ANNUAL REPORT 2021 BY THE OMBUDSMAN FOR EQUALITY

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I DUTIES OF THE OMBUDSMAN FOR EQUALITY

The Ombudsman for Equality is an independent authority whose domain is the promotion of gender equality. The duties of the Ombudsman for Equality:

- Monitoring compliance with the Act on Equality between Women and Men, particularly its prohibitions of discrimination
- Providing information about the Equality Act and its application
- Promoting the purpose of the Act by means of initiatives, advice and guidance
- Monitoring the implementation of equality between women and men in different sectors of society
- Taking measures to pursue reconciliation in matters concerning discrimination referred to in the Equality Act

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. If someone suspects that he or she has been discriminated against in a manner referred to in the Equality Act, he or she may appeal to the Ombudsman for Equality. The Office of the Ombudsman for Equality provides advice and instructions on rights and the application of the Equality Act and, if necessary, investigates suspected cases of discrimination through a written procedure. If the Ombudsman finds that a violation of the Equality Act has been committed, he will issue instructions and guidance on discontinuing the unlawful practice. In certain cases, the Ombudsman may refer the case to the National Non-Discrimination and Equality Tribunal of Finland, which has the power to impose a conditional fine to prevent discrimination. Statements issued by the Ombudsman for Equality are not legally binding. Anyone who suspects that he or she has been a victim of discrimination can take the case to a district court and claim compensation.

Jukka Maarianvaara, Master of Laws, serves as Ombudsman for Equality for the term 2022–2027.

What are the impacts of the statements by the Ombudsman for Equality?

The Ombudsman for Equality often makes a request for an employer to change its actions or recommends the employer to re-evaluate its policies from the perspective of equality. In some cases, the statement has led to negotiations at the workplace, resulting in a solution equally satisfying to both parties. Similarly, after receiving the statement from the Ombudsman for Equality, for example suppliers of goods or services have reported having changed their pricing in compliance with the Equality Act. The Ombudsman for Equality may facilitate reconciliation in discrimination matters provided for in the Act on Equality between Women and Men. The Act prohibits discrimination based on gender, gender identity and gender expression. The statutory possibility of reconciliation improves the legal protection of discrimination victims and the effective realisation of their rights.

2 A WORD FROM THE OMBUDSMAN FOR EQUALITY

Ombudsman for Equality's review

Exceptional times characterised by the coronavirus pandemic continued in 2021. The Office of the Ombudsman for Equality continued to work from home for nearly the whole year: we had just spent a few days back at the office in November, when the epidemic forced us to return to remote work again. At the time of writing, the situation appears to have improved, and we have returned to the office part-time. We have pondered the same issues related to hybrid work as I am sure many similar organisations have: which factors speak for remote work and which for in-office work, and what would be the optimal relationship between remote and in-office work. I myself have found that remote work is a significant help in reconciling work and family life but, on the other hand, no amount of Teams meetings can replace interaction with colleagues, the sense of community, learning and easy exchange of information at the workplace. Working home at the kitchen table can reconcile work and family life a bit too much, blurring the line between work and free time.

In addition to our enforcement duties, the work of the Office of the Ombudsman for Equality in 2021 revolved around preparing the report to Parliament. Issuing a report on the realisation of gender equality in Finland to Parliament every four years is one of the duties of the Ombudsman for Equality. The report was delivered to Speaker of Parliament Matti Vanhanen on 27 April 2022. The final report is based on a vast reserve of expertise and experience, accumulated by the Office of the Ombudsman for Equality in both enforcement duties and the promotion of gender equality. Preparing the report is always a major effort for an office of ten. As I am writing this, our report and its recommendations are already being discussed by the Employment and Equality Committee of Parliament.

The preparation of a number of gender equality measures listed in the Programme of Prime Minister Sanna Marin's Government progressed in spite of the coronavirus pandemic – while others remained unfulfilled. The family leave reform was passed by Parliament in early December. The tripartite working group for preparing the provisions of the Act on Equality Between Women and Men related to pay transparency completed its work at the end of August. Preparations for a reform of the sex offences chapter of the Criminal Code of Finland continued in the Ministry of Justice. The working groups preparing the reform of trans legislation started their work.

On the other hand, the Government Programme's measure for reinforcing the protection of fixed-term employees from discrimination based on pregnancy did not advance in the Ministry of Economic Affairs and Employment's tripartite working group. The Ombudsman for Equality has been saying for a long time that discrimination based on pregnancy and family leave is a serious, enduring issue in working life. Fixed-term employees are in a particularly vulnerable position, and one of the most common forms of pregnancy-based discrimination is terminating a fixed-term employment relationship at pregnancy or family leave. Because of this, we have recommended reinforcing the protection of fixed-term employees from pregnancy-based discrimination in the Employment Contracts Act and other employment legislation.

This recommendation was adopted in the Government Programme and was included in the mandate of the tripartite working group. However, the working group found no cause to amend the Employment Contracts Act in this regard. The Ombudsman for Equality's opinion on the matter has not changed. Even though weeding out discrimination requires dialogue on the rights and obligations of the parties to employment contracts, an equality issue of this magnitude and importance should also be addressed in legislation.

The trans legislation reform should be passed in this Government term

The Ombudsman for Equality, as well as several other authorities and human rights organisations, have been calling for an urgent reform of the human-rights transgressing Trans Act (Act on Legal Recognition of the Gender of Transsexuals). The central issue is the infertility requirement for confirming an individual's legal gender, but the current Act has many other issues

as well. It is thus commendable that the reform of trans legislation is finally under way. According to the Government Programme, the infertility requirement will be removed from the Trans Act, in addition to which medical treatments will be separated from the correction of legal gender. The bill for the Trans Act has not been presented to Parliament for discussion as of yet, and I am concerned that the bill will not be discussed in this parliamentary term. Furthermore, the bill restricts the legal correction of gender to adults, which is problematic with regard to the rights of the child.

The family leave reform aims for a more equal distribution of care

The family leave reform will enter into force on 1 August 2022. The reform will entail a significant increase in non-transferrable leave earmarked for fathers. Even though the current legislation permits nearly all family leave to be divided freely between the parents, fathers only take about 10% of family leave. This reform will hopefully encourage fathers to take a larger portion of family leave going forward, which would be to the benefit of fathers, mothers and children alike. It should also be kept in mind that dividing family leave is usually also financially profitable for the parents.

New legal provisions alone do not suffice, however – we also need family-friendly workplace practices, information sharing and education. The family leave reform should also be taken into account in the provisions of collective agreements: when the parental leave replaces the earlier maternity and paternity leaves, paid parental leave should not depend on the gender of the parent either.

Promoting pay transparency is important for addressing pay discrimination

It appears that increasing pay transparency is not easy. The matter has already been prepared in the pay transparency report prepared by myself (2018) as well as by two tripartite working groups, the latter of which delivered its report at the end of August. Proposals on the table have included giving employees who suspect pay discrimination access to the pay information of other employees, as well as clarifying the provisions regarding pay surveys in gender equality plans. The working group could not reach a consensus, and the draft government proposal recently circulated for comments differs from the working group's proposal in terms of the right of access to information.

Based on our enforcement observations, the working group's proposals for increasing pay transparency should be implemented. Increasing the transparency of pay information would make it easier to detect and intervene in pay discrimination, and would also support the promotion of pay equality through pay surveys.

In the public sector, pay information is public pursuant to the Personal Files Act. In our statements regarding the health and social services reform, we pointed out that this pay transparency should also be preserved in the future wellbeing services counties – which was not included in the legislation package concerning the reform. Fortunately, it appears that pay transparency is being implemented through other legislation. The health and social services reform also involves other pay issues, especially the harmonisation of pay between the future wellbeing services counties. It is important to budget sufficient funds for this, so that the harmonisation of pay can be carried out as required by the Act on Equality between Women and Men and other legislation.

Strong equality work must continue

The parliamentary term is coming to a close and the next elections are just around the corner. Many measures for promoting equality have been advanced in this government term, and the Equality Policy Report just delivered to Parliament by the Government gives Members of Parliament the opportunity to discuss equality objectives and means for promoting equality in the longer term. I hope that our own report to Parliament has also served this purpose. Together we can make Finland an even more equal and non-discriminatory society!

Helsinki, 13 june 2022

Jukka Maarianvaara

Ombudsman for Equality

3 STATEMENTS FOR THE PARLIAMENT OF FINLAND AND OTHER AUTHORITIES

The Ombudsman for Equality issued a number of statements to Parliament and the authorities in 2020. A few examples of such statements requested from the Ombudsman are provided below.

Statement for the Parliament's Employment and Equality Committee on the family leave reform (HE 129/2021 vp)

The Ombudsman for Equality was heard by the Parliament's Employment and Equality Committee on the family leave reform on 15 October 2021.

The Parliament's Employment and Equality Committee requested a statement from the Ombudsman for Equality on the Government Proposal to the Parliament for Acts Amending the Health Insurance Act, the Employment Contracts Act and the Act on Early Childhood Education and Care as well as related Acts (HE 129/2021 vp., later referred to as the family leave reform).

According to the government proposal, the aim of the proposal is to divide family leave and care responsibilities more equally between both parents. The aim is also to improve the equal treatment of different types of families in the parental allowance system and the flexibility of the system, taking the families' different needs into account in the use of leave and allowances.

The goals set for the family leave reform are to be supported. Above all, the more equal division of the care responsibilities may have a positive effect on equality in working life; it improves the opportunities of women in particular to participate in working life and balance work and family life.

In the view of the Ombudsman for Equality, however, the proposal includes some suggestions that are problematic with regard to gender equality.

Family leave with regard to the prohibition of discrimination

Discrimination based on pregnancy, giving birth, parenthood or gender is prohibited by law. When examining prohibited discrimination, it is important to note if the individuals compared in the situation in question are in a comparable situation, in which case they should in principle be treated the same way. For instance, according to the valid legislation, it has been possible to pay a maternity allowance for a period longer than a paternity allowance period. From the perspective of the prohibitions of discrimination of the Act on Equality between Women and Men, this has been possible because the grounds for the payment of maternity and paternity allowances have been different. The opportunity to stay away from work, thereby ensuring the health of the parent and child and the care of the child at home, has been used as the grounds for a maternity allowance. The paternity allowance has been used to encourage fathers to participate in the care of their child and establish a good relationship with their child. (e.g. HE 50/2004, p. 9). In its statement PeVL 38/2006 vp., the Constitutional Law Committee has also noted that the provision on equality in section 6 of the Constitution of Finland does not create obstacles to the different treatment of allowances that are determined based on different grounds.

In contrast, the positions of the parental allowance and the maternity and paternity allowances have been considered different. The purpose of the parental allowance is to ensure the care of the child at home. The parents are seen as being in a comparable position with regard to parental leave, and they must be treated in the same way, which is why a parental allowance, among other things, must be paid equally to the mother or father that takes care of the child.

The government proposal changes the structure of family leave so that, in the future, in addition to the parental allowance there would only be a pregnancy allowance intended for the parent who is pregnant and gives birth. The parental allowance would be paid to all parents regardless of their gender, and therefore parents of a different gender would be in a comparable position during the benefit period. As a result, the mother and the father must be treated in the same way as beneficiaries of the benefits related to parental leave.

Proposals concerning the pregnancy allowance

Purpose of the pregnancy allowance

The proposal suggests that a pregnancy allowance to replace the maternity allowance should be provided for in chapter 9, sections 1–2 of the Health Insurance Act. According to the provision-specific grounds, the purpose of the pregnancy allowance would be to compensate the income of pregnant persons due to the absence from work required by the final stage of the pregnancy (HE 129/2021 vp., p. 121). The current payment of a maternity allowance has been justified by stating that its objective is "to grant the mother an opportunity to be absent from work, thereby ensuring her own health and that of her child, and to ensure the care of the child at home." This perspective of maternity protection is completely absent from the family leave proposal.

In the view of the Ombudsman for Equality, a reference to the pregnancy and maternity protection should still have been included in the grounds of the proposals on the pregnancy allowance. The need to protect the health of the parent who is pregnant and gives birth and the recovery of said parent from pregnancy and birth has not disappeared, and therefore it would be important to state this clearly in legislation. This would also be important with regard to the legal status of mothers.

Duration of the pregnancy allowance period

According to the proposal, the parent who is pregnant and gives birth would always have the right to receive a pregnancy and parental allowance for at least 105 weekdays. This would not require custodianship or care of the child. The parental allowance period and parental leave have traditionally been linked to the care of the child. In the view of the Ombudsman for Equality, the parental allowance period cannot replace the time to which the parent who is pregnant and gives birth is entitled for the reasons of pregnancy and maternity protection behind the current maternity leave, for instance. The Ombudsman for Equality notes that in general, the mother and the father are not otherwise in a comparable position with regard to the use of the parental allowance, if a part of the mother's parental allowance days would in most cases be spent on recovering from the pregnancy and birth. According to the legal provisions on discrimination, this is problematic.

In the view of the Ombudsman for Equality, recovery from pregnancy and birth as well as starting to breastfeed the child require the payment of a pregnancy allowance and extending the pregnancy allowance period to cover the time after birth. It would be important to extend the pregnancy allowance period from its suggested length so that the goal would be the paid maternity leave of at least six weeks after birth required by Article 8 of the European Social Charter and its monitoring practice, for instance. The ILO Maternity Protection Convention also includes a mandatory leave of at least six weeks after birth.

The Maternity Protection Convention also provides for breastfeeding breaks. In the view of the Ombudsman for Equality, their implementation in Finland can also be investigated, if parents start to share the parental leave more equally than at the moment.

Paid maternity and paternity leave in collective agreements

The government proposal has not examined how the reform may potentially be reflected on the paid maternity and paternity leave stipulated by the collective agreements, thereby affecting pay equality or the financial position of women and men.

THE EFFECTS OF THE FAMILY LEAVE REFORM ON THE FINANCIAL STATUS OF WOMEN AND MEN SHALL BE MONITORED

Negotiating collective agreements and their content is a part of the contracting parties' autonomy regarding agreements. In the opinion of the Ombudsman for Equality, however, the family leave reform includes a risk that as a result of the reform, the paid maternity leave of mothers with its current length would be either removed from the collective agreements or significantly shortened. If this should happen, the financial position of working mothers would deteriorate compared to their current one, and the change would be extremely dramatic. The increased allowance (90% of the three hundredth part of the annual income) received during the pregnancy period and parental leave period (a total of 56 weekdays) would not replace this. It is likely that this would also affect the average income that describes the wage gap between women and men. At the moment, the average earnings of women are approximately 84% of men's average earnings. (TAS 509/2021)

Statement on the Government proposal for a Parenthood Act (HE 132/2021 vp)

The Ombudsman for Equality replied to the Ministry of Justice's request for a statement from the viewpoint of its powers in the area of gender equality.

According to the Ministry of Justice's proposal, the amendment is mostly technical. In addition, it rectifies and clarifies certain issues and ambiguities that have arisen in connection with the application of the current Maternity Act and Paternity Act.

Combining the Maternity and Paternity Acts into a Parenthood Act

The Ombudsman for Equality was in favour of combining the Maternity Act and Paternity Act into a single Parenthood Act. There are many common aspects to establishing maternity and paternity. Combining the Acts will make these provisions easier to apply. A common Act can also contribute to the appreciation of parenthood as equally important regardless of the parent's gender.

Clarifications to the legal protection of fathers

The Ombudsman for Equality noted that the proposal will improve the de facto status and legal protection of fathers by giving men who suspect that they could be the father of a child the right of action also if parenthood was established by virtue of an acknowledgment given before the child's birth. Legal protection is also improved by the proposal that action to annul paternity could still be brought within one year of becoming aware of the grounds for bringing such action.

Gender neutrality

The Ombudsman for Equality commends the fact that the Parenthood Act and its rationales use gender-neutral language where possible without compromising the precision and understandability required of legislation.

Gender-neutrality is appropriate in contexts where there is no need to highlight the differences in status between the genders. However, it is important that the use of gender-neutral language does not obscure actual differences between the genders, the diversity of genders, or the special circumstances of people belonging to gender minorities.

The parent's gender in sections 2, 3 and 4 of the proposal

The text of section 2 of the Act does not tie motherhood to the parent's gender. The rationale for the section also states that the establishment of parenthood does not require the person who gave birth to the child to be female.

Under section 3, paternity can be established by virtue of being married to the woman who gave birth to the child. Section 4 of the Act provides for the other situations in which parenthood can be established.

An opportunity to use sperm whose donor has given his consent for establishing his paternity in assisted fertility treatments is proposed for female couples. In such cases, the donor would be established as the child's father. This improves the ability of sperm donors, who are mainly men, to establish their paternity.

