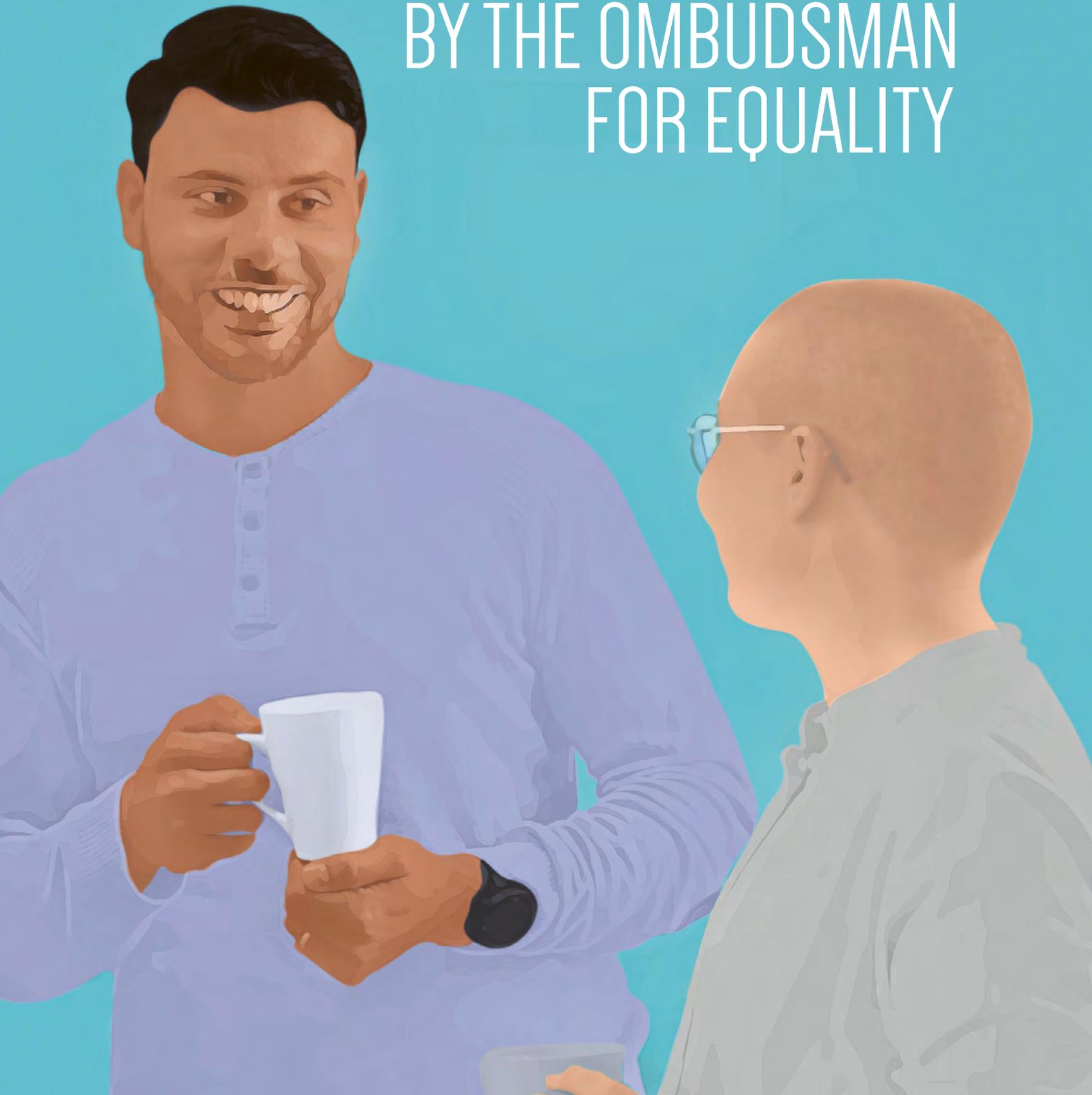


REPORT 2022
TO PARLIAMENT
BY THE OMBUDSMAN
FOR EQUALITY



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REPORT 2022 TO PARLIAMENT
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TASKS OF THE OMBUDSMAN FOR EQUALITY

The main duty of the Ombudsman for Equality is to supervise compliance with the Act on Equality between Women and Men. The Office of the Ombudsman for Equality provides advice and instructions on the application of the Equality Act, discrimination based on gender and promoting gender equality.

Tasks 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 implementation of the Equality Act's intention by means of initiatives, advice and guidance
- Monitoring the implementation of equality between women and men in different sectors of society
- Taking action to promote reconciliation in matters concerning discrimination referred to in the Equality Act

The Ombudsman has powers on matters related to gender identity and gender expression.

The powers of the Ombudsman consist of both combating discrimination and promoting equality. The Ombudsman for Equality is an independent authority and located under the administrative branch of the Ministry of Justice.

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. 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.

Current Ombudsman is Mr. Jukka Maarianvaara, Master of Laws (term 2022-2027).

THE EQUALITY ACT IN A NUTSHELL

- The purpose of the Act on Equality between Women and Men is to prevent discrimination based on gender, to promote equality between women and men, and to improve the status of women, particularly in working life. The aims of the Act also include preventing discrimination based on gender identity or gender expression.
- As a rule, the Equality Act 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 associated with religious practice.
- The Equality Act contains three types of provisions: provisions promoting equality, prohibitions on discrimination, and provisions on legal protection and monitoring.
- The provisions promoting equality apply to public authorities, education providers and other organisations providing education or training, and employers. Public authorities should assess all of their activities from the gender perspective and create practices for promoting equality. Equality is also promoted through the use of quotas. At educational institutions and in working life equality is, among other things, promoted through gender equality plans.
- The general prohibition of discrimination defines and prohibits direct and indirect discrimination based on gender. Such discrimination also includes sexual harassment, gender-based harassment, and any order or instruction to engage in discrimination. Countermeasures, or treating someone less favourably because they have made appeal to their rights, constitute discrimination. The reason for discrimination may also be connected to an individual close to the person, or discrimination may be based on an assumption.
- 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 affected person may claim compensation for violations of these prohibitions. The employer and educational institution have the responsibility, when requested, to give a written report on their actions to anyone suspecting that discrimination has taken place.
- Compliance with the Equality Act is overseen by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal. Among other things, the Ombudsman for Equality provides guidance and advice on applying the Equality Act, such as the prohibitions of discrimination and equality planning. The National Non-Discrimination and Equality Tribunal may prohibit discriminatory practice under the threat of imposing a fine, and on recommendation of the Ombudsman for Equality, it can oblige parties to prepare an equality plan within a set period.
- Ultimately, the person suspecting discrimination may bring legal action at the district court. In line with the principle of shared burden of proof, the person suspecting discrimination has a lesser burden of proof. The Criminal Code contains provisions on discrimination offences, employment offences and sex offences.
- The Ombudsman for Equality can take action to promote reconciliation in a discrimination case.

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INTRODUCTION

Issuing a report on the state of gender equality to Parliament every four years is one of the duties of the Ombudsman for Equality. This is the second such report; we submitted our first report just before Christmas in 2018. I consider it extremely important that the Ombudsman for Equality has the opportunity to express their views directly to Parliament, which exercises the highest legislative and budgetary power in Finland. Correspondingly, the report gives Members of Parliament the opportunity to discuss current issues related to gender equality and outline Parliament's views on the promotion of equality.

1.1 AMBITION AND CONCRETE ACTION

Parliamentary elections have been held and a new government has been formed in Finland since the previous report. Gender equality was on the tip of everyone's tongue after the elections. A record number - 47 % of all MPs - of female representatives were elected and the majority of government ministers are women. Gender equality is featured prominently in the Programme of Prime Minister Sanna Marin's Government in everything from equality in working life to the prevention of violence against women. At the time of writing, it can be said that the equality measures recorded in the Government Programme have been implemented to varying degrees: the reform of trans legislation and sex offence provisions is proceeding according to the Government Programme, but legislative measures for preventing discrimination based on pregnancy have been abandoned and the increasing of pay transparency has suffered setbacks as well. It would be important to implement the gender equality measures set down in the Government Programme sooner than later.

The Government has made preparations for issuing a gender equality policy report to Parliament. The report is intended to be a roadmap for Finland's national and international gender equality policy and set national gender equality goals for the 2020s. The Ombudsman for Equality's previous report called for clear and measurable gender equality objectives at the national level, from which the various administrative branches could derive their own objectives for gender equality. This would support the mainstreaming of the gender perspective and increase the level of ambition in gender equality policy. The objectives defined in the report should be as concrete and ambitious as possible - Finland has gotten used to the idea that we are a "model country in gender equality", which could, at worst, be an obstacle to development in this area.

1.2 THE CORONAVIRUS CRISIS HAD AN IMPACT ON GENDER EQUALITY

Finland has been dealing with the coronavirus pandemic since early 2020. The pandemic and related lock-down measures have affected different population groups differently. As early as in June 2020, a team of experts headed by Archbishop Emeritus Kari Mäkinen estimated in its report that the coronavirus crisis would be hardest for those in the most vulnerable position.¹ Factors such as age, gender, socioeconomic status and minority status have contributed to the burden caused by the pandemic.

¹ Finnish Government (2020).

On the job market, the coronavirus crisis had the worst effects on the service industry, in which employees are typically young and predominantly female. Unemployment grew in the private service sector, whereas the burden on social welfare and health care workers in particular increased heavily during the pandemic.² The coronavirus pandemic does not appear to be having long-term effects on the unemployment rate.³

The Finnish Institute for Health and Welfare has launched the ‘Impact of the COVID-19 crisis on gender equality in Finland’ project for collecting information on the coronavirus pandemic and the policy measures related to it on the state of gender equality in Finland. The project will end at the end of May 2022. Its first results were published at the end of January 2022. According to the results, the pandemic had an impact on the job market, particularly in female-dominated service industries, but Finland’s economic support measures were modest compared to many other countries. Gender impact assessments were made for very few of the legislative or other measures taken.

Collecting information on the effects of the coronavirus pandemic on different groups of people, both on the job market and in terms of health and well-being, is essential for minimising the damage caused by the pandemic. The coronavirus pandemic will probably not be the last global epidemic, so we should learn from these experiences.

1.3 AN INTERSECTIONAL PERSPECTIVE REVEALS VULNERABILITIES

Gender is not the only factor that determines a person’s place in society and affects the discrimination faced by them. Other significant factors include age, health, origin, language, religion and sexual orientation. This intersectional perspective that also takes into account the other factors that define an individual provides better visibility into structural differences, not only between but also within the genders (differences between women belonging to different groups, men belonging to different groups and so on). Intersectionality is an important consideration in both promoting equality and non-discrimination and in investigating experiences of discrimination.

Multiple discrimination is discrimination based on more than one characteristic, such as someone’s gender and age, religion or origin. The Act on Equality between Women and Men prohibits discrimination based on gender, gender identity and gender expression. The Non-Discrimination Act, for its part, prohibits discrimination on other grounds, including age, origin, language, religion, disability or sexual orientation. However, the prohibitions of discrimination provided for in the Equality Act cannot be applied if one of the grounds for discrimination provided for in the Non-Discrimination Act is having a combined effect with gender, gender identity or gender expression - and such cases of discrimination also fall outside the authority of the Ombudsman for Equality.

The Ombudsman for Equality should have the power to process the aforementioned cases of intersectional discrimination when gender (or gender identity or gender expression) is involved in the case as a basis for discrimination. Consideration of the factors that intersect with gender is becoming increasingly important in the prevention of discrimination. Even though gender in itself exposes people to many kinds of discrimination, such as discrimination based on pregnancy, it is often important to identify the significance of other grounds for discrimination intersecting with gender. A re-evaluation of these boundaries between Acts and the powers of authorities is thus needed.

² Finnish Institute of Occupational Health (2021).

³ Bank of Finland (2021).

1.4 EQUALITY AND NON-DISCRIMINATION ARE BEING CHALLENGED IN NEW WAYS

The European Commission is striving for "A Union of Equality", for example with the Gender Equality Strategy published in 2020 and the Union's first strategy concerning the equality of sexual and gender minorities. In the spring of 2021, the Commission published its proposal for a directive on pay transparency. The Commission's commitment to promoting gender equality is important, even though the implementation of legislative projects largely depends on the willingness of individual Member States. And the Member States appear more divided than ever concerning women's rights, equality and the rights of sexual and gender minorities.

As a rule, social attitudes towards LGBTIQ people, that is, sexual and gender minorities, have improved. However, it should not be taken for granted that equality will improve in the European Union or its individual Member States. For example, Poland and Hungary have called into question women's rights in the areas of sexual and reproductive health as well as the rights of sexual and gender minorities while eroding the rule of law and freedom of the media. Curtailing the rights of women and sexual and gender minorities is often related to the international movement dubbed 'anti-genderism', which opposes sexual education and gender studies in addition to sexual and reproductive rights.

In July 2021, the European Commission initiated an infringement procedure concerning the infringement of the fundamental rights of LGBTIQ people by Hungary and Poland. As a counterforce, the Commission and some Member States and members of the Council of Europe are putting equality and LGBTIQ issues on the political and regulatory agenda of the EU.

The work of the Commission is all the more important as the Member States are not united in championing gender equality, and the Member States that seek to promote equality should support this work.

1.5 TRANS LEGISLATION REFORM MUST BE ACHIEVED THIS GOVERNMENT TERM

The trans legislation reform must be pushed through in this government term. The current Act on Legal Recognition of the Gender of Transsexuals is outdated and violates the rights of trans people. The sterilisation requirement is contrary to Finland's human rights obligations. The Ombudsman recommended separating the legal recognition of gender from medical treatments already in the previous report to Parliament. Safeguarding the right to self-determination is important but, at the same time, the legal effects of the legal recognition of gender should also be defined as clearly as possible. Furthermore, the separate nature of the legal recognition of gender and possible gender reassignment therapy must be made clear to the people themselves.

The Ombudsman for Equality finds that the legislative reform should also address the situation of minors. The preparation of the reform should be based on human rights and the rights of children. Regulation 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.

1.6 CONCEPTION AND MEANING OF GENDER IN FLUX

There is currently very little legislation that assigns meaning to gender. Legislative reforms have aimed at gender-neutral language without references to women and men, and this development has also been evident in equality policy. Gender-neutral language is often a good starting point for legislation. However, practical equality work often requires looking at things through the 'gender lens', i.e. identifying average differences between the genders. This enables the identification and dismantling of harmful gender stereotypes. This actual promotion of gender equality and mainstreaming of the gender perspective are also the premises on which the Act on Equality between Women and Men is based.

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 reformers of legislation should therefore consider when various differentiations by gender are necessary and at what level they should be determined. The Equality Act currently prohibits differentiating services and goods by gender without an acceptable reason. But these acceptable reasons are not described in concrete terms or specified in the provisions of the Act, forcing the Ombudsman to Equality to consider the acceptability of each practice on a case-by-case basis. Achieving maximum consistency in practices would require clearer legislation.

The legislators have the most power to differentiate people by their gender, which is felt in especially concrete terms in military service. According to the Constitution of Finland, every Finnish citizen is obligated to participate or assist in national defence, but military service is only compulsory to men by law. This solution is an exception to the prohibition of gender-based discrimination, but cannot be assessed from the perspective of the Equality Act, since the Act explicitly states that providing for compulsory military service for men alone does not constitute discrimination as referred to in the Act. However, the Ombudsman for Equality would like to draw attention to the development of non-discrimination law and the idea that, in addition to being provided for in law, categorically different treatment based on gender must also be acceptable and proportionate.

1.7 LEGAL PROTECTION FROM DISCRIMINATION MUST BE IMPROVED

There are significant shortcomings in legal protection from discrimination. Discrimination is alarmingly common, especially in working life, judging from studies and reports made to the Ombudsman for Equality. There are constant suspicions of discrimination based on gender, pregnancy or family leave in, for example, recruitment, promotion to more challenging positions, pay and the renewal of fixed-term employment contracts. Yet relatively few cases of discrimination are heard by the courts. There are a number of probable reasons for this. The person suspecting discrimination does not necessarily identify their situation as discrimination in violation of the Equality Act, much less know who to turn to in the matter. Employees may fear reprisals from the employer or difficulties in finding work. A court hearing also runs a high cost risk.

In recent years, the average trial costs of civil cases involving the Equality Act have been equal to or higher than the monetary compensation received from the violation itself. The compensations ordered by the district courts have ranged from 5,000 to 10,000 euros, while the trial costs have averaged around the 10,000 euro mark. It is thus understandable that, in the absence of legal expenses insurance or union support, few discrimination cases reach the courts. It should also be noted that the courts do not usually treat sexual harassment as discrimination prohibited under the Equality Act, but as an occupational safety or criminal matter. This is probably also due to the victims' unwillingness to pursue the matter in their own name.

Legal protection against gender-based discrimination would merit an overall assessment. There is clear need for low-threshold, expert remedies. The powers of both the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal must be assessed and developed to provide victims of discrimination with. The right to bring action for compensation under the Equality Act should be developed into a more collective direction, and giving the Ombudsman for Equality an independent right to bring action should be considered in particular.

1.8 PROTECTION AGAINST DISCRIMINATION IN WORKING LIFE MUST BE IMPROVED

The Programme of Prime Minister Sanna Marin's Government lists legislative ways of addressing pay discrimination and discrimination based on pregnancy, among other things. The Government intends to address pay discrimination by increasing pay transparency through legislative means. The issue was considered by the tripartite pay transparency working group established for 2020-2021, whose non-unanimous report was published in 2021. In the Ombudsman for Equality's view, the working group's proposals for gaining access to individual pay information in cases of pay discrimination and clarifying the personnel representatives' right of access to information when making pay surveys should be implemented as proposed. Intervening in pay discrimination and promoting pay equality is currently extremely difficult due to pay secrecy, especially in the private sector.

The Government Programme also specifies that the protection of fixed-term employees against discrimination based on pregnancy should also be improved by clarifying the legislation. In the Ombudsman's previous report to Parliament, the Ombudsman for Equality recommended the improvement of protection against discrimination by introducing a prohibition against non-renewal of a fixed-term employment contract due to pregnancy or family leave into employment legislation. This matter was also under preparation by the tripartite working group instituted by the Ministry of Economic Affairs and Employment. It is still the view of the Ombudsman that the protection of especially vulnerable fixed-term employees against discrimination based on pregnancy should be reinforced - the end of a fixed-term employment relationship due to pregnancy is a lamentably common form of discrimination based on pregnancy.

1.9 GENDER EQUALITY AT SCHOOL SUPPORTS THE WELL-BEING OF CHILDREN AND YOUNG PEOPLE

This report examines gender equality in educational institutions quite extensively. Working for gender equality in educational institutions is extremely important because many gender-based divisions and stereotypes are created at a very early stage. As early as in basic education, choices in school subjects influence the gender segregation of fields of study and professions. Sex education at school can reduce sexual harassment and taking the diversity of genders into account in curricula may reduce discrimination against gender minorities.

According to the recent School Health Promotion study, most children and young people feel well, but the study also highlighted some concerns.⁴ The sexual harassment experienced by girls and young women has increased significantly: no less than half of girls in lower secondary school and secondary school have experienced disturbing sexual propositioning or harassment during the past year. Nearly 20 % of girls studying at vocational institutions have experienced sexual violence. At the same time, anxiety and exhaustion have increased significantly, especially among girls.

The Finnish Education Evaluation Centre (Karvi) has studied differences in learning outcomes within and between genders in an assessment report.⁵ The study notes that differences in learning outcomes between capable and less capable pupils have become polarised in recent years. There are capable and less capable pupils among both girls and boys. The report states that educational inequality should be compared to social inequalities and proposes a number of commendable measures for improving gender equality in basic education.

⁴ Finnish Institute for Health and Welfare (2021).

⁵ Saarinen, J. – Siekkinen, K. – Laimi, T. – Ahonen, A., Bernelius, V. – Brunila, K. – Gustavsson, M. – Kauppinen, M. – Norrena, J. (2021).

Promoting gender equality in education and training, such as narrowing learning differences between and within the genders and dismantling segregation, requires a strong gender perspective in guidance documents, for example. From this perspective, it is surprising that the gender perspective is almost entirely absent, for example, from the Education Policy Report of the Finnish Government, which is intended to outline the goals of education and research as well as the required changes to resources, structures and guidance all the way to the 2040s.⁶

1.10 RECOMMENDATIONS

In our first report, we dealt extensively with questions of gender equality, especially in working life. We also looked at gender equality in educational institutions, the situation of gender minorities as well as hate speech, harassment and violence. These themes are also discussed in this report, but with slightly different emphases.

The recommendations we issued on the themes discussed and shortcomings identified formed the core of our first report. They were directed especially to Parliament as the highest wielder of legislative and budgetary power. Parliament accordingly addressed a number of our recommendations in its response, and many of them were also adopted into the Programme of Prime Minister Sanna Marin's Government, titled Inclusive and Competent Finland. Many of our recommendations have since led to concrete measures, such as law-drafting processes, but some are yet to be implemented. Therefore, we repeat part of these recommendations in this report in addition to making new ones.

