perspectives that arose from interview respondents. GADC has made recommendations from a gender perspective, towards improving the legal framework for addressing gender-based discrimination. GADC acknowledges that education, awareness-raising and penalties for institutional failures must accompany these legal changes for them to be implemented properly. GADC's recommendations result from this particular position and approach to social change.

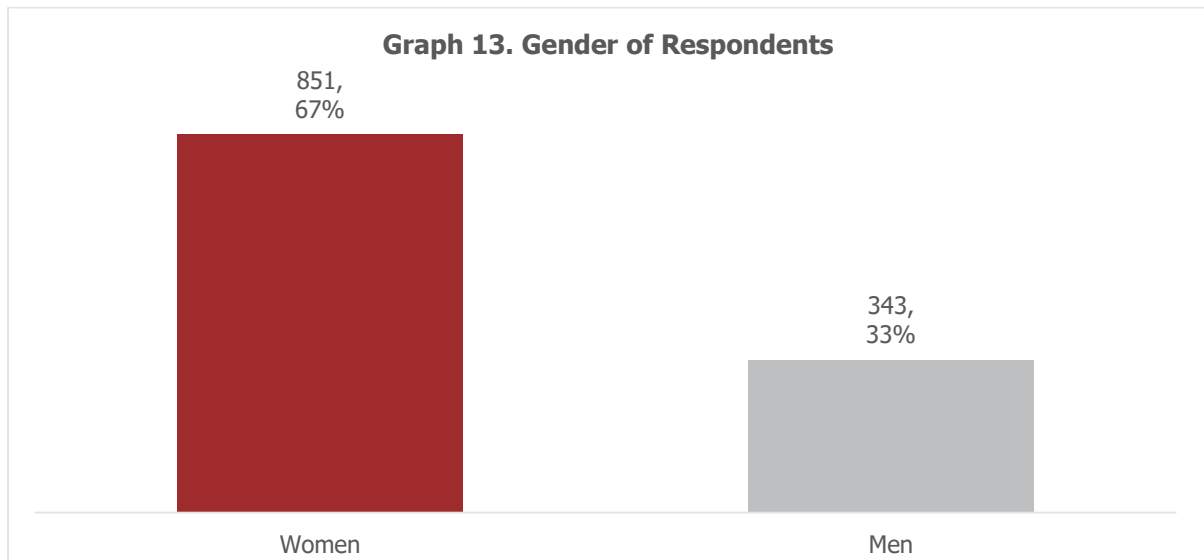
## **Validity**

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

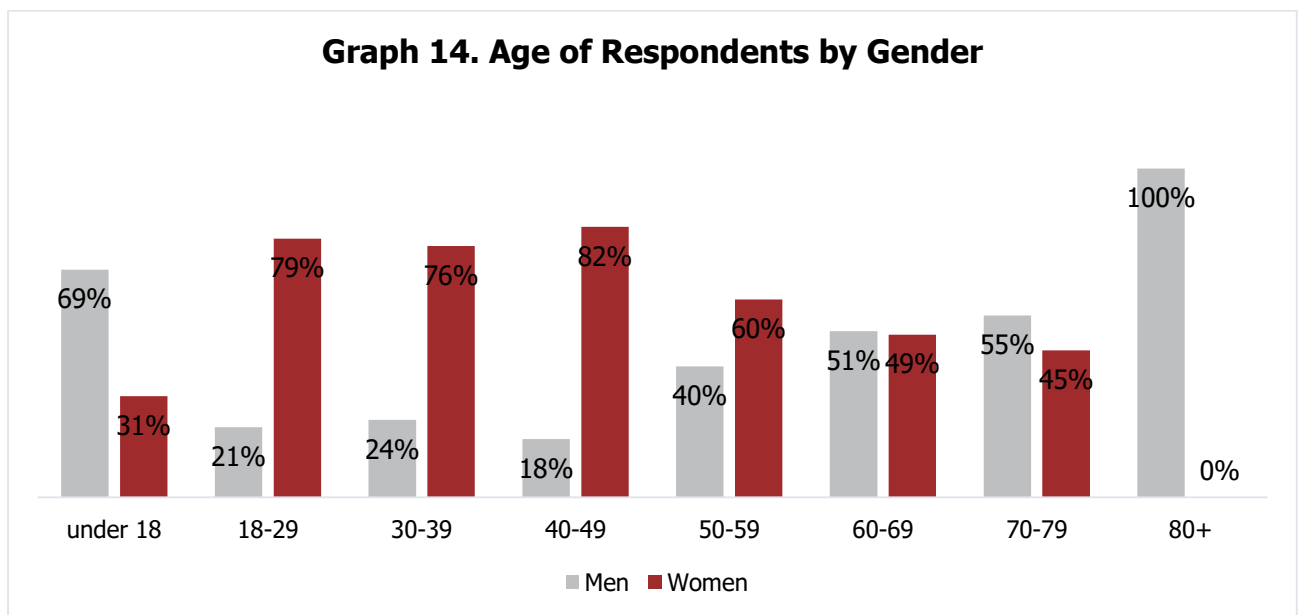