The text of section 4 does not tie paternity to the parent's gender. However, the rationales restrict the right of trans women to establish their paternity according to the date on which their gender was recognised. The Ombudsman for Equality does not see acceptable grounds for this restriction. The Ombudsman for Equality proposed that the rationale for section 4 would state that establishing paternity does not require the father to be male.

Population Information System entries

Recording the relationship between child and parent in the Population Information System can be problematic, especially with regard to the privacy of individuals who have had their gender recognised and respect for the gender identity of such individuals. The Ombudsman for Equality considers it important that parents who have had their gender recognised have the opportunity to obtain a parenthood entry matching their recognised gender. Population Information System entries can be reviewed in connection with the amendment of the Transsexuality Act.

Act on Assisted Fertility Treatments

In the opinion of the Ombudsman for Equality, it would be important to review the Act on Assisted Fertility Treatments in light of the special circumstances of gender minorities, in connection with the amendment of the Transsexuality Act at the latest. The Ombudsman for Equality has stated

that individuals who have their gender corrected must have equal access to reproductive services such as the storage of gametes and assisted fertility treatments. (TAS 180/2021)

Statement regarding the preparation of the Government's Equality Policy Report

The Ministry of Social Affairs and Health sought the views of the Ombudsman for Equality and other actors on what issues should be taken into account in the preparation of the Equality Policy Report and what national targets should be set in the report.

The report addresses the time between now and 2030. Respondents were asked to provide a maximum of five clear equality issues and a long-term equality policy goals.

The Ombudsman for Equality noted that, unfortunately, the central equality issues of today's society do not seem to be disappearing, despite various measures having been taken. It is therefore important for the Ombudsman for Equality that these pressing equality issues are also emphasised in the new equality report.

It is also important that the Gender Equality Report comprehensively takes into account gender diversity and the need for an intersectional assessment of gender equality issues.

Both the equality issues raised by the Ombudsman for Equality in its statement and other equality issues have been discussed in more detail, for example, in a report submitted to Parliament by the Ombudsman for Equality (K22/2018 VP). The report also contains related recommendations.

The Ombudsman for Equality suggested that the Gender Equality Report address at least the following issues:

- Division of care duties
- Learning differences and segregation in education
- The gender pay gap
- Discrimination on the basis of pregnancy or parental leave
- Sexual harassment and gender-based harassment

As concrete and achievable long-term equality policy goals, the Ombudsman for Equality proposed the following:

- Closing the average pay gap between women and men by 2030.
- At least 20 % of employees working in so-called equality sectors (representation of at least 40 % women and men).
- Fathers using 30 % of family leave.
- A significant reduction in the incidence of pregnancy and family leave discrimination
- A significant reduction in the incidence of sexual harassment

Respondents were also asked for suggestions on how legislation or individual redress should be developed to increase gender equality. The Ombudsman for Equality paid particular attention to the importance of gender impact assessment, the Ombudsman of Equality's insufficient resources, the risk of high legal costs in providing legal protection for those discriminated against, and the need to develop collective redress.

In addition, the Ombudsman for Equality cited ten examples of legislative reforms and other measures to increase gender equality. (TAS 561/2021)

Statement to the Legal Affairs Committee of Parliament on the amendment of the Criminal Code of Finland and taking gender into account as grounds for increasing the punishment (HE 7/2021 vp.)

The Ombudsman for Equality was heard by the Legal Affairs Committee of Parliament on 27 October 2021 on an amendment to the Criminal Code of Finland, in which a motive based on the gender of the victim would be added to the grounds for increasing the punishment listed under "Determining the sentence".

The Legal Affairs Committee of Parliament asked the Ombudsman for Equality to issue a statement on the government proposal for an amendment to the Criminal Code of Finland. (HE 7/2021 vp.) In his statement, the Ombudsman for Equality examined the Criminal Code of Finland from the perspective of gender equality.

The proposed amendment is commendable but lacking

Criminality, violence and hate speech are phenomena differentiated by gender. The majority of violent crime consists of violence between men. This is stated in the government proposal as well. Average differences between the genders can be found in the forms, motives and effects of violence when women and men are compared as perpetrators and victims. In the opinion of the Ombudsman for Equality, the gendered nature of violence should be recognised and understood in order to better prevent violence and hate speech and protect victims.

The Ombudsman for Equality is in favour of adding gender to the provisions of the Criminal Code of Finland (39/1889) as proposed. However, the proposed amendment is lacking in certain respects from the perspectives of gender equality and Finland's human rights obligations. As a rule, the Ombudsman for Equality is in favour of the gender-neutral premise of the Criminal Code of Finland, but took notice of the conceptions of gender presented in the rationale for the amendment.

International human rights obligations require a wider examination of gender and the Criminal Code of Finland

Finland's international human rights obligations require combating gendered violence against women, and this perspective should have been consistently included in the rationale for the proposal. International law defines gendered violence against women as violence committed against women based on gender and/or violence the victims of which are typically women.

According to the definition in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), for example, 'gender' means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men. Unlike the government proposal's narrow conception of gender as a personal, externally perceptible characteristic, the concept of gender enshrined in international law makes it easier to define what we are talking about when discussing gender, violence against women and misogyny, as well as gendered violence.

The aim of the proposal is to emphasise the reprehensibility of acts motivated by gender-based hatred. It also aims to achieve stronger intervention in systematic harassment, threats and targeting, which threaten freedom of speech, the activities of the authorities, research and communications. On the other hand, the effects of the amendment are estimated to be mostly limited to influencing attitudes. Furthermore, the proposal states that it is justified to assess gendered hate similarly to racism in legislation. However, the proposal does not address sexism and the historically subordinate status of women as structural social issues like racism and racist offences, which could be taken into account in the assessment of the reprehensibility of offences in the Criminal Code of Finland.

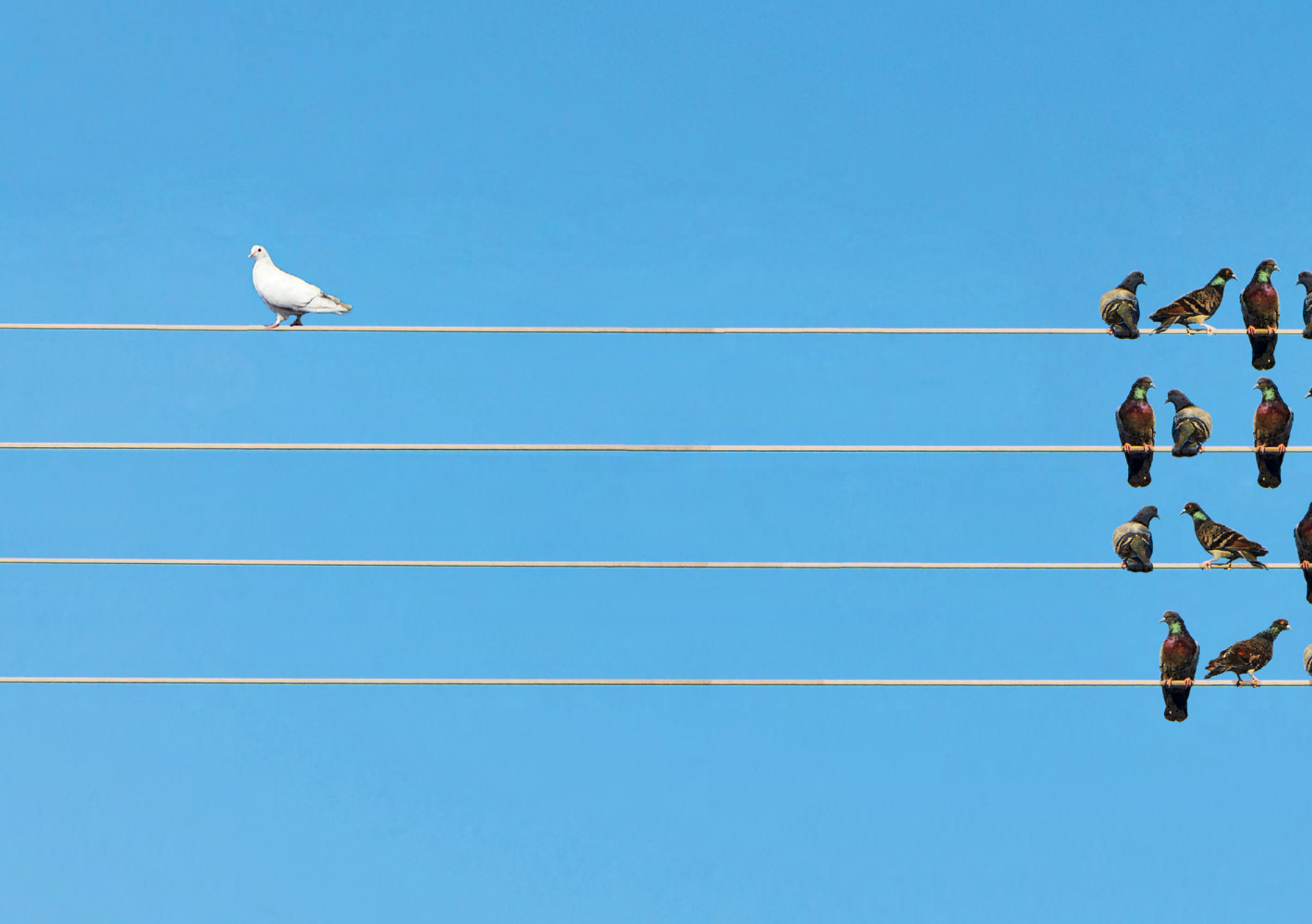
The Istanbul Convention provides for aggravating circumstances in substantive (criminal) law and requires, among other things, that the Parties ensure that an intimate relationship between the perpetrator and victim is taken into account as an aggravating circumstance in their national legislation. However, with regard to intimate partner violence, for example, the government proposal states that, even though women are more typically the victims in intimate partner violence, it is not motivated by gender, but motives such as relationship problems, jealousy and revenge. In a deeper understanding of violence against women and gendered violence, however, the aforementioned motives are considered to be gender-related. The Ombudsman for Equality finds it unfortunate that this view was not taken into account in the preparations of the government proposal and the need for possible dedicated statutory definitions for offences was not considered in this regard.

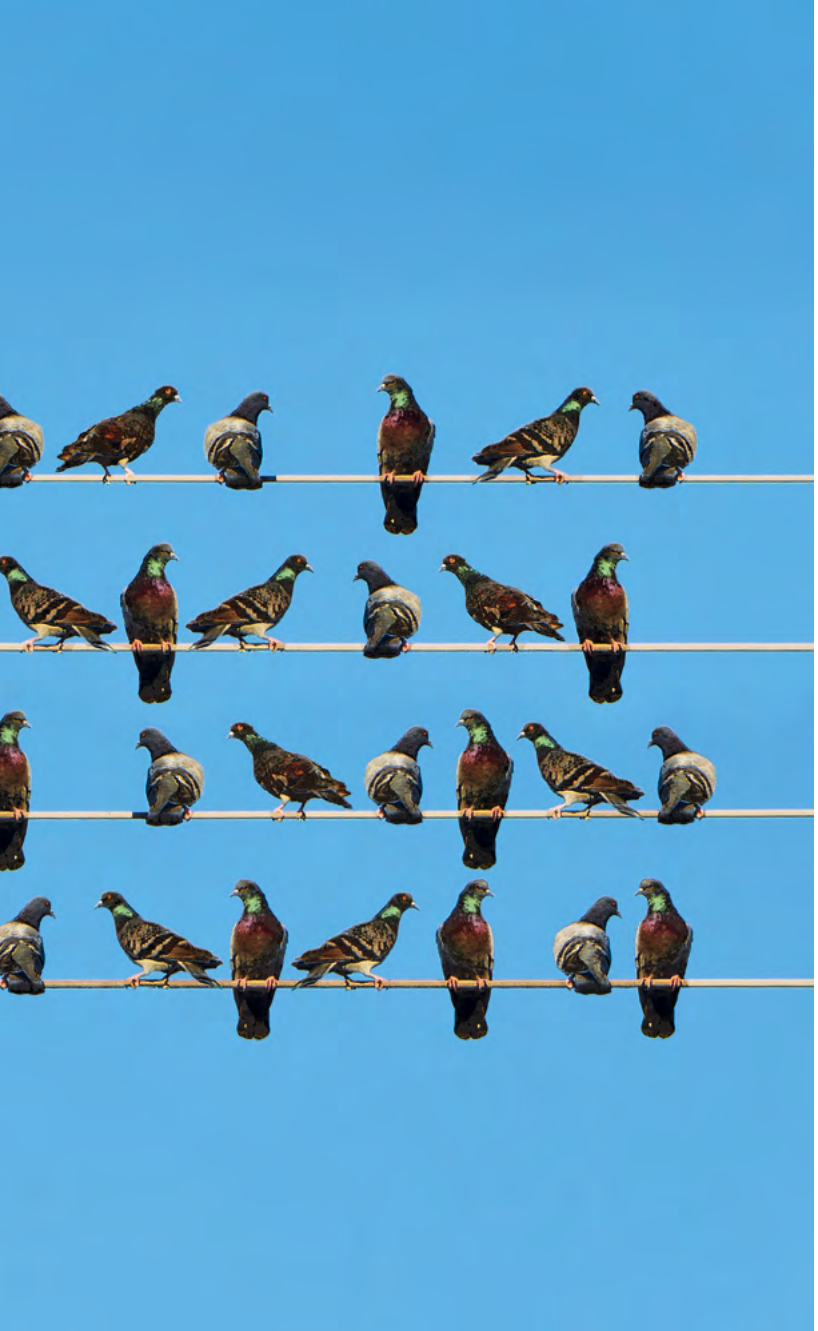
The proposal states that, as an alternative to amending the grounds for increasing the punishment, gender could have been added to the statutory definition of ethnic agitation. This alternative was nevertheless rejected on the grounds that the provision is intended to protect vulnerable ethnic groups with a minority status or other need of special protection. In this regard, the Ombudsman for Equality would have hoped that the significance of gender as an established and widely prohibited grounds for discrimination would have been taken into account in the assessment of this regulatory alternative. It is now possible that acts to which the proposed grounds for increasing the punishment do not apply may remain entirely outside the scope of punishment.

The protection needs of gender minorities

Because the terms used by people of themselves and their gender identities are fluid, the proposal states that the Criminal Code cannot specifically take into account and define such terms. Therefore, the proposal concludes that motives related to the victim's gender identity, gender expression or being an intersex person, would continue to be defined as "another corresponding" motive based on hate. On the other hand, 'gender' refers to men and women in the proposal.

The Ombudsman for Equality finds this premise to be inconsistent and detrimental. Gender identity and gender expression are established concepts in legislation. With regard to these concepts, the government proposal itself refers to the Act on Equality between Women and Men, in which the concepts are defined. The best possible way to take into account the diversity of gender and the protection of gender minorities from discrimination was studied during the preparations for the amendment of the Act on Equality between Women and Men. A specific provision was added to the Act on Equality Between Women and Men as section 6c, stating that authorities are obliged to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression.





Members of gender minorities are especially vulnerable, for example to various forms of discrimination precisely because of their gender minority status, and it would be important to make this visible. The Ombudsman for Equality accordingly considers it important to specifically mention gender identity and gender expression in the provision. (TAS 525/2021)

Statement of the Ombudsman for Equality for the Employment and Equality Committee on the Government Proposal to the Parliament on amending the Act on the Non-Discrimination Ombudsman (HE 123/2021 vp)

The Ombudsman for Equality considers the establishment of the position of rapporteur on violence against women to be of crucial importance. Gender sensitivity and female specificity are necessary in the monitoring of violence and assessment of measures against violence. Recognising the gender-based nature of violence is crucial, since it will enhance efforts to prevent violence and protect victims.

The Ombudsman for Equality considers it important that the rapporteur on violence against women is a separate and independent authority.

Basing actions on knowledge is a fundamental aspect of the duties of a rapporteur. In the opinion of the Ombudsman for Equality, evaluating victim support, access to services and the realisation of the perpetrators' criminal liability generally requires evaluating the actions of the authorities. Many official documents of the health care and social services, police, prosecution and courts related to domestic and sexual violence contain confidential information. In the Ombudsman for Equality's opinion, the rapporteur will not be able to fulfil their duties as intended if the rapporteur does not have access to such confidential documents. The Ombudsman for Equality considers it necessary for the rapporteur to have the right to receive information notwithstanding secrecy provisions.

The Ombudsman for Equality emphasises the importance of the rapporteur's duties being based on human rights. Finland is required to take measures to eliminate violence against women by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) and the Council of Europe Conven-

tion on preventing and combating violence against women and domestic violence (Istanbul Convention), among other things. Finland has repeatedly received complaints about the lack of measures on violence against women from international human rights bodies.