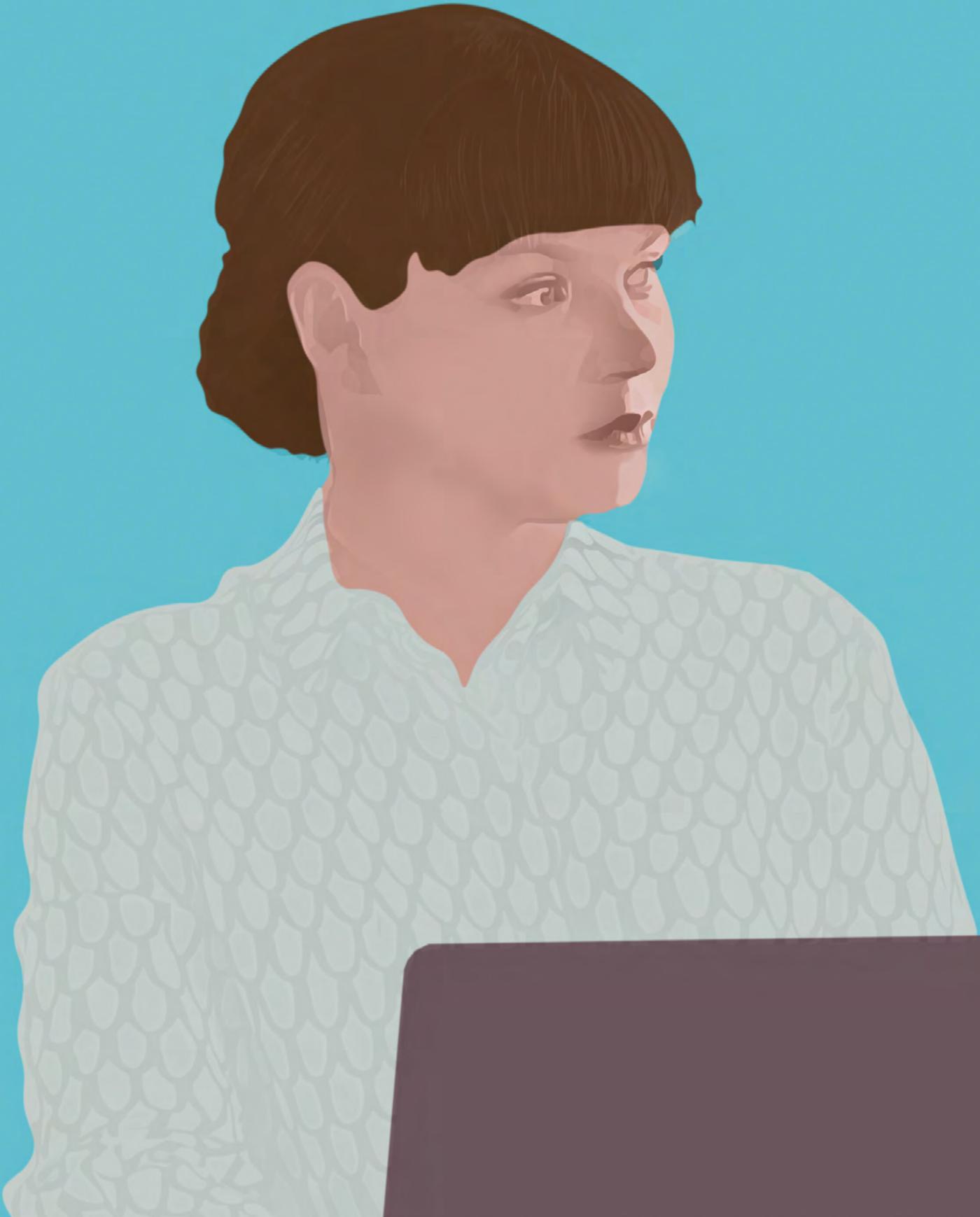
Finland is one of the most equal countries in the world, but even we still have our work cut out. It is our hope that this report will provide some tools for long-term and goal-oriented equality work.

Jukka Maarianvaara
Ombudsman for Equality

⁶ Finnish Government (2021).

After discussing the Ombudsman for Equality's first report, Parliament adopted a position requiring the Government to:

1. determine possible amendment needs to the legislation on fixed-term employment contracts and contract work required to prevent discrimination based on pregnancy and parenthood;
2. draft the required legislative amendments for implementing the family leave reform as soon as possible;
3. seek to develop a method for comparing the difficulty of work between sectors as part of the work to improve of pay equality;
4. ensure that the practical work for promoting gender equality is developed at all levels of education, beginning from early childhood education and care, in order to find solutions to challenges in school work and studies caused by gender differences, learning differences and other differences;
5. examine possibilities for appointing an independent body to monitor and assess the implementation of the obligations of the Istanbul Convention and, if necessary, prepare the required legislative amendments and issue a report to the Employment and Equality Committee during the next four-year term on the progress of the national implementation of the obligations of the Istanbul Convention, along with the implementation and effectiveness of the measures formulated by the coordination body; and
6. ensure the availability of sufficient resources for the implementation and enforcement of equality legislation and safeguard the ability of equality-oriented civil society organisations to work for the long-term promotion of gender equality.



ASPECTS OF MONITORING THE PROHIBITIONS OF DISCRIMINATION AND DEVELOPMENT NEEDS IN LEGAL PROTECTION



2.1 REVIEW OF THE PROHIBITIONS OF DISCRIMINATION AND LEGAL PROTECTION

2.1.1 Legal protection require more effective enforcement

The Act on Equality between Women and Men (Equality Act) prohibits discrimination based on gender, gender identity and gender expression. The Equality Act and its prohibitions of discrimination can be applied extensively to the various sectors of society.⁷ With regard to anti-discrimination legislation, including the Equality Act, the challenge is ensuring that the prohibitions of discrimination are implemented appropriately in practice. This section of the report discusses the Ombudsman for Equality's duties and role as the supervisor of the prohibitions of discrimination provided for in the Equality Act, along with the Ombudsman for Equality's duties and authority intended to promote the realisation of legal protection with regard to these prohibitions.⁸

Already when enacting the Equality Act, the legislators recognised that the rights and obligations provided for in the Act will not be realised simply by laying down provisions for them in the Act. Authorities for supervising compliance with the Act were thus established immediately in 1987 when the Equality Act entered into force. Supervising compliance with the Equality Act, and especially its prohibitions of discrimination, was defined as the principal duty of the Ombudsman for Equality. An Equality Tribunal was also instituted. Its duties have since been passed on to the National Non-Discrimination and Equality Tribunal.⁹

The Equality Act's provisions on sanctions and the legal protection of those who suspect discrimination are also important with regard to the realisation of the rights provided for in the Act. Violations of the prohibitions of discrimination under the Equality Act usually entitle the victim to file a claim for compensation.

The Equality Act has been amended on several occasions, including some amendments to its provisions on enforcement, legal protection and sanctions. For example, the Ombudsman for Equality's independence and neutrality have been reinforced¹⁰ and the promotion of reconciliation has been added to the Ombudsman's duties¹¹. The period for filing a claim for compensation has been lengthened and the scope of compensations extended. The legislation still requires improvement with regard to legal protection, however. There are a number of challenges related to the ability of persons who suspect discrimination to appeal to their legal rights such as inequalities arising from the financial standing of the person.

7 The provisions of the Act do not apply to relationships between family members or other relationships in private life or activities associated with religious practices (Equality Act, section 2).

8 The Ombudsman for Equality's previous report to Parliament in 2018 included an extensive discussion of the Ombudsman for Equality's activities and experiences as the supervisor of the equality planning obligation applying to working life, see K 22/2018, pp. 49–63 and 123–146. The topic is also discussed in this report, see 3.7, while section 6 of this report deals with the promotion of equality in educational institutions.

9 Act on the National Non-Discrimination and Equality Tribunal (Laki yhdenvertaisuus- ja tasa-arvolautakunnasta 1327/2014).

10 The Ombudsman's independent and neutral position is expressly stated in the Act on the Ombudsman for Equality (laki tasa-arvovaltuutetusta 1328/2014) passed in 2015.

11 Act amending section 2 of the Act on the Ombudsman for Equality (Laki tasa-arvovaltuutetusta annetun lain 2 §:n muuttamisesta 916/2016).

2.1.2 Proposed amendments to the Act

The adoption of class actions and giving the Ombudsman for Equality an independent right to bring legal action have been proposed as ways of strengthening the legal protection provided by the Equality Act.¹² The Ombudsman for Equality's right to bring legal action was on the agenda of the Committee for the Amendment of the Equality Act, instituted in 2000, but the Committee did not take it further.¹³ Questions brought up in the 2000s and 2010s have involved the Ombudsman's authority for promoting reconciliation and, in particular, extending the Ombudsman's right to place the matter before the Equality Tribunal (presently the National Non-Discrimination and Equality Tribunal). It was initially proposed that the Ombudsman for Equality's right to bring action should be extended to cover an even wider range of organisations. Since then, the discussion has primarily revolved around giving individuals who suspect discrimination the right to bring action.¹⁴

A working group was instituted in early 2018 for preparing a partial reform of the Equality Act, but its work was cut short. The working party was tasked with drawing up proposals for reforming the Equality Act in the following regards, among others: extending the right to bring action with the National Non-Discrimination and Equality Tribunal by virtue of the Equality Act, possibility of requesting a statement from the National Non-Discrimination and Equality Tribunal, and the Ombudsman for Equality's opportunity to be heard in a trial. The working party's work was supposed to be based on Positions of Parliament, the Government Report on Gender Equality and the corresponding Interim Report, as well as the background reports drawn up for the legislative drafting process. For example, the Ministry of Social Affairs and Health had commissioned a report on the functionality of the Equality Act's supervision provisions.¹⁵

With regard to the overall reform of the Equality Act in 2014, the Employment and Equality Committee and Constitutional Law Committee of Parliament drew attention to the differences between the Non-Discrimination Act and Equality Act with regard to the right to institute proceedings with the National Non-Discrimination and Equality Tribunal. The Committees also stressed the importance of low-threshold legal remedies and found it important to investigate the possibility of giving the Tribunal the authority to order the compensation.¹⁶

These legislative proposals are discussed and evaluated below, in connection with the Ombudsman for Equality's opinions on ways of boosting legal protection under the Equality Act.

2.2 DISCRIMINATION CASES FALLING WITHIN THE SCOPE OF THE OMBUDSMAN FOR EQUALITY'S SUPERVISORY REMIT

2.2.1 The prohibitions of discrimination laid down in the Equality Act

Since the Ombudsman for Equality supervises compliance with the Equality Act, the Ombudsman's authority in the processing of discrimination cases are determined by the types of discrimination falling within the scope of the Equality Act. The scope of application of the Equality Act is broad: only private relationships and activities associated with religious practices are excluded.

12 See Ministry of Social Affairs and Health (1992), pp. 56–57; OJ 3/1997 p. 28 and 80; Ministry of Social Affairs and Health (1998), p. 45. See also the decision on instituting the Committee, Ministry of Social Affairs and Health (2002).

13 With regard to the right to bring action, the Committee only discussed extending the period for bringing action, see Ministry of Social Affairs and Health (2002). At the time, the Ombudsman for Equality stated that the legislation should have been amended and the Ombudsman for Equality's powers and extending the Ombudsman's right to bring action addressed in that connection, Statement of the Ombudsman for Equality, Rec. no. 16/50/02.

14 On this topic, see sections 2.5.3.1. and 2.5.3.2.

15 Anttila, O. & Nousiainen, K. (2013), p. 91.

16 TyVM 11/2014 vp and PeVL 3/2014 vp.

Due to this wide scope of application, the Equality Act broadly covers discrimination occurring in various contexts. The general prohibition of discrimination (Equality Act, section 7) provided for in the Act extends to its entire scope of application. In addition to this general prohibition, special prohibitions are provided for an increasing number of specific contexts. Currently, there are such special prohibitions for discrimination occurring in working life and educational institutions and organisations, as well as in connection with the provision of goods or services (Equality Act, sections 8-8e). The Equality Act also prohibits discriminatory vacancy announcements (section 14).

The scope of application of the Equality Act is broad: only private relationships and activities associated with religious practices are excluded.

The Ombudsman for Equality receives information requests and reports of suspected discrimination covering a large variety of topics and questions. However, questions related to working life have dominated the Ombudsman's work from the beginning and continue to do so today. Those contacting the Ombudsman for Equality have often experienced discrimination personally, but the Ombudsman also receives some reports of general discriminatory practices. The general prohibition of discrimination laid down in the Equality Act can be used to evaluate the inherent discriminatoriness of practices, rules and regulations in various areas, without examining the application of the procedure to individuals.

2.2.2 The concept of gender-based discrimination has been expanded and detailed

The Equality Act's concept of discrimination based on gender defines the types of unequal treatment to which the prohibitions of discrimination laid down in the Act may apply. This also has a fundamental effect on the Ombudsman for Equality's duties and role in society. The concept of discrimination based on gender has been detailed and expanded in connection with the various reforms of the Equality Act.

When the Equality Act entered into force in 1987, discrimination was defined as placing women and men in an unequal position on the basis of gender, as well as putting women and men in unequal positions with regard to each other. Already in the early 1990s, it became necessary to legally clarify that the discrimination on the basis of pregnancy and family leave also constituted discrimination prohibited under the Equality Act, which no longer required a comparison between women and men for discrimination to occur. The Equality Act also takes into account the diversity of genders, meaning that not everyone is unambiguously male or female. In 2015, specific provisions were added to the Equality Act, stating that discrimination based on gender also refers to discrimination based on gender identity and gender expression. These provisions were adopted especially to clarify and improve the protection of gender minorities against discrimination.¹⁷

Discrimination based on pregnancy and family leave and questions related to the status of gender minorities have played a large role in the Ombudsman for Equality's work, both in the investigation of suspected cases of discrimination and in the Ombudsman's activities for reducing and preventing discrimination. For example, the Ombudsman for Equality has implemented three nationwide campaigns for increasing awareness of discrimination based on pregnancy and family leave and preventing it.¹⁸ In 2012, the Ombudsman for Equality commissioned the first official survey of the status of gender minorities in Finland¹⁹. The Ombudsman has also made several motions for improving the status of gender minorities.²⁰

17 Although the Ombudsman for Equality had since 2005 interpreted the protection against discrimination under the Equality Act to extend to all sexual minorities, and not only those who had undergone a gender reassignment process were specifically mentioned as being covered by the protection against discrimination in the CJEU's decision *P. v. S. and Cornwall County Council* C-13/94.

18 These campaigns were *Oikeutta odottaville* (Justice for those Expecting) in 2012, *Raskaussyrjintä ei ole leikin asia* (Pregnancy Discrimination is No Laughing Matter) in 2017 and *Edelläkävijä* (Forerunner) in 2018.

19 Ombudsman for Equality (2012).

20 The Ombudsman for Equality discussed the status of sexual minorities and the discrimination faced by them, along with the Ombudsman's activities in these areas, in his previous report to Parliament, K 22/2918, pp. 75–89.

2.2.3 Intersectional discrimination remains outside the authority of the Ombudsman for Equality

Identifying all manner of discrimination connected to gender and promoting gender equality between people of different backgrounds and statuses requires taking into account other factors and grounds connected to discrimination than gender alone. The equality action plan of Prime Minister Sanna Marin's administration accordingly states that promoting equality between genders requires an intersectional perspective that takes into account factors such as socioeconomic status, age and ethnic background in addition to gender.²¹

While discrimination can be based on gender, gender identity and gender expression alone, these can also be factors in multiple discrimination. If the conduct is also discriminatory based on any of the individual bases for discrimination (cumulative discrimination), it falls within the scope of the Equality Act and the authority of the Ombudsman for Equality with regard to discrimination based on gender. Factors other than gender can also compound experiences of discrimination prohibited under the Equality Act. For example, women, young people, minorities and people with low income have a greater risk of suffering sexual harassment prohibited under the Equality Act.²²

Gender can also lead to discrimination only in combination with other factors of inequality (intersectional discrimination). For example, being placed in a less favourable position due to wearing a scarf for religious or cultural reasons only applies to women and thus creates a situation of intersectional discrimination. Several studies have also shown that discrimination based on age is gendered, with the most common victims being older female employees.²³

It would be important to extend the Ombudsman for Equality's authority to cases involving intersectional discrimination.

The Ombudsman for Equality currently does not have the authority to investigate suspected cases of intersectional discrimination even if gender is an essential element in the discrimination. According to the rationales for the Equality Act and Non-Discrimination Act, cases of intersectional discrimination fall exclusively within the scope of the Non-Discrimination Act.²⁴ The competent authorities in such cases are thus the authorities charged with enforcing the Non-Discrimination Act: the State Regional Administrative Agencies in cases involving working life and the Non-Discrimination Ombudsman in other cases. This policy on intersectional discrimination set out in the rationales for the Equality Act and Non-Discrimination Act raised little discussion in connection with the 2015 legislative reform. The Ombudsman for Equality did point out at the time that it would be important to extend the Ombudsman for Equality's authority to cases involving intersectional discrimination.²⁵

Discrimination and promoting equality are often two sides of the same coin. Excluding all types of intersectional discrimination from the authority of the Ombudsman for Equality limits the Ombudsman's ability to address important current issues from the perspective of gender equality, such as the aforementioned scarf

21 Ministry of Social Affairs and Health (2020a).

22 For more information, see Ollus, N. - Tanskanen, M. - Honkatukia, P. - Kainulainen, H. (2019).

23 According to the structural results of Viitasalo's study, discrimination based on age is most prevalent among 55-year-old female employees, Viitasalo, N. (2015), p. 49 and 55.

24 Government proposal 19/2014.

25 TAS 147/2014.

cases, and restricts the Ombudsman’s ability to adapt to the times and act as a social force for equality. This restriction of the Ombudsman’s authority is also not very widely known, leading to expectations for the Ombudsman for Equality to also take action on intersectional discrimination. For example, the low visibility of intersectional discrimination issues was criticised in the feedback on the Ombudsman’s 2018 report to Parliament.

The European Commission’s proposal for a ‘Pay Transparency Directive’²⁶ states that pay discrimination includes discrimination based on a combination of gender and any other ground or grounds of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC, such as origin, age or disability. In other words, the proposal requires intersectional discrimination connected to gender to be taken into account in the assessment of pay discrimination. Since the Ombudsman for Equality does not have the authority to address situations of intersectional discrimination, the national implementation of the Directive would require separate arrangements with regard to legal protection and the supervision of legislation. This does not seem appropriate.

The Ombudsman for Equality accordingly considers that categorically excluding discrimination essentially connected to gender from the Ombudsman’s authority problematic and requires reassessment.

Authority with regard to intersectional discrimination: The current categorical exclusion of gender-related intersectional discrimination from the Ombudsman for Equality’s authority should be reviewed and reassessed.

2.3 SUPERVISION OF COMPLIANCE WITH THE PROHIBITIONS OF DISCRIMINATION

2.3.1. A two-tiered supervision system

The system of supervision provided for in the Equality Act is two-tiered: compliance with the Act is supervised by the Ombudsman for Equality and National Non-Discrimination and Equality Tribunal. The principal task of the Ombudsman for Equality is to supervise compliance with the Equality Act and, especially, its prohibitions of discrimination.²⁷ The Government proposal notes that the supervision of compliance with the Equality Act should focus on the Ombudsman for Equality’s guidance and advisory activities.²⁸ According to the Equality Act, upon finding that the provisions of the Equality Act are being violated, the Ombudsman for Equality shall provide guidance and advice so as to prevent the continuation or recurrence of such unlawful practice (Equality Act, section 19, subsection 2). The Government proposal accordingly noted that the Ombudsman for Equality’s ”guidance activities are thus oriented towards securing future compliance with the Act”.²⁹ The ultimate objective of supervising compliance with the Equality Act is to ensure that the Act’s objectives are met.

The legislator intended compliance with the Act to be voluntary. According to the Government proposal, the primary objective is to persuade the party guilty of violating the Act to voluntarily desist from their practice. If necessary, continuing and repeating the practice can be prohibited by decision of the Tribunal.³⁰ The Ombudsman for Equality or a central labour market organisation may place a matter involving an action contrary to the prohibitions of discrimination laid down in the Equality Act, that is, the provisions of sections 7, 8, 8a-8e or 14 before the National Non-Discrimination and Equality Tribunal for the purposes of the procedure referred to in section 21 (Equality Act, section 20). The National Non-Discrimination and Equality

26 COM2021 93 (final) 2021/0050 (COD).

27 The Ombudsman for Equality’s duties also include promoting the fulfilment of the objectives of the Equality Act through initiatives, guidance and advice; providing information on equality legislation and its application; monitoring the realisation of equality in different sectors of society; and taking action to promote reconciliation in matters concerning discrimination referred to in the Equality Act (Act on the Ombudsman for Equality and Equality Tribunal (Laki tasa-arvovaltuutetusta ja tasa-arvolautakunnasta 1328/2014), section 2).

28 HE 57/1985, p. 27.

29 HE 57/1985, p. 27.

30 HE 57/1985 p. 9.

Tribunal may prohibit anyone who has acted contrary to the prohibitions of discrimination laid down in the Equality Act from continuing or repeating the practice, under the threat of imposing a fine if necessary (Equality Act, section 21, subsection 1).³¹

2.3.2 The Ombudsman for Equality's monitoring practices

The Ombudsman for Equality's monitoring practices are based on the provisions concerning the supervision of compliance with the Equality Act and the aforementioned premise of voluntary compliance with the Equality Act. If, after investigating the matter, the Ombudsman for Equality finds a practice to be discriminatory, the party obliged to comply with the Act is exhorted to bring their practices into line with the Ombudsman's conception of lawful practice. If changes to the practice are achieved through voluntary means, the Ombudsman for Equality has no grounds for submitting the matter to the Tribunal.

Service pricing is a typical matter in which changes to discriminatory practices have been achieved with the Ombudsman's requests. Requests have also been issued in other types of cases, for example job application forms that ask for information on the applicant's children, job or housing advertisements, and the authorities' practices regarding income support. The processing of a case at the Office of the Ombudsman for Equality can also cause the discriminatory practice to be abandoned even without an express recommendation.

