

# Trends in anti-discrimination case-law

## in Bosnia and Herzegovina 2018-2021

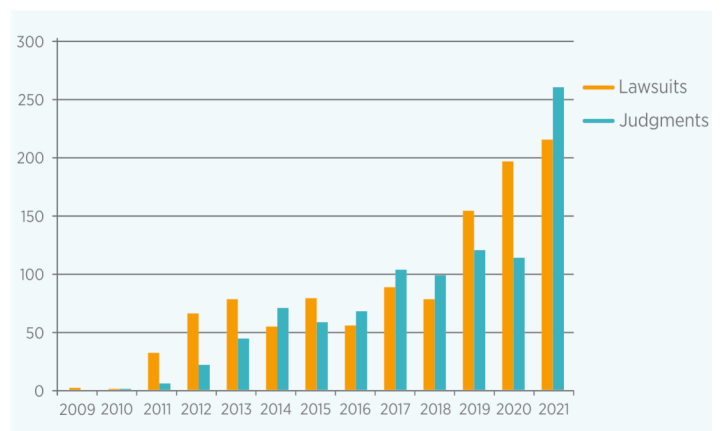


This fact-sheet summarizes the key findings of the analysis of the OSCE Mission to Bosnia and Herzegovina (Mission) of 433 domestic court decisions rendered in anti-discrimination cases from mid-2018 to mid-2021.

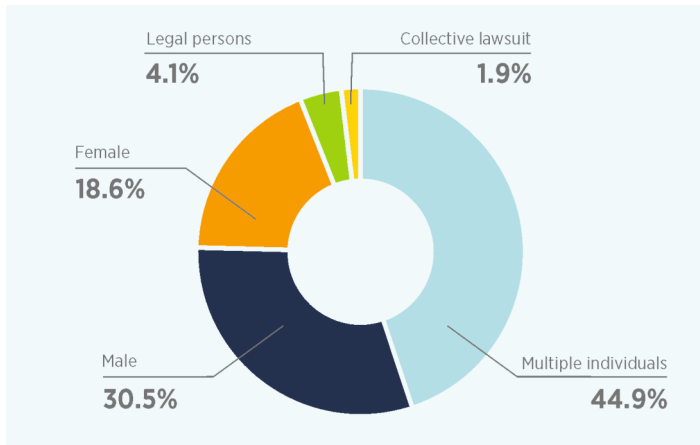
Discrimination, being an unjustified, unequal treatment of citizens because of their personal characteristics or features such as ethnicity, race, gender or disability, remains a widespread challenge with detrimental impact on basic social values and, in turn, on the country's stability. The Mission continuously assists Bosnia and Herzegovina's efforts to effectively combat and prevent discrimination and the judiciary is an indispensable ally in this regard. For this reason, the Mission monitors the processing of anti-discrimination cases before courts and in this report analyzes the latest developments to advance the legal framework and practice.

### Key findings:

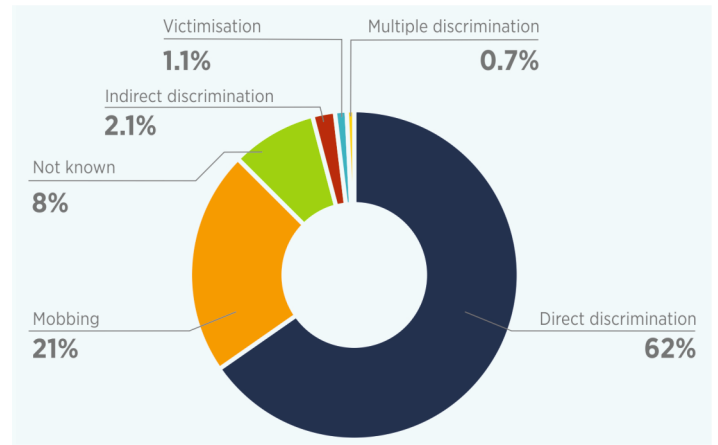
There is an **increased use** of the Law of Prohibition of Discrimination – in particular against public authorities – in terms of lawsuits lodged and judgements rendered.