The Ombudsman for Equality wishes to note that the human rights conventions concerning violence against women include different kinds of obligations, and their scopes of application and monitoring mechanisms differ from each other. For example, the Istanbul Convention does not enable individual complaints, unlike the CEDAW Convention or the European Convention on Human Rights, for instance.

The Ombudsman for Equality considers the Istanbul Convention specifically mentioned in the proposed provision to be a significant human rights convention that imposes obligations on Finland. However, it is important to take Finland's human rights obligations concerning violence against women as a whole into account in the duties of the rapporteur.

In addition to the Istanbul Convention, a natural part of the rapporteur's duties would include monitoring the human rights complaints on the topic and assessing what measures Finland has taken due to the potential human rights violations discovered. (TAS 481/2021)

Statement to the parliamentary Employment and Equality Committee on the report on internal security (VNS 4/2021 vp)

In the statement, the Ombudsman for Equality drew attention to the following matters:

Recognising intersectionalities and differences between genders

The Ombudsman for Equality wishes to point out a statement included in the report, according to which the perceived and measured security of population groups considered to be in a vulnerable position is worse than that of the average population.

It is important to note gender as a factor when examining perceived security and security threats. By analysing how gender intersects with other factors, such as age or being part of a minority, more detailed information can be obtained on differences related to perceived security, allowing us to better meet the needs of various population groups. It is difficult to target measures without identifying intersectionalities, and the most vulnerable groups may be left unidentified.

The Ombudsman for Equality wishes to highlight the importance of taking the gender perspective into consideration when assessing internal security.

The report states that Finland is the safest country in the world. It should be ensured that it is possible for everyone to live without violence or threat of violence, regardless of gender, gender identity and expression of gender.

The Ombudsman for Equality considers it important for national crime victim research to systematically monitor and analyse changes in crime according to gender. Furthermore, new forms of online abuse, hate speech, online targeting and harassment are phenomena that require analysis from the gender perspective together with other underlying factors.

Gender minorities, including children and young people, are more likely to become victims of violence, bullying, harassment and sexual abuse. This must be taken seriously.

IT IS IMPORTANT TO NOTE GENDER AS A FACTOR WHEN EXAMINING PERCEIVED SECURITY AND SECURITY THREATS

Social exclusion from the gender perspective and violence against men

The report states that crime and accidents are often linked to deprivation. Social exclusion is examined extensively. Factors such as a low level of education, unemployment and problems related to income are mentioned as significant risk factors for social exclusion. (2.1.6.) The prevalence of violence experienced by young people placed outside their home has been raised as a concern. (3.3.3.)

A large portion of the population is concerned about increase of inequality. When it comes to security, this is particularly evident with threat of violence, accidents, discrimination, hate crimes and various forms of neglect. (3.1.5.)

The report states that the greatest underlying factor linked to security-related inequality is the risk of poverty and social exclusion, which affects a significant portion of the population, approximately 860,000 people.

However, these risk factors are not consistently examined from the gender perspective, and gender is not taken into specific consideration with regard to measures and monitoring. In preventing social exclusion, it would be important to assess risk factors from the gender perspective in order to identify any differences between genders with regard to exclusion and its various forms, as well as to acknowledge the need for any gender sensitive measures.

Violence and threat of violence against men and boys must also be addressed. It is known that there are differences in the wellbeing, social participation, health, morbidity and mortality of different genders. The report states, among other things, that the number of injuries and deaths resulting from accidents involving men is high in Finland, more than double the figures of the Nordic country with the lowest number of injuries and accidents, Denmark, and a third higher than in Sweden. (3.2.2.) The report also mentions the "male sex" as one factor related to crime with both perpetrators and victims. (3.3.2.)

A significant portion of homicide mortality in Finland is connected to social exclusion of men and abuse of alcohol or other intoxicants. (3.6.6.) On the other hand, the report does not indicate whether and how social exclusion of men and women differs, and what are the underlying factors for men's proneness to accidents. This makes it difficult to plan and target efficient preventive measures.

Violence against women

Violence experienced by women, including severe domestic violence that may even be lethal, is alarmingly common in Finland. International law defines gendered violence against women as violence committed against women based on gender and/or violence the victims of which are typically women. This type of violence includes various sex offences and domestic abuse offences. The State's responsibility to effectively protect women from violence, including intimate partner violence and sexual abuse, is emphasised in cases involving severe violence. This responsibility of the State is laid down in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and General Recommendations no. 19 and 31 of the CEDAW Committee, as well as the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In the view of the Ombudsman for Equality, it is important that violence against women has been examined in the report and the issue has been acknowledged on a national level.

Both the CEDAW Committee and the expert body for the Istanbul Convention, GREVIO, have commented on the situation in Finland. In its recommendations, GREVIO has urged Finland to ensure sufficient resources aimed at preventing and combating violence against women and domestic abuse, improve the regional accessibility of shelters everywhere in the country, train police officers and prosecutors on the subject of violence against women and domestic violence, ensure sufficient resources for law enforcement authorities to intervene with violence and assess legislation such as the Act on Restraining Orders and its implementation practices from the perspective of the Istanbul Convention.

The significance of assessing the risks of violence against women, including intimate partner violence, must be acknowledged and invested in. Parties such as GREVIO have encouraged Finland to ensure that systematic gender-sensitive risk assessment becomes a standard practice for all relevant authorities and criminal justice agencies in particular in cases involving violence against women.

Although the number of shelters has increased in Finland, the network of shelters is not sufficiently extensive on a national level. The report could have suggested possible changes to the use of shelter services and assessed accessibility of shelter services for women in a vulnerable position, such as women with disabilities and women with an immigrant background. Furthermore, women with substance abuse issues do not have access to shelter services.

Access to shelters and other support services is particularly important during the COVID-19 pandemic, when internal conflicts in families may have escalated and the threat of violence is likely to have grown. The report states that the number of domestic calls has increased significantly. (3.7.7.)

The report notes that resistance towards authorities and violence faced by authorities at work has steadily increased in the 2010s. With regard to this, the Ombudsman for Equality wishes to point out that violence experienced in the workplace disproportionately affects female dominated industries, such as the service industry, the health care industry and the social service industry. The report should also have noted that women experience more violence and threat of violence at the workplace on average.

The Ombudsman for Equality was heard by the parliamentary Employment and Equality Committee on the report on internal security on 17 September 2021. (TAS 437/2021)

Statement to the Parliamentary Committee on Employment and Equality and the Defence Committee on Women's Voluntary Military Service (HE 182/2021 vp)

Both the Parliamentary Committee on Employment and Equality and the Defence Committee asked the Ombudsman for Equality for an opinion on the proposed Government Decree regarding the Act on Voluntary Military Service for Women (182/2021 vp.) The Ombudsman for Equality issued the same statement to both committees.

The Ombudsman for Equality was heard by the Finnish Parliament's Employment and Equality Committee on this matter on 15 November 2021.

The Ombudsman for Equality monitors changes in legislation and developments in the field of national defence from a gender equality perspective

The proposed Government Decree (182/2021 vp) would enact a new law on voluntary military service for women. The new Act is intended to bring the current legislation on women's voluntary military service in line with the Finnish Constitution and to modernise the legal technicalities of the legislation. The concepts used in the Act and the age limits for military service are proposed to be partly harmonised with the Conscription Act. The new Act would replace the Act of the same name currently in force.

In assessing the current status quo, it must be noted that for a Government Decree and an order of the Ministry of Defence to regulate matters that, under section 80 of the Finnish Constitution, should be regulated by law, is highly problematic. The main proposals outlined in the decree under consideration are to raise the provisions on the deadline for applying for military service, conscript training, pregnancy, and equipment allowance to the level of the law.

The Ombudsman for Equality supports the proposed legislative changes.

IT IS IMPORTANT THAT GENDER EQUALITY IS TAKEN INTO ACCOUNT IN THE DEVELOPMENT OF THE FINNISH DEFENCE FORCES

The Ombudsman for Equality is regularly contacted about military service and the associated differences in treatment between men and women. Contacts have been made on issues such as the equipment allowance, equipment, attire, and the unisex accommodation trial. In the view of the Ombudsman for Equality, repeated contacts highlight the ways in which various matters can be perceived as unfair, especially if the intended aim of a particular practice is not clear. The Ombudsman for Equality has previously stated that, with regard to military service, it is useful to pay attention to the basis for gender-specific arrangements, when gender-specific arrangements are necessary, and at what level these arrangements should be imposed. The Ombudsman for Equality considers it important for the current system's gender-specific measures to be clearly justified and known by everyone.

The Ombudsman for Equality does not take a position on the ways in which the defence forces should be organised in Finland but considers it important that the promotion of gender equality is taken into account in the development of the Finnish defence forces. The question of how equality can best be promoted depends on the basic organisational solutions to fulfilling Finland's responsibilities regarding its national defence forces.

Gender equality and the gender-sensitive organisation of Finland's defence forces

The main provisions on gender equality are outlined in the Finnish Constitution and the Equality Act (Act on Equality between Men and Women, 609/1986). Under section 6 of the Constitution, everyone is equal before the law and there must be a valid reason for any discrimination based on gender. The same section also provides for the promotion of gender equality in societal activities. The aims of the Equality Act are similar to those of the constitutional provision, but rather than referring to a specific law, the constitutional provision instead provides for a general obligation on the legislator to develop the legislation.

Under section 127 of the Constitution, every Finnish citizen has a national defence service duty. In practice, men have been subject to compulsory military service under the Conscription Act (2007/1438), while women have had the option of voluntary military service under the Act on Voluntary Military Service for Women (Laki naisten vapaaehtoisesta asepalveluksesta, 194/1995).

The Finnish national defence system is, therefore, based on the different treatment of men and women at the legislative level. In connection with the enactment of the current Conscription Act, the Finnish Parliament's Constitutional Law Committee has stated that the Constitution has not tradi-

tionally been considered to prevent conscription being legislated for men only. Women's military service has been considered to be voluntary and can, therefore, be provided for by law. As stated in the proposal, the law on voluntary military service for women entered into force before the fundamental rights reform. The Constitutional Law Committee has not addressed the issue from the perspective of the constitutional prohibition of discrimination and the obligation to promote equality. The Ombudsman for Equality therefore welcomes the fact that the proposal has also been sent to the Constitutional Law Committee for an opinion, as the gender-specific organisation of national defence is a fundamentally important gender equality issue.

Treating people differently on the basis of their gender is not categorically prohibited and gender equality does not require that women and men are treated equally in all situations. On the other hand, there is now a determination to reduce discrimination based on traditional stereotypical gender roles, and legislation, for example, has sought to make language as gender neutral as possible. Today, anti-discrimination legislation, including European Union law and international human rights obligations, sets certain requirements for situations in which men and women are treated differently. However, the legislator has more discretion than the authority applying the law with regard to when people can be segregated on the basis of gender.

The Equality Act prohibits direct discrimination on the grounds of gender, gender identity, and gender expression. Direct discrimination, i.e., putting men and women on a different footing, is essentially the granting of different advantages or rights or the imposition of certain obligations, restrictions or burdens. The general prohibition of discrimination under section 7 of the Equality Act extends to the entire scope of application of the Act, i.e., concerning all areas of social life and all situations in which discrimination may occur. However, making military service compulsory for men only is an explicitly permitted exception to the prohibition of direct discrimination in section 9 of the Equality Act.

The Ombudsman for Equality hopes that the Finnish Parliament will not only assess the technical aspects of legislation concerning women's voluntary military service but will also examine this legislation in a holistic way in the light of gender equality, fundamental rights, and anti-discrimination law. In addition to legislating, it is important that the legislator assesses and debates the acceptability of differentiating between women and men and the proportionality of the means. (TAS 560/2021)

Statement on the Government proposal on legislation concerning the establishment of counties and the reform of health, social and rescue services (HE 241/2020 vp)

On 11 March 2021, the Ombudsman for Equality was heard by Parliament's Employment and Equality Committee on the health and social services reform, which will establish 21 health and social services counties in Finland. The reform would transfer the responsibility for organising healthcare, social welfare and rescue services from municipalities to these counties. At the hearing and in his written statement to the Committee, the Ombudsman for Equality drew attention to three things in particular: the publicity of the wages of county personnel, the harmonisation of wages in connection with the reform, and the equal participation of men and women in public decision-making.

Publicity of wages must be ensured

The Ombudsman for Equality expressed serious concern regarding the effects of the impending reform on the publicity of the wages of personnel transferred into the employ of the counties being established. According to section 7 of the Register Act (Nimikirjalaki), the wages of those employed by municipalities, joint municipal authorities, the government and the Evangelical Lutheran Church are public information.

The publicity of wages has played a significant role in the investigation of pay discrimination cases. The successful investigation of suspected pay discrimination and realisation of the principle of equal pay requires the availability of effective legal remedies to those who suspect discrimination, and above all the right to be informed of the pay of possible individuals in equivalent positions.

This right will be jeopardised, however, unless the Register Act is amended so that the publicity of wages will also cover the personnel of the counties being established. Without an amendment to the Register Act, the status of county employees would differ significantly from that of other public sector personnel, even though the proposal specifically suggests that municipal employment legislation should apply to them.

The importance of pay openness, particularly for the promotion of equal pay, has been stressed both in Finland and at the EU level. The Government Programme of Prime Minister Sanna Marin states that the elimination of pay differences and pay discrimination will be promoted by increasing pay openness through legislative means. The European Commission has also issued a Proposal for a Directive on increasing pay transparency on 4 March 2021.

Pay harmonisation must be implemented in the counties

The Equality Act provides for the principle of equal pay, meaning that the same wages must be paid for the same work or work of equivalent value. The purpose of the principle is to eliminate gender-based discrimination from all factors or conditions affecting the compensation paid for the same work or work of equal value. If pay is determined according to a classification of duties, this classification must be based on the same criteria for men and women. The classification must not involve gender-based discrimination.

The Ombudsman for Equality considers it important for Parliament to issue a clear commitment to adherence with the principle of equal pay in the health and social services reform and its implementation. The social and health care sector has stood out in the communications made to the Ombudsman for Equality about suspected pay discrimination.

Equality must be taken into consideration in public decision-making

It is one of the fundamental objectives of the Equality Act that men and women should have equal opportunities to participate in public planning and decision-making. The Ombudsman for Equality thus commends the proposals attempts to ensure equal participation in the counties' administrative bodies by men and women. The proposal suggests amending section 4a of the Equality Act so that the provisions of the Act would be applied to electing the members of such bodies. The Ombudsman for Equality considers it important to apply section 4a of the Equality Act to all public administrative bodies referred to in the proposal. (TAS 126/2021)

Statement on the Government report on development needs in promoting integration (VNS 6/2021)

The Ministry of Economic Affairs and Employment requested a statement from the Ombudsman for Equality concerning the draft for a Government report on development needs in promoting integration. The objective of the report is to comprehensively promote integration, taking into account the different needs of immigrants, the service system as a whole and the promotion of good relations between population groups. The Ombudsman for Equality replied to the request for a statement from the perspective of gender equality.

The objectives of the Act on Equality between Women and Men (609/1986, Equality Act) are to prevent discrimination based on gender, gender identity or gender expression, and thus to improve the status of women, particularly in working life. (Section 1 §) According to the Equality Act, authorities must in all their activities promote equality between women and men purposefully and systematically, and must create and consolidate administrative and operating practices that ensure the advancement of gender equality in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances which prevent the attainment of gender equality must be changed. (Section 4)

There are many significant differences with regard to equality in the labour market positions of men and women. But this is not the only line of division in the labour market. Women and men are not uniform groups with regard to labour market position. Neither do differences in the ability to participate in the labour market or in the status of employees arise solely from gender, but also from factors such as immigrant background. When gender intersects with such other factors, it can generate experiences and phenomena of intersectional discrimination in working life. These are also equality issues faced by Finnish society. As a discrimination issue, intersectional discrimination falls outside the competence of the Ombudsman for Equality, being in the remit of the authorities responsible for enforcing the Non-Discrimination Act. The Ombudsman for Equality nevertheless considers it important to pay attention to intersectional discrimination in equality and non-discrimination policy. This also highlights the necessity of co-operation between authorities.

The Ombudsman for Equality commends the fact that the report on development needs in promoting integration highlights equality issues, such as the impact of the use of family leave on the duration of the integration programme, the employment problems faced by women of immigrant background and involving women of immigrant background caring for their children at home in employment measures. Furthermore, the Ombudsman for Equality considers it important that the position on integration adopted by Parliament in January 2019 requires making women of immigrant background a special focus group of integration services.