The Ombudsman for Equality has submitted a total of two cases to the Tribunal, while the central labour market organisations have not submitted a single case. Soon after the entry into force of the Equality Act, the Ombudsman for Equality asked the then Equality Tribunal to forbid a hospital operated by a joint municipal authority from continuing its practice for appointing deputies, in which the deputy was appointed for a shorter period than the original officeholder's leave of absence because the deputy was going on family leave.³² The other case, submitted to the Tribunal by the Ombudsman for Equality in the autumn of 2020, concerned gender quotas in student admissions for the University of Jyväskylä's Faculty of Sport and Health Sciences, which the Ombudsman for Equality found to be in violation of the general prohibition of discrimination.³³

Several parties have pointed out that very few matters concerning gender equality have been submitted to the National Non-Discrimination and Equality Tribunal.³⁴ The option of submitting the matter to the Tribunal is considered by the Ombudsman for Equality in connection with the processing of each case. The Ombudsman has also successfully reminded a number of obligated parties of this option when discrimination has been clearly established in the course of supervision. More matters would have been submitted to the Tribunal if the Ombudsman for Equality had not used submission to the Tribunal as a condition for compliance with the Ombudsman's requests.

Apart from the fact that the Ombudsman for Equality primarily seeks to secure voluntary compliance with the Equality Act, there are also a number of other factors due to which a case is ultimately not submitted to the tribunal procedure. For example, disputes involving working life in which the Ombudsman for Equality has been asked for advice or a statement may also be processed by a trade union or the State Regional Administrative Agency. If a discriminatory practice active in the background is identified during the investigation of a suspected case of discrimination reported by a client, the client's status and wishes are also taken into account when considering submission to the Tribunal.

31 The duties of the Tribunal also include confirming reconciliations in discrimination matters referred to in the Equality Act (Equality Act, section 20, subsection 3) and issuing statements to the courts on the application of provisions concerning prohibitions of discrimination in cases significant with regard to the objectives of the Equality Act.

32 Regarding this case and its significance for the subsequent legislation reform, see Ministry of Social Affairs and Health (1992), pp. 5–6.

33 TAS 384/2020.

34 For example, the Government Report on Gender Equality 2010 stated that the powers of the Ombudsman for Equality and Tribunal are not being fully used and that cases should be submitted to the Tribunal more actively. Government Report on Gender Equality, p. 74.



The Ombudsman for Equality may only submit a discrimination case to the Tribunal for the purpose of obtaining a prohibition decision. According to section 21 of the Equality Act, the Tribunal may prohibit anyone who has acted contrary to the prohibitions of discrimination from continuing or repeating the practice, under the threat of imposing a fine if necessary. Therefore, a case may only be submitted to the Tribunal if a prohibition of continuing or repeating the practice is relevant. This is not the case with every violation of the prohibitions of discrimination by any means. Cases reported to the Ombudsman for Equality frequently involve applying the prohibitions of discrimination to the circumstances of a specific individual in a one-time manner, with the concrete circumstances/facts of the case having a high relevance. For example, if a more merited job applicant is passed over in recruitment, the assessment of discrimination concerns appointment to a specific position and the comparison of merit between certain specific applicants instead of some general practice that could be prohibited.

2.4 THE OMBUDSMAN FOR EQUALITY'S AUTHORITY FOR PROMOTING LEGAL PROTECTION

2.4.1 Promoting legal protection is also a duty of the Ombudsman for Equality

In addition to supervising compliance with the law, the Ombudsman for Equality has duties and authority intended to assist those who suspect discrimination and promote the realisation of discrimination victims' legal protection.³⁵ In some cases, the end of discriminatory practices, which can be achieved through the supervisory authority's actions, may be a sufficient remedy for the infringement suffered by the victim of discrimination. Actions related to supervising compliance with the Equality Act and to promoting legal protection are thus partly interlinked in the Ombudsman for Equality's work.

However, access to the legal protection provided for in the Equality Act cannot be reduced to merely ensuring that the discriminatory practice will not continue in the future. Obtaining a resolution and compensation under the Equality Act for the infringement is an essential component of legal protection of discrimination victims.³⁶ The premise of the Equality Act is that discrimination victims' primary remedy is claiming compensation by legal action brought at the district court.

The Ombudsman for Equality's duties related to promoting legal protection include providing advice and guidance to individuals who suspect that they have suffered discrimination as referred to in the Equality Act.³⁷ The Ombudsman for Equality also has the authority to promote reconciliation in matters concerning discrimination referred to in the Equality Act³⁸ and, in certain cases, assist discrimination victims in the trial.³⁹ These authority and their use by the Ombudsman for Equality are discussed below.

2.4.2 Advice, guidance, statements and the promotion of reconciliation

According to the Equality Act, anyone who suspects that they have become the victim of discrimination referred to in the Equality Act may request guidance and advice in the matter from the Ombudsman for Equality. The Ombudsman provides such guidance and advice either by telephone or in writing. The advice, guidance and statements issued by the Ombudsman for Equality are not legally binding.

There are two procedures available to the Ombudsman for Equality in cases instituted in writing: giving general advice and guidance to the client, without taking stand on their individual circumstances, or initiating an investigation. This usually entails making inquiries with, for example the employer, educational

³⁵ The European Union's equality directives (Directives 2004/113/EC and 2006/54/EC), under which the Ombudsman for Equality is the national equality body, require the equality body's duties to include, among other things, providing independent assistance to victims of discrimination in pursuing their complaints about discrimination.

³⁶ See FRA & Council of Europe (2016), p. 16.

³⁷ Equality Act, section 19, subsection 1.

³⁸ Equality Act, section 19, subsection 4.

³⁹ Act on the Ombudsman for Equality (Laki tasa-arvoaltuutetusta), section 3.

institution or service provider and issuing the Ombudsman's opinion on the matter. The choice of procedure depends on the reason for contacting the Ombudsman, the client's preference and other circumstances related to the case.

Clients contact the Ombudsman for a variety of reasons, from information requests of a general nature to requests for the Ombudsman for Equality's opinion on their matter. Clients are not always willing to disclose their employer, for example, or at least do not want their employer or some other party to know about their contact with the Ombudsman, and thus ask for guidance or advice at a general level. Even though the Ombudsman for Equality is not able to give an opinion on the individual case without hearing both parties in such cases, general guidance can help the client gain a clearer picture of whether discrimination could be suspected in the matter. The Ombudsman's advice can also help with clearing the matter up at the workplace, for example.

Initiating an investigation means following the procedures required by the Administrative Procedure Act, particularly hearing the party suspected of discrimination. The Ombudsman for Equality has extensive rights of access to information when investigating a case, which is a necessity for conducting an investigation. Some discrimination cases are examined by the Ombudsman for Equality in the Ombudsman's own name. Such investigation procedures are usually also based on a report made to the Ombudsman. This procedure is typically used in cases of gender-based differences in pricing or service, or job advertisements looking for persons of a specific gender.

The provisions of the Equality Act and Act on the Ombudsman for Equality on the Ombudsman for Equality's authority to take measures to reconcile a discrimination matter referred to in the Equality Act entered into force in November 2016. The Ombudsman for Equality was in favour of recording the promotion of reconciliation in law, because the Ombudsman considered that a reconciliation procedure could promote the realisation of the rights arising from the Equality Act.⁴⁰ The reconciliation procedure requires the consent of both parties. 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.

Setting down the option of reconciliation in legislation and the possibility of having the reconciliation confirmed by the Tribunal have been positive developments in the Ombudsman for Equality's view. Nevertheless, seeking to promote reconciliation and achieving a resolution in the matter were not new approaches for the Ombudsman for Equality. It is more common for the Ombudsman for Equality to contribute to a reconciliation in other ways than taking part in the actual reconciliation negotiations. The reconciliation procedure has been used in a few cases each year. In 2020, for example, the Ombudsman for Equality promoted reconciliation in three cases, two of which were ultimately settled between the parties with a reconciliation agreement.⁴¹ Reconciliation could not be reached in one of the cases. The Ombudsman for Equality's statement clearly contributed to a reconciliation between the parties in two other cases, and a reconciliation agreement was made without the Ombudsman's opinion in a further two cases being processed by the Ombudsman for Equality. All of these cases concerned employment disputes.

The impact of the Ombudsman's activities on the ending of a discriminatory practice or acceptance of the claims of the party suspecting discrimination is not limited to promoting reconciliation. The Ombudsman's opinion and the processing of the matter in the Ombudsman's office can contribute to the resolution of the matter in other ways as well.⁴² General guidance and advice or discussions between the parties can

40 Ombudsman for Equality's Statement TAS 290/2016.

41 One of these processes is described in the Annual Report 2020 by the Ombudsman for Equality, p. 40.

42 In 2020, for example, the contracting parties to a municipal collective agreement made amendments to a collective agreement signed in 2018 concerning a performance-based non-recurring compensation based on the Ombudsman for Equality's opinion and paid the non-recurring compensation to employees who had been denied it due to having been on maternity, parental or child-care leave during the determination period, TAS 408/2018.

sometimes also contribute to the progress and resolution of the matter. Likewise, advice given over the telephone helpline can at times provide support for the clearing up and resolution of individual cases. The impact of the Ombudsman for Equality's activities cannot thus be assessed on the basis of the use of any single authority, but requires a comprehensive investigation of the Ombudsman's different forms of activity.

Supervision of compliance with the prohibitions of discrimination and, on the other hand, the prevention of discrimination, promotion of equality and active advocacy are all intertwined in the Ombudsman for Equality's work. When a suspected case of discrimination at the workplace is reported, the Ombudsman normally also asks the employer to submit their equality plan for evaluation if they are required to have one, that is, there are more than 30 employees at the workplace. Supervision of compliance with the law reveals a variety of discrimination issues, which the Ombudsman seeks to address through means such as motions, cooperation with stakeholders, and communications. For example, the Ombudsman for Equality has implemented three campaigns against discrimination based on pregnancy.⁴³ It is vital for the reduction and prevention of discrimination that the supervisory authority is endowed with versatile duties and authority.

2.4.3 Action for compensation and the Ombudsman for Equality's authority to assist victims of discrimination

2.4.3.1 Action for compensation under the Equality Act

The Ombudsman for Equality was in favour of express legal provisions on the Ombudsman's powers to promote reconciliation because, among other things, the Ombudsman considered reconciliation to be a viable alternative for an expensive and protracted trial in which the result is never certain.⁴⁴ However, reconciliation is only an option if both parties are willing to reconcile. This is not always the case, possibly also because the party responsible for the discrimination usually has greater resources than the individual subjected to discrimination.⁴⁵ It is thus essential to also provide other options for gaining access to one's rights. According to the Equality Act, a person suspecting discrimination can usually bring action for compensation, which is the principal legal remedy provided in the Equality Act for victims of discrimination.

Compensation can be claimed if the guilty party has violated the special prohibitions of discrimination applying to employers, educational institutions, organisations representing labour market interests, or the providers of goods or services, that is, the provisions of section 8 or sections 8a-8e of the Equality Act (section 11 of the Equality Act). As a rule, the minimum compensation amount is 3,740 euro. In cases concerning employee recruitment, however, the compensation payable shall not exceed EUR 18,690 for an employee who would not have been chosen for the job even if the choice would have been made on non-discriminatory grounds.⁴⁶ Compensation shall be claimed by legal action brought at the district court within two years of the discrimination prohibition being violated. In cases concerning employee recruitment, however, the action shall be brought within one year of the discrimination prohibition being violated.⁴⁷

From the perspective of legal protection, it is vital that situations in which discrimination occurs are not excluded from the scope of compensations without a valid reason. Likewise, it is important to ensure that bringing an action for compensation is a realistic option in practice. Bringing action for compensation involves certain issues as a legal remedy in both respects.

43 See footnote 18. The Ombudsman for Equality has also produced a set of learning materials dealing with sexual harassment, titled *Ei meidän koulussa* (Not in Our School), along with a brochure on hairdressing services in cooperation with Suomen Hiusyrittäjät ry (Association of Finnish Hairdressing Entrepreneurs) and the Finnish Competition and Consumer Authority, see TAS 291/2017.

44 Ombudsman for Equality's Statement TAS 290/2016.

45 According to Koulun R. (2018), many scenarios in which individuals are opposed to a powerful organisation have proven hopeless for achieving reconciliation.

46 On the amount of compensation, see Government Decree 441/2021.

47 The period for bringing action in non-recruitment disputes was extended from one to two years in connection with the 2005 law reform, see HE 195/2004, p. 43.

2.4.3.2 The scope of compensations requires extension

A party that violates the special prohibitions of discrimination can be sentenced to pay compensation under the Equality Act. The compensation is intended to compensate for the immaterial damage resulting from the insult caused by the discrimination. Payment of compensation does not prevent the injured party from further claiming compensation for financial loss under the Tort Liability Act or other legislation (Equality Act, section 11 subsection 4). The right to claim compensation for financial loss also applies to violations of the general prohibition of discrimination (Equality Act, section 7), but such violations do not entitle the injured party to bring action for compensation by virtue of the Equality Act. Claiming compensation for immaterial damages, that is, the suffering caused by the insult, can be possible for violations of the general prohibition if the general prohibition of discrimination laid down in the Criminal Code has been violated in the exercise of official authority (Criminal Code of Finland, chapter 11, section 11). However, this is only possible if intent can be established in the case. The recommendations of the Advisory Board on Personal Injury Matters for the amount of damages paid for suffering, 300-1,500 euro, are considerably smaller than the compensation.⁴⁸ Even the minimum amount of the compensation is 3,740 euro.

The Equality Act differs from the Non-Discrimination Act in that discriminatory practices by the authorities are not included in the scope of compensations unless the authority is acting in a role (such as service provider or employer) subject to the special prohibitions of discrimination. Extending the compensations under the Equality Act to cover the authorities was on the agenda of the working party for the preparation of the partial reform of the Equality Act instituted in 2018, but the working party's work was cut short. The Ombudsman for Equality is of the opinion that extending compensations to cover discriminatory activities by the authorities should be reintroduced into the legislative drafting process and gender-based discrimination should be made subject to similar sanctions in this regard as discrimination prohibited under the Non-Discrimination Act.

Furthermore, the scope of compensations in recruitment discrimination should be extended to also cover the application phase preceding the selection decision. At present, compensation can only be claimed if a more merited applicant of a different gender is passed over in the final selection without weighty and acceptable reasons. On the contrary, discrimination during the selection phases preceding the final selection does not entitle the victim to compensation under the Equality Act. Inappropriate treatment based on gender in the application phase can have a significant impact on the selection itself. The Ombudsman for Equality has been proposing amendments to the Equality Act in this regard for nearly two decades now.⁴⁹ The Ombudsman for Equality has also considered it important to extend the scope of compensations to also cover the company purchasing leased work if the company's discriminatory practices affect the continuation of the employee's employment.⁵⁰ The scope of compensations in these employment-related situations are discussed in more detail in this report's section on employment (see p. 3.2.4).

The scope of compensations under the Equality Act should be extended to also cover the following discriminatory situations: discrimination in the exercise of official authority, discrimination preceding the recruitment decision, and discriminatory practices by the purchasers of leased work that have an impact on the continuation of the employee's employment.

48 See Recommendations of the Advisory Board on Personal Injury Matters, p. 39. On the amount of compensation, see section 4.3.3.

49 See the Ombudsman for Equality's Statements 16/50/02 and TAS 84/2010 and the Ombudsman for Equality's Report to Parliament 2018, K 22/2018, p. 44.

50 K 22/2018, pp. 42–43.

A person who suspects that they have been discriminated against due to their gender, gender identity or gender expression, may turn to the Ombudsman for Equality for advice.



2.4.3.3 Disputes based on the Equality Act in the courts

Not very many disputes based on the Equality Act are taken to court. In 2015-2018, a total of 66 actions concerning gender-based discrimination were brought in the district courts. All of the actions whose subject was indicated in the judgment were related to employment and most of them, that is 30 claims, concerned appointment to office or filling a position.⁵¹ Ten cases involved suspected discrimination based on pregnancy and family leave. The number of civil cases based on the Equality Act appears to have stayed more or less constant, since 48 judgments concerning gender-based discrimination were issued by the district courts in the three-year period from 2012 to 2014.⁵²

Disputes concerning violations of the Equality Act are heard not only by the general courts, which can order the payment of compensation, but also by the administrative courts and, at times, by the Labour Court and Insurance Court. The administrative courts heard 45 cases based on the Equality Act in 2015-2018 and 48 cases in 2012-2014. In both periods, the majority of cases concerned appointments to office. Less than ten of the cases concerned the Equality Act's quota provision (section 4a), that is, did not involve discrimination.⁵³ Gender-based discrimination can also be examined by the courts in connection with the general prohibition of discrimination (Criminal Code of Finland, chapter 11, section 11) and prohibition of work discrimination (Criminal Code of Finland, chapter 47, section 3) laid down in the Criminal Code.

The low number of discrimination disputes brought before the courts does not mean the absence of discrimination based on gender, gender identity or gender expression, nor even the absence of disputes concerning discrimination. In the Ombudsman for Equality's view, the majority of employment-related discrimination disputes are settled, often with the support of a trade union. The greatest single explaining factor for the low number of discrimination disputes in the courts is probably the high expense risk, which has an equal effect on the opportunity to bring action in civil cases of all types. In disputes concerning employment relationships in 2019, the median legal fees of cases won by the claimant (n=42) was 7,459 euro, while the corresponding median in cases won by the defendant (n=37) was 12,760 euro. The trial fees were larger in cases won by the defendant.⁵⁴ The costs of individual cases can exceed the median by a considerable margin.

Accordingly, bringing an action for compensation cannot be considered a very realistic option for many people suspecting discrimination. It must be noted that the amount of compensation imposed by the court is usually not very large. In 2015-2018, most compensations imposed by the district courts appear to range from 5,000 to 10,000 euro. Larger compensations were paid in a few cases.⁵⁵ In one case clearly exceeding the average amount, the district court ordered the defendant to pay the claimant 60,000 euro in compensation. The defendant appealed the judgment to the court of appeal, but the parties have since settled the matter.⁵⁶

51 In 17 of these 30 actions, the claimant was the same man. The cause of the dispute may not be indicated in the documentation if the action was withdrawn or the district court confirmed a settlement in the matter.

52 Source: Civil cases based on the Equality Act heard by the district courts between 1 January 2015 and 31 December 2018, according to information requested from the district courts by the Ombudsman for Equality on the basis of identifying information obtained from the Legal Register Centre, as well as the publication *Tasa-arvolain ja rikoslain syrjintäsäännösten soveltaminen oikeuskäytännössä vuosina 2012–2014* (Application of the discrimination provisions of the Equality Act and Criminal Code in legal practice in the years 2012–2014). Office of the Ombudsman for Equality, Jasmiina Jokinen.

53 Source: Information provided to the Ombudsman for Equality by the administrative courts on the cases heard by them in 2015–2018 in which the Equality Act was applied, as well as *Tasa-arvolain ja rikoslain syrjintäsäännösten soveltaminen oikeuskäytännössä vuosina 2012–2014*, Office of the Ombudsman for Equality, Jasmiina Jokinen.

54 Sarasoja, L. & Carling, C. (2019), pp. 61–62. The Government Programme of Sanna Marin's administration mentions lowering trial costs as a means of promoting access to legal protection regardless of financial or social standing. The Ministry of Justice (2021b) has drawn up an assessment memorandum on the matter.

55 See footnote 51.

56 Pirkanmaa District Court, L 17/27103, issued on 9 October, 2018.

In a trial concerning compensation or damages, the claimant is the individual or individuals who consider themselves to have been discriminated against. The threshold for bringing a discrimination action can be high for the individual suspecting discrimination, and not only for financial reasons or due to the duration or uncertainty of the process. For example, employees are not always very keen on demanding their rights based on the Equality Act to be respected at the workplace, let alone pursuing them in the courts. This can be due to a fear of reprisals by the employer and sometimes also other employees. The comparison to other employees, often related to the assessment of discrimination, can also feel unpleasant. For the above reasons, even contacting the authorities, such as the Ombudsman for Equality, can be considered difficult, and this contributes to the fact that the majority of discrimination remains hidden.⁵⁷

2.4.3.4 Assisting victims of discrimination

According to the Act on the Ombudsman for Equality, the Ombudsman for Equality can assist victims of discrimination in safeguarding their rights and, if necessary, assist them in a trial concerning the payment of compensation or damages, if the Ombudsman the matter to have considerable significance with regard to the application of the law (Act on the Ombudsman for Equality, section 3). However, for the reasons given below, the Ombudsman for Equality has never actually assisted in a trial concerning a discrimination dispute.

According to the Equality Act, providing assistance is limited to matters that the Ombudsman considers to be of major significance with regard to the application of the law. When the Equality Act was passed, the premise was that the Ombudsman for Equality could not perform the Ombudsman's main duties if the Ombudsman would serve as legal counsel on a large scale.⁵⁸ Indeed, the Ombudsman for Equality's resources are manifestly inadequate for challenging trials. In employment-related matters, which most trials for compensation involve, the person suspecting discrimination can get legal aid from a trade union or legal aid office.

Another factor limiting the significance of the Ombudsman's authority for assisting discrimination victims is related to the assisted claimant's liability for the counterparty's trial costs, which the claimant will have to pay if they lose. The rationale for the Equality Act states that the assistance provided by the Ombudsman for Equality to discrimination victims should be free of charge⁵⁹, but nothing is stated in the Act or its rationale about the Ombudsman's possibility of paying the counterparty's trial costs. With regard to the compensation of trial costs, the Act on the Ombudsman for Equality states that, if the counterparty to the person being assisted by the Ombudsman for Equality loses the case, they would be liable to compensate the State for reasonable costs incurred from the assistance on the same grounds as are provided for the compensation of trial costs between the interested parties (Act on the Ombudsman for Equality, section 3, subsection 3). The cost risk thus remains with the claimant, even though the matter in which the Ombudsman for Equality can assist in the first place must have considerable significance with regard to the application of the law. The cost risk remains with the claimant even if the Ombudsman for Equality assists in the case because it can be considered a test case.