### Annex 3. Demographic Information about the Sample

Of the respondents that completed 90% of the questionnaire, 67% were women and 33% were men.<sup>134</sup>



Most of the overall respondents<sup>135</sup> were ages 18-29<sup>136</sup>, and as graph 14 illustrates 21% of them were men and 79% women. Most women respondents tended to be ages 18-29 (25%) and ages 30-39 (20%). Meanwhile, most men were 18-39 (13%).<sup>137</sup>



<sup>134</sup> N = 1,194.

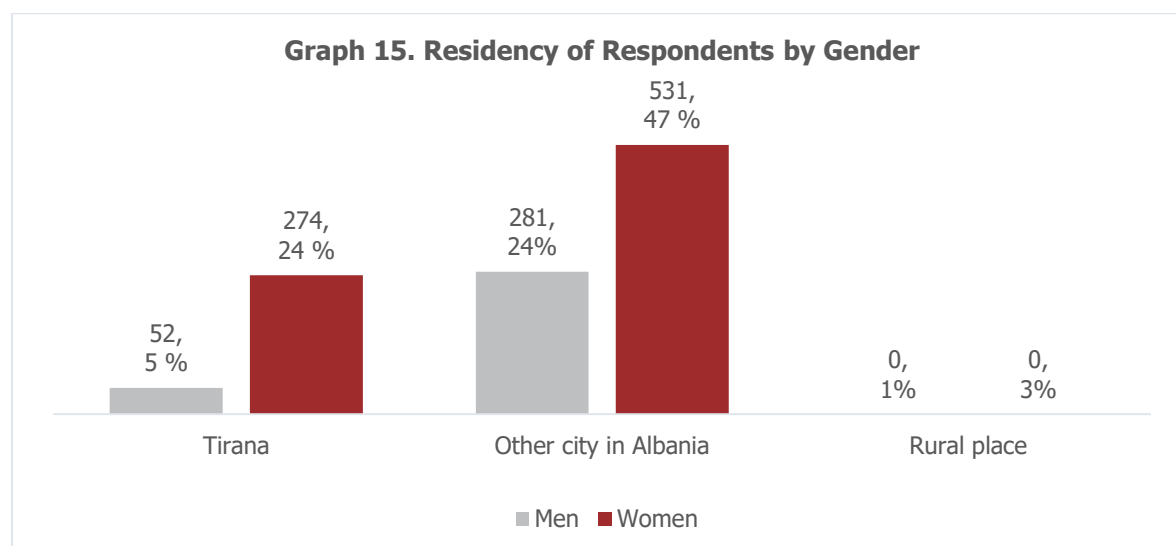
<sup>135</sup> N = 1,165.

<sup>136</sup> N = 375.

<sup>137</sup> N = 1,165.