The report describes how experiences of bullying and loneliness accumulate for boys of immigrant background. The Ombudsman for Equality is concerned about this phenomenon and considers it important to plan concrete action for tackling these issues. Experiences of bullying and loneliness can otherwise lead to a variety of problems related to, for example education, employment and marginalisation.

Promoting the employment and inclusion of immigrants

In its latest concluding observations on Finland's periodic report, the United Nations Committee overseeing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) expressed concern about the high unemployment rate, low wages and underrepresentation in political and public life of migrant women. The Committee recommended that Finland should pay particular attention to these issues. (CEDAW/C/FIN/CO/7)

The family leave reform should also take into consideration the special circumstances of families of immigrant background. The reform must not undermine the position of women of immigrant background. The circumstances of women of immigrant background range from the highly educated to the highly vulnerable. It would be important to also inform families of immigrant background about the family leave reform and encourage fathers to use their family leave.

Improving the availability of guidance and counselling for immigrants

The CEDAW Committee recommended that Finland take action to increase the awareness of migrant women of their rights, access to education and employment, other basic services and legal remedies. The Committee also recommended Finland to conduct comprehensive studies on discrimination against migrant women both in their communities and in society at large. Statistics are needed on the employment and health care of migrant women, as well as the forms of violence that they may experience, in order to address multiple or intersecting forms of discrimination. (CEDAW/C/FIN/CO/7)

The Ombudsman for Equality is a key authority with regard to the realisation of the legal protection of individuals in matters involving discrimination. This is a group of issues in which the financial risk involved in trials can discourage individuals from bringing action in the courts. Furthermore, the Ombudsman for Equality has a central role in the supervision of the duties to promote equality provided for in the Equality Act.

People of immigrant background have only rarely contacted the Ombudsman for Equality. It is to be assumed that they suffer from, e.g. gender-based discrimination at least as much as the majority population, so under-reporting is a particularly serious issue in their case. It would thus be important to ensure that people of immigrant background are aware of their rights and able to turn to the authorities, such as the Ombudsman for Equality.

Creating an integration programme to support early-stage integration

The Ombudsman for Equality finds it commendable that the use of family leave has been taken into account in providing flexibility in the duration of the integration programme. In practice, attention must also be paid to the fact that every person and family of immigrant background is individual and has unique needs. It is important from the perspective of equality that the use of family leave does not have a negative effect on the rights and benefits of individuals, such as on the integration programme.

Reinforcing partnerships and the role of organisations

The Ombudsman for Equality considers that the integration of vulnerable women of immigrant background requires close cooperation between the authorities and NGOs at the local level. Low-threshold services provided by NGOs are particularly important for the successful integration of vulnerable women of immigrant background. Therefore, adequate resources should be provided to organisations working with women of immigrant background.

Guidelines for promoting integration in the 2020s and summary of next steps

The amendment of the Act on the Promotion of Immigrant Integration and other legislation requires gender impact assessments. The effects of pregnancy and family leave must also be taken into account in the assessment. The simultaneous effect of a variety of background factors, such as immigrant background, age and socio-economic standing, the status of individuals in addition to gender must be borne in mind when conducting the gender impact assessment. (TAS 72/2021)

Statement on reindeer herders' right to stand-in help, particularly during family leave

The Sámi Parliament has asked the Ombudsman for Equality and Non-Discrimination Ombudsman for statements on the Reindeer herders' stand-in help act (Laki poronhoitajien sijaisavusta) currently in force, discrimination against reindeer herders and inequality between men and women in the stand-in help system.

The Sámi Parliament made a proposal for the development of the reindeer herders' stand-in help system to the Ministry of Social Affairs and Health and the Farmers' Social Insurance Institution of Finland (Mela) in May 2020. According to the proposal, reindeer herders' right to stand-in help, for example during family leave, should be safeguarded. Reindeer herders are currently only entitled to stand-in help when unable to work due to illness or accident. In this regard, reindeer herding does not have equal status with livelihoods such as agriculture or fur farming.

In his statement, the Ombudsman for Equality refers to Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity. It provides for the right of female self-employed workers, as defined in the Directive, to maternity benefits. According to the Directive, female self-employed workers must have access to any existing services supplying temporary replacements. The purpose of this provision is to enable female self-employed workers to take maternity leave.

The Ombudsman for Equality notes that every family and entrepreneur is different and accordingly has different ways of finding a suitable balance between work and family life. Access to stand-in help is one arrangement that can improve the opportunities of entrepreneurs, particularly sole proprietors and small entrepreneurs, to find a balance between work, motherhood and parenthood. It would also be conducive to promoting gender equality. Temporary replacement services can make starting a business possible, particularly for women, but they can also be significant for male entrepreneurs in balancing work and family life. They can give self-employed parents a real chance to use their family leave for its intended purpose.

A reform of farmers' holiday and stand-in legislation is included in Prime Minister Marin's Government Programme. The Ombudsman for Equality considers it important that the drafters of the reform also pay attention to the gender impact of the acts, and that the possibilities of reindeer herders for balancing motherhood, parenthood and entrepreneurship be improved in this context.

The Sámi Parliament compares reindeer herders' rights to stand-in help to the more extensive rights granted to agricultural entrepreneurs. In the Ombudsman for Equality's opinion, this issue can be evaluated from the perspective of non-discrimination in general, instead of through the Act on Equality Between Women and Men. (TAS 134/2021)

The Finnish Government's Education Policy Report and gender equality

The Ombudsman for Equality has issued a statement on the Education Policy Report of the Finnish Government (VNS 1/2021 vp) to the Education and Culture Committee of Parliament.

The importance of the educational system to gender equality is well understood. Among other things, the 2020–2023 Equality Programme of Prime Minister Sanna Marin's administration has set goals for promoting gender equality and non-discrimination systematically in early education and all stages of the education system.

However, gender equality is addressed rather modestly in the Education Policy Report of the Finnish Government. The Report discusses the gender segregation of different fields of education and differences in learning between the genders only at a very superficial level. Gender equality is practically ignored in the targets and measures proposed in the Report.

With regard to targets related to learning differences, for example, the Report states that differences in the competence of students should be minor by 2040. Yet the Report does not set any targets for narrowing the competence and learning gaps between the genders in basic education.

The segregation of the labour market and fields of study is only discussed in relation to institutes of higher education. It is nevertheless clear that measures to mitigate segregation are necessary in basic education at the latest. For example, stereotyped notions of "male" or "female" professions begin affecting the choices made by children at a very early stage and should be addressed already in early childhood education. (TAS 248/2021)

In 2021, the Ombudsman was called for hearings 24 times on the following matters:

- **hearing 11 March 2021, Parliament's Employment and Equality Committee: Government Proposal to the Parliament for Acts Amending the Health Insurance Act, the Employment Contracts Act and the Act on Early Childhood Education and Care as well as related Acts (HE 241/2020 vp)**
- **hearing 25 May, 2021, Parliament's Employment and Equality Committee: the General Government Fiscal Plan for 2023–2026 (VNS 3/2021 vp)**
- **hearing 17 September, 2021, Parliament's Employment and Equality Committee: Government Report on internal security (VNS 4/2021 vp)**
- **hearing 15 October, 2021, Parliament's Employment and Equality Committee: (HE 129/2021 vp)**
- **hearing 22 October, 2021, Parliament's Employment and Equality Committee: Government report on development needs in promoting integration (VNS 6/2021 vp)**
- **hearing 27 October, 2021, Parliament's Legal Affairs Committee: (HE 7/2021 vp)**
- **hearing 16 November, 2021, Parliament's Employment and Equality Committee: Government Proposal regarding the Act on Voluntary Military Service for Women (HE 182/2021 vp)**

4 MONITORING PROHIBITIONS OF DISCRIMINATION

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. The Equality Act generally applies to all societal activities and all areas of life. The Act does not apply to relationships between family members, other private relationships or activities relating to religious practice.

There are three types of regulations in the Equality Act: regulations promoting equality, prohibitions on discrimination and regulations on legal protection and monitoring. The Act defines and prohibits gender-based discrimination. This prohibition applies to the entire field covered by the Act, meaning as a general rule all areas of social life and all situations in which discrimination may arise.

Special prohibitions define discriminative actions in working life, at educational institutions, in organisations representing labour market interests, and regarding provision of goods and services. The employer and educational institution are under the obligation to provide a written report on their actions to anyone suspecting that such discrimination has taken place.

Investigating cases of work-related discrimination is a central part of Ombudsman for Equality's work. Of all the enquiries received by the Ombudsman regarding discrimination, more than half concern working life.

4.1 DISCRIMINATION ON THE BASIS OF PREGNANCY AND FAMILY LEAVE

Workplace discrimination based on pregnancy and parenthood, including taking family leaves, has continued for decades in Finnish society. Up to one half of the clients contacting the Ombudsman about working life issues report discrimination due to pregnancy or family leave, also in 2021.

It affects the position of women, in particular, in many different ways. Women in fertile age who have no children may also experience discrimination related to maternity in working life, as employers may presume that they will go on a family leave. Typical situations associated with discrimination include inappropriate questions related to family status or family-related plans during the recruitment process, discontinuation of a fixed-term contract after learning about the employee's pregnancy or plan to go on family leave, and an employee's return to work after family leave (an employee returning to work after family leave may have been replaced by a substitute, or the employee's work tasks have "disappeared").

It may also be a case of discrimination if a person is placed at a disadvantage regarding pay because of pregnancy or family leave. Discrimination due to pregnancy or family leave particularly targets women in insecure employment, but also men have been discriminated against due to family leaves.

EXAMPLES OF SUSPECTED DISCRIMINATION ON THE BASIS OF PREGNANCY AND FAMILY LEAVES

Lay-off and right to family leave of an employee on family leave

Mr. A asked the Ombudsman for Equality to determine whether he had been discriminated against in a manner prohibited in the Act on Equality between Women and Men (609/1986, "Equality Act") when his employer had begun treating him worse after he spoke of his wish to take family leave. A was finally laid off upon his return from family leave. The employer gave a reduced amount of work and financial and production-related reasons as grounds for the lay-off. A was the only employee laid off by the company.

Provisions on discrimination in the Equality Ac

The Equality Act prohibits treating someone differently on the basis of parenthood or family responsibilities as indirect gender-based discrimination (section 7, subsection 3, paragraph 2). Such conduct does not constitute discrimination, however, if it is aimed at achieving an acceptable objective and if the chosen means must be deemed appropriate and necessary in view of this objective (section 7, subsection 4).

According to the Equality Act, the employer may not manage the work, distribute tasks or otherwise arrange the working conditions in such a way that one or more employees find themselves in a less favourable position than other employees on the basis of gender (section 8, subsection 1, paragraph 4). In principle, the provision gives the employee the right to return to their former position or a similar position after the end of family leave. The employer's conduct must also be deemed to constitute discrimination prohibited by the Equality Act if the employer dismisses or lays off one or more employees on the basis of gender (section 8, subsection 1, paragraph 5). The employer's conduct does not constitute discrimination, however, in the situations provided for in section 7, subsection 4 and for acceptable reasons as provided for in the Act (section 8, subsection 4).

Assessment of the case

As a rule, the employer's powers of management give the employer the right to choose which employees to dismiss or lay off from among the group of employees under the threat of lay-off or dismissal. Legal practice has also taken the view that employers can prioritise employees who are important to business operations even if the order of reduction has not been agreed on in the collective agreement followed by the employer. The employer may not make the choice on inappropriate or discriminatory grounds, however. Whether the employer intended to discriminate or not is irrelevant when assessing the matter in light of the prohibition of discrimination.

The Ombudsman for Equality found that, if the reduction in work was real and met the definitions laid down in the Employment Contracts Act, the employer had acceptable grounds for the conduct alleged to constitute discrimination. On the other hand, even if there were acceptable grounds for the conduct, the targets and implementation method of the lay-offs must still be assessed.

The employing company did not state that it follows a specific workforce reduction order. In its report to the Ombudsman for Equality, the company stated that, in addition to a consideration of the reduction in available work, lay-offs are based on the individual's expertise, professional skill and importance to the company's business.

In the Ombudsman for Equality's view, the decisive factor in assessing the lay-off's acceptability is whether the employer can justifiably have considered the other employees more important to the company's business than A when deciding on the lay-off. The Ombudsman for Equality pointed out that, in this case, the employer had not compared the length of the employees' employment at the company or their expertise, abilities, know-how or suitability.

Due to the conflicting views and lack of comparison, the Ombudsman for Equality was unable to assess A's professional skills or the importance of his competence to the employer in relation to other employees. On the other hand, the Ombudsman for Equality found that A had extensive professional skills and competence useful to the employer. A had a long career at the company, he had been the only employee responsible for sales for several years, and he had an executive employment contract.

A presumption of discrimination can arise in cases of indirect discrimination based on parenthood or family responsibilities such as this one even when no comparison has been made between women and men. The comparison can be made to a person without family responsibilities, or even to the individual themselves. In such cases, the point of comparison is the situation in which the individual would have been in, had they not taken family leave.

A presumption of discrimination arose in the case, requiring the employer to demonstrate that A was chosen to be laid off for another, acceptable reason than their use of family leave in order to disprove the presumption.

The Ombudsman for Equality paid particular attention to the fact that the employer did not take any other options into consideration in the implementation of the lay-off, such as choosing other employees to be laid off instead of or in addition to A. Neither did the employer indicate that it would have considered other ways of implementing the lay-off, such as by reducing daily or weekly working hours.

The Ombudsman for Equality cannot give a final assessment on whether or not the employer could have implemented the lay-off in some other manner within the scope of the written inquiry procedure. Nevertheless, taking the provisions of sections 7 and 8 of the Equality Act and established legal practice into account, it is not sufficient for the employer to merely invoke

the existence of an acceptable reason, i.e. a reduction of work as referred to in the Employment Contracts Act. The employer must present reasons justifying the necessity and appropriateness of targeting the lay-offs at a single employee.

In its report, the employer did not present any reasons why the lay-off could not have been, at least in part, targeted and implemented in another, less discriminatory manner. In this case, the employer did not disprove the presumption of discrimination with regard to the necessity and justification of the conduct or the proportionality of the means employed.

The Ombudsman for Equality additionally drew attention to the fact that, according to section 6 of the Equality Act, every employer must promote equality between women and men within working life in a purposeful and systematic manner. In order to promote gender equality in working life, the employer must, for example, facilitate the reconciliation of working life and family life for women and men by paying attention especially to working arrangements, and act to prevent the occurrence of discrimination based on gender.

The Ombudsman for Equality primarily comments on legal questions concerning the interpretation of the Equality Act. Evaluation of proof, comparison of merits and the final decision on the matter of discrimination are ultimately made by the district court hearing the possible compensation action brought against the employer. (TAS 310/2020)

The impact of family leave on performance bonuses

Man A asked the Ombudsman for Equality to investigate whether he had been discriminated against because his family leave (paternity and child-care leave) prevented him from getting the full performance bonus for the year.

The purpose of employer A's performance bonus system is to reward employees for good results and thus incentivise them to target- and performance-oriented work. According to the employer, the performance bonus system rewarded employees if they did well or achieved their personal performance targets in the year during which the performance bonus was accumulated. The payment of performance bonuses also required that the employer had achieved its overall performance targets by an excellent margin and that its financial situation permitted the payment of performance bonuses. In addition, in order to be eligible for the performance bonus, an employee had to work for at least three quarters (9 months) of the calendar month in question and still be on the employer's payroll at the time of payment.

Questions to be assessed

The matter was about whether the individual should have been entitled to be admitted into the performance bonus system in 2019 and whether his paternal and child-care leave prevented him from receiving the performance bonus. It also involved the question of whether the employer had an acceptable reason for its practice.

In his statement, the Ombudsman for Equality discussed the concept of 'performance bonus' as a retrospective pay component in line with the legal practice of the Court of Justice of the European Union.

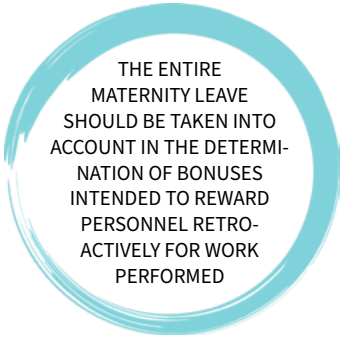
The purpose of the pay system affects the assessment of discrimination

The Act on Equality between Women and Men prohibits direct and indirect discrimination as well as gender-based discrimination in the determination of pay. The employer's conduct may be illegal if an employee is put in a less favourable position due to family leave, for example. The provision covers pay discrimination based on maternity leave, paternity leave, parental leave and child-care leave (section 7 and section 8, subsection 1, paragraphs 2 and 3).