An expansion of the right to bring action is discussed below in the section dealing with the possibilities for reinforcing right to bring legal action. Arrangements regarding the right to bring action are also relevant to the cost risk.

⁵⁷ On under-reporting, see e.g. Aaltonen, M. – Heino, P. – Villa, S. (2013), pp. 151–154.

⁵⁸ HE 57/1985, p. 30.

⁵⁹ HE 57/1985, p. 30.

2.5 DEVELOPMENT OF LEGAL REMEDIES

”The requirement of a reasonable realisation of rights in everyday life puts a far greater burden to the state (and rule of law) than the requirement of good and up-to-date legislation”.⁶⁰

Our Constitution requires the measures intended to promote the realisation of the prohibition of gender-based discrimination included in section 6 of the Constitution of Finland to be effective, since the public authorities have a responsibility to guarantee the observance of basic rights and liberties and human rights (Constitution of Finland, section 22). The prohibitions of discrimination provided for in EU law must also be implemented effectively by the Member States (see, for example, Directive 2006/54/EC, Article 25). In the spring of 2020, the European Commission issued its proposal for a pay transparency directive specifically to ensure the improvement of the implementation and monitoring of equal pay, enshrined as a fundamental right in the EU (COM (2021) 93 final / see above).

Certain options for the development of legal protection related to the Equality Act are assessed below. We first address expanding the right to bring action, which was not included in the mandate of the working party tasked with preparing a partial reform of the Equality Act in 2018. The Ombudsman for Equality’s right to be heard in a trial concerning the application of the Equality Act is also briefly touched on. Finally, we examine the duties of the National Non-Discrimination and Equality Tribunal and developing the Tribunal’s role, along with the issue of also giving persons who suspect discrimination the right to institute proceedings with the Tribunal.

2.5.1 Expanding the right to bring action

An action for compensation under the Equality Act is a typical individual lawsuit brought by an interested party. The individual’s weak position as a claimant and the challenges faced by individuals in bringing action have been referred to above. Furthermore, the matters to which prohibitions of discrimination are applied are frequently collective in nature. The need for legal protection related to the same issue, such as disputes concerning various employee benefits, can apply to a large group of people, making an individual lawsuit an unsuitable way of addressing the discriminatory circumstances in the first place. On the other hand, it can be in the public interest to obtain a court ruling to clarify the interpretation of the law even in discrimination disputes in which the actual case does not involve several potential claimants.

There is a clear need to develop legal protection and the right to bring action in a more collective direction in matters concerning equality so that the actual realisation of legal protection can be ensured. In their study of the functionality of the monitoring provisions laid down in the Equality Act, Anttila and Nousiainen suggested considering the adoption of class actions and giving the Ombudsman for Equality the right to bring action.⁶¹ They point out that this would enable strategic litigation in Finland, that is, bringing test cases to court in matters with significance regarding the interpretation of the law.⁶² In Finland, class actions are only available in consumer cases, in which the Consumer Ombudsman can bring action.⁶³ The Swedish Equality Ombudsman has an independent right to bring action in certain cases.⁶⁴

Expanding the right to bring action in equality disputes was considered fairly soon after the entry into force of the Equality Act. The committee instituted in the autumn of 1991 to examine the need for a reform of the Equality Act found that a class action could be an appropriate instrument, especially in questions of equal pay. The working party proposed that the matter should be examined in connection with a wider legislative

⁶⁰ Koulu, R. (2018).

⁶¹ See Anttila, O. & Nousiainen, K. (2013), p. 92.

⁶² *Ibid.*, pp. 53–55, 91.

⁶³ Act on Class Actions 444/2007.

⁶⁴ Diskrimineringslagen 6 kap. 2 §.

reform of the various branches of justice.⁶⁵ This also happened. During the preparations for class action legislation in the 1990s, the Ministry of Justice took the position that, in matters concerning equality, the adoption of class actions could be considered for issues of equal pay, if at all. The adoption of class actions was ultimately not proposed, however.⁶⁶ The rationale for this negative position is highly open to criticism. The reasoning was that equal pay disputes in general are ultimately individual by nature, and the processing of collective disputes in the labour court procedure was considered to have a significant and sufficient role.⁶⁷

**The adoption of class actions in equality cases should be considered
and the Ombudsman for Equality should be given the right to bring action.
This would enable strategic litigation in matters with
significance to the interpretation of the law.**

The working party tasked with preparing a reorganisation of equality matters in the late 1990s found that it would significantly improve the realisation of equality if the Ombudsman for Equality could submit matters of high theoretical importance to the courts in the Ombudsman's own name.⁶⁸ The Ombudsman for Equality's right to bring action is also mentioned in the mandate of the committee instituted for preparing a reform of the Equality Act in 2000, but the matter was not mentioned in the committee's report.⁶⁹

In the Ombudsman for Equality's opinion, the question of expanding the right to bring action should once again be included in the preparation of a legislative reform of equality matters. The European Commission's proposed directive for increasing pay transparency also gives cause for examining the issue. It proposes giving equality bodies and employee representatives the right to bring action on behalf of several employees subject to their consent.⁷⁰ In principle, the Ombudsman for Equality finds it reasonable to give the Ombudsman for Equality the right to bring action in the Ombudsman's own name in matters involving the application of the Equality Act ('public class actions'). The Ombudsman's right to bring action should not be limited to, for example, matters of equal pay alone, since it is equally necessary in other issues related to equality. Trade unions should also have the right to bring action in equality matters ('union class action'), and the possibility to give other organisations the right of action should be looked into.

In the Ombudsman for Equality's opinion, the reform should not be limited to, for example, still requiring individuals to bring action but giving the Ombudsman for Equality the possibility to pay the counterparty's trial costs imposed on the person being assisted if they lose the case. An expansion of the right to bring action itself is required. For example, in cases considered 'test cases' by the Ombudsman for Equality, the role of claimant belongs to the Ombudsman for Equality rather than the individual suspecting discrimination. Reforming the right to bring action and the necessity of such reform should be assessed as part of a wider investigation of improving legal protection under the Equality Act.

65 Ministry of Social Affairs and Health (1992), pp. 56–57.

66 OLJ 3/1997, p. 28 and 80.

67 On criticism of the rationale, see Nummijärvi, A. (2004), p. 373–375. See also Anttila, O. & - Nousiainen, K. (2013), p. 12.

68 Ministry of Social Affairs and Health (1998), p. 45.

69 Ministry of Social Affairs and Health (2002).

70 Proposal for a Directive COM2021 93 (final) 2021/0050 (COD), Article 13.

2.5.2 Hearing the Ombudsman for Equality in court

According to the mandate of the working party instituted for preparing a partial reform of the Equality Act in 2018, the task of the working party was to draft a proposal for the Ombudsman for Equality's possibility to be heard during a trial. Had it been realised, this amendment would have harmonised the duties of the Ombudsman for Equality and the Non-Discrimination Ombudsman in this regard. The Non-Discrimination Act provides that a court must reserve an opportunity for the Non-Discrimination Ombudsman to be heard insofar as the matter pertains to the application of the Non-Discrimination Act.⁷¹ In the Government Proposal, this provision is justified by stating that the Ombudsman has special expertise in the various manifestations of discrimination.⁷²

The Ombudsman for Equality's right to be heard could be justified similarly. The Ombudsman for Equality thus finds it reasonable that the Ombudsman for Equality would also have the opportunity to be heard in court in matters pertaining to the application of the Equality Act. It should be up to the Ombudsman for Equality to decide whether a hearing is required, and the performance of this duty should be taken into account when deciding on the Ombudsman's resources.

2.5.3 Developing the Tribunal's role and the right of individuals to institute proceedings

2.5.3.1 Expanding the right to institute proceedings

A matter concerning a violation of the prohibitions of discrimination laid down in the Equality Act can be submitted to the National Non-Discrimination and Equality Tribunal by the Ombudsman for Equality or a central labour market organisation. The expansion of this right to institute proceedings with the Tribunal in matters involving gender-based discrimination has been discussed in the 2000s. It has been proposed that the right to institute proceedings should be extended from the central labour market organisations to other labour market organisations, as well as organisations in other sectors, such as student or consumer organisations.⁷³ Granting the right to institute proceedings to other organisations has been considered justified, since the Tribunal's power to process discrimination matters is not limited to employment-related discrimination. The European Union's equality directives also require that organisations representing the victims of discrimination have the opportunity to institute judicial and/or administrative proceedings in the matter.⁷⁴

Since then, granting the right to institute proceedings with the Tribunal to individuals who suspect discrimination has also become an important topic in this debate. This was proposed in, for example Anttila and Nousiainen's report on the functioning of the monitoring provisions in the Equality Act and the 2016 Interim Report to the Government Report on Gender Equality 2010.⁷⁵ The right of individuals to institute proceedings is considered necessary for the harmonisation of legal remedies based on the Equality Act and Non-Discrimination Act.⁷⁶ Those making this argument refer to the Constitutional Law Committee's statement drawing attention to the differences between the Non-Discrimination Act and Equality Act, for example with regard to who has the right to institute proceedings.⁷⁷ According to the Non-Discrimination Act,

71 Non-Discrimination Act (1325/2014), section 27.

72 HE 19/2014, pp. 92–93.

73 Report to the Employment and Equality Committee of Parliament on the functioning of the Act on Equality Between Women and Men, p. 47 and Government Report on Gender Equality 2010, p. 31. Also see the Ombudsman for Equality's Statement TAS 84/2010.

74 See Directive 2006/54/EC, Article 17 and Directive 2004/113/EC, Article 8.

75 Anttila, O. & Nousiainen, K. (2013), p. 91 and Ministry of Social Affairs and Health (2017), s. 11.

76 See e.g. Anttila, O. & Nousiainen, K. (2013), p. 91.

77 PeVL 31/2014 vp.

the person who considers that they have been discriminated against or victimised or, subject to the injured party's consent, the Non-Discrimination Ombudsman or a community promoting equality may bring a matter concerning discrimination or victimisation to be handled by the National Non-Discrimination and Equality Tribunal for measures provided for in section 20, subsection 3 of the Non-Discrimination Act.⁷⁸

Giving the right to institute proceedings to individuals is seen precisely as reinforcing low-threshold legal remedies.⁷⁹ Anttila and Nousiainen state that a discrimination victim's right to bring the matter to the Tribunal would serve as a low-threshold legal remedy for individual victims of discrimination. They nevertheless note that the Tribunal's lack of authority to order the payment of compensation to the victim reduces access to justice.⁸⁰ The National Non-Discrimination and Equality Tribunal is generally referred to as a low-threshold redress body.⁸¹ The justification of this characterisation can be called into question, however, taking into account the Tribunal's current duties and authority.

Bringing a discrimination matter to the Tribunal for a prohibition decision and the prohibition to continue or repeat the discriminatory practice issued by the Tribunal is first and foremost a measure related to supervision of compliance with the law. The Tribunal's current role and authority appear problematic with regard to individuals who suspect discrimination, considering access to justice through low-threshold means. Even though, as stated above, victims of discrimination can at times consider a change in the discriminatory practice to be a sufficient measure, it represents but a fragment of what protection against discrimination should cover. The fact that the Tribunal can order the practice to be changed in future may not be relevant any more to the individual who brought the matter to the Tribunal. The Tribunal cannot order the payment of compensation or damages to the victim of discrimination for the violation of their rights. Rather, the discrimination victim must bring the matter to court to receive these. Individuals can only receive compensation through the Tribunal procedure if they bring a reconciliation agreement including a compensation to the Tribunal for confirmation.

Certain other aspects must also be taken into account when assessing whether the right of individuals to institute proceedings with the current Tribunal would improve their legal protection as a whole. It is often said that the right of individuals to institute proceedings would make the system clearer, because this arrangement is used in discrimination disputes based on the Non-Discrimination Act. This overlooks the fact that the Equality Act provides for a two-tiered supervision system: the Ombudsman for Equality must initially seek to prevent the unlawful practice from being continued or repeated through advice and guidance, and only then can the matter be brought to the Tribunal. Therefore, giving individuals the right to institute proceedings with the Tribunal would create more competent authorities of first instance, which would inevitably complicate the system of remedies.⁸² At minimum, it should be possible to provide those who suspect discrimination with clear information on when and in what matters they should turn to the Ombudsman for Equality and when to the Tribunal.

When assessing the realisation of legal protection, it is also necessary to take into account the fact observed by the Ombudsman for Equality in the course of the Ombudsman's supervision duties that persons who suspect discrimination often need advice and guidance not only on equality legislation, but also on various aspects related to the processing of the matter. In this regard, it would be sensible to direct these people to contact the Ombudsman for Equality rather than the redress body.

78 Non-Discrimination Act, section 21, subsection 2. The measures means that the Tribunal may, in other matters than those pertaining to the authority of the Occupational Safety and Health Authority, forbid the party in question from continuing or repeating the discrimination or victimisation, or order the person to take action within a reasonable time to fulfil the obligations provided for in this Act.

79 Government Report on Gender Equality 2010: Interim Report 2016, p. 11.

80 Anttila, O. & Nousiainen, K. (2013), p. 94.

81 It is characterised thus also in the National Non-Discrimination and Equality Tribunal's statement TyVL 11/2014.

82 On the problems of multiple official routes, see e.g. Aaltonen, M. - Heino, P. Villa, S. (2013), pp. 141–143.



2.5.3.2 Development of a low-threshold redress system

In its statement on the reform of the Non-Discrimination and Equality Acts in 2014, the Constitutional Law Committee pointed out that people who have suffered discrimination should have access to low-threshold redress channels for having the matter cleared up and decisions made on possible compensation without high cost risks and long processing times. The Committee considered it important to examine possibilities for processing claims for compensation in the National Non-Discrimination and Equality Tribunal as the court of first instance.⁸³ Giving the Tribunal the authority to order the payment of compensations has been proposed in various connections.⁸⁴ With regard to the Non-Discrimination Act, this is currently being examined by a working party instituted by the Ministry of Justice for a partial reform of the Non-Discrimination Act.⁸⁵

There is also an evident need to improve access to compensation under the Equality Act and potential damages in matters concerning gender-based discrimination, and to examine the availability of low-threshold legal remedies. The right of individuals to institute proceedings with the Tribunal should be examined as part of a wider assessment of the current system instead of as a separate question. Extending the right to institute proceedings to individuals would be more justified if the Tribunal's duties and authority were extended and the Tribunal developed from a body focusing on supervising compliance with the Equality Act into a genuinely low-threshold redress body.

If the Tribunal were to be developed in this direction, it would be necessary to define the division of authority between the National Non-Discrimination and Equality Tribunal and the courts. The Employment and Equality Committee of Parliament has stated that giving the Tribunal the authority to order the payment of compensation would require a comprehensive reassessment of the Tribunal's composition, the legal status of its members and the rules of procedure of the Tribunal.⁸⁶ It would also require the resolution of a number of other questions, such as competence with regard to the damages occasionally imposed in discrimination cases and the future appellate authority for the Tribunal's decisions. Use of the Tribunal's services could increase the need for legal aid, which would raise the question of service costs.

In the opinion of the Ombudsman for Equality, an extensive study is required of improving access to justice in matters involving gender-based discrimination. A comprehensive review should be conducted to determine the best way of implementing improvements in legal protection. Firstly, extending the right to bring action in civil cases based on the Equality Act should be examined, especially granting an independent right to bring action to the Ombudsman for Equality. The possibility of developing the National Non-Discrimination and Equality Tribunal into an actual low-threshold redress body and a possible extension of the Tribunal's authority to include ordering the payment of compensation should also be looked into.

An extensive study of the options for improving access to justice in matters involving gender-based discrimination is required. It should determine:

- the possibility to grant the Ombudsman for Equality an independent right to bring action in discrimination disputes based on the Equality Act; and
- the possibility of developing the National Non-Discrimination and Equality Tribunal into a low-threshold redress body that could order the payment of compensation.

83 PeVL 31/2014 vp.

84 This has been proposed by, e.g. the Non-Discrimination Ombudsman, see the Non-Discrimination Ombudsman's Report to Parliament 2018, K 6/2018, as well as the European Commission against Racism and Intolerance (ECRI), see the recommendation in the ECRI Report on Finland 2019, recommendation 21. Also see Nieminen, K. – Jauhola, L. – Lepola, O. – Rantala, K. – Karinen, R. – Luukkonen, T. (2020), p. 20.

85 Institution decision of 4 June 2021, VN/3528/2021-OM-3.

86 TyVM 11/2014.

2.6. OTHER ASPECTS RELATED TO SUPERVISION OF COMPLIANCE WITH THE LAW AND IMPROVING ACCESS TO JUSTICE

2.6.1 Resources are needed for the work

There are ten positions in the Office of the Ombudsman for Equality, six of which are referendary positions. The Ombudsman for Equality's appropriation is approximately one million euro (970,000 euro for 2021). The main task of the Ombudsman for Equality is monitoring compliance with the Equality Act, especially with its prohibitions of discrimination. In addition, the Ombudsman for Equality supervises compliance with the equality planning obligations of, for example workplaces and educational institutions and with the quota provision. Roughly 8,000 workplaces and over 3,000 educational institutions are obliged to draw up an Equality Plan. In addition to these supervision duties, the Ombudsman for Equality is tasked with, for example promoting the achievement of the objectives of the Equality Act and providing information on equality legislation and its application.

The legislative materials drawn up during the drafting of the Equality Act laid out how the Ombudsman for Equality's resources should be allocated. Supervision of compliance with the prohibitions of discrimination provided for in the Equality Act was specified as the Ombudsman for Equality's main duty, whereas the Ombudsman shall supervise the obligations to promote equality "within the resources available".⁸⁷ The seriously inadequate resources currently at the disposal of the Ombudsman for Equality are the most significant factor affecting the Ombudsman for Equality's possibilities for supervising the equality planning obligations laid down in the Equality Act and taking other measures to promote equality. However, the shortage of resources is reflected in all of the Ombudsman's duties, including the supervision of compliance with the prohibitions of discrimination and the prevention of discrimination. This shortage is also apparent in the efficiency and extent to which the Ombudsman for Equality is actually able to exercise all of the Ombudsman's authority available in discrimination matters, as well as the Ombudsman's ability to monitor and develop the impact of the Ombudsman's activities.

Overlooking the fact that new duties require resources for carrying them out has been a particular problem with the far-reaching reforms of the Equality Act. For years, the Ombudsman for Equality has drawn the attention of ministries and Parliament to the disparity between the Ombudsman for Equality's constantly increasing duties and the resources available to the Ombudsman. Parliament did require additional appropriations to be allocated to the Ombudsman for Equality in 2011 for hiring additional personnel for the management of supervision and guidance related to the obligations to promote equality laid down in the Equality Act.⁸⁸ Regardless of this, the Ombudsman for Equality's motions for obtaining more personnel have not borne fruit, apart from a promise to allocate one extra position to the Ombudsman for Equality in 2022. The gap between the Ombudsman's statutory duties and resources will nevertheless remain significant. New obligations are also being planned, the supervision of which would fall on the Ombudsman for Equality, such as the extension of the equality planning obligation to early childhood education.⁸⁹ Should the Ombudsman for Equality be given the right to bring action in the courts in the Ombudsman's own name, as presented in this report as one option for improving access to justice, the Ombudsman's resources must be increased to permit the exercise of this authority in actuality.

⁸⁷ HE 57/1987, p. 30.

⁸⁸ Parliamentary Communication 51/2010 vp.

⁸⁹ See section 6.4 of this report.

2.6.2 Secrecy of the identity of persons contacting the Ombudsman for Equality

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces provides for the secrecy of the personal data of persons making a report. According to the Act, when occupational safety and health authorities have received a notice of a suspected breach of provisions to be enforced by them, the informant's identity and the fact that the enforcement action is taken due to a complaint shall be concealed. The informant's identity may, however, be revealed if it is necessary for enforcement purposes and the informant has consented to it. (Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces, chapter 2, section 10. The informant's information may be given to the prosecution and police authorities without the informant's approval if required to solve an offence.)

Corresponding provisions should be enacted for the supervision of compliance with the Equality Act. Under-reporting due to fear of countermeasures is one of the problems related to addressing discrimination and supervising compliance with the law. The adoption of a provision such as the one contained in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces would probably have at least some impact on this.

It is evident that the contacting person's identity will be revealed to the party responsible for compliance with the prohibitions of discrimination when the matter is examined as discrimination against one or more specific individuals. However, examining a matter and assessing whether a conduct, practice or regulation is discriminatory does not always require examining the matter in connection with a specific named individual. General practices can be assessed from the perspective of the prohibitions of discrimination laid down in the Equality Act without examining their application to specific individuals. An example of this could be the assessment of a performance-based remuneration scheme, unless an individual requests a review of the scheme specifically with regard to them.

Even though the Ombudsman for Equality can proceed with such cases on its own initiative, the customer's contact with the Ombudsman is assessed on the basis of the Act on the Openness of Government Activities. This fact alone can prevent people from contacting the Ombudsman for Equality. Protecting the contacting person's data could also be significant with regard to supervising compliance with the equality planning obligation. Individuals contacting the Ombudsman may be concerned that their employer or educational institution could hear about their report on, for example the lack of an equality plan.

2.7 RECOMMENDATIONS

- ▶ Authority with regard to intersectional discrimination: The current categorical exclusion of gender-related intersectional discrimination from the Ombudsman for Equality's powers should be reviewed and reassessed.
- ▶ The scope of compensations under the Equality Act should be extended to also cover the following discriminatory situations: discrimination in the exercise of official authority, discrimination preceding the recruitment decision, and discriminatory practices by the purchasers of leased work that have an impact on the continuation of the employee's employment.
- ▶ An extensive study of the options for improving access to justice in matters involving gender-based discrimination is required. It should determine:
 - ▶ the possibility to grant the Ombudsman for Equality an independent right to bring action in discrimination disputes based on the Equality Act; and
 - ▶ the possibility of developing the National Non-Discrimination and Equality Tribunal into a low-threshold redress body that could order the payment of compensation.