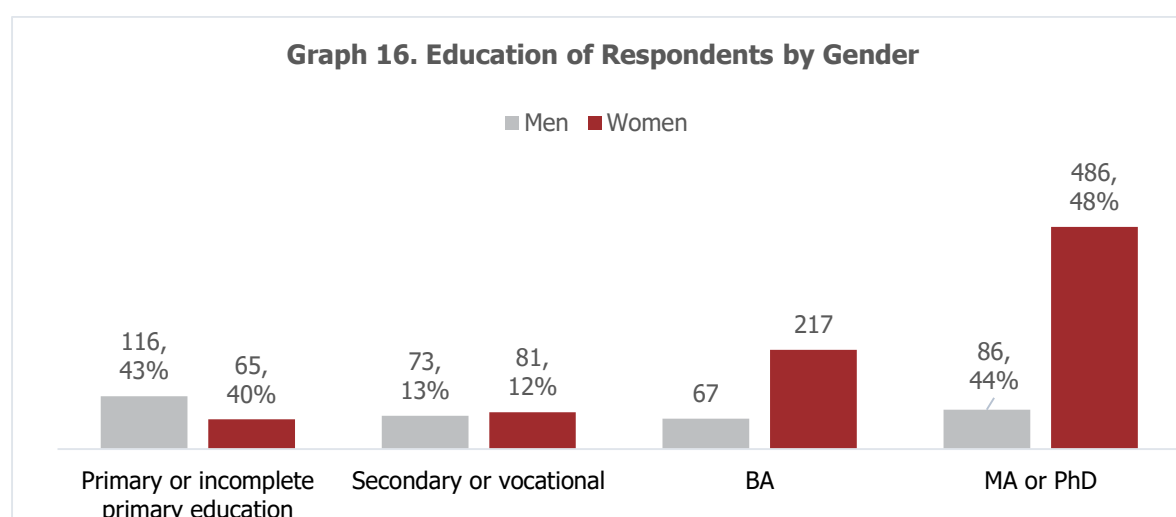
Concerning ethnicity, 98% of respondents (70% women and 28% men) identified as Albanian; 6% as Greek; 3% as Arumun; and 4% as Roma or Egyptians. Among the respondents, 7% of women (12 women) and 14% of men (37 men) considered themselves persons with disabilities.<sup>138</sup>

As Graph 15 illustrates, 326 of the respondents were from Tirana (24% of women and 5% of men).<sup>139</sup> Meanwhile, 812 respondents were from other cities in Albania (47% of women and 24% of men).<sup>140</sup> Only 1% of respondents lived abroad (seven women and one man).



Among respondents, 26% were single and 59% were married. Additionally, 6% were engaged, 2% co-habiting 3%, divorced 3% and 4% were widowed.

Most respondents held a Master's or PhD degree (48%),<sup>141</sup> 24% held a Bachelor's degree.<sup>142</sup> More specifically, 60% of women and 13% of men respondents had these higher levels of education, while only 13% of women and 12% of men had secondary or vocational education (Graph 16). Thus, most respondents were highly educated.



<sup>138</sup> N = 1,192.

<sup>139</sup> N = 1,138.

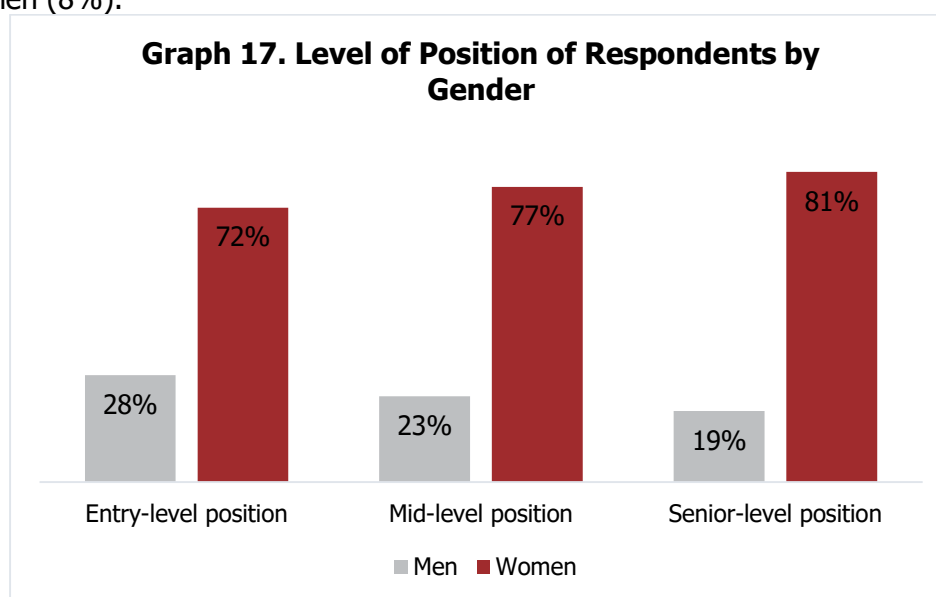
<sup>140</sup> N = 1,138.