The Ombudsman for Equality found that an employee's right to various pay benefits while on family leave must be assessed in relation to the purpose and objectives of the specific pay benefit in question. It depends on the purpose of the performance bonus whether employees deprived of the bonus can be considered to be in the same or a comparable position to the employees who received the bonus. The EU Pregnancy Protection Directive (92/85/EEC) that the maintenance of payments or entitlement to an adequate allowance is guaranteed to workers on maternity leave. The purpose of the Pregnancy Protection Directive is to ensure the maintenance of an adequate income during maternity leave.

However, the right to a retrospective pay component is not assessed from the perspective of the realisation of the minimum allowance provided for in the Pregnancy Protection Directive, but from the perspective of the pro-

hibitions of discrimination provided for in the Equality Directive 2006/54/EC (Court of Justice of the European Union decision C-333/97 Lewen). The Ombudsman for Equality found that the performance bonus system being examined constituted such retrospective pay that was subject to the additional requirement of good personal performance against one's own performance and development targets.



Various causes of absence in the assessment of the practice in terms of gender-based discrimination

For Man A, the question involved the right to a performance bonus during paternal leave, but the statement of the Ombudsman for Equality also addressed the matter in terms of the determination of other family leave under EU law.

In its Lewen decision, the CJEU found that compulsory maternity leave (during which it is prohibited to work) shall be assimilated to periods worked in the calculation of bonuses. The CJEU found that if compulsory maternity leave was not assimilated to periods worked, a female employee would be discriminated against as a worker since, if she had not been pregnant, the period in question would have been counted as a period worked.

Finland's national legislation provides for a 105-day maternity leave including a compulsory four-week period. If they were not pregnant, an employee would be working for both the compulsory four-week period and the remainder of the maternity leave. For this reason, the Ombudsman for Equality has found that the compulsory and other parts of the maternity leave should not be differentiated, and that the entire maternity leave should instead be taken into account in the determination of bonuses intended to reward personnel retroactively for work performed. With regard to maternity leave, therefore, the whole absence should be assimilated to periods worked according to the Ombudsman for Equality.

Conversely, in EU law, parental and child-care leave have not been treated similarly, because their grounds have been found to be different. The maternity allowance has been granted on the grounds of providing an opportunity to ensure the health of the parent and child and care for the child at home by staying away from work. The national paternity allowance has, however, been used to encourage fathers to participate in the care of their child and establish a good relationship with their child. It is thus possible that the two are not comparable with regard to the payment of a performance bonus. However, an employee on parental or child-care leave must receive a share of the performance bonus proportional to their time at work if their performance meets the requirements of the performance bonus (Lewen C-333/97).

The CJEU does not address paternity leave provided for in national legislation, but it must be assessed similarly to parental leave at minimum.

Assessment of acceptable reasons

Whereas putting someone in a less favourable position on the grounds of maternity leave raises suspicions of direct discrimination, parental leave, child-care leave and paternity leave constitute causes of indirect discrimination related to parenthood or family responsibilities as referred to in the prohibition of indirect discrimination in the Act on Equality between Women and Men (Equality Act). In such cases, an employer is not considered guilty of discrimination if they can demonstrate an acceptable reason not based on gender for their practice.

The Ombudsman for Equality adopted the position that the fact that employees have also been excluded from the performance bonus system based on other absences than family leave cannot be considered to constitute an acceptable reason for the less favourable treatment of employees on family leave under the Equality Act. Neither can the acceptability of the system under the Equality Act be justified by the fact that the ratio of women to men has usually been fairly equal among employees deprived of performance bonuses on the grounds of absences of various kinds. Discrimination based on parenthood or family responsibilities is not tied to the gender of the employee, but applies equally to putting women or men in a less favourable position based on parenthood or family responsibilities.

In the opinion of the Ombudsman for Equality, the fact that it is more difficult for the supervisor to assess the performance of such employees than those who have been at work for nine months or more cannot be considered an acceptable reason under the Equality Act either. The performance of employees who have been on family leave can be assessed in relation to their period worked.

Conclusions

The Ombudsman for Equality found the condition of working for nine months to be eligible for the bonus to be in violation of the Equality Act insofar as it causes employees who have been on family leave to be denied the performance bonus for the period they have actually been at work.

The Ombudsman for Equality found a performance bonus system that completely excluded employees who had taken more than three months of family leave in circumstances in which the employer had exceeded its overall performance targets by an excellent margin and the employer's financial situation permitted the payment of performance bonuses to be in violation of the Equality Act.

The employer discriminated against A under the Equality Act when it did not pay man A the portion of the performance bonus corresponding to his time at work in 2019 and could not demonstrate an acceptable reason for its practice under the Equality Act. The Ombudsman for Equality urged the employer to change its performance bonus system so that maternity leave is counted as a period worked and employees on paternity, parental and child-care leave are paid a portion of the performance bonus corresponding to their time at work. Requiring the employees to have performed as required to be eligible for the performance bonus during their time at work is an acceptable additional requirement for payment of the performance bonus. (TAS 518/2020)

4.2 DISCRIMINATION IN RECRUITMENT

The Equality Act prohibits discrimination based on gender in working life. The prohibitions of discrimination in working life cover all stages of the employment relationship, including job advertisements and recruitment. The Ombudsman for Equality is regularly asked to investigate cases of suspected discrimination in recruitment.

The Equality Act does not restrict employers' right to choose the candidate they consider the best for a particular job. The Act aims to prevent situations where a person is appointed unjustly on the basis of gender when another candidate would have been more qualified.

The Ombudsman for Equality is also regularly contacted with regard to job advertisements, where either only men or only women are able to apply. Under the Equality Act, a job may not be advertised just for women or men

unless there is a pressing and acceptable reason for doing so given the nature of the work or task. For example, a person may be chosen for the role of a dancer or actor if he or she is of the gender that character calls for. The personal nature of the employment relationship can also be regarded as a weighty reason that justifies selection on the basis of gender when selecting a personal assistant.

EXAMPLES OF SUSPECTED DISCRIMINATION IN RECRUITMENT

Suspected discrimination in connection with recruitment of assembly workers

Woman A asked the Ombudsman for Equality to determine whether she had been discriminated against in a manner prohibited by the Act on Equality between Women and Men (609/1986, hereinafter the Equality Act) in connection with recruitment of assemblers. The job in question was leased work acquired through a recruitment agency that proposed potential assemblers to be interviewed by the hiring company and acted as the employer of the recruited assemblers.

Woman A and her husband B were employees of the same recruitment agency and applied for the same position of an assembler by submitting their CVs and recorded video interviews. A and B had similar work and training background. The recruitment agency recommended both of them for the job.

Man B was invited to a job interview and was offered a job. Woman A was not invited to a job interview. During the job interview, B asked the hiring company whether they had seen A's job application, and B was told that physically heavy assembly work is not suited for women. B did not accept the job offered to him, because he felt that the hiring company discriminated against A based on her gender. The company hired four men who had significantly less experience than A and B.

The Ombudsman for Equality requested clarification on the matter from both the recruitment agency and the hiring company. The recruitment agency stated that they considered A to be suited for the position of an assembler on the basis of her application and interview. The recruitment agency presented to the hiring company A's CV and video interview, along with those of other applicants', after which the hiring company interviewed the applicants it deemed suitable and decided on the assemblers to hire.

The hiring company stated in its clarification that assembly work is heavy work, and good physical fitness and strength is required from assemblers. According to the view of the hiring company, the comment they made during B's interview regarding the work not being suited for women was an expression of concern related to the degree of physical difficulty and not discrimination on the basis of gender in violation of the Equality Act. The employer is liable to ensure balancing and prevention of physical strain at work, which is achieved through job rotation at the mast assembly line. It is not possible for the duties of a single assembly line worker to be modified to diverge from the job rotation.

A had the same experience in demanding assembly work as B. In her response, A stated that the hiring company has not proven that it assessed or compared the required physical fitness and strength of the chosen applicants and A. A noted that the requirement for physical fitness only applied to a fraction of the duties and she would have managed all duties required for the job. There was no test to determine the applicants' level of physical fitness. Therefore, the assessment on A's physical fitness was based solely on an assumption made based on her gender.

The Ombudsman for Equality noted in their statement that the recruitment agency has not acted reprehensibly because the agency proposed A to the hiring company as a suitable applicant. However, the hiring company acted in violation of section 8 of the Equality Act by not inviting the more qualified A to a job interview and failing to assess A's physical fitness and strength. (TAS 303/2021)

Suspected discrimination in connection with crisis management recruitment

Person A requested the Ombudsman for Equality for a comment on whether she had been discriminated against in violation of the Act on Equality between Women and Men (1986/609), when she was not selected for crisis management service, regardless of her training as a police officer and basic level training as a paramedic and a bodyguard. According to A, the level of training and background of men did not appear to bear any significance,

despite the fact that the job posting specifically states that person best suited for the position will be selected.

Assessment of the case

The Ombudsman for Equality requested Pori Brigade to provide clarification on the matter. In its clarification, Pori Brigade stated that the Brigade aims to place both women and men in the Army's military crisis management service, taking equality into consideration, without gender-based discrimination.

According to the clarification, A's civilian and military training and experience in military crisis management service is so extensive and diverse that men with poorer merits may have been selected for crisis management operations in the last year.

The primary criterion for selection is meeting the qualification requirements. In situations in which the merits of two applicants who meet the qualification requirements are on the same level, the decision is made on the basis of other selection criteria. In such case, applicants who have not previously been selected for crisis management service have priority. For applicants who have previously served in crisis management operations, recovery time in the home country after the previous assignment is assessed. The choice between applicants whose merits are on the same level is not made based on gender, and a comparison of merits between men and women is not prepared on the applicants.

Taking into consideration the provisions laid down in the Act on Military Crisis Management, the Ombudsman for Equality finds that the provisions of the Equality Act on recruitment can be applied as specified below when selecting a person for crisis management service.

Pori Brigade stated in its clarification that the choice between applicants whose merits are on the same level is not made based on gender, and a comparison of merits between men and women is not prepared on the applicants.

The Ombudsman for Equality notes that the Equality Act requires the employer to carry out a comparison of merits when applicants include both genders, but the Equality Act does not require any specific formalities to be followed in recruitment. The purpose of the Equality Act is not to change generally accepted or common methods and practices related to comparison of merits as long as they do not discriminate against anyone on the basis of gender.

The Ombudsman for Equality recommends that comparison of merits be made in writing. Making the comparison of merits in writing ensures that all merits of applicants of different genders are taken into consideration when selecting candidates for interviews and when making the final decision. Furthermore, it is easier and more reliable to compare merits using a written summary than based on application documents alone. A comparison of merits made in writing also makes it easier to verify the selection process retrospectively, thus promoting transparency. However, the Equality Act does not specifically require that the comparison of merits is made in writing.

The purpose of the comparison is to take note of the applicants' knowledge, experience, abilities, etc. which are objectively meaningful for the position in question. Rational principles that have been accepted in the industry and can be explained to an outsider should be used for the comparison. Information can be obtained from the documents presented by the applicants. The employer's subjective view on whether one candidate's training is better than the training of another may lead to gendered discrimination pursuant to section 8(1)(1) of the Equality Act, unless the training can objectively be considered to have merit. The nature of the work duties and industry practices determine what is taken into consideration when carrying out the comparison. The final comparison of merits should be an overall assessment that takes into consideration the results of different areas.

In this case, the employer stated that it is probable that applicants whose merits were not as good as A's were selected for crisis management service. However, A or Pori Brigade have not specified a counterpart who was selected regardless of A having better merits. If such a counterpart could be identified, a presumption of discrimination would arise. In order to disprove a presumption of discrimination, the employer must demonstrate that their actions were due to another acceptable reason as required by the Equality Act.

In this case, Pori Brigade clarified that the primary criterion for selection was meeting the qualification requirements. In situations in which the merits of two applicants who meet the qualification requirements are on the same

level, the decision is made on the basis of other selection criteria. In such case, applicants who have not previously been selected for crisis management service have priority.

The clarification also states that for applicants who have previously served in crisis management operations, recovery time in the home country after the previous assignment is assessed. According to the clarification, A had served on three different crisis management assignments and returned home from the previous assignment in May 2020. With regard to psychosocial support and the soldier's functional capacity, it would be advisable for the person to take a sufficiently long time for recovering from crisis management service in the home country before going on a new crisis management assignment. As a general principle, a person should recover in their home country for at least as long as they served in a crisis area. However, for those who have served in crisis management on more than one occasion, personnel management aims for approximately two years of recovery between assignments.

Pori Brigade stated that an average of 1,557 people were on call in 2020 and approximately a third of them were selected for military crisis management operations. This means that some applicants never get to serve in crisis management.

Taking into consideration the clarification provided by Pori Brigade, the Ombudsman for Equality found in its statement that the nature of selection for crisis management operations does not fully correspond to ordinary recruitment. The aim is to also provide crisis management experience to as many candidates as possible, for which reason first-time applicants have priority. Furthermore, crisis management service is considered to be so strenuous that a sufficient recovery period is required before being appointed to a new assignment.

Therefore, the Ombudsman for Equality found that Pori Brigade had presented acceptable reasons for not selecting A for crisis management service in 2020. Thus, A was not discriminated against in selecting people for crisis management operations. (TAS 282/2021)

4.3 PAY DISCRIMINATION

The Ombudsman for Equality continues to regularly receive enquiries from people who suspect that they have been discriminated against in terms of pay because of their gender. Some cases concerning pay discrimination involve a suspicion that a person is paid a lower role-specific pay (basic pay) than another person working in an identical or equivalent role. Some others concern possible discrimination in the form of different bonuses.

The Equality Act prohibits gender-based discrimination regarding pay. In general, the Equality Act concerns differences in pay between employees of the same employer. Applying pay terms in a way that places an employee or employees in a less favourable position because of their gender than one or several other employees doing the same or same level of work for the same employer constitutes discrimination, unless there is an acceptable reason for this.

Cases concerning pay discrimination and family leaves are presented in section 4.1.

AN EXAMPLE OF SUSPECTED PAY DISCRIMINATION

Pay gap resulting from a lower salary increase in connection with transfer of business

Resident doctors A and B transferred to hospital district X due to transfer of business. A and B are persons of different genders. B received a salary increase for experience before the transfer based on having worked three years as a licensed physician. The salary increase was based on a local agreement binding on the employer. Hospital district X terminated the agreement in connection with the business transfer. When A reached the milestone of three years as a licensed physician after the business transfer, her salary increase based on the national collective agreement binding on hospital district X was lower than B's salary increase had been. A considered the pay gap to be in violation of the Equality Act.

The Ombudsman for Equality stated that the case involved examining application of the Act on Equality between Women and Men (Equality Act) in connection with transfer of business. Before the transfer of business, A and B worked for the same employer, meaning that the case did not involve differences in salary between employees transferred from different organisa-

tions. However, the different grounds for determining the salary of A and B are related to the change of payroll system in connection with the transfer of business.

Assumption of pay discrimination

The Ombudsman for Equality found that A had reason to compare her salary to the salary of B, and an assumption of discrimination pursuant to the Equality Act arose in the case. The employer did not deny that A and B were engaged in the same work or work of equal value. The rationale for the provisions on prohibition of pay discrimination in the Equality Act emphasises that an assumption of pay discrimination arises when an employee works for the same employer as an employee of the opposite sex and is engaged in either the same work or work of equal value but is paid less. Efforts were made to clarify this premise in connection with the 2005 law reform, both in the rationale for the Act and by changing the wording concerning the prohibition of pay discrimination.

According to the rationale for the section on pay survey in the Equality Act, any pay differences between employees of different genders, resulting from factors such as merging of organisations or introduction of a new pay system, may need to be analysed on the basis of the Equality Act. The rationale for the Act states that pay differences may for a special reason lasting a limited time result from merging of organisations, introduction of a new pay system or market factors affecting pay.

Changes in circumstances as an acceptable reason for a pay difference

Pursuant to the Equality Act, the employer can revoke the assumption of pay discrimination by proving that there is an acceptable reason for the pay difference. It has been found in established legal practice and monitoring practice of the Equality Act that employers have had an acceptable reason for pay differences due to certain changes in circumstances. In such cases, the employers have been liable to harmonise the pay differences within a reasonable time. The section in the rationale for the Equality Act stating that pay differences may result from certain changes in circumstances for a special reason "lasting a limited time" means that pay differences must be harmonised within a reasonable transitional period. The Ombudsman for Equality found that A had the right to have her salary harmonised with B's salary within a period that is deemed reasonable.

Duration of a reasonable transitional period

In assessing the duration of a reasonable transitional period, the requirements set in the Equality Act for determining an acceptable reason must be taken into consideration. The transitional period must be appropriate and necessary in view of its objective.