EQUALITY IN WORKING LIFE



3.1 LASTING ISSUES AND NEW CHALLENGES

The Ombudsman for Equality last issued a report to Parliament in December 2018. The three years after the report's publication have been dominated by the coronavirus pandemic, the measures taken to manage the pandemic, and the results of these measures. The effects of the pandemic on working life have been profound. However, the coronavirus crisis has been notably absent from the employment-related reports made to the Ombudsman for Equality, appearing mostly as a background factor for lay-offs.

The mostly female service sector and younger age brackets have been hit hardest by the pandemic's employment effects.⁹⁰ The epidemic has taxed the endurance of employees, especially in many female-dominated nursing professions. On the other hand, it has highlighted the value and significance of predominantly female nursing work.⁹¹

A project led by the Finnish Institute for Health and Welfare (THL), launched soon after the onset of the coronavirus emergency, is studying the effects of the crisis on the status of women and men, including their working conditions and labour market status.⁹² It is extremely important to take the emergency's employment-related gender impact comprehensively into account and to invest in equality-promoting measures in the decisions made at different levels of government about the aftercare of the coronavirus crisis.

It is vital to take into account the gender impact of the crisis on working life and to invest in equality measures in the aftercare of the coronavirus crisis.

⁹⁰ Sutela, H. (2021).

⁹¹ Kantola, J. – Koskinen-Sandberg, P. – Ylöstalo, H. (2020).

⁹² For more information on the project, see e.g. <https://thl.fi/en/web/thlfi-en/research-and-development/research-and-projects/the-impact-of-the-covid-19-crisis-on-gender-equality-in-finland>.

The Ombudsman for Equality's previous report to Parliament and the article written by equality researchers, published as an appendix to the report, contain a more general discussion of the status of women and men in the labour market and the gender divisions and gender impact related to different uses of labour.⁹³ This report features a more specific discussion of certain persistent issues related to equality in working life and some topics currently relevant for the promotion of equality.

It is essential both for individuals and society as a whole that discriminatory factors do not prevent employment. Anonymous job applications would be one method of reducing discrimination in recruitment. This report discusses anonymous job applications from the perspectives of the Act on Equality between Women and Men (Equality Act) and its prohibition of gender-based discrimination.

Since child care remains highly gendered in Finland, the ability to reconcile work with private life has a particular impact on the possibilities of women to find gainful employment. The opportunities for reconciling work and family life are determined by the family leave system and the availability of day care and afternoon care for young schoolchildren. Since the Ombudsman for Equality's previous report to Parliament in 2018, the subjective right to day care was restored to all children at the beginning of August 2020. This was extremely important for equality between the genders.⁹⁴

Issues that need to be addressed in day care going forward include the sufficient availability of flexible day-care and development of afternoon care for young schoolchildren. This is especially relevant for the quality of life and employment of single parents and one-parent families and, by extension, equality between the genders. The majority of single parents and custodians of one-parent families are women, and the shortcomings in flexible day care and afternoon care are hindering their ability to participate in working life.⁹⁵

The availability of flexible day care and afternoon care would promote employment among women, single parents in particular.

In the area of family leave, the Government concluded a long reform process with a Government Proposal for a new family leave system 8 December 2021.⁹⁶ The amendments will also implement European Union Directive 2019/1158 on work-life balance.⁹⁷ Entirely new legislation was also proposed for carers' leave in situations such as a family member's need for urgent assistance.⁹⁸ This section of the report discusses and assesses the proposal especially with regard to child care leave.

93 K 22/2018 pp. 35–47 and Implementation of gender equality policy in Finland in the 2010s (K 22/2018, Appendix 3).

94 On this subject, see for example K 22/2018, pp. 27–28.

95 Analysis by the Trade Union for the Public and Welfare Sectors JHL (2021) and Zad, Y. (2021).

96 HE 129/2021 vp.

97 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

98 HE 129/2021 vp., p. 155.

Improving the family leave system is not in itself sufficient to promote equality between the genders. Eliminating discrimination based on pregnancy and the use of family leave is also required. Discrimination based on pregnancy and family leave, is a ubiquitous, significant and enduring issue in working life. Year to year, it is the most common employment-related cause for contacting the Ombudsman for Equality. This report discusses the prevalence of discrimination based on pregnancy and family leave and presents the Ombudsman for Equality's suggestions for measures to reduce this form of discrimination.

Equal pay is another recurring theme in the promotion of equality. This report reminds the reader that giving the same pay not only for the same work, but also for work of equal value, is a fundamental aspect of the equal pay principle. It is important to keep this in mind when making payroll decisions, whether by employers or the parties to collective agreements, as well as in the application of the Equality Act in various contexts.

Increasing pay transparency is vital for promoting equal pay. The issue has been discussed both in Finland and at the level of the European Union of late, and has now progressed from talks and studies to concrete legislative proposals. On 4 March 2021, the European Commission issued a proposal for a new directive increasing pay transparency.⁹⁹ It focuses on two key components of equal pay, namely improving pay transparency for both employees and employers and providing victims of pay discrimination with better access to justice.

In Finland, a tripartite working group instituted to address pay transparency has issued its proposal for the provisions to be introduced to the Equality Act in order to promote pay transparency.¹⁰⁰ The proposals include not only the employee's right to obtain information on the pay of peers in connection with suspected pay discrimination, but also disclosing pay information to employee representatives in connection with pay surveys. In this report, increasing pay transparency is discussed both in terms of detecting and intervening in pay discrimination and with regard to the implementation of pay surveys. Equality planning, of which pay surveys are a part, is also discussed in general terms.

In addition to improving the family leave system, efforts are needed to eliminate discrimination based on pregnancy and family leave.

Increasing pay transparency would be crucial for detecting and intervening in pay discrimination.

⁹⁹ European Commission (2021).

¹⁰⁰ Ministry of Social Affairs and Health (2021).

MACCHIATO
CAPPUCCINO
LATTE
COCOA
CHOCOLATE
ASK FOR SELECTIONS)
LATTE
FRUIT SODA
TEA
COFFEE

4,70€
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3,40€
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4,00€
5,00€
4,00€

KASVIMATO LISA



3.2 DISCRIMINATION IN RECRUITMENT

3.2.1 Reports made to the Ombudsman for Equality

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. Treating an applicant differently in recruitment due to pregnancy or family leave is also gender-based discrimination. The Equality Act aims to prevent the unjustified selection of employees on the basis of gender by passing over a candidate with greater merits.

Recruitment discrimination has been one of the most common causes for contacting Ombudsman for Equality throughout the office's history. Both women and men have reported experiences of recruitment discrimination. In 2019 and 2020, for example, half or more of those contacting the Ombudsman for Equality due to suspected recruitment discrimination were men. Only a few reports of recruitment discrimination have been made to the Ombudsman for Equality by members of gender minorities. They have a high threshold for contacting the authorities.

**Both women and men experience discrimination in recruitment.
In recent years, roughly 50% or more of those suspecting
recruitment discrimination have been men.**

3.2.2 Prevention of recruitment discrimination

Anti-discrimination legislation is not in itself sufficient to eliminate recruitment discrimination from the labour market. Policy measures and changes to recruitment practices are also needed.

Various measures have been attempted to prevent discrimination. The results of studies on these measures have been assessed in a survey of recruitment discrimination and the means to combat it, commissioned by the Government.¹⁰¹ Anti-discrimination measures include influencing the attitudes of recruiters, the use of technology in the recruitment situation, use of an anonymous recruitment process, and the employer's encouragement of applicants. According to the above-mentioned survey, no single tool that would clearly and systematically reduce recruitment discrimination in all circumstances is identified in the studies. Based on current knowledge, there is an evident gap between the extent of recruitment discrimination and the functional tools available for its prevention. Designing effective policies against recruitment discrimination requires well-framed research into potential preventive measures.

Anonymous applications are the most widely researched individual measure, but results vary significantly between studies. Some studies have shown promising results, others even negative ones.

3.2.3 Anonymous job applications and gender equality

In an anonymous recruitment process, candidates are selected for interviews on the basis of application documents from which the applicant's background information, such as name, age and gender, have been redacted. Photographs are not included with anonymous job applications. In other words, candidates are selected for interview based on the information provided on their experience and competencies. An anonymous recruitment process can be an effective means of preventing gender-based discrimination as well.

101 Kanninen, O. & Virkola, T. (2021).

According to the Diversity Barometer published by the Finnish Institute of Occupational Health in 2020, 12 % of HR professionals reported that anonymous recruitment had been employed or piloted in some form at their workplace.¹⁰²

Many Finnish industries and professions are highly gendered. The recruitment staff's prejudices and stereotypes concerning the suitability of applicants of a certain gender for a specific industry or position can influence the recruitment procedure. Women and men can also suffer discrimination in recruitment based on other characteristics, such as origin or age. Gender in combination with origin or age can compound the risk of discrimination. Researcher Akhlaq Ahmad sent 5,000 job applications to determine how the applicant's name affects success in job-seeking. Women of Finnish background were received best as job applicants, while men of Somali background fared the worst.¹⁰³ According to a member survey conducted by Akava Works in 2020, women over 55 years of age experience age discrimination at work more often than men.¹⁰⁴

Gender minorities can have a particularly unfavourable position on the labour market. For example, a contradiction between the applicant's first name and legal gender can expose them to discrimination in the selection of candidates for interviews. According to the research report on sexual and gender minorities' experiences of discrimination and harassment published by the European Union Agency for Fundamental Rights FRA¹⁰⁵, 6 % of Finnish respondents said that they had experienced discrimination in recruitment in the last 12 months. However, trans people had encountered significantly more discrimination when looking for work, with 21 % reporting experiences of discrimination.¹⁰⁶

Anonymous recruitment can provide more even access to job interviews for various groups of people. This is important, although not in itself a guarantee of non-discrimination. However, the problem with anonymous recruitment is that it hinders the use of positive discrimination to improve the status of disadvantaged groups.

With regard to the promotion of gender equality, it is important for employers to keep collecting and monitoring data on the genders of both applicants and those selected for the positions even when anonymous recruitment is used. The provisions of sections 6, 6a and 6b of the Equality Act on the employer's duty to promote gender equality between women and men. In order to promote equality, the employer must assess the gender situation at the workplace, for example with regard to recruitment. It is thus important to keep track of the numbers of applicants and recruited persons by gender. The employer can then design measures to promote equality on the basis of this data.

In addition, section 6c of the Equality Act obliges employers to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation imposed by section 6c of the Equality Act shall be taken into account in the preparation of the employer's gender equality plans and when deciding on measures to improve equality. According to the Government Proposal on the Equality Act (HE 19/2014), the privacy of gender minorities shall nevertheless be respected, and promoting equality does not mean investigating the gender identities or gender expression of people.

Information on applicants' genders is also required for the comparisons on the merits between applicants of different genders. Compliance with the prohibition of discrimination laid down in section 8, subsection 1, paragraph 1 of the Equality Act requires comparing merits if the applicants include both men and women.

102 Bergbom, B. – Toivanen, M. – Väänänen, A. (2020).

103 Ahmed, A. (2019).

104 Akava Works (2020).

105 FRA (2020).

106 Ministry of Justice (2021d).

When collecting gender-related data at the workplace, the employer must bear in mind that legal gender, for which there are currently two choices, female and male, is public information. On the other hand, information on an applicant's gender identity or gender expression falls under the protection of privacy, and the employer does not have the right to inquire about them, for example on job application forms or otherwise in connection with recruitment. In the Ombudsman for Equality's view, it could be good practice to inform applicants that, in the collection of gender data, gender refers to the person's legal gender, but the employer encourages persons with various gender identities to apply for the position.¹⁰⁷

Ways of taking into account the provisions of the Equality Act on promoting equality between women and men and the comparisons of the merits between female and male applicants required by the prohibition of discrimination in connection with anonymous recruitment should be examined.

3.2.5. Extending compensations to the application procedure preceding the selection decision

Discrimination is prohibited in all phases of recruitment, but victims of discrimination are only entitled to compensation under section 8 of the Equality Act for a discriminatory final selection decision. In other words, compensation cannot be claimed for practices preceding the selection decision, such as selection for interviews and aptitude tests. These are only subject to section 7 of the Equality Act (general prohibition of discrimination), which is not a basis for claiming compensation. The Equality Act differs from the Non-Discrimination Act in this regard. Limiting the right to compensation to the selection decision alone may also be in conflict with the EU's Equality Directive 2006/54/EC.

An increased emphasis on the assessment of applicants' personal characteristics and aptitude is a recent trend in recruitment. In practice, being excluded from the interview decides whether an applicant has the opportunity to display their aptitude and be selected for the position. Selection for interviews is thus a key part of the recruitment process.

Extending the right to compensation to cover the phases preceding the selection decision would improve the legal protection of applicants and prevent discrimination. The Ombudsman for Equality considers the implementation of this amendment to be necessary.¹⁰⁸

The right to compensations shall be extended to discrimination during the recruitment process preceding the selection decision.

3.3 FAMILY LEAVE

3.3.1 Family leave affects equality in working life

The use of family leave is strongly divided by gender in Finland, which has a major impact on the realisation of gender equality in working life. Family leave affects the employment of women in particular.

The use of family leave hinders the wage development of women. The degree and duration of the impact on the mother's pay depends on the length of the family leave. Family leave has no impact on the wage development of fathers, because they typically only take very short periods of family leave.¹⁰⁹

Family leave also affects the employee's pension accrual and amount. On average, the pensions of women are approximately one fifth lower than those of men.¹¹⁰

107 TAS 145/2019. Statement of the Ombudsman for Equality.

108 K 22/2018 vp, p. 44; TAS 84/2010. Statement of the Ombudsman for Equality.

109 Lilja, R. – Asplund, R. – Kauppinen, K. (2007), pp. 57–67; K 22/2018 vp, p. 26.

110 Kuivalainen, S. – Järnefelt, N. – Kuitto, K. – Ritola, S. (2019).

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

Parliament approved the government's proposal (HE 129/2021 vp.) as family freedom reform on 8 December 2021. The family leave reform enters into force on 1 August 2022.

It proposes the removal of current parental allowances, namely the provisions on maternal, paternal and parental allowances. These will be replaced by a pregnancy allowance and parental allowance. The purpose of the pregnancy allowance is to safeguard the pregnant person's income during the final stages of pregnancy. A parental allowance will be paid for the duration of child care, with roughly equal conditions for all parents regardless of gender.¹¹¹

As a rule, parental allowance will be paid for 320 working days. Each of the child's parents will be entitled to half of the parental allowance days. Pregnant person's covered by Finnish social insurance will be paid a pregnancy allowance for 40 working days before the start of the parental allowance entitlement.

The purpose of the family leave reform is to reinforce the notion of equal parenthood.¹¹² The Ombudsman for Equality shares the opinion that a more even distribution of family leave and care responsibilities between parents, and men and women in general, would promote equality and the well-being of families.

According to a report published by the Nordic Council of Ministers, paternal leave is the most effective way of having men stay home longer with their children. When more weeks of leave are earmarked for fathers alone, fathers will also use more of them.¹¹³ Earlier studies have also arrived at similar results.¹¹⁴

The family leave reform's objectives of a more equal distribution of care responsibilities between parents are commendable. The effects of the reform on gender equality in working life and the financial status of parents appear to have received little attention in the law-drafting process. In particular, the Ombudsman for Equality's statement on the family leave reform (TAS/109/2021) drew attention to the effects of the reform on the status of mothers. The Ombudsman for Equality will also focus on these effects in this report, because it appears that the reform may have detrimental effects on equality and the status of mothers.

3.3.3 Gender-neutral language does not recognise the need for protection during pregnancy and maternity

The family leave reform seeks to place different kinds of families on an equal footing. For this reason, the reform uses gender-neutral language and mostly speaks of 'parents'. This premise, justified in itself, nevertheless means that the mother's status and physiological condition during pregnancy, postnatal recovery and nursing is largely neglected. At the same time, the proposal has not been aligned with the international treaties concerning protection during pregnancy and maternity and the obligations imposed by these treaties.

The family leave reform hardly considers the status of the mother from the perspectives of pregnancy and postnatal recovery.

111 HE 129/2021, p. 59.

112 HE 129/2021 vp, p. 58.

113 Cederstöm, C. (2019), p. 46.

114 E.g. Salmi, J. & Närvi, J. (2017), pp. 8–31; K 22/2018 vp, p. 31.

The family leave reform will reduce the current maternity allowance, paid for 105 working days, to a pregnancy allowance paid for 40 working days. In the current system, mothers can begin their maternity leave 30-50 working days before the due date, the pregnancy allowance period will begin no earlier than 30 working days and no later than 14 working days before the expected date of delivery. According to the reform, the pregnancy allowance will be followed by a parental allowance, of which the mother and father will be entitled to half, although the proposal would always grant mothers the right to a minimum continuous period of 105 days of pregnancy and parental allowance.

From the perspective of maternity protection, the amendment is lacking in terms of postnatal recovery and nursing. In many cases, it would leave the mother with very little time to recover from childbirth and would not provide any security to the mother during her recovery in some cases. Even though Finland has not ratified the ILO's Maternity Protection Convention No. 183, it should be noted that it provides for a compulsory leave of at least six weeks after childbirth.¹¹⁵ The Maternity Protection Convention also provides for nursing breaks, the introduction of which should be examined in more detail in Finland too, if parents will begin sharing their parental leave more equally.¹¹⁶ The Ombudsman for Equality has also proposed extending the pregnancy allowance period to cover postnatal recovery, but this was not deemed necessary.¹¹⁷

3.3.4 Future of paid maternity leave in collective agreements in doubt

The family leave reform will create a need to change the paid maternity and paternity leave agreed on in collective agreements. In these agreements, pay for family leave is often linked to the maternity and paternity allowance periods defined in the Health Insurance Act. For example, many agreements specify either three months or 72 working days as the duration of paid maternity leave. The length of paid paternity leave varies from 3 to 22 working days, but is most often six working days.

The traditional view is that the difference between paid maternity and paternity leave does not constitute discrimination as referred to in the Equality Act, since the purpose for granting maternity leave and paternity leave are different, and women on paid maternity leave are thus not comparable to men on paid paternity leave. Women could receive pay for the duration of pregnancy leave in the future as well, but mothers and fathers should receive pay for an equal part of the parental allowance period so that the practice would not constitute discrimination prohibited by the Equality Act. This is because mothers and fathers have an equal right to parental leave.

Therefore, the parties to collective agreements should agree on procedures in which mothers and fathers receive pay for an equal number of parental allowance days. If only the mother or father would be paid for parental allowance days, or mothers and fathers would be paid for a different period of time, the practice would constitute discrimination as referred to in the Equality Act. The Constitutional Law Committee has also established this principle, for example in its Statement 38/2006 vp.

115 Neither has Finland ratified the section of the European Social Charter requiring a maternity leave of at least six weeks after delivery.

116 Kytölä, M. & Niemi, J. (2021).

117 HE 129/2021 vp, p. 111.

In the opinion of the Ombudsman for Equality, 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 significantly shortened.¹¹⁸ If this should happen, the financial position of working mothers would deteriorate compared to their current one, and the change would be extremely dramatic. This would not be compensated by the increased daily allowance paid for the pregnancy allowance period and parental leave. 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.¹¹⁹

Increasing the use of family leave by fathers is a very positive and commendable goal, but one that should be achieved through other means than legislative adjustments that would have a negative effect on women's pay.

The effects of the family leave reform on paid family leave in collective agreements and the financial status of women and men shall be monitored.

3.3.5 Gender impact assessments are often forgotten

The assessment of gender impact is an important part of the promotion of equality in legislative drafting. It means, among other things, determining whether the proposal will have an impact on the equality of men and women in working life or financial status, or on their parenthood and possibilities for aligning work with family life.¹²⁰ The unequal distribution of family leave and ostensible gender-neutrality of social benefits have been cited as specific examples requiring those responsible for law-drafting to assess the impact on women and men from financial, employment and parenting perspectives.¹²¹

As indicated by the above-mentioned effects of the family leave reform, the assessment of gender impact is often lacking in government proposals. The Ombudsman for Equality has frequently pointed out to law-drafters that the impact of pregnancy and family leave has been forgotten in the gender impact assessment. Some examples are provided below.

3.3.6 Determination of parental allowances during family leave

When the determination basis of parental allowances under the Health Insurance Act was changed to insured annual income in the beginning of 2020, the government stated that the daily allowances will be determined in a gender-neutral manner.¹²² Even though pregnancy and family leave have an essential connection to gender, the law-drafters did not pay enough attention to the fact that the grounds for determining parental allowances apply differently to women and men, and their actual impact is thus different for them.

The practical impact of the change in the basis for determining parental allowances on the financial status of women has begun to show. The Ombudsman for Equality has also been contacted in this regard. The status of women in fixed-term employment or working as freelancers has deteriorated, as has that of women who experience health issues during pregnancy.

The change has also been evident in positions and sectors in which shift bonuses or various compensations for inconvenience determine a significant portion of the pay. Because women are not as able to work shifts, nights and weekends during pregnancy, women and men are actually in a different position with regard to

118 By 15 March 2022 at least in the collective agreements of the state and the church, the paid family leave is agreed to be 72 weekdays for the birthing parent is 72 weekdays and 18 weekdays for the other parent.

119 Statistics Finland, Index of wage and salary earnings 2019.

120 Ministry of Social Affairs and Health (2016), p. 38.

121 Ministry of Social Affairs and Health (2007), p. 9.

122 HE 296/2018 vp., p. 19.

the determination of parental allowances. The compensation a man working in the same field and position receives for parental leave can be considerably better than a woman's, because the previous taxation period is no longer taken into account in determining the allowance, and there is no compensation for the loss of income due to the reduced ability to work during pregnancy.