<sup>141</sup> N = 572.

<sup>142</sup> N = 284.

Half of the sample were employed full-time (50%) and 10.5% were unemployed but looking for work.<sup>143</sup> Of the employed persons, 37% were employed full-time, 4% part-time and 7% were self-employed.<sup>144</sup> In the public administration, 35% of respondents were employed and an additional 8% worked in publicly owned enterprises in the public sector. In the private sector, 45% of respondents worked. 10% of respondents worked in CSOs. Respondents who were unemployed and looking for a job comprised 8% of the sample, whereas 4% were unemployed and not seeking work. Students and pensioners each comprised 7% of the sample, respectively. Finally, 2% of respondents said they performed unpaid work (unemployed officially).

On average, the employed respondents<sup>145</sup> tended to work in entry-level positions (43%).<sup>146</sup> Women respondents worked in the same value in entry-level positions and mid-level positions (31%). More women respondents worked in senior-level positions (13%) than did men (3%). Interestingly, 28% of the women respondents had been working more than one year, but less than four years in their current position, which was significantly different than men (8%).<sup>147</sup>



As Graph 18 illustrates, most respondents worked in the public sector (75% of women and 25% of men).<sup>148</sup> Only 11% of women and 1% of men respondents worked in civil society or other international bodies (e.g., EU, UN, UN agency, foreign embassy, etc.).

<sup>143</sup> N = 1,109.

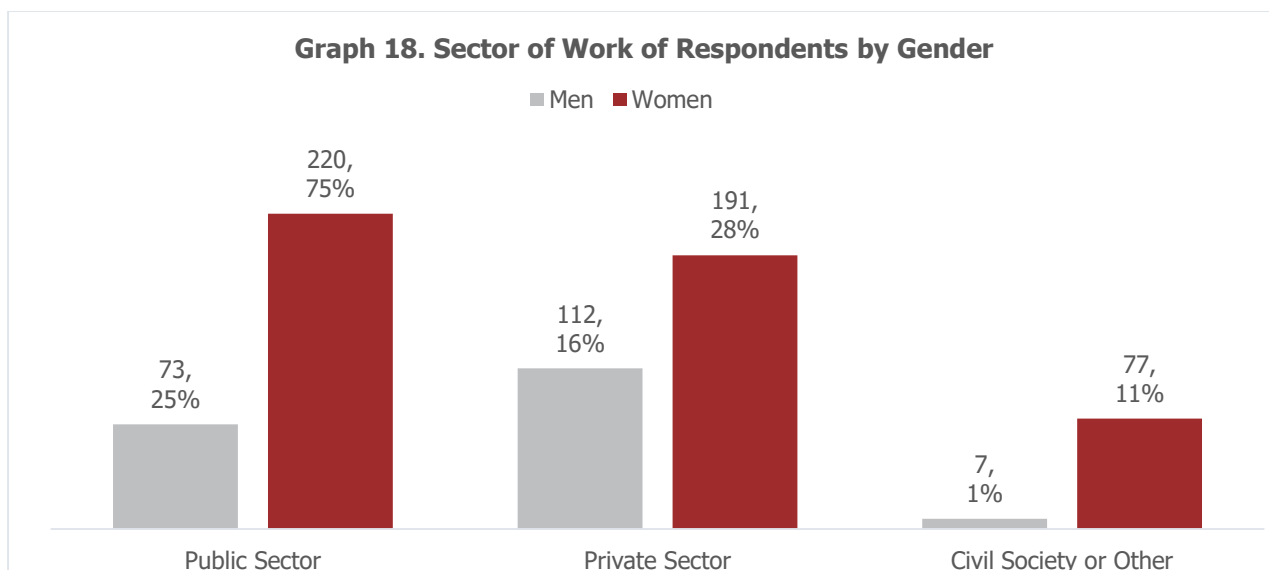
<sup>144</sup> N = 1,109.