Acceptable duration for eliminating pay differences is assessed on a case-by-case basis. In Supreme Court rulings KKO 2013:10 and KKO 2013:11, harmonisation of pay differences took two years, which the Supreme Court found to be an acceptable period.

In a response to A, hospital district X stated that the plan was to harmonise the pay of employees who had transferred to the hospital district in connection with the business transfer in 2020, which means that the duration of the transitional period would be one year. In the view of the Ombudsman for Equality, the transitional period referred to by the hospital district can in this case be considered an acceptable period for correcting A's salary, unless the hospital district proves otherwise. (TAS 19/2021)

4.4 GENDER IDENTITY AND GENDER EXPRESSION

The Act on Equality between Women and Men prohibits discrimination based on gender identity and gender expression. Furthermore, the Act obliges authorities, education providers and employers to take pre-emptive action against discrimination based on gender identity or gender expression.

Reform of trans legislation

In 2021, the Ombudsman for Equality has a representative on the monitoring and assessment group for preparing the reform of trans legislation. According to the working party's mandate, the reform will remove the infertility requirement, and medical treatment will be separated from legal gender reassignment. The reform will additionally improve intersex children's right to self-determination and abolish cosmetic, non-medical sexual organ surgery for young children. Proposals for the parenthood of persons who have had their gender confirmed legally and the application of social security legislation will also be made in connection with the reform.

The Ombudsman for Equality notes that the objective of respecting the right to self-determination requires providing people with appropriate information on the legal consequences of legal gender and the decision to have it recognised (such as effects on military service and parenthood). Furthermore, the separate nature of the legal recognition of gender and the individual's possible gender reassignment therapy must be made clear to them. The legal recognition of gender does not guarantee access to gender reassignment therapy.

When the legal recognition of gender is separated from medical diagnoses and reassignment treatments, it is essential to simultaneously ensure that those needing reassignment therapy for gender dysphoria have access to sufficient, appropriate and accessible health care services, and that psychosocial support is available to those who need it. Gender diversity must be included in the basic and supplementary training for various fields in order to ensure that professionals have expertise in this area.

The Ombudsman for Equality considers it important that deciding on the reliability or sufficiency of a report possibly required for the legal recognition of gender should not be left to application procedure. Rather, the practice should be as consistent as possible, with the minimum content of the report provided for by law.

In the Ombudsman for Equality's opinion, minors should also be taken into account in the reform of trans legislation. Preparation of the reform should be based on human rights and the rights of the child. The legislation must take into account the child's best interests and personal integrity, as well as the impact of the child's age and level of development.

Non-urgent medical procedures (surgery, hormone therapy and other procedures that modify sex characteristics) are still being performed on intersex children without informed consent. The Ombudsman for Equality has proposed that the medically unnecessary genital surgery of intersex children should be stopped. The Ombudsman states that non-urgent medical procedures should not be performed on intersex children until the child has the opportunity to give their informed consent. The effective realisation of rights should be ensured with legal provisions.

The reform of trans legislation is also intended to address the parenthood of individuals who have had their legal gender recognised. The Ombudsman for Equality has taken the position that the recognition of legal gender should not hinder the recognition of parenthood or prevent access to infertility treatments.

Contacts concerning gender identity and gender expression

The Ombudsman for Equality handled a broad range of issues related to gender identity and gender expression in 2021. In addition to reports of suspected discrimination, the Ombudsman for Equality has received requests for information regarding gender diversity from, for example authorities, employers and educational institutions. The Ombudsman for Equality has brought up considerations related to the status of gender minorities in the Ombudsman's statements to authorities and Parliament, emphasising that effects on the status of gender minorities must also be taken into account in the assessment of gender impact.

According to the findings of the Ombudsman, there has recently been an increase in the concern of parents regarding the affairs and treatment of non-binary teenagers in customer contacts. Parents are, for example, worried about whether their child will be treated correctly at school.

Spaces differentiated by gender, such as wash and dressing facilities, are a fact of everyday life for many people in schools, workplaces, leisure activities and various services. It is precisely about such everyday and commonplace practices, who is allowed to use what space based on their gender, that the Ombudsman for Equality is increasingly being contacted. A trend of challenging services or spaces determined by gender can be seen in both Finland and other European countries. However, the Equality Act or other legislation does not unambiguously address practices and spaces differentiated by gender.

THE CURRENT LEGISLATION DOES NOT TAKE THE STATUS OF INTERSEX PEOPLE, MINORS OR NON-BINARY PEOPLE SUFFICIENTLY INTO ACCOUNT

The reformers of legislation should therefore consider when various differentiations by gender are necessary and at what level they should be determined. In the opinion of the Ombudsman for Equality, the legislative reform should pay attention to the basis of the various differentiations by gender, as well as the The Equality Act currently prohibits differentiating services and goods by gender without an acceptable reason. The Equality Act does not specify reasons of privacy and decency as a justified basis for different treatment, and the Ombudsman for Equality has assessed each situation on a case-by-case basis according to the customer's report. The manner in which gender diversity is taken into account in spaces and services differentiated by gender should be laid out at the legislative level.

4.5 DISCRIMINATION IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

The Equality Act prohibits discrimination in educational institutions based on gender, gender identity or gender expression. The prohibition of discrimination also applies to the education providers and schools as referred to in the Basic Education Act. The Equality Act prohibits educational institutions and other communities offering education and training from treating a person less favourably than others on the basis of gender, gender identity or gender expression in

- student selections
- the organisation of teaching
- the evaluation of study performance
- any other regular activity of the educational institution or community

in a manner that is referred to in the regulation regarding the general prohibition of discrimination.

- The actions of an educational institution will be considered prohibited discrimination if a person is subjected to sexual or gender-based harassment and the educational institution or community neglect to take the steps available to prevent continued harassment. However, the educational institution or other community's responsibility only begins when a responsible representative of the institution has been informed of the harassment.
- discrimination in a manner that is referred to in the Equality Act based on orders or instructions to discriminate.

National Non-Discrimination and Equality Tribunal: Gender quotas used in University of Jyväskylä student selection process found to violate Finland's Equality Act

In its decision issued on the 20 December 2021, the National Non-Discrimination and Equality Tribunal found that the gender quotas used in the student admission process at the University of Jyväskylä's Faculty of Sport and Health Sciences violated the Equality Act (217/2017). The Ombudsman for Equality also issued a statement on this matter in February 2020, in which it reached the same conclusion as the Tribunal. However, with the University having declined to comply with the position taken by the Ombudsman for Equality, the Ombudsman referred the matter to the Non-Discrimination and Equality Tribunal in December 2020.

In its decision, the Non-discrimination and Equality Tribunal found the aspects of the student admission process of the University of Jyväskylä's Faculty of Sport and Health Sciences to be based on discriminatory gender quotas. The Tribunal prohibits the University from continuing to utilise its discriminatory student selection methods, which contravene the Equality Act. The University must immediately comply with this injunction.

Furthermore, in its decision, the Non-Discrimination and Equality Tribunal also found that the use of a gender quota is problematic from the perspective of non-binary or other gender identities. With regard to the Universities Act (558/2009), the Tribunal also notes that the grouping of applicants on the basis of gender is not an acceptable grounds for the selection of candidates in the student admission process as provided for in the Universities Act.

The decision of the Tribunal has entered into force.

4.6 GENERAL PROHIBITION OF DISCRIMINATION

All discrimination is still not within the scope of the special prohibitions. Discrimination is in some cases only prohibited on the basis of the general prohibition in the Equality Act.

Inequality between parents in alternating residence arrangements

The Ombudsman for Equality was asked to give a statement on the problems related to arrangements in which children reside alternately with each parent (alternating residence). The party requesting the statement considered that the Ministry of Justice's guideline on assessing the amount of child maintenance payments (Ministry of Justice publication 2007:2) does not adequately address cases in which children reside with different parents in alternate weeks. According to the request for a statement, the residence deduction specified in the guideline does not sufficiently take into account the costs incurred by the secondary parent from having the child visit them.

The amount of child maintenance payment is provided for in the Child Maintenance Act. Pursuant to section 2 of the Child Maintenance Act, both parents are responsible for providing maintenance for their child to the best of their ability. In evaluating the ability of each parent to make maintenance payments, attention is given to their age, fitness for work and prospects of gainful employment, the amount of assets available to them and, where applicable, their other statutory maintenance obligations.

According to section 4 of the Act, a parent can be obliged to pay child maintenance if the parent does not otherwise see to the child's maintenance, the child does not reside permanently with the parent, or the child resides alternately with the parent and the child's other parent or custodian. The amount and form of child maintenance is confirmed by an agreement or judgment.

On the residence deduction, the aforementioned Ministry of Justice guide on assessing the amount of child maintenance states, for example, that the average number of overnight stays per month is decisive in assessing the extent of residence with the secondary parent for the purposes of determining the amount of the residence deduction. Both regular weekend meetings and similar meetings and longer periods of residence on holidays are counted in the number of overnight stays. The total number of nights is then divided by twelve. The amount of the residence deduction is thus increased by longer periods of residence, for example in the summer, calculated into the average. The amount of the residence deduction and, consequently, child maintenance payment is nevertheless the same for each calendar month.

The guide includes a table for calculating the residence deduction, showing the amount of the deduction according to the child's age and extent of residence. The monetary amounts presented in the guide are based on the assumption that the parent meeting with the child only pays the child's necessary costs of living during the visits. If the parents have agreed that the child spends an equal amount of time with both parents and they share the costs incurred from the child equally, the parents can naturally also agree on a larger deduction than that given in the guide.

According to the guide, the maximum amount of residence deduction is 66 euro (child aged 13–17 stays with secondary parent for 13–15 nights per month).

The position of alternating residence families should be improved

A study has been published on the alternating residence of children in Finnish (Publications of the Government's analysis, assessment and research activities 2020:51 Lasten vuoroasuminen ja sosiaaliturva; Vuoroasumisen nykytila ja merkitys etuus- ja palvelujärjestelmän kannalta). According to the study, the alignment of alternating residence and social security currently involves a number of issues, and children and parents with alternating residence arrangements are not treated equally. In addition to housing allowance, the parents who took the survey described problems with school transport and obtaining information on matters involving the child.

Children's residence arrangements affect both the children's and their parents' rights to social security and many services. In practice, children residing alternately with each parent have two homes but, for many benefits and services, the child's official address decides which parent is entitled to the benefits related to the child or where they can obtain services.

However, benefits and services play a role in how smooth everyday life is between two homes. For the first time in Finnish legislation, the amended Child Maintenance Act that entered into force in December 2019 provides for alternating residence as an option for a child's living arrangements. In addition to recognising its legal status, addressing alternating residence requires a reassessment of the bases on which many social benefits and rights are determined. Some of the key questions include the extent to which both parents are entitled to social benefits or services, or how such benefits will be divided between the parents.

The Ombudsman for Equality noted that, according to section 4 of the Equality Act, authorities must in all their activities promote equality between women and men purposefully and systematically, and must create and consolidate administrative and operating practices that ensure the advancement of gender equality in the preparatory work undertaken on different matters and in decision-making.

The alignment of alternating residence with the social security system entails a number of problematic areas, and children and parents with alternating residence arrangements are currently not being treated equally. Furthermore, the Ministry of Justice's guide for determining the amount of child maintenance does not specifically address alternating residence, and the residence deductions specified in the guide are not applicable to alternating residence in their current form.

In his statement, the Ombudsman for Equality found that the position of families with alternating parenting arrangements should be improved with regard to housing allowance and other social benefits in order to support equal alternating parenthood. The Ombudsman for Equality considers it im-

portant that the social welfare authorities who confirm child maintenance agreements be made aware of legal practice in this field (incl. KKO:2001:140, KKO:2010:38, Turku Court of Appeal 2020:10), for example by reworking and updating the Ministry of Justice's guide on determining the amount of child maintenance. Alternating residence should be recorded in child maintenance agreements in a manner that reflects the actual arrangements made between the parents.

The Ministry of Justice has sent this statement to the Ministry of Justice and Ministry of Social Affairs and Health for information. (TAS 40/2021)

Opportunity for pregnancy-related examinations during working hours for women only

A male individual contacted the Ombudsman for Equality concerning a future father's opportunity to participate in pregnancy-related examinations during working hours. The spouse of the person making contact was pregnant, and he found out from his employer that the right to attend examinations related to pregnancy only applies to pregnant women, not the child's father. The person making contact felt that the father of the child is being treated unequally compared with the mother.

Assessment of the case

The duty of the Ombudsman for Equality is to supervise compliance with the prohibition of discrimination based on gender, gender identity or gender expression, as referred to in the Act on Equality between Women and Men (609/1986), or the Equality Act. The powers of the Ombudsman for Equality are limited to supervision of compliance with the provisions of the Equality Act. The Ombudsman for Equality cannot comment on compliance with other legislation or realisation of other kinds of equality.

The provision in chapter 4, section 8 of the Employment Contracts Act (55/2001) states that the employer shall compensate a pregnant employee for loss of earnings incurred from medical consultations prior to the birth if it is not possible to arrange the consultations outside working hours.

According to the preparatory materials (government proposal 108/1994), the background for the provision was implementation of the European Community's Protection of Pregnant Workers Directive in Finland, so the purpose was to ensure the health of the expectant mother and the foetus. Several collective agreements also include similar provisions concerning the opportunity of pregnant women to attend consultations related to pregnancy during working hours.

Considering the aforementioned purpose of health examinations for pregnant women, an expectant mother and the future father are not in comparable position regarding them. Thus the case does not involve discrimination on the basis of gender prohibited in the Equality Act, and the Ombudsman for Equality is unable to intervene in the situation.

However, the Ombudsman for Equality finds it important that fathers can take part in a child's life as equally as possible during pregnancy, upon delivery and in terms of child clinic services. In a case like this, improving fathers' opportunities for participation requires amending the Employment Contracts Act, collective agreements or the terms and conditions of an employment relationship. (TAS 315/2021)

Equation of a woman in voluntary military service with a man in conscript service

A customer contacted the Ombudsman for Equality because she had been refused the labour market subsidy after completing the voluntary military service for women. The customer intended to appeal to the Social Security Appeal Board to change Kela's decision.

The customer had been accepted as a student during her 11-month military service and registered as absent for the academic year at the start of the autumn semester. The customer was unemployed for a time after the end of her military service. She was refused the labour market subsidy because, according to the labour market policy statement issued by the TE Office, the military service had been voluntary for the customer, so she did not have a valid reason to postpone the start of her studies in the autumn.

During the processing of the matter, the customer had sought to emphasise that she was already liable for military service when she was accepted as a student. She had passed the 45-day boundary before which women can leave the service. She had approximately four months of service left when her studies would have begun, so she could not start school without deserting.

If a person has withdrawn from the labour market for more than six months without an acceptable reason, they will not be granted an unemployment allowance before they once again meet the work requirement. Acceptable reasons for withdrawing from the labour market include, for example, conscription and non-military service or other comparable reasons.

The Ombudsman for Equality stated that he is unable to comment on specific appeals. In his statement, the Ombudsman instead assesses whether men liable for military service and women entering voluntary military service can be compared to each other in view of the Act on Equality between Women and Men, especially after 45 days have elapsed from the start of the woman's military service.

According to the Act on women's voluntary military service (Laki naisten vapaaehtoisesta asepalveluksesta), a woman who gives notice within 45 days of the start of her service that she is discontinuing her service must be discharged immediately. After this period, women are equivalent in all respects to conscripts, both during and after their service. If a woman thus refuses to continue serving after the aforementioned time limit, she will have to complete her service as non-military service. If she refuses non-military service, she can be sentenced to imprisonment or monitoring.

In his previous statements, the Ombudsman for Equality has taken the view that, even though the fact that conscription only applies to men does not constitute gender-based discrimination as referred to in the Act on Equality between Women and Men, detrimental practices related to conscript service can be evaluated as discrimination as referred to in the Act. Conscription should not lead to a situation in which conscription causes men to be treated less favourably than women in other contexts without an acceptable reason. Correspondingly, women in voluntary military service should be treated the same way when their status is equivalent to that of men. Otherwise, the woman would be discriminated against based on her gender. (TAS 112/2021)

4.7 PROMOTING RECONCILIATION

The Ombudsman for Equality may facilitate reconciliation in discrimination matters provided for in the Act on Equality between Women and Men. The Act prohibits discrimination based on gender, gender identity and gender expression. The statutory possibility of reconciliation improves the legal protection of discrimination victims and the effective realisation of their rights.

The possibility for reconciliation is important for both parties of the dispute. The process can be a good alternative to a trial that can be expensive and protracted and uncertain in terms of results.

The Ombudsman for Equality seeks to help parties to disputes reach an understanding over their issues.