In the Ombudsman for Equality's opinion, it would be important to find out how the regulations of the Health Insurance Act could better take into account the fact that pregnancy and family leave reduce the income and employment opportunities of women in particular. One potential option is that a woman could choose either the income of the 12 months preceding pregnancy or the 12 months preceding family leave as the grounds for payment. The Ombudsman for Equality has notified the Ministry of Social Affairs and Health of this matter.¹²³ The Government Proposal for the family leave reform notes that parental allowance, sickness allowance and special care allowance are subject to the same regulations, and it was not possible to prepare changes to the grounds for determining them in connection with the reform.¹²⁴

An amendment of the Health Insurance Act should be considered, to the effect that the pregnant person could choose either the income of the 12 months preceding pregnancy or the 12 months preceding family leave as the grounds for payment of parental allowance.

3.3.7 Family leave also has an impact on mothers' annual holiday accrual

The Annual Holidays Act was amended in 2016 so that, for example only a maximum of 156 days of maternal, paternal or parental leave is counted employment instead of the full period.¹²⁵ In other words, a mother using the maternal leave afforded to her accumulates considerably less annual holiday for her maternal leave than a father using the full allowance of paternal leave. The Ombudsman for Equality issued a statement to the Employment and Equality Committee¹²⁶ in connection with the parliamentary review of the matter. According to the statement, the amendment will put women in a less favourable position than men directly based on gender. In the opinion of the Ombudsman, the proposal contradicts the equality provision of section 6 of the Constitution of Finland.

The Constitutional Law Committee found the impact of the amendment to the Annual Holidays Act to be difficult to reconcile with the prohibition of discrimination and the constitutional mandate concerning equality between the genders.¹²⁷ At the time, the Constitutional Law Committee took the position that this difficulty was alleviated by the fact that the families themselves decide on the use of family leave. The Committee nevertheless found that reductions of parental leave that mostly affect mothers would hinder efforts to achieve equal pay and accordingly proposed amending the Act in a manner that would have a more equal actual impact on women and men.

According to the family leave reform, at most 160 days of pregnancy and parental leave would be considered equivalent to employment for mothers, while a maximum of 160 days of parental leave would be considered equivalent to employment for other parents caring for the child. Mothers would still earn less annual holidays for the duration of parental leave than the child's father or other parents, which puts mothers in a less favourable position in comparison to other parents based on their gender.

123 TAS 324/2020.

124 HE 129/2021 vp., p. 113.

125 HE 145/2015 vp.

126 TAS 57/2016.

127 PeVL 4/2016 vp.





According to a judgment of the European Court of Justice (C342/01), an employee shall have the right to use their annual holidays separately from their maternal leave. As stated in the judgment, provisions for the protection of pregnancy and maternity may not lead to unfavourable treatment of women in the terms of employment. However, the family leave reform puts mothers in a less favourable position than other parents, also with regard to the regulations on granting annual holidays. According to the proposal, an employer could not order an employee caring for a child to use their annual holidays during the first 105 days of parental leave, while the same prohibition would apply to mothers for the 105 first days of pregnancy leave and parental leave.

The Annual Holidays Act should be amended so that the pregnancy allowance period and parental allowance period would not be considered equal for the purposes of earning and granting annual holidays, but mothers would be credited with the same number of parental allowance days counted as working days as other parents. Neither shall pregnancy allowance and parental allowance periods be considered equal in terms of granting annual holidays.

3.3.8 The qualifying period for labour market subsidy should not be reset after family leave

The use of family leave has a negative impact on a person's right to labour market subsidy when the qualifying period is reset.

In a case examined by the Ombudsman for Equality, a woman had received labour market subsidy after the statutory 21-week qualifying period. She had taken family leave and registered as unemployed after that, upon which another 21-week qualifying period had been imposed on her.

According to chapter 7, section 2 of the Unemployment security act (Työttömyysturvalaki 1290/2002), labour market subsidy will be paid after a 21-week qualifying period. The qualifying period can be imposed several times for the same individual if they lack the required education. If a person has not been registered as an unemployed job-seeker after their family leave, their qualifying period will be reimposed. If the absence from the labour market has been due to the exercise of family leave rights, reimposing the qualifying period is an unexpected and unreasonable sanction that causes financial hardship. It is not appropriate for people on family leave to register themselves as unemployed job-seekers when they are caring for a child on family leave as is their right. They cannot be available to the labour market in actuality during their family leave. The Ombudsman for Equality submitted the statement to the Ministry of Social Affairs and Health for information and as a basis for possible measures in 2017.¹²⁸ The Ombudsman for Equality has also drawn attention to this fact in the Ombudsman's previous report to Parliament in 2018. The issue has not been rectified, however.

The qualifying period must not be reimposed on recipients of labour market subsidy if the reason for their absence from the labour market has been family leave.

3.4 DISCRIMINATION ON THE BASIS OF PREGNANCY OR PARENTAL LEAVE

3.4.1. Pregnancy and family leave discrimination in the Ombudsman for Equality's work

The Equality Act prohibits different treatment on the basis of pregnancy, childbirth, parenthood or family responsibilities. Regardless of this, discrimination based on pregnancy and the use of family leave has continued for decades and is still a major issue in working life.

128 TAS 438/2017.

Pregnancy and family leave discrimination is the category of cases in which the most suspected cases of discrimination are reported to the Ombudsman for Equality. Discrimination based on pregnancy and family leave occurs in all sectors. It has a variety of negative effects on the status of women in particular, but men also face family leave discrimination.

In practice, discrimination based on pregnancy and family leave can take the form of limiting the duration and extension of fixed-term employment contracts or problems in returning to work after family leave. It also occurs in recruitment, as cancellations of employment during the trial period and terminations, as well as in pay and other terms of employment. For example, performance bonus schemes have contained conditions that put employees in an unequal position based on family leave.

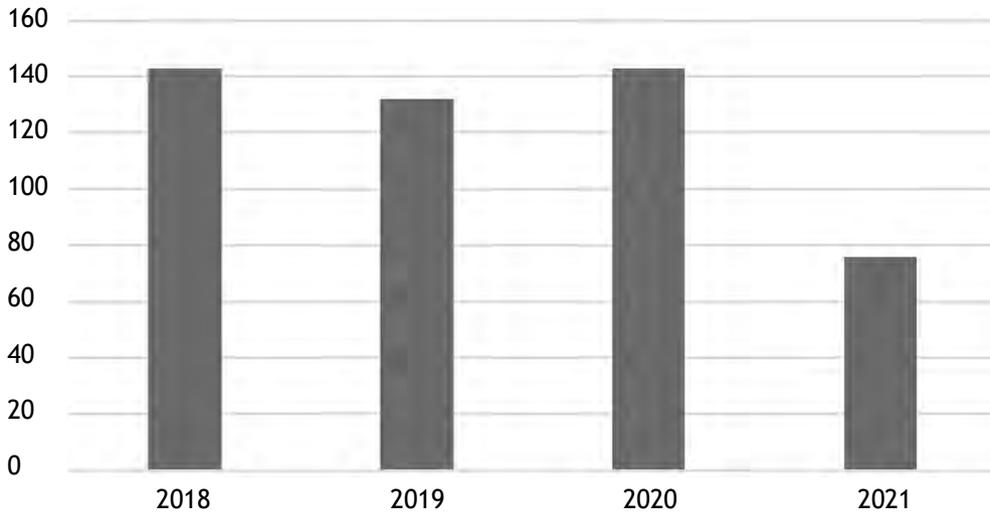


Figure 1. Ombudsman for Equality contacted in writing or by telephone about pregnancy and family leave discrimination in 2018–2021.

Pregnancy and family leave discrimination has a particular impact on the status of women at work, but men also encounter family leave discrimination.

3.4.2 Pregnancy and family leave discrimination also concerns trade unions and associations

Trade unions are also contacted about discrimination based on pregnancy or family leave. For example, Service Union United PAM is contacted roughly a thousand times each year regarding pregnancy discrimination. Women in uncertain labour market situations, such as fixed-term or part-time employees, agency contract workers or those working on zero-hour contracts are at particular risk of being discriminated against on the basis of pregnancy or family leave. As ways of working change (for example work commissioned through the platform economy), legislation must be kept up to date in order to ensure that it does not enable circumventing the prohibition of discrimination based on pregnancy or parenthood.¹²⁹

129 PAM (2019a) and PAM (2019b).

The Mothers in Business MiB association is a network of career-oriented mothers that asked its members in 2019 whether they had encountered discrimination based on their family situation. More than 20 per cent reported experiences of discrimination. Based on their replies, discrimination based on pregnancy is one of the principal forms of discrimination. The most serious cases reported in the member survey involved the termination of fixed-term employment contracts because of pregnancy, with another person being recruited for exactly the same position. Promotions discussed earlier had been cancelled, or the employee's position had been changed due to pregnancy. The survey also revealed cases in which a position had been terminated during family leave, a substitute had been made permanent, or an empty desk had been waiting for the mother upon her return to the workplace. MiB's member survey revealed that many mothers do not dare or want to report their problems.¹³⁰

Women working fixed-term, part-time or on zero-hour contracts are at particular risk of discrimination based on pregnancy and family leave.

3.4.3 Pregnancy and family leave discrimination is little-studied

The figures for discrimination based on pregnancy and family leave are based on the number of reports made to the Ombudsman for Equality and trade unions. According to this data, the incidence of pregnancy and family leave discrimination has remained relatively constant between 2011 and 2018.

A study carried out by Statistics Finland's labour research unit in 2018 was the first study of the prevalence of pregnancy and family leave discrimination experienced by Finland's entire population.¹³¹

According to Statistics Finland's study, a quarter of employed mothers who had changed positions or jobs or had not returned to work after their family leave said that the change was not made of their own volition. At the level of the entire population, this amounts to approximately 42,000 women in total.

The discrimination-related failure to extend a fixed-term employment contract applied to roughly 11,000 Finnish women, while around 17,000 had switched jobs or positions because their duties had changed or disappeared upon their return or another person had been hired in their place.

Discrimination based on pregnancy or family leave thus affects women in particular. The majority of fathers included in the data set had continued at the same workplace and in the same position after family leave. So few fathers had taken longer periods of family leave that it was impossible to give an accurate estimate of the discrimination experienced by them at work.

Statistics Finland's study only asked about the discrimination experienced by parents with children under the age of 15 and, if they had more than one child, only with regard to their youngest child. In other words, the mothers who had experienced pregnancy or family leave discrimination earlier in their careers or in connection with their older children were not included in the results. Neither were people not employed at the time of the study included. Therefore, the number of mothers who have experienced discrimination in working life may be greater than the figures quoted above. The study also did not examine discrimination related to applying for work.

¹³⁰ Mothers in Business MiB Association (2019).

¹³¹ Keyriläinen, M. (2019).

3.4.4 Measures for preventing discrimination based on pregnancy and family leave

The Ombudsman for Equality has taken the view that measures for the prevention of discrimination based on pregnancy and family leave must be made a focus of equality policy and be put on the agenda of the labour market parties. The Ombudsman for Equality recommended this in the Ombudsman's previous report to Parliament (2018) and proposed the inclusion of the matter in the Government action plan for gender equality and the National Action Plan on Fundamental and Human Rights.¹³² The Ombudsman for Equality has proposed a significant reduction in discrimination based on pregnancy and family leave as one of the objectives of the 2021 equality policy report. Progress towards the objective must be monitored with regular studies.¹³³

The prevention of discrimination based on pregnancy and family leave must be made a focus of equality policy and effective measures must be taken to end discrimination.

3.4.5 Addressing discrimination based on pregnancy and family leave through legislation

In the Ombudsman for Equality's previous report to Parliament, the Ombudsman recommended improvements to the status of fixed-term employees, agency contract workers and those working on zero-hour contracts in order to improve their protection against discrimination based on pregnancy and family leave.¹³⁴ The Ombudsman for Equality commends the fact that addressing discrimination based on pregnancy and family leave and some of the Ombudsman for Equality's recommendations have been taken into account in Prime Minister Sanna Marin's Government Programme and law-drafting.

The legislative questions related to this have been discussed by the Ministry of Economic Affairs and Employment's working group tasked with preparing the implementation of the Work-Life Balance Directive. The Ombudsman for Equality has informed the working group of the Ombudsman's proposals for preventing discrimination based on pregnancy and family leave and improving legal protection in order to better protect fixed-term employees, agency contract workers and people working on zero-hour contracts from discrimination.¹³⁵ The Ombudsman for Equality is concerned, however, about whether these proposals will actually be implemented.

3.4.5.1 Improving the protection of fixed-term employees against discrimination based on pregnancy and family leave

The Ombudsman for Equality considers it important to develop the provisions on discrimination based on pregnancy and family leave, especially to prevent discrimination against those with fixed-term employment relationships. A provision prohibiting the non-renewal of a fixed-term employment contract on the basis of pregnancy or family leave, or only making a fixed-term employment contract until the start of family leave, should be added to the Employment Contracts Act and other acts governing employment relationships. Furthermore, employers' and employees' awareness of the statutory obligations concerning the rights of pregnant persons and employees using family leave must be increased.

The renewal of fixed-term employment relationships concerns the continuation of employment. In this sense, from the perspective of the employee, the situation is equivalent to the protection of indefinitely valid employment contracts. In the Ombudsman for Equality's estimate, including provisions on this matter in the Employment Contracts Act and other employment relationship legislation in addition to the Equality Act would improve the protection of pregnant fixed-term employees and fixed-term employees using family leave against discrimination.

132 K 22/2018 vp, p. 43.

133 TAS 561/2020 Ombudsman for Equality's statement on the preparation of the Government report on equality policy.

134 K 22/2018 vp, pp. 39–43.

135 TAS 331/2020 Ombudsman for Equality's statement to the Work-Life Balance working group.

The protection of fixed-term employees' employment relationships shall be improved. It would be important to include a prohibition of failing to renew a fixed-term employment relationship based on pregnancy or family leave in employment relationship legislation, along with a prohibition of limiting the duration of fixed-term employment relationships to the start of maternity, paternity or parental leave.

3.4.5.2 Improving the protection of agency contract workers against discrimination based on pregnancy or family leave

The status of agency contract workers has been revealed as particularly problematic in the Ombudsman for Equality's monitoring activities. A contract worker has an employment relationship with the agency, but their actual employment depends on the client company commissioning the services of the agency.

If the client company excludes an employee from continuing work on grounds of pregnancy, the client company is not the employer referred to in section 3 of the Equality Act and is thus not liable to pay compensation for its practices. The client company can be found to have violated the general prohibition of discrimination provided for in section 7 of the Equality Act, but cannot be sentenced to pay compensation for it under the Equality Act, as this sanction is limited to employers for violating the prohibitions provided for in sections 8-8e of the Equality Act.

In the Ombudsman for Equality's opinion, the legislation should be changed to put agency contract workers on an equal footing with other employees in terms of protection against discrimination. The liability for compensations must be extended to the client company if its discriminatory practice has had an actual effect on the termination of employment.

In order to prevent discrimination based on pregnancy and family leave, the division of responsibilities between agencies and client companies should be clarified in cases when the client company's discriminatory practice has an impact on the continuation of the employee's employment. In such cases, the liability to pay compensation under the Equality Act should be extended to the client company.

3.4.5.3 Improving the protection of those working on zero-hour contracts against discrimination based on pregnancy and family leave

The vulnerable status of those working on zero-hour contracts and other employment contracts with variable working hours in connection with pregnancy and family leave has also become clear in the course of the Ombudsman for Equality's monitoring activities.

According to the Employment Contracts Act, any agreement that the minimum working hours included in a variable working hours clause will be fewer than required by the employer's labour need may not be made at the employer's initiative. Making a variable-time employee's working hours regular was clarified with an amendment to the Employment Contracts Act.¹³⁶ However, the provisions concerning negotiations on changes to the working hours clause and obtaining justifications for the working hours clause from the employer remain complicated for employees in a vulnerable position.

136 Act amending the Employment Contracts Act (Laki työsopimuslain muuttamisesta 377/2018).

In the Ombudsman for Equality's Report to Parliament 2018¹³⁷, the Ombudsman noted that it is important to monitor the actual impact of the amendment concerning zero-hour contracts on the status of employees and make further improvements to legislation if required. The monitoring of the impact of legislation must also pay attention to the challenges in the implementation of protection against discrimination with regard to pregnancy and family leave in the use of zero-hour contracts.

The Ombudsman for Equality is thus pleased that improvements to the Employment Contracts Act in this regard are being prepared by a project launched by the Ministry of Economic Affairs and Employment.¹³⁸ The project aims to improve the status of temporary employees and those working on zero-hour contracts. Legislative support for making a variable-time employee's working hours regular will be increased. The Government Proposal on the implementation of the Working Conditions Directive and national changes to zero-hour contracts will probably be issued in the spring 2022 parliamentary session.

3.5 WORK OF EQUAL VALUE

3.5.1 Equal pay for work of equal value

The provisions on equal pay – including the Equality Act, Union law and certain international treaties – require the payment of equal pay for equal work or work of equal value, regardless of gender. There must be an acceptable reason for differences in pay.

It is frequently stated that the principle of equal pay has been realised in Finland, because "people get the same pay for the same work". As a rule, this is indeed the case for equal work.¹³⁹ However, different bonuses are sometimes paid to employees doing the same work, not always with acceptable reasons for the resulting differences in pay.

Equal pay shall be paid not only for equal work, but also for work of equal value. Finland has been committed to observing this principle since ratifying the ILO's Equal Remuneration Convention No. 100 (1951) in 1962. With regard to the implementation of the principle of equal pay, the weight given to the demand for equal pay for work of equal value in general when making decisions that affect pay and employment relationships is essential, as are the types of work compared and considered of equal value in such decision-making.

**Giving equal pay not only for equal work,
but also for work of equal value is an essential
component of the principle of equal pay.**

What is meant by work of equal value is also crucial to identifying the pay discrimination prohibited by the Equality Act and demonstrating pay discrimination. The concepts 'equal work and work of equal value' define the peers to whom employees can compare their work and pay and with whom they can demand equal pay (Equality Act, section 8, subsection 1, paragraph 3). The courts will ultimately decide the meaning assigned to the concept of 'work of equal value' when assessing compliance with the provisions on equal pay.

137 K 22/2018 vp, pp. 39–40.

138 TEM107:00/2020, Establishment of working hours in variable working hours contracts (Employment Contracts Act).

139 See Statistics Finland's report to the Ministry of Social Affairs and Health (8 September 2021) on income differences between the genders for equal work or positions as similar as possible, described in the draft Government Proposal to Parliament for an Act amending the Act on Equality Between Women and Men, p. 6 (in Finnish).

The definition of work of equal value is also significant in connection with pay surveys. It should affect which groups of employees are chosen for pay comparisons. By law, the purpose of the employer's own pay survey is to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value (Equality Act, section 6b).

3.5.2 Different work can be equal in value

Government Proposal HE 47/1962 on the ratification of the ILO's Equal Remuneration Convention states, referring to the Committee instituted for reviewing the matter, that "in the relatively rare cases in which women and men perform exactly the same work at the same workplace, the equal value of the work can be established without any great difficulty or time-consuming investigations. In other cases, it must be determined whether the work being done by men and women have been ranked correctly in terms of difficulty and pay as required by the Equal Remuneration Convention".¹⁴⁰

The principle of equal pay was thus considered to include the comparison of different work and ranking it into pay grades according to difficulty. This was the premise on which Finland ratified the ILO Convention. In practice, however, the Convention was implemented and pay grades determined in Finland without any extensive assessment of the difficulty of the various types of work.¹⁴¹

The ILO's expert committee has found that Finland is interpreting the concept of work of equal value very narrowly and has reminded Finland of its definition.¹⁴² In ILO's Equal Remuneration Convention, the concept of 'work of equal value' covers not only the same and similar types of work, but also work of an entirely different nature but equally difficult when assessed as a whole, even if different in terms of working conditions and the skills and responsibility required by the work.¹⁴³ The potential for improving the pay status of women lies precisely in this comparison of different types of work.

3.5.3 Defining work of equal value in the Equality Act

The Equality Act itself does not define or explain the concept of 'work of equal value', even though it has a significant impact on the content and interpretation of the aforementioned provisions of the Act. The concept is nevertheless described in, for example Government Proposal HE 19/2014, which states that "work of equal value refers to work that must be considered equally demanding as another type of work. The requirement of equal pay applies to work of equal value even when the nature of the work is very different, if the types of work can be considered equally difficult".¹⁴⁴ The Government Proposal also cites factors that should be taken into consideration when comparing work¹⁴⁵. The Court of Justice of the European Union has also defined factors to be taken into account in the comparison.¹⁴⁶

ILO's expert committee has pointed out that our Equality Act does not contain guidance or explanation regarding the meaning of 'work of equal value'. The committee has urged Finland to clarify the concept of 'equal value' and ensure that a broad approach is taken to comparing work in all contexts in which the principle of equal pay is applied.¹⁴⁷ The European Commission has also stressed the need to add a clarifying provision to national legislation, explaining the contents of the concept 'work of equal value'. The Commission has found that including the definition of the value of work in national legislation could help victims of

140 HE 47/1962 vp, p. 2.

141 See, e.g. Nummijärvi, A. (2004), pp. 51–54 (in Finnish).

142 International Labour Organization (2017). ILC.106/III(1A). On this, see also Bruun, N. (2019), p. 32.

143 ILO (2012), report sections 672–675 and ILO (2017), ILC.106/III(1A).

144 HE 19/2014, p. 116.

145 HE 57/1985, p. 19 and HE 19/2014, p. 116.

146 On these, see e.g. COM(2020) 152 final.

147 ILC.106/III(1A).

pay discrimination in bringing their cases to the national courts.¹⁴⁸ The Commission proposal for Article 4 of the Pay Transparency Directive includes a list of criteria by which it should be possible to assess whether the work performed by two employees is of comparable value.¹⁴⁹ These listed criteria are educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of the tasks involved.