<sup>145</sup> N = 610.

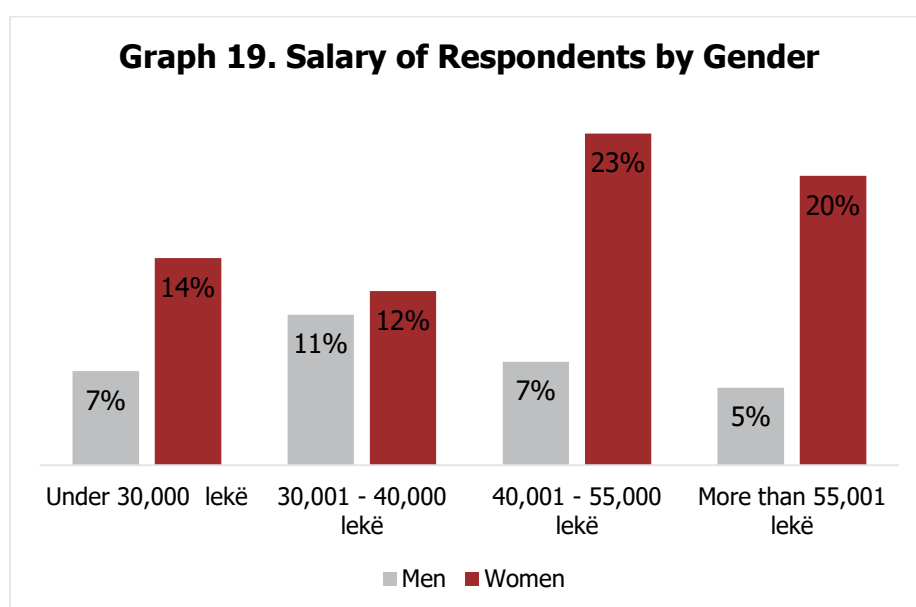
<sup>146</sup> N = 264.

<sup>147</sup> N = 365.

<sup>148</sup> N = 680.



As Graph 19 illustrates, 21% of respondents<sup>149</sup> received less than 30000 lekë net per month (14% of women and 7% of men).<sup>150</sup> Approximately 53% of the respondents received between 30000 lekë and 50000 lekë<sup>151</sup>, including a higher percentage of women (35%) than men (18%). A higher percentage of women (20%) than men (5%) received salaries amounting to more than 50000 lekë<sup>152</sup>.



<sup>149</sup> N = 128.

<sup>150</sup> N = 607.

<sup>151</sup> N = 323.

<sup>152</sup> N = 156

## **Annex 4. Survey Instrument**

### **Survey on Discrimination at Work**

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

#### **GENERAL INFORMATION**

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

**What is your gender?**

Woman  
Man  
Other

**In which year were you born?**

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

Albanian  
Arumun  
Bosniak  
Bulgarian  
Egyptian  
Greek  
Goran  
Montenegrin  
Macedonian  
Roma  
Other (please write) \_\_\_\_\_

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

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

**What is your current marital status?**

Single  
Engaged  
Married  
Divorced  
Co-habiting  
Widowed

**Do you consider yourself to have a disability?**

Yes  
No

## **EMPLOYMENT INFORMATION**

### **Are you currently:**

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

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

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

### **Where do you work? Please check all that apply.**

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

### **In which field do you work?**

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

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

Four months or less

5-8 months

9-12 months

1-3 years

4-10 years

11+ years

**Which of the following best describes your current position?**

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

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

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

I'm my own boss

Other (please write)

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

Yes

No

I don't know

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

The employer

The Labour Inspectorate

The Ombudsperson Institution

The police

None of the above

I don't know

**HIRING***Now we have some questions about your experiences with hiring processes.***How many times have you been in a job interview since 2008?**

Never

Once

2-5 times

More than 5 times

Don't remember

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

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

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

	es	o
You are a woman		
You were pregnant		
You have children		
You shared that you are planning to have children		
Your age		
Your appearance		

	es	o
You are a man		
You are expecting a baby		
You have children		
You shared that you are planning to have children		
Your age		
Your appearance		