Use of the reconciliation procedure is voluntary and based on the parties' consent. The reconciliation can also include a monetary compensation, for example. Confirmation of the reconciliation can be applied from the National Non-Discrimination and Equality Tribunal, and a confirmed reconciliation is equally enforceable as a final court judgment.

THE STATUTORY POSSIBILITY OF RECONCILIATION IMPROVES THE LEGAL PROTECTION OF DISCRIMINATION VICTIMS AND THE EFFECTIVE REALISATION OF THEIR RIGHTS

5 PROMOTING EQUALITY

The Equality Act obliges every employer to promote gender equality purposefully and systematically. This affects both public- and private-sector employers, regardless of the number of employees involved. Schools and educational institutions also have the obligation to promote gender equality.
The Equality Act contains provisions on the equality planning obligation which applies to employers employing more than 30 people and educational institutions. The Equality Act also obliges authorities to promote gender equality in all their activities and contains provisions on the composition of public administration bodies and bodies exercising public authority.

5.1 EQUALITY PLANNING AT WORKPLACES

The Equality Act obliges the employer to draw up a gender equality plan regarding personnel policy annually if the employer regularly employs more than 30 people. Gender equality planning can be considered the most important tool provided for in the Equality Act for promoting gender equality in working life.

The plan must be drawn up in cooperation with the employees and must contain a report on the gender equality situation in the workplace. The survey must include details of the employment of women and men in different jobs.

A compulsory section of the equality plan is a survey of the grade of jobs performed by women and men, the pay for those jobs and the differences in pay. On the basis of the assessment of gender equality, the equality plan should include necessary measures planned for introduction or implementation with the purpose of promoting gender equality and achieving equality in pay. The equality plan must also indicate the measures that have been decided on to promote gender equality at the workplace and an estimate of how successful those measures have been.

The Equality Act states that employers are obliged to prevent in a purposeful and planned manner all discrimination based on gender identity or gender expression. The obligation must be taken into account in the formulation of equality plans and in decision-making on equality promotion measures.

In particular, the Ombudsman for Equality has considered it important for employers to seek to prevent discrimination through gender equality planning. Every employer should have guidelines in place for preventing and investigating harassment. These guidelines should be included in the gender equality plan, or the plan should describe them and tell employees where they are available. In the Ombudsman for Equality's opinion, this obligation should also be recorded in the provisions of the Equality Act on gender equality planning.

Monitoring of equality plans

The Ombudsman for Equality receives equality plans for the review in different ways. The Ombudsman for Equality has for a long time followed a practice according to which the Ombudsman requests those workplaces that have had suspected cases of discrimination to submit their gender equality plans for assessment. Equality plans were also requested if the Ombudsman finds that a plan had not been drawn up or did not meet the statutory requirements.

The Ombudsman for Equality examines each plan individually to assess whether it meets the requirements of the Equality Act and issues instructions for further planning based on the results.

Many organisations still have work to do in meeting the statutory requirements set for gender equality plans and pay surveys. They lack in content in many ways: few plans address the prevention of discrimination based on gender identity and gender expression, the realisation of the previous plan has not been assessed or part of the personnel has been left out of the actual pay comparisons.

5.2 QUOTAS

Section 4a of the Act on Equality between Women and Men requires that all Government committees, advisory boards and other similar administrative bodies have at least 40 per cent of both women and men, unless there are special reasons to the contrary. In established use, the quota provision has also been deemed to apply to bodies appointed by ministries, such as working groups. Likewise, municipal and inter-municipal co-operation bodies, municipal councils excluded, must have at least 40 per cent of both women and men, unless otherwise dictated by exceptional circumstances.

According to the same section of law, the executive or administrative organs of bodies and institutions exercising public authority and companies in which the government or a municipality is the majority shareholder must include an equitable proportion of women and men, unless there are special reasons to the contrary. This provision obligates all parties proposing members to the bodies mentioned above to put forward the nomination of both a man and a woman for every membership position.

The concept of special reason shall be interpreted restrictively. This kind of reason may be, for example, that a body will be working in a very specialized area where the experts are only either women or men. A special reason always requires justification, and such a reason must exist by the time the body is being appointed.

EXAMPLE OF ENQUIRIES RELATED TO QUOTAS

Application of the quota requirement in the composition of a school board

The Ombudsman for Equality was requested to determine whether the selection of members for the school board of a primary school was in violation of the Equality Act. The board has seven members, and two men and five women were appointed as the members of the board.

According to section 4 of the Equality Act (Act on Equality between Women and Men 609/1986), authorities must in all their activities promote equality between women and men purposefully and systematically, and must create and consolidate administrative and operating practices that ensure the advancement of gender equality in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances which prevent the attainment of gender equality must be changed.

According to section 4a of the Equality Act, the proportion of both women and men in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40 per cent, unless there are special reasons to the contrary.

If a body, agency or institution exercising public authority, or a company in which the Government or a municipality is the major shareholder has an administrative board, board of directors or some other executive or administrative body consisting of elected representatives, this must comprise an equitable proportion of both women and men, unless there are special reasons to the contrary.

Authorities and all parties that are requested to nominate candidates for bodies referred to in this section must, wherever possible, propose both a woman and a man for every membership position. The authority preparing the appointment of a body is responsible for ensuring compliance with the quota requirement.

The quota requirement of the Equality Act applies separately to ordinary members and deputy members. An exception to the quota requirement can be made for a special reason, for example when a special field only has experts of one gender available. In the view of the Ombudsman for Equality, the concept of special reason should be given a narrow interpretation and a party referring to a special reason must justify their position. It should not be possible to retrospectively refer to special reasons if they were not taken into consideration when composing the body. The authority preparing the appointment of a body is responsible for ensuring compliance with the quota requirement.

The Ombudsman for Equality found that a school board is a body as referred to in the Local Government Act, and its composition must be in compliance with the quota requirement pursuant to the Equality Act. The board of the primary school has five members and deputy members appointed from the custodians of children. In addition, there is one member and deputy member appointed from both teachers and other staff. The board comprises of a total of seven members and deputy members. No male candidates were available for members and deputy members representing teachers and other staff. There were 7 female and 3 male custodian candidates available. For this reason, 5 women and 2 men were chosen as members of the board and 6 women and one man were chosen as deputy members.

According to clarification presented in the case, candidacy was voluntary and based on consent.

The Ombudsman for Equality found that the lack of male candidates for the two membership positions for teachers and other staff and the membership positions for custodians is deemed to be a special reason that allowed for an exception to be made to the quota requirement in this case. The Ombudsman for Equality concluded that it would be desirable for the school to appoint teacher members and members representing other staff in a manner resulting to compliance with the quota requirement in the final composition of the board. (TAS 442/2021)

Application of the quota provision to the Judicial Appointments Board and the Judicial Training Board

The Ministry of Justice requested the opinion of the Ombudsman for Equality on whether or not the quota provision of the Equality Act should apply to the Judicial Appointments Board and the Judicial Training Board. The Judicial Appointments Commission prepares and submits a reasoned proposal for the appointment of permanent judges to the Finnish Government for presentation to the President of the Republic of Finland. Members are appointed by the courts, the Finnish Bar Association, the Finnish Prosecution Service, and the Ministry of Justice on proposals from universities.

The Judicial Training Board is responsible for planning training for court staff, from judicial traineeships to in-service training, in cooperation with the National Courts Administration and the courts. Its members are appointed by the Judicial Training Board, the Prosecutor General, the Finnish Bar Association, the universities proposed by the Ministry of Justice, the National Courts Administration.

Under section 4 of the Equality Act (Act on Equality between Women and Men 609/1986), the authorities must promote equality between women and men in all their activities in a goal-oriented and planned manner and create and establish administrative and operational practices that ensure the promotion of equality between women and men in the preparation and decision-making process. In particular, circumstances which prevent the attainment of gender equality must be changed.

Pursuant to section 4a of the Equality Act, the proportion of both women and men in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of intermunicipal cooperation, but excluding municipal councils, must be at least 40 %, unless there are special reasons to the contrary.

If a body, agency or institution exercising public authority, or a company in which the Government or a municipality is the majority shareholder has an administrative board, board of directors or some other executive or administrative body consisting of elected representatives, this must comprise an equitable proportion of both women and men, unless there are special reasons to the contrary.

Authorities and all parties that are requested to nominate candidates for bodies referred to in this section must, wherever possible, propose both a woman and a man for every membership position.

The quota provision of the Equality Act applies separately to both full members and alternate members. The quota requirement may be waived for a specific reason, for example where there are no experts in a particular field other than those of the opposite sex. In the view of the Ombudsman for Equality, the concept of special or exceptional reason must be interpreted narrowly and the person invoking a special reason must justify their decision. Special reasons should not be invoked retrospectively, at least not if they were not taken into account when the institution or body was established. The pre-establishment authority is responsible for ensuring that the quota provision is adhered to.

Under section 3 of the Finnish Constitution, jurisdiction is exercised by independent courts, with the Supreme Court and the Supreme Administrative Court being the highest courts.

According to the Government Decree on the Constitution (HE 1/1998), the independence of the courts means that the courts must be independent of the influence of other parties in their judicial activities. This applies to the legislator, the government, and the authorities, as well as to the parties to a dispute, for example. The court is also independent within the judiciary itself. A higher court must not seek to influence the decision of a lower court in an individual case and must instead wait for a possible appeal stage.

The Ombudsman for Equality has stated that the independence of the courts means independence in the administration of justice. The establishment and election of the members of the boards in question is an administrative function and, therefore, in the view of the Ombudsman for Equality, there are no grounds, for example because of the independence of the courts, for not applying the quota provision provided for in section 4a of the Equality Act to the composition of these bodies.

In its opinion, the Ombudsman of Equality considered that the Judicial Appointments Board and the Judicial Training Board are state institutions within the meaning of section 4a of the Equality Act, to which the quota provision applies. (TAS 473/2021)

5.3 EQUALITY IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

In addition to prohibiting discrimination, the Equality Act obliges that instruction and education providers must ensure that educational institutions carry out institution-specific, systematic and structured work to promote gender equality. In connection with gender equality work, educational institutions have to compose an equality plan.

Aimed at developing the educational institution's operations, the equality plan is a tool for supporting the promotion of gender equality in all school activities. Special attention must be given to pupil or student selections, the organisation of teaching, learning differences and the evaluation of study performance, to measures ensuring the prevention and elimination of sexual harassment and gender-based harassment, and measures preventing discrimination based on gender identity or expression of gender. According to the Equality Act, educational institutions shall prepare a gender equality plan to develop their operations in cooperation with staff and pupils or students.

Drawing up a gender equality plan is not an end in itself. Rather, the success of gender equality planning is measured by how the plan supports and guides the educational institution in the promotion of gender equality and achieves the required concrete changes to practices. Indeed, a gender equality plan aiming to improve the operations of the educational institution should be seen as a tool that supports the promotion of gender equality in all aspects of the institution's operation. The obligation to draw up a gender equality plan is intended to ensure that educational institutions work systematically to promote gender equality. However, the promotion of gender equality in an educational institution can only develop the institution's operations if the work is appropriately planned and implemented and the entire staff of the institution, all the way up to its management, is committed to it.

The tasks of the Ombudsman for Equality include supervising compliance with the obligation to promote gender equality plans at educational institutions, and the Ombudsman participates actively in developing the contents of this requirement. This has been one of the priorities of the Ombudsman's activities also in 2021.

SCHOOL MUST BE A SAFE PLACE FOR ALL CHILDREN AND YOUNG PEOPLE

6 STATISTICS

For the most part, enquiries received by the Ombudsman for Equality are submitted by individual clients, and they consist of cases of suspected discrimination and different requests for information on the content of the Equality Act, or the operations of the Ombudsman for Equality. The issues discussed also concern the monitoring of equality plans, or consist, for instance, of statements made by the Ombudsman for Equality to other authorities. In 2021, the Ombudsman received a total 83 enquiries from the other authorities. In addition to the statistics described here, the Ombudsman for Equality deals with matters relating to communication, the economy and administration.

In 2021, the details of 640 new cases were logged in the Ombudsman's register, and decisions were reached on a total of 623 cases. The majority of cases entered into the register were related to performing the statutory duties of the Ombudsman for Equality.

In 2021, the Ombudsman for Equality received a total of 989 enquiries. Of these, 65 % (640) were submitted in writing and 35 % (349) were telephone enquiries.

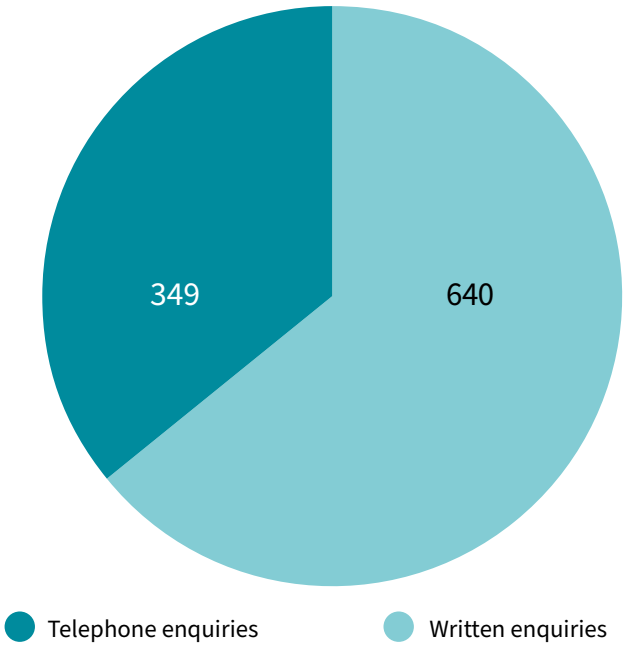
Telephone enquiries and cases handled in writing 2021

35 % of the written enquiries (225 cases) concerned questions of discrimination. 45 % of these cases were related to discrimination in employment.

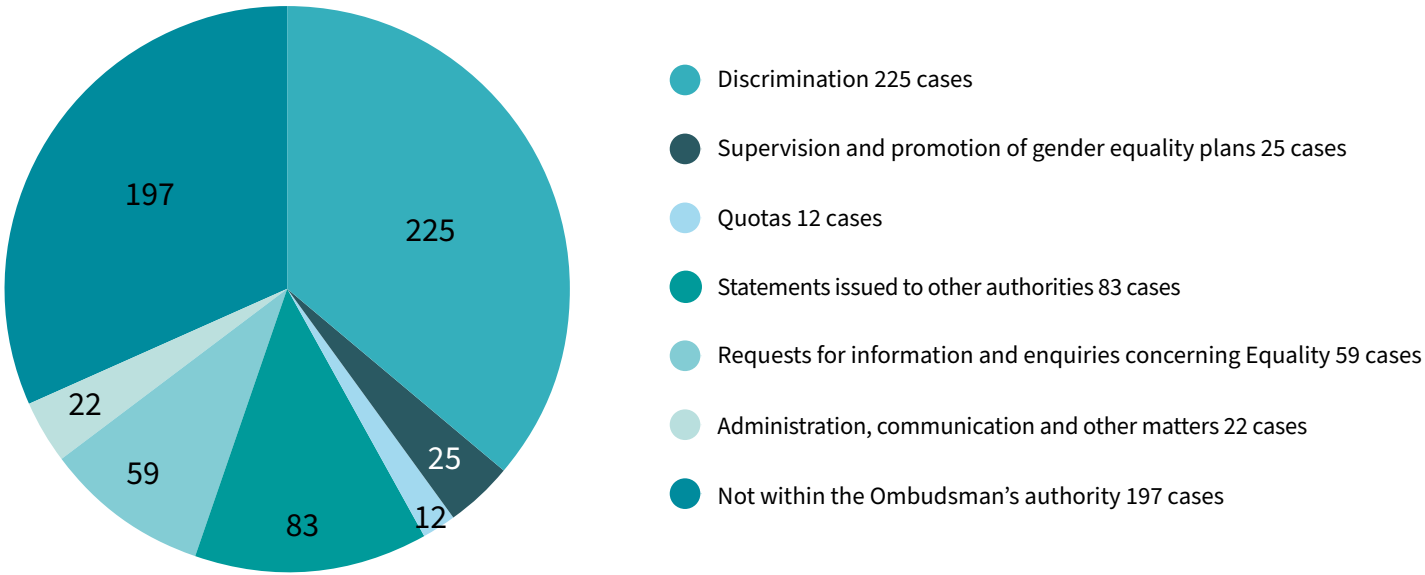
Half (175 enquiries) of the telephone enquiries concerned discrimination. 80 % of telephone enquiries concerning discrimination were related to employment. Of these, 30 % concerned discrimination on the basis of pregnancy and family leave.