The Ombudsman for Equality finds that a provision defining the meaning of the concept ‘work of equal value’ in the Equality Act should be added to the Act. The fact that the Equality Act also covers the possibility of making pay comparisons between different types of work in order to establish their equal value should be apparent from the Equality Act itself, and not only from the legislative materials for the Act.¹⁵⁰

A provision defining the meaning of the concept ‘work of equal value’ in the Equality Act should be added to the Act.

3.5.4 Measures for promoting the assessment of the difficulty of work

Clarifying the concept of ‘work of equal value’ in the Equality Act would represent a step forward in the implementation of equal pay provisions. But even if factors to be taken into account in the comparison were described on a general level in the law, defining the concrete contents of the comparison criteria would still be left to those deciding the amount of pay or assessing the application of equal pay provisions.

According to Article 4 of the European Commission’s proposal for a directive on pay transparency, Member States shall take the necessary measures ensuring that tools or methodologies are established to assess and compare the value of work. The ILO’s Equal Remuneration Convention and the related Recommendation also require the states that have ratified the Convention to take measures for promoting the appraisal of jobs.¹⁵¹ It is thus a positive development that the Ministry of Social Affairs and Health has launched the *Samanarvoinen työ* (Work of Equal Value) project (2021-2022). The project will examine possibilities for adopting more consistent criteria for the appraisal of jobs in various payroll systems. The objective is to promote equal pay for equally demanding work.¹⁵²

3.6 ACCESS TO PAY INFORMATION IN CASES OF PAY DISCRIMINATION

3.6.1 Access to pay information is lacking

The assessment of pay discrimination usually requires employees to have access to their own pay information as well as that of their peers, that is, a colleague or colleagues serving as a point of reference. However, the Equality Act currently in force does not give private sector employees the right to obtain information on the pay of their colleagues. According to section 10, subsection 3 of the Equality Act, “the employer shall provide an employee with a report *on the grounds for their pay* and other necessary information concerning the employee which could be used to assess whether the prohibition of pay discrimination referred to in section 8(1)(2) or 8(1)(3) has been complied with.” The legislative materials for the Act also note that employees have the right to obtain information specifically on the grounds for their own pay - but not on the pay of their peers for the purpose of assessing whether they have been discriminated against.¹⁵³

148 COM(2013) 861 final. Brussels, 6.12.2013. Report from the Commission to the European Parliament and the Council on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). SWD(2013) 512 final, p. 8.

149 For more detail, see section 3.5.4 of the proposal for a Directive.

150 In its ruling concerning the principle of equal treatment provided for in the Employment Contracts Act, the Supreme Court found that the types of work being compared were different and thus not comparable, equal or of equal value. KKO: 2020:4.

151 ILO Convention No. 100, Article 3 and Recommendation No. 90, Paragraph 5.

152 See the Ministry of Social Affairs and Health decision on instituting the *Samanarvoinen työ* project steering group VN/21223/2021, 30 August 2021, and the brief description of the project at <https://stm.fi/-/samanarvoinen-tyo-hanke-kehittaa-toiden-vaativuuden-arviointia> (in Finnish).

153 HE 90/1994 vp, p. 20.





In practice, private sector employees have to request pay information from their employee representative - if a representative has been appointed. Section 10, subsection 4 of the Equality Act provides that a local union representative, elected representative or some other employee representative shall have independent right of access to information on the pay and terms of employment of an individual employee *with the latter's consent*, or of a group of employees if there is reason to suspect pay discrimination based on gender. Upon the request of an employee who suspects that pay discrimination has occurred, the employee's representative referred to above has the right to obtain information from the Ombudsman for Equality on the pay and terms of employment of an individual employee if there are justified grounds for the suspicion (Equality Act, section 17, subsection 3). Pursuant to the aforementioned 'pay dummy provision', the Ombudsman for Equality would in practice be required to launch an identical examination procedure as for any other case of suspected discrimination in order to be able to give pay information to the employee representative: in addition to the pay information, the Ombudsman for Equality would have to request the employer's opinion on the suspected discrimination and subsequently assess whether there is justified cause for the suspicions of pay discrimination.¹⁵⁴ Indeed, the procedure has been criticised as overly bureaucratic and has never actually been used.

3.6.2 Improvements to pay transparency are proposed

In his report on pay transparency, Ombudsman for Equality Jukka Maarianvaara proposed amending section 10 of the Equality Act to provide employees with access to all of the necessary information for assessing compliance with the prohibition of pay discrimination.¹⁵⁵ This would include the pay information of a peer or peers. The Ombudsman for Equality's report to Parliament likewise recommended giving employees who suspect discrimination in violation of the Equality Act in their pay the right to obtain peer pay information from their employer.¹⁵⁶

The openness of pay information was discussed by a tripartite pay transparency working group in the term of Prime Minister Juha Sipilä. The working group examined different regulatory options, the relationship between pay openness and the protection of privacy, and corresponding regulation in the other Nordic countries. The resignation of the government nevertheless prevented the working group from discussing conclusions and policy outlines.¹⁵⁷

Prime Minister Sanna Marin's Government Programme, titled 'Inclusive and competent Finland', also addressed the promotion of pay transparency. The Government Programme states that the elimination of unjustified pay differences and pay discrimination will be promoted by increasing pay openness through legislative means. Unjustified disparities in pay between women and men will be addressed more rigorously than at present. In addition, the Government Programme states that the Act on Equality between Women and Men will be amended to incorporate rights and meaningful opportunities for staff, staff representatives and individual employees to access pay information and address pay discrimination more effectively.

Based on the Government Programme, the Ministry of Social Affairs and Health instituted a second tripartite working group for promoting pay transparency in August 2020. It was tasked with preparing the amendments to equality legislation required by the Government Programme. The working group's term ran from 21 August 2020 to 31 August 2021. It discussed pay transparency from the perspectives of both the individual's right of access to information and the pay information processed in pay surveys (see also p. 72 of this report).¹⁵⁸

154 HE 195/2004 vp, p. 44.

155 Maarianvaara, J. (2018), p. 61.

156 K22/2018 vp, p. 46.

157 Ministry of Social Affairs and Health (2019c).

158 Ministry of Social Affairs and Health (2021). Final report of the pay transparency working group.

With regard to suspected cases of pay discrimination, the working group decided to propose an amendment to section 10 of the Equality Act to the effect that employers would be required to disclose information on the pay of colleagues and other necessary information regarding the grounds for determining their pay to employees suspecting pay discrimination, so that such employees could assess compliance with the prohibition of discrimination provided for in section 8, subsection 1, paragraph 2 or 3 of the Act. The employee would be obliged to keep the disclosed information secret. The employer would be obliged to notify the employees whose information has been disclosed. The 'pay dummy provision' of section 17, subsection 3 of the Equality Act would be repealed at the same time.

In this regard, the working party's proposal can be considered highly commendable and in line with the Ombudsman for Equality's recommendations. In the Ombudsman for Equality's view, improving employees' right of access to information is necessary to enable effective intervention in pay discrimination.

3.6.3 Pay transparency on European Commission's agenda

The promotion of pay equality is also high on the European Commission's agenda, and compulsory measures for increasing pay transparency have been one of the Commission's primary policy objectives. One of the objectives of the European Commission's Gender Equality Strategy (2020-2025) is to narrow the pay and pension gap between genders. The Strategy notes that pay differences and discrimination are easier to detect if information on pay levels is available. Due to a lack of transparency, many women are unaware or unable to prove that they are being paid too little.¹⁵⁹

The Commission thus issued a proposal for a new Directive to improve pay transparency on 4 March 2021 (Proposal for a Directive of the European Parliament and of the Council (COM (2021) 93 final) to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms). The proposal for a Directive focuses on two key factors of equal pay, namely improving pay transparency from the perspectives of employees and employers both, and improved access to justice for the victims of pay discrimination. The following proposals were made with regard to pay transparency:

Pay transparency prior to employment. Employers must inform applicants about the initial pay level or its range in the job vacancy notice or prior to the job interview. Employers may not ask applicants about their pay history.

Employees' right to information. Workers are guaranteed the right to receive information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs.

Reporting on the pay gap between genders. Employers with at least 250 workers must publish information on the pay gap between female and male workers in their organisation. For internal purposes, they would also be required to provide information on the pay gap between women and men in groups of workers doing the same work or work of equal value.

Joint pay assessment. When pay reporting demonstrates a gender pay gap of at least 5% and the difference cannot be justified by objective and gender-neutral factors, employers must conduct a joint pay assessment in cooperation with their workers' representatives.

¹⁵⁹ European Commission (2020), p. 11.

The Government of Finland has issued a Union communication (U 23/2021 vp) to Parliament on the Directive proposal, stating that the proposal for a Directive is for the most part commendable, even though it still requires clarification in some regards. The proposal would probably have quite significant effects on Finnish legislation, which requires further examination. In its discussion of the communication, the Employment and Equality Committee of Parliament also found the objectives of the proposed Directive to be worth pursuing.¹⁶⁰ The proposal for a Directive is currently being discussed by a working party of EU Member States.

The promotion of equal pay and elimination of pay discrimination from the labour market require a broad range of tools, which is also reflected in the Commission's proposal for a Directive. It is thus essential that Finland support the Commission's proposal for a Directive in addition to implementing the proposals of the working group on pay transparency.

3.7 EQUALITY PLANNING AND THE PAY SURVEY

3.7.1 The gender equality planning obligation and its enforcement

Gender equality planning can be considered the most important tool provided for in the Equality Act for promoting gender equality in working life. The Equality Act obliges employers who regularly have a personnel of at least 30 employees to prepare a gender equality plan including a pay survey. The plan must be drawn up at least every two years and must include an assessment of the gender equality situation in the workplace, necessary measures for promoting equality and a review of the extent to which measures previously included in the gender equality plan have been implemented and of the results achieved. The pay survey, on the other hand, must include the classifications of jobs performed by women and men, the pay for those jobs and the differences in pay.

The supervision of compliance with the gender equality planning obligations is the duty of the Ombudsman for Equality. It is established practice for the Ombudsman to request the gender equality plan for review if the Ombudsman for Equality has been contacted about a suspected case of discrimination at the workplace. The Ombudsman for Equality has also carried out some targeted supervision campaigns, in which several employers from a certain sector have been requested to submit their gender equality plans to the Ombudsman for review.¹⁶¹ 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.

3.7.2 Observations and reports recommend development of provisions

The provisions of the Equality Act on gender equality planning and the pay survey and the obligations imposed by the Act have been clarified on a number of occasions, partly based on studies of their functionality. The most recent amendments to the provisions on gender equality planning and the pay survey were made in 2015, when, for example provisions on the purpose and content of the pay survey were added to the Act.

The Ombudsman for Equality's Report to Parliament 2018 (K 22/2018 vp) dealt quite extensively with the observations made by the Ombudsman on gender equality planning and pay surveys in the course of the Ombudsman's monitoring activities since the reform of the Equality Act in 2015. The report noted that room for improvement remained in the quality and coverage of gender equality plans and pay surveys. The Ombudsman for Equality accordingly gave several recommendations for the improvement of the Equality Act's provisions on gender equality plans and pay surveys.¹⁶²

160 TyVL 10/2021 vp.

161 K 22/2018, pp. 50–51.

162 K 22/2018, pp. 49–63 and 123–146 (Appendix 2).

A study on the prevalence, coverage and quality of gender equality plans and pay surveys in the public and private sectors, commissioned from Statistics Finland by the Ministry of Social Affairs and Health, was published in November 2020.¹⁶³ The study was implemented as a questionnaire for employer and employee representatives. The promotion of equality and non-discrimination in institutes of higher education has also been studied.¹⁶⁴ The results of these studies correlate with the observations based on the Ombudsman for Equality's monitoring activities.

The Ministry of Social Affairs and Health instituted a tripartite working group to examine pay transparency in January 2019. Its work was carried on by the working party instituted for the preparation of pay transparency legislation in August 2020. The draft government proposal prepared by this working group has just been completed at the time of writing.¹⁶⁵ The proposal deals with the right of access to pay information in connection with pay surveys and suspected pay discrimination.

3.7.3 Observations on gender equality plans

3.7.3.1 Scheduling and merging with non-discrimination plans

According to section 6a of the Equality Act, the gender equality plan and pay survey included in it must be drawn up every other year. However, an agreement can be made locally that the pay survey will be carried out every three years, provided that the other parts of the gender equality plan are completed annually.

According to the Ombudsman for Equality's observations, the gender equality planning schedules are not always followed, even though most organisations with an gender equality planning obligation do appear to be drawing up their gender equality plans.¹⁶⁶ This failure to observe the schedules has also been highlighted in studies¹⁶⁷. This could partly be because the gender equality planning schedules and their various options are difficult to grasp and follow for many organisations. The Ombudsman for Equality has thus proposed amending the Equality Act to only contain one schedule for drawing up gender equality plans¹⁶⁸.

It is fairly rare to prepare the gender equality plan as a separate plan. It is most often drawn up together with the non-discrimination plan¹⁶⁹. The Ombudsman for Equality has found that drawing these two plans together can be justified, as both concern the prevention of discrimination and the development of an equal and non-discriminatory workplace¹⁷⁰.

3.7.3.2 Participation of personnel representatives

The gender equality plan must be prepared in cooperation with personnel representatives. The legislative materials of the Act emphasise giving personnel representatives a real opportunity to participate in preparing the plan and influence its contents. Personnel representative should participate in determining the gender equality situation at the workplace, planning and choosing the required measures, and assessing the results of prior measures¹⁷¹. They have the right to participate in, for example the various stages of the personnel survey and pay survey¹⁷².

163 Attila, H. & Koskinen, H. (2020).

164 Tanhua, I. (2020).

165 Ministry of Social Affairs and Health (2021). Final report of the pay transparency working group.

166 K 22/2018, p. 124.

167 E.g. Attila, H. & Koskinen, H. (2020), pp. 45 ja 90 and Tanhua, I. (2020), p. 24.

168 K 22/2018 vp, p. 52.

169 K 22/2018 vp, p. 53 and Attila, H. & Koskinen, H. (2020), pp. 45–46.

170 K 22/2018 vp, p. 53.

171 HE 19/2014 vp, p. 114.

172 K 22/2018 vp, p. 129.

It appears that personnel representatives are not being given opportunities to participate as required by the Equality Act. Personnel representatives are only participating in the preparation of the gender equality plan in approximately two out of three organisations, and only one in three organisations involves them in drawing up the pay survey¹⁷³. At worst, personnel participation can be limited to approval of the finished plan¹⁷⁴. According to the Ombudsman for Equality's observations, gender equality plans rarely indicate how personnel representatives have participated in their preparation.

The Ombudsman for Equality recommends that gender equality plans should indicate how cooperation with personnel representatives has been arranged.¹⁷⁵

The employer must also ensure that the employee representatives have the necessary information during the preparation of the gender equality plan and pay survey. The pay transparency working group's proposals for disclosing pay information to personnel representatives are discussed in more detail in section 3.7.5.

3.7.3.3 Room for improvement remains in the content of gender equality plans

Many organisations still have work to do in meeting the statutory requirements set for gender equality plans and pay surveys. According to Statistics Finland's study, the most commonly included content is the survey of the gender equality situation at the workplace - although even this is often very limited in scope according to the Ombudsman for Equality's observations. On the contrary, few plans address the prevention of discrimination based on gender identity and gender expression. The realisation of the previous plan is only assessed in roughly a third of all gender equality plans.¹⁷⁶ These results are in line with the Ombudsman for Equality's observations.

According to the Ombudsman for Equality's observations, the measures recorded in gender equality plans vary widely in quality, ranging from adopting new practices to simply stating that the organisation follows the law and operates equally.¹⁷⁷ Measures should be based on the results of the assessment of the gender equality situation. Measures should be concrete and realistic in order to promote equality. It is essential that the implementation of the measures can be monitored and schedules and responsibilities have been agreed for them.¹⁷⁸

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.¹⁷⁹

173 Attila, H. & Koskinen, H. (2020), pp. 90 and 75.

174 Attila, H. & Koskinen, H. (2020), pp. 50 and 90.

175 K 22/2018, pp. 129–130.

176 Attila, H. & Koskinen, H. (2020), p. 90.

177 Also Attila, H. & Koskinen, H. (2020), p. 91.

178 K 22/2018 vp., p. 55 and 133.

179 K 22/2018 vp., p. 60.

3.7.3.4 Communication of the gender equality plan

The Equality Act states that employees must be informed about the gender equality plan and any updates to it. The plan must be easily available to all employees. Discussing the matter with personnel representatives in a cooperation body will not suffice to meet the communication obligation.¹⁸⁰

Nearly every organisation says that it informs personnel of the gender equality plan but, for example according to the Gender Equality Barometer, personnel are not as a rule aware of the gender equality plan or its contents¹⁸¹. There is also considerable variation in the communication practices of organisations. Some organisations inform personnel about the plan on the intranet and with personal email messages, while others simply publish a news story on the intranet with no link to the plan or information about its location.¹⁸²

The Ombudsman for Equality recommends that the gender equality plan should state how personnel have been informed of the plan. Attention should be paid to the fulfilment of the communication obligation in the monitoring of the implementation of the gender equality plan¹⁸³. The pay transparency working group also proposes making the communication obligation more specific (see section 3.7.5).

3.7.4 Pay survey

3.7.4.1 Pay survey coverage

The purpose of the pay survey is to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value. According to the Equality Act, the whole personnel should be included in the pay survey.

The Ombudsman for Equality's previous report to Parliament included an extensive assessment of the implementation of pay surveys at workplaces, based on the observations made by the Ombudsman in the course of monitoring.¹⁸⁴ The Ombudsman found problems in, for example the selection of employee groups formed for pay comparisons, the coverage of the pay survey, the examination of pay information and the analysis of pay differences.

According to the Ombudsman for Equality's observations, employers had often left a part of their personnel out of the actual pay comparisons. Such excluded employees included not only part-time and fixed-term employees, but also employees belonging to small employee groups. These small employee groups had been left out of the pay comparisons out of a fear of revealing the pay information of individual employees. Some personnel were perhaps only included in the examination of the pay of all women or men in the workplace, or in pay comparisons by sector, personnel group or collective agreement.¹⁸⁵

Statistics Finland's survey nevertheless states that all employee groups had been included comprehensively in the pay surveys. On the other hand, the survey notes that some organisations compared pay according to difficulty level or group of positions and, in some cases, the pay surveys were conducted at a high level, such as by personnel group or collective agreement.¹⁸⁶

180 K 22/2018 vp., p. 145.

181 Gender Equality Barometer 2017, pp. 79–81; Attila, H. & Koskinen, H. (2020), p. 68.

182 Attila, H. & Koskinen, H. (2020), p. 68.

183 K 22/2018 vp., p. 145.

184 K 22/2018, pp. 55–59 and 137–145.

185 Idem, pp. 56–58 and 140–142.

186 Attila, H. & Koskinen, H. (2020), pp. 76–79.

Large-scale pay surveys bundle together jobs with very different difficulty levels. The Ombudsman for Equality has taken the view that it is difficult to assess whether unjustified pay differences exist for the same work or work of equal value on the basis of such comparisons.¹⁸⁷ Comparisons of this nature thus do not fulfil the purpose of the pay survey in the Ombudsman for Equality's opinion. The Ombudsman for Equality has accordingly recommended that the pay survey provision be clarified so that the purpose of the pay survey would be better taken into account in the selection of reference groups formed for the comparison of pay.

3.7.4.2 Increasing pay transparency in pay surveys

To avoid the exclusion of employees from pay surveys due to the small size of employee groups, the Ombudsman for Equality's previous report published in 2018 recommended measures such as also giving employee representatives access to the pay information of individual employees if necessary when drawing up the pay survey. This does not mean publishing the individuals' pay information in the final gender equality plan available to all employees.¹⁸⁸ In the public sector, where pay is also public, this information can already be processed when carrying out the pay survey.¹⁸⁹ The pay information of individuals can also be necessary for determining the causes for pay differences.

In 2020-2021, based on the Government Programme of Prime Minister Sanna Marin, the pay transparency working group discussed the rights and actual possibilities of individual employees as well as personnel representatives and the personnel as a whole to increase pay awareness and address pay discrimination more effectively. In practice, the working group considered both the development of pay survey provisions and opportunities for increasing pay awareness among employees.

As a result of its deliberations, the working group proposed that, in order to ensure the comprehensive comparison of pay or determine the reasons for pay differences, employers should give employee representatives access to individual employees' pay information and other necessary information on the grounds for their pay requested by the representatives in connection with the pay survey. The personnel representatives would be obliged to keep this information secret.

The working group also proposed some clarifications to the availability of the gender equality plan and pay surveys to the whole personnel. According to the working group's proposal, the gender equality plan and the pay survey included in it should be freely available to all personnel.¹⁹⁰ The Ombudsman for Equality considers these proposed amendments to be commendable and in line with the purpose of the pay survey.