## PROMOTION

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

Yes, all employees have an equal opportunity

No, some employees are treated differently than others

Both - It differs depending on the employer I have had

Don't know

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

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

Your ethnicity

Your sexual orientation

The employer had a personal preference

Your age

Your religion

Your place of residence (for example, rural)

I don't know

None of the above happened to me

Other (please write):

## WORKING CONDITIONS

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

Yes

No

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

Yes

No

## UNIONS

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

Yes

No



I don't know

**Are you a member of any workers' union?**

Yes

No

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

Very well

Good

Somewhat

Poorly

Very poorly

## **PREGNANCY AND MATERNITY LEAVE**

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

Yes

No

I am currently pregnant but haven't taken up maternity leave yet

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

Yes

No

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

Yes

No

I am still on maternity leave

**Why not? Please mark all that apply.**

I did not want to work anymore

I started a new job

The employer terminated my contract/fired me

My contract expired while I was on maternity leave

The employer decided to employ my replacement instead

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

I could not find work

Due to illness or injury

Another reason (please write)

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

Yes

No

**When you returned to work, did you have:**

More responsibilities

Fewer responsibilities

The same responsibilities

**Did you have:**

Higher pay

Lower pay

The same pay

**Did you have:**

More working hours

Less working hours  
The same working hours

**When you returned, were you:**

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

**PATERNITY LEAVE**

**Would your employer give you paternity leave?**

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

**Since 2008, have you ever had a new born child while being employed?**

Yes  
No

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

**When you returned from leave, were you:**

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

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

Yes  
No  
I don't know

**CONTRACTS AND PAY**

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

Yes  
No

**Do you currently have a contract?**

Yes  
No

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

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

**In your workplace, who tends to have longer contracts?**

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

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

Yes

No

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

1-20

21-40

41-60

More than 61

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

Less than or equal to 26000

26001-30000

30001-40000

40001-50000

50001-60000

60001-70000

70001-80000

80001 or more

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

Yes

No, my employer tells the authorities something else

I don't know

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

Yes

No

**Usually, how are you compensated for overtime worked?**

I don't receive anything extra (beyond my regular monthly wage)

I'm paid for the extra time worked at the same rate as my usual wage

I'm paid for the extra time worked with a higher rate than my usual wage

I receive time off

Other (please write)

Not applicable: I never work overtime

## **SEXUAL HARASSMENT AT WORK**

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

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

A colleague or superior forcing someone to have sex with him/her			
--	--	--	--

**Were the persons who did this to you:**

Women

Men

Both

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

Lower positions than you

Equal positions as you

Higher positions than you

**Who did you tell? Please check all that apply.**

No one

Friend, acquaintance

Family member

Colleague

My manager

Police

Religious leader

Person in an official reporting mechanism at my workplace

Someone else, please specify:

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

I was ashamed

I'm afraid of losing my job

I did not want to

I think I have to take care of it myself

Other (please write):

**OVERALL REFLECTIONS**

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

Yes

No

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

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

**In which sector were you working when this occurred?**

Private sector (business, including family business or farm)

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

Local civil society organization

International civil society organization

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

Other:

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

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

**What happened when you reported discrimination to the relevant authorities?**

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

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

Yes  
No

#### **FOLLOW-UP**

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

Yes  
No

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

Phone:  
Email:

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

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

## **Annex 5. Sample Interview Guide**

### **(For the Labour Inspectorate)**

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

#### Introduction

Hello, my name is \_\_\_\_\_ and I am here on behalf of GADC 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.

#### Attitudes and Perceptions

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

#### Training

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

#### Laws and Implementation

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

22. To what extent do you think that the Anti-Discrimination Law is being implemented in the labour market?

23. To what extent do you think that the Law on Gender Equality is being implemented in the labour market?

24. Other comments related to this:

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25. Have you ever dealt with a discrimination case against a woman or man because of their gender, related to labour since 2008?

25.1.1 Yes

25.1.2 No

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

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

Gender-based discrimination cases reported

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

27.1 If yes, how many approximately?

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

27.3 What was the gender of the alleged perpetrator?

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

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

27.6 What types of discrimination did you encounter?

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

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

29. What steps have you taken?

30. Were any disciplinary measures taken?

31. If so, which?

32. What was the biggest challenge?

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

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

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

36. [Researcher notes (reflexivity)]