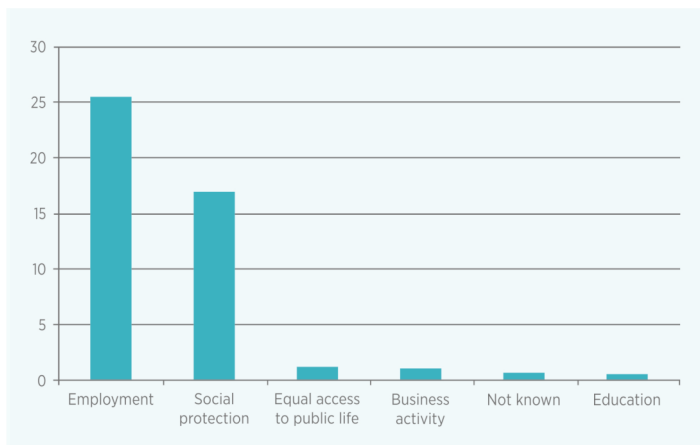
The **structure of plaintiffs**, in which males continue to dominate, is as follows:



**Mobbing**, as a specific form of discrimination in the context of labour relations, continues to be frequently litigated:



Discrimination cases relating to **employment** remain the most frequent:



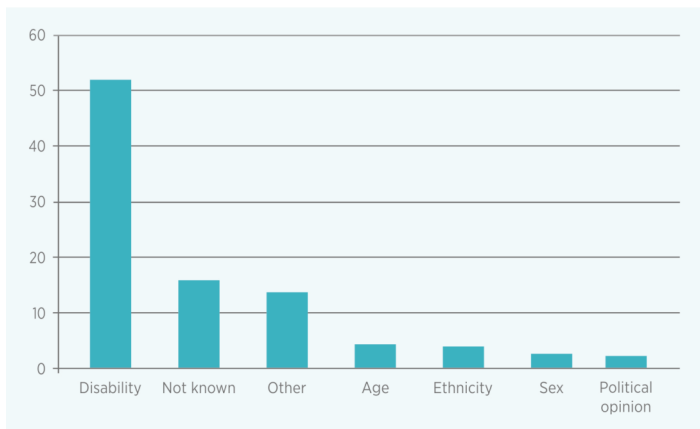
As regards **collective lawsuits**, the positive outcomes in several high-profile cases are indicative of the great potential of this instrument. That said, it remains under-utilized in combatting systemic discrimination. The emergence of case law in systemic discrimination nonetheless represents one of the most important developments in this reporting period.

### Remaining challenges and recommendations

A few main areas of concern, in which greater clarity and further development are needed, include:

- Improvement of case **management and treatment of evidence** – traditional evidentiary tools are still predominantly used despite the innovations and flexibility prescribed in the LPD. Namely, statistics or situational testing are still infrequently produced as evidence in anti-discrimination cases;
- Awarding of **non-pecuniary damages** – there is a lack of thorough reasoning regarding the just satisfaction of victims of discrimination, which might question the effectiveness of the anti-discrimination litigation as a whole. Once established, discrimination can never be regarded as trivial and should automatically presuppose the existence of harm;
- Shifting of **burden of proof** – the LPD needs to be more assertively applied. In its current form, it should suffice for a plaintiff to substantiate ‘prevailing probability’ of discrimination to shift the burden of proof to the defendant, however this is rarely seen in practice. This specific standard significantly increases the likelihood of a positive outcome;
- Adjudication of **mobbing** cases – there is divergent case law regarding the procedural standing to be sued (whether it should be the employer or the individual perpetrator) and the repetitiveness of alleged acts of harassment (duration and frequency). These divergences need to be settled through the prevailing application of the LPD and an assessment of individual circumstances in each mobbing case;
- Treatment of **systemic discrimination** – when discrimination stems from statutory provisions or well-established institutional patterns, collective lawsuits could provide better and more efficient protection against discrimination.

There is significant number of judgements dealing with **disabilities** (52.1%). There is however, a large number of cases in which the protected ground cannot be identified – the processing of such cases is relatively cumbersome and the likelihood of a successful outcome remains low.



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### OSCE Mission to Bosnia and Herzegovina

Fra Anđela Zvizdovića 1, UNITIC Tower A  
71000 Sarajevo  
Bosnia and Herzegovina

Office: +387 33 952 100  
Fax: +387 33 442 479  
press.ba@osce.org  
www.osce.org/bih

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