Other phone calls related to the powers of the Ombudsman for Equality concerned discrimination in fields other than the world of work or gender equality planning.

WRITTEN AND TELEPHONE ENQUIRIES IN 2021 (989 in total)



CASES HANDLED IN WRITING 2021 (623 in total)

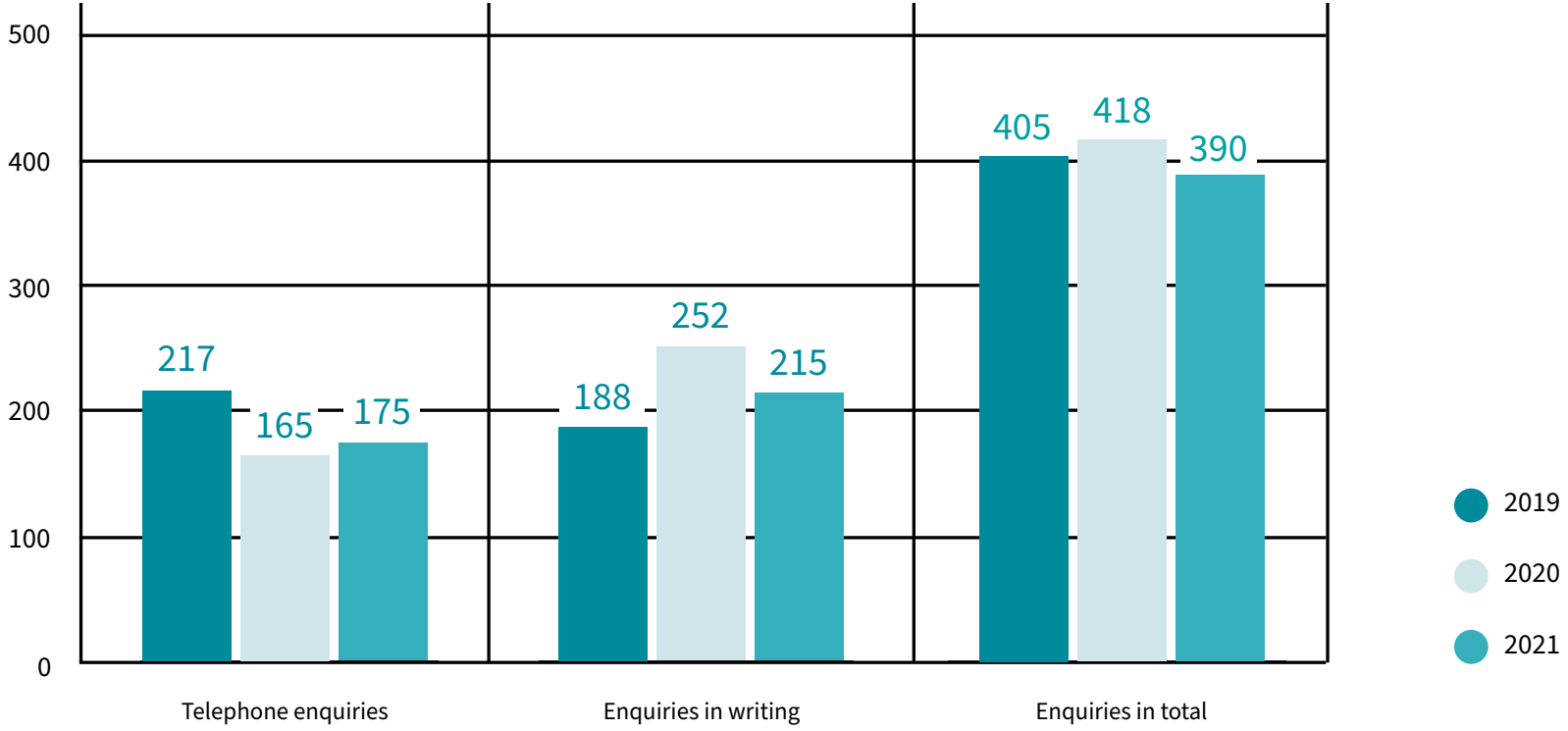


In 2021, 623 written cases that had been ongoing during the year were concluded. 36 % (225 cases) handled in writing concerned the prohibition of discrimination under the Equality Act. 40 % of these cases (96 cases) concerned gender-based discrimination in employment. In most cases, they were related to suspected discrimination in recruitment or discrimination on the basis of pregnancy or parenthood, discrimination in recruitment or pay discrimination. The rest of the enquiries were related to discrimination outside the world of work: 8 cases concerned suspected discrimination in educational institutions, and 45 enquiries dealt with discriminatory pricing and availability of services and goods. Of all the cases dealing with discrimination, 75 were covered by the general prohibition of discrimination.

The monitoring of equality plans and promotion of gender equality, such as municipal equality plans, were under discussion in 25 cases, and 12 cases were related to the composition of institutional bodies. The Ombudsman provided 59 replies to different requests for information on the Equality Act and the Ombudsman's operations. The Ombudsman for Equality issued 83 statements to other authorities.

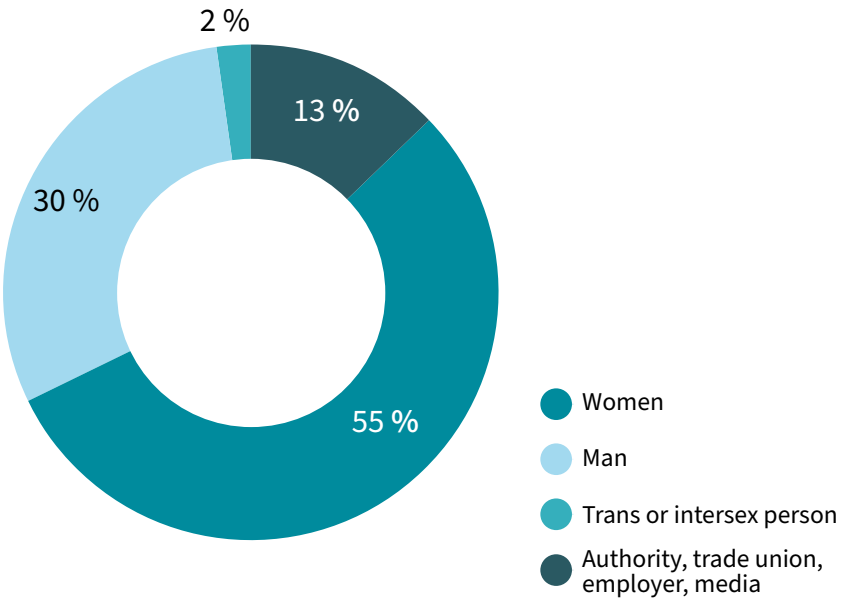
In addition, the Ombudsman for Equality received a total of 197 enquiries not concerning the Equality Act, where the Ombudsman for Equality has no authority. If necessary, the client was redirected to a competent authority. The remainder of the cases handled in writing during the year were related to administration and communication.

CLIENT CONTACTS RELATED TO DISCRIMINATION 2019-2021

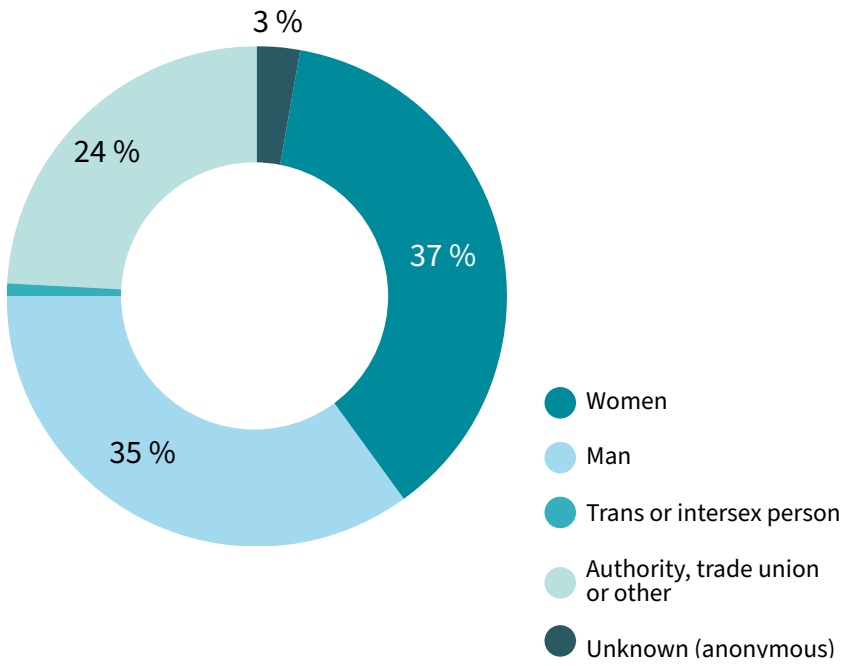


In 2021, the Ombudsman for Equality received slightly less client enquiries related to discrimination than in 2020. In 2021, there were a total of 390 written and telephone enquiries, whereas in 2020 there were a total of 418 written and telephone enquiries. In 2019 there were 405 enquiries in total.

TELEPHONE ENQUIRIES 2021 BY THE CLIENT (est. %)



ENQUIRIES 2021 BY THE CLIENT (est. %)

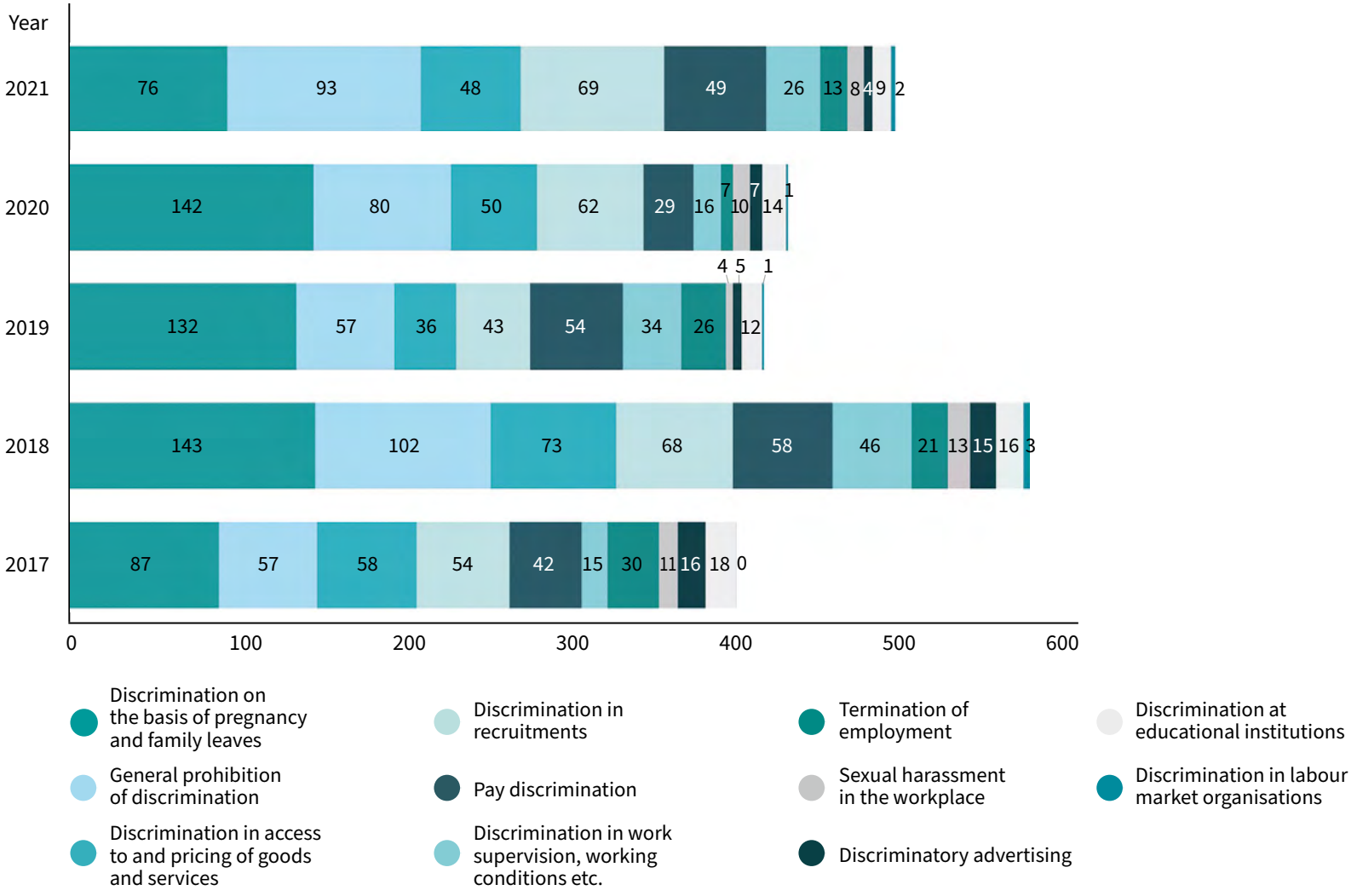


Personnel and appropriations

In 2021, the Office of the Ombudsman for Equality had on average 10,7 man-years at its disposal. In addition to the Ombudsman for Equality, a temporary Senior Officer, Communications Planner and Project Planner also worked at the Office.

During the year of the review, the appropriation for the Ombudsman for Equality was EUR 970,000. In addition to an operational appropriation, this amount includes the employees' salary costs and other administrative expenditures. Almost 90% of the appropriation is used for employees' salary costs and office facilities.

CLIENT CONTACTS RELATED TO DISCRIMINATION MADE IN WRITING AND ON TELEPHONE IN 2017-2021

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7 COMMUNICATION AND COOPERATION

The Ombudsman for Equality engages in active cooperation both nationally and internationally.

Presentation of The Ombudsman for Equality in different bodies

- Committee for Preventing Violence against Women and Intimate Partner Violence (NAPE) / Ministry of Social Affairs and Health
- Communications network of the Ministry of Justice's administrative branch
- Expert group for monitoring of discrimination / Ministry of Justice
- Gender Equality network of the Centre for Gender Equality Information / National Institute for Health and Welfare
- Government network for cooperation on LGBTI issues
- Human Rights Delegation / Human Rights Centre
- Monitoring and assessment group on the reform of trans legislation / Ministry of Social Affairs and Health
- Network of the Capable project – strengthening work against hate crimes and harassment / Ministry of Justice
- Section for Non-discrimination, Equality and Sustainable Development / National Sports Council
- Statistics Finland's working group Equality and Statistics / Statistics Finland
- Steering group for the Manifold More project (ESR) / National Institute for Health and Welfare
- Steering network of the Ministry of Justice's administrative branch / Ministry of Justice
- Working group for the preparation of pay equality legislation / Ministry of Social Affairs and Health

International cooperation

The Ombudsman for Equality is a member of the European Network of Equality Bodies (Equinet). As in previous years, representatives of the Office of the Ombudsman for Equality participated in activities of Equinet's Communication Strategies and Practices and Gender Equality working groups, and the Annual General Meeting. All the meetings were held online due to the Covid-19 situation in Europe.

The annual meeting of the Nordic Ombudsmen for Equality and Discrimination was not held in 2021 due to the Covid-19 situation.

Communication

The Ombudsman for Equality in media

Jukka Maarianvaara, the Ombudsman for Equality, gave interviews for media 36 in 2021 regarding e.g., pay transparency, sexual harassment, discrimination due to pregnancy and family leaves, trans Act and military service. The Ombudsman for Equality was mentioned in 148 articles in media.

Publications

Annual Report 2020 by the Ombudsman for Equality.
Jämställdhetsombudsmannens årsberättelse 2020.
Tasa-arvovaltuutetun vuosikertomus 2020.

OMBUDSMAN FOR EQUALITY ON SOCIAL MEDIA AND INTERNET

TWITTER: TASAARVO_NEWS
5530 FOLLOWERS

FACEBOOK: WWW.FACEBOOK.COM /TASAARVOVALTUUTETTU
3146 FOLLOWERS

INSTAGRAM: @TASAARVOVALTUUTETTU
2434 FOLLOWERS

LINKEDIN: TASA-ARVOVALTUUTETTU
465 FOLLOWERS

TASA-ARVO.FI
51 219 VISITS*, 42 849 VISITORS*

The most visited topics on the website of the Ombudsman for Equality concern Equality Act, discrimination in recruitment, the differences in pay and pay discrimination, promoting gender equality in working life and sexual harassment.

*The figures concerning visits and visitors on the website 2021 are not comparable with the figures of the previous years. These figures describe only visits and visitors when the cookies have been allowed.

Ombudsman for Equality

Ombudsman for Equality

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