187 K 22/2018, p. 56.

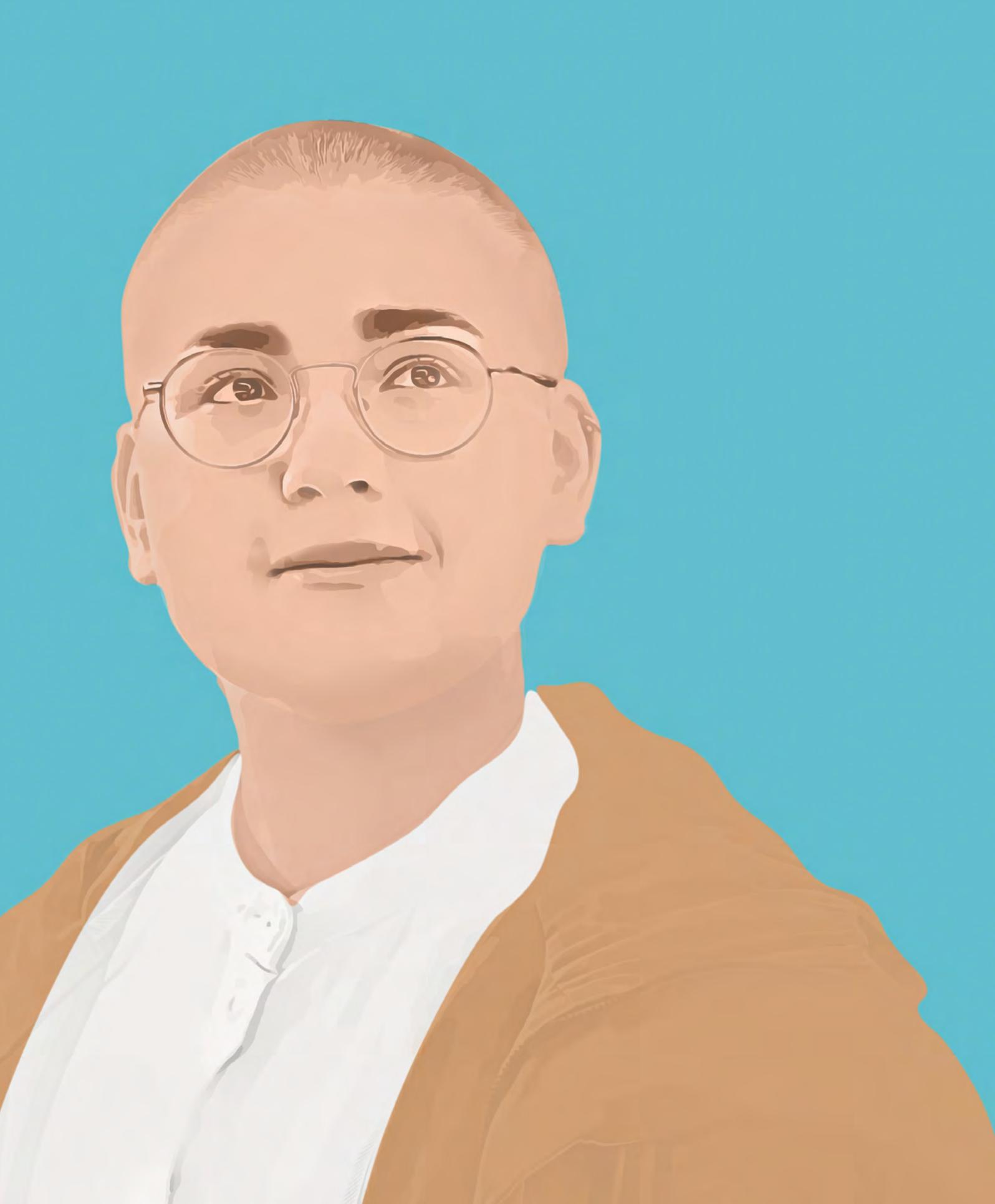
188 K 22/2018 vp, p. 62.

189 HE 19/2014 vp, p. 117.

190 Ministry of Social Affairs and Health (2021). Final report of the pay transparency working group.

3.8 RECOMMENDATIONS

- ▶ Ways of taking into account the provisions of the Equality Act on promoting equality between women and men and the comparisons of the merits between female and male applicants required by the prohibition of discrimination in connection with anonymous recruitment should be examined.
- ▶ The right to compensations shall be extended to discrimination during the recruitment process preceding the selection decision.
- ▶ The effects of the family leave reform on paid family leave [in collective agreements] and the financial status of women and men shall be monitored.
- ▶ An amendment of the Health Insurance Act should be considered, to the effect that the pregnant person could choose either the income of the 12 months preceding pregnancy or the 12 months preceding family leave as the grounds for payment of parental allowance.
- ▶ The Annual Holidays Act should be amended so that the pregnancy allowance period and parental allowance period would not be considered equal for the purposes of earning and granting annual holidays, but mothers would be credited with the same number of parental allowance days counted as working days as other parents. Neither shall pregnancy allowance and parental allowance periods be considered equal in terms of granting annual holidays.
- ▶ The qualifying period must not be reimposed on recipients of labour market subsidy if the reason for their absence from the labour market has been family leave.
- ▶ The prevention of discrimination based on pregnancy and family leave must be made a focus of equality policy and effective measures must be taken to end discrimination.
- ▶ The protection of fixed-term employees' employment relationships shall be improved. It would be important to include a prohibition of failing to renew a fixed-term employment relationship based on pregnancy or family leave in employment relationship legislation, along with a prohibition of limiting the duration of fixed-term employment relationships to the start of maternity, paternity or parental leave.
- ▶ In order to prevent discrimination based on pregnancy and family leave, the division of responsibilities between agencies and client companies should be clarified in cases when the client company's discriminatory practice has an impact on the continuation of the employee's employment. In such cases, the liability to pay compensation under the Equality Act should be extended to the client company.
- ▶ A provision defining the meaning of the concept 'work of equal value' in the Equality Act should be added to the Act.



GENDER DIVERSITY

4

4.1 GENDER IDENTITY AND GENDER EXPRESSION IN THE EQUALITY ACT

Gender diversity and the prevention of discrimination against sexual minorities have been part of the Ombudsman for Equality's duties since 2004. The Ombudsman has principally approached this work from the perspective of human and fundamental rights.

Gender is a diverse phenomenon that cannot be reduced to two clearly distinct sexes. For example, gender minorities include trans people (such as transgender people, transvestites, and genderqueer and non-binary people) as well as intersex individuals.¹⁹¹

The protection of gender minorities against discrimination has been provided for in the Act on Equality Between Women and Men (Equality Act, 609/1986). Compliance with the Act is supervised by the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal. Discrimination based on sexual orientation is prohibited in the Non-Discrimination Act (1325/2014). Compliance with this Act is supervised by the Non-Discrimination Ombudsman, National Non-Discrimination and Equality Tribunal and the Occupational Safety and Health (OSH) Divisions of the Regional State Administrative Agencies.

Specific provisions prohibiting discrimination based on gender identity and gender expression was added to the Equality Act on 1 January 2015. Preventing discrimination based on gender identity or gender expression is one of the objectives of the Equality Act. According to the definitions in the Equality Act, gender identity means an individual's own experience of their gender and gender expression means expressing one's gender through clothing, behaviour, or by other means. These prohibitions of discrimination also apply to discrimination based on the fact that an individual's physical gender-defining characteristics are not unambiguously female or male.

Furthermore, the Equality Act obliges authorities, education providers and employers to take pre-emptive action against discrimination based on gender identity or gender expression. This obligation must be taken into account in the preparation of the educational institution's and employer's gender equality plans. The legislative materials of the Equality Act state that the privacy of gender minorities shall be respected, and promoting equality does not mean determining the gender identities or gender expressions of individuals.

4.2 DISCRIMINATION AGAINST GENDER MINORITIES AND THEIR STATUS IN SOCIETY

4.2.1 Improvement and opposition

The improvement in the status of gender minorities, reported in the Ombudsman for Equality's Report to Parliament in 2018¹⁹², has continued. Objective information and public debate on gender diversity has increased. In addition to transgender people, individuals such as genderqueer, non-binary, transvestite and intersex people have achieved greater visibility.

191 Finnish Institute for Health and Welfare's equality glossary. <https://thl.fi/fi/web/sukupuolten-tasa-arvo/sukupuoli/tasa-arvosanasto>.

192 K 22/2018 VP, pp. 75–89.

At the same time, we have seen the rise of activity designed to call into question the experiences of gender minorities and gender diversity in general (incl. the anti-gender movement). It is possible for positive development to slow down or even be reversed, as has happened in Poland and Hungary, for example.¹⁹³ Inappropriate or uninformed treatment of gender minorities is still too common in the context of, for example health care and social welfare services, education, and sports and fitness services. They are also subjected to harassment and hate speech.

The European Commission's LGBTIQ Equality Strategy 2020-2025 approved in November 2020 urges Member States to draw up national equality strategies for sexual and gender minorities. The Ombudsman for Equality considers it important that Finland should draw up a national action plan for sexual and gender minorities.

The Ombudsman for Equality is a member of the Government network for cooperation on LGBTI issues, which includes members from various ministries, the Offices of the Non-Discrimination Ombudsman and Ombudsman for Equality, and civil society organisations. Through the network, the Ombudsman for Equality has both received and disseminated information and experiences on the status of gender minorities.

Scientific studies of the circumstances of gender minorities in various areas of life are also needed. This information could be used to plan and implement reforms to improve the status of gender minorities. The Ministry of Justice conducted a survey of the scientific literature¹⁹⁴ and a situational assessment of the realisation of sexual and gender minorities' rights in 2021.¹⁹⁵

4.2.2 FRA survey on LGBTI experiences of discrimination

The European Union Agency for Fundamental Rights FRA published the results of its 2019 LGBTI Survey in the spring of 2020. The survey examined sexual and gender minorities' of discrimination and hate crimes (the previous survey was conducted in 2013).¹⁹⁶ There is great dispersion in the results of different Member States. Finland's results are above the EU average, and some progress has been made in several issues from the previous report. Finland's high statistics in harassment and violence remain a cause of concern. Reporting incidents to the authorities is also extremely rare.¹⁹⁷ Of all Finnish respondents to the survey, 31 % said that they had experienced discrimination in some area of life in the previous 12 months. Intersex individuals stood out clearly from this group, with 70 % reporting experiences of discrimination. Trans people had also experienced more discrimination than the average (46 %).¹⁹⁸

4.2.3 Status of gender minorities in working life

Gender minorities have reported very few suspected cases of employment-related discrimination to the Ombudsman for Equality. The threshold for contacting the authorities remains high for gender minorities. However, Finnish trans organisations have conducted surveys of discrimination against and support for gender minorities in working life in 2016 and again in 2021. The analysis examined the situation after the 2015 amendment to the Equality Act, in which gender identity and gender expression were recorded in the Act as bases for discrimination.¹⁹⁹

The results were compared with those of a corresponding survey conducted in 2016, the results of which are described in the Ombudsman for Equality's previous report to Parliament.²⁰⁰ The results of the new survey published in 2021 show that gender minorities are still encountering discrimination at work from their em-

193 Minister for Nordic Cooperation and Equality Thomas Blomqvist (2021). Helsingin Sanomat 3 July 2021.

194 Ministry of Justice (2021d).

195 Ministry of Justice (2021a).

196 FRA (2020).

197 Ministry of Justice release (2020).

198 Ministry of Justice (2021d).

199 Saloheimo, A. (2021).

200 K 22/2018 VP, pp. 81–82.

ployers, supervisors and others responsible for their working conditions, as well as from their colleagues. The respondents' work-related socioeconomic status was also clearly weaker than that of the general population. On the other hand, the positive and encouraging trend identified in the 2016 survey also seems to have grown stronger in working life.

The Council of Europe Sexual Orientation and Gender Identity (SOGI) Unit monitors the implementation of the Council's recommendation on measures to combat discrimination in the Member States.²⁰¹ SOGI's latest report underlines the importance of training, spreading correct information and good practices at the workplace. All parties in working life should contribute to diversity and build practices for ensuring that workplaces are safe for everyone regardless of gender identity and sexual orientation.²⁰²

4.2.4 Suspicions of discrimination reported to the Ombudsman for Equality

The Ombudsman for Equality has also received information through complaints and other communications on situations in which people belonging to gender minorities are discriminated against or their situation has not been taken into account in legislation and various practices. Discrimination can sometimes be difficult to distinguish from the other problems encountered by gender minorities.

The Ombudsman for Equality's previous report to Parliament²⁰³ described the discrimination reports made by gender minorities to the Ombudsman for Equality in 2010-2018 (up to 30 September 2018), and the information for the period 2018-2021 is provided below.

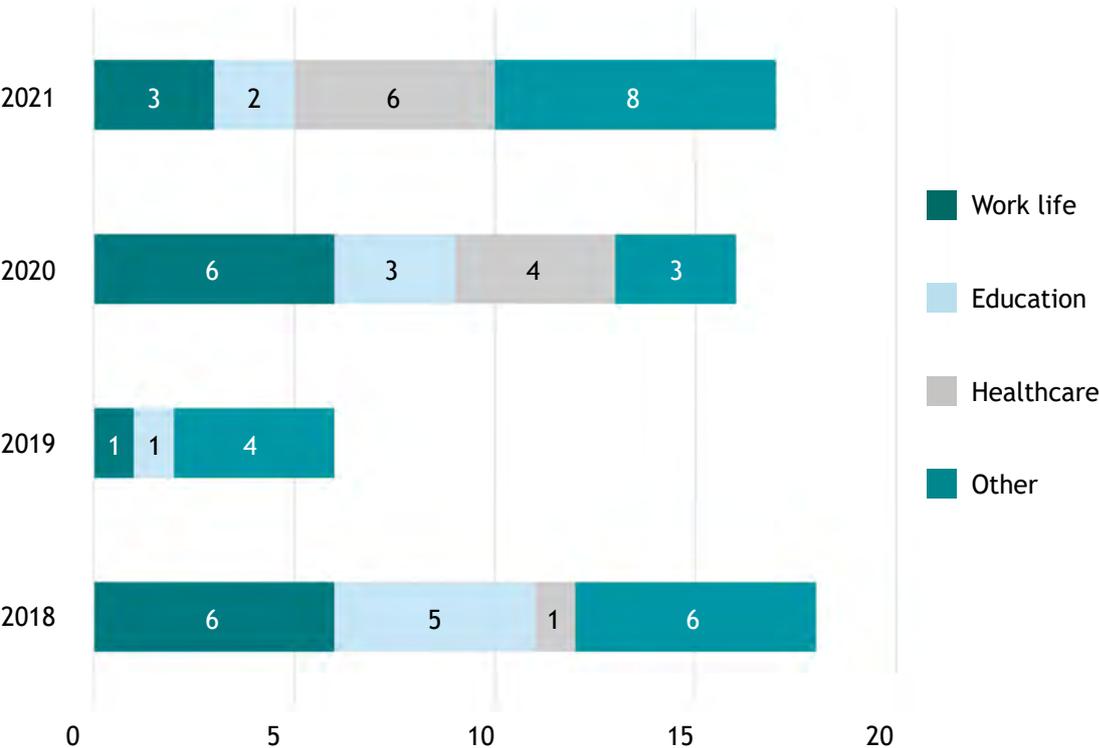


Figure 2. Suspected cases of discrimination instituted in writing with the Ombudsman for Equality 2018-2021. Members of gender minorities have also contacted the Ombudsman for Equality's helpline. The Ombudsman has received roughly as many calls as written reports, and the subjects of both have been largely similar.

201 CM/REC(2010)5.

202 Council of Europe (2021).

203 K 22/2018 VP, pp. 79-81.

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.

4.3 GENDER DIVERSITY IN LEGISLATION AND SERVICES

4.3.1 Recommendations in the Ombudsman for Equality's Report to Parliament 2018

In the Ombudsman for Equality's previous report to Parliament in 2018, the Ombudsman provided a great deal of background to the injustices related to the status of gender minorities and gave recommendations for rectifying them.²⁰⁴

OMBUDSMAN FOR EQUALITY'S REPORT TO PARLIAMENT 2018: recommendations concerning gender minorities

1. The infertility requirement must be removed from the conditions for confirming gender provided in the Act on legal recognition of the gender of transsexuals (Trans Act).
2. The legal confirmation of gender must be separated from medical diagnoses and treatments related to gender dysphoria. At the same time, the right to medical treatment for gender dysphoria as part of public health care services must be safeguarded for those who need it.
3. The medically unnecessary genital surgery of intersex children must be stopped.

In addition, the Ombudsman for Equality drew attention to the bullying and harassment suffered by children and young people belonging to gender minorities. The situation of children and young people has also been discussed in connection with the age limit for the legal recognition of gender as well as intersex children's right to physical self-determination. The situation of children and young people is also addressed in this report's section on schools and educational institutions.

The infertility requirement of the current Transsexual Act and treatment practices for intersex children violate the personal integrity of trans and intersex people. In general, the current legislation does not take the status of intersex people, minors or non-binary people sufficiently into account.

4.3.2 Reform of trans legislation

The Ombudsman for Equality's above-mentioned recommendations were taken into account in Prime Minister Sanna Marin's Government Programme 2019.²⁰⁵ Their practical implementation is planned to take place in connection with the reform of trans legislation. An official working party for preparing the reform of trans legislation and a monitoring and assessment group have been instituted for the period 1 June 2021-31 January 2022. The Ombudsman for Equality has a representative on the monitoring and assessment group.

²⁰⁴ K 22/2018 VP, pp. 75–89.

²⁰⁵ Finnish Government (2019).

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.

4.3.3 Treatment practices for intersex children

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 report 'Alternative regulatory models for the legal status of gender minorities'²⁰⁶ of the working party instituted by the Ministry of Social Affairs and Health also states that the current treatment of intersex children is in violation of the Act on the Status and Rights of Patients (785/1992), but at the same time considers the current legislation to be sufficient for safeguarding the rights of intersex children and emphasises the need to improve the monitoring of treatment practices. However, monitoring frequently focuses on retrospective control and accountability. The Ombudsman for Equality takes the view that the violations of intersex children's rights should, above all, be prevented as effectively as possible. Ensuring this could require amendments to legislation.

It is paramount that infringements of intersex children's rights should be prevented as efficiently as possible.

206 Ministry of Social Affairs and Health (2020b).

The Ombudsman for Equality draws attention to the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Bio-medicine Convention, Oviedo Convention)²⁰⁷, which also applies to the assessment of treatment practices for intersex children. According to the Convention, an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. As a rule, if consent cannot be obtained, the procedure can only be carried out if it has immediate benefits for the patient. Furthermore, if a minor does not have the capacity to consent to an intervention according to law, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

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 provided for in an act.

4.3.4 Gender recognition and parenthood

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. In the Ombudsman for Equality's statement for the preparation of the Parenthood Act²⁰⁸, the Ombudsman also highlighted certain aspects related to the parenthood of persons who have had their gender recognised. The Government Proposal (HE 132/2021) took into account the Ombudsman's opinion that persons who have had their gender recognised as female must have the possibility to have their paternity recognised regardless of the date of gender recognition. The Ombudsman for Equality's statements also noted that persons who have had their gender recognised should have the possibility to change their parent title (father/mother) to match their recognised gender. The situation of persons who have had their gender recognised should be taken into account in access to infertility treatment. For example, having one's gender recognised as male should not prevent access to infertility treatments if the person in need of them has a womb.

Recognition of legal gender should not prevent access to infertility treatments.

4.4 GENDER DIVERSITY IN SERVICES AND SPACES DIFFERENTIATED BY GENDER

According to the report issued in 2020 by the working party instituted by the Ministry of Social Affairs and Health for the reform of the Transsexual Act, there is currently very little legislation that assigns significance to gender.²⁰⁹ In addition to the Equality Act, these include the Conscription Act (1438/2007) and various acts, decrees and decisions related to garments and separate facilities for women and men, such as washing, dressing, sleeping and toilet facilities. Gender is also significant in regulations related to parenthood and infertility treatments. According to the Transsexual Act (563/2002), a person's recognised gender is used in the application of other legislation unless otherwise provided.

Garments and spaces differentiated by gender are rarely regulated at the level of legislation, but are encountered every day by the majority of people in the context of schools, workplaces, activities and services. 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 appropriate level of regulations in which they should be provided for.

207 SopS 23/2010.

208 Ombudsman for Equality's Statements TAS 180/2021 and TAS 506/2021.

209 Ministry of Social Affairs and Health (2020b).

According to the Equality Act, the action of a provider of goods or services is deemed to constitute discrimination if a person is treated less favourably than others on the basis of gender, gender identity or gender expression. However, the Act provides that provision of goods and services exclusively or mainly to representatives of one gender is allowed if it is justified in order to achieve a legitimate objective and this objective is sought to be achieved by appropriate and necessary means. This provision of the Equality Act is based on the EU Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Council Directive 2004/113/EC), which explicitly states that different treatment of women and men may be accepted if justified by reasons of privacy and decency.

The Ombudsman for Equality is regularly contacted concerning the significance of gender, gender identity and gender expression in, for example, dressing and washing facilities or services differentiated by gender. 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 Ombudsman for Equality has stated, among other things, that as the bodily and external sex characteristics or gender expression of trans people can differ from the average, case-by-case consideration is needed to find the best non-discriminatory practices. In itself, legal gender is not always the deciding factor in these assessments²¹⁰. On the other hand, it is clear that trans women are also women and trans men are also men. The manner in which gender diversity is taken into account in spaces and services differentiated by gender should be outlined in connection with the trans legislation reform.

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 RECOMMENDATION

- ▶ 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.
- ▶ Recognition of legal gender should not prevent access to infertility treatments.
- ▶ 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.

210 Ombudsman for Equality's Statements TAS 295/2019 and TAS 1/2021.



GENDERED VIOLENCE, HATE SPEECH AND HARASSMENT

5

5.1 FROM AMBITIOUS GOALS TO FUNCTIONING PRACTICES

Violence, hate speech and harassment must be addressed from the gender perspective to make Finland a safer and more equal country for all, regardless of gender. The gendered nature of violence, hate speech and harassment must be understood before the various forms of violence and the related abuses of power can be prevented effectively.

In the Ombudsman for Equality's previous report to Parliament in 2018, the Ombudsman drew attention to the incidence of harassment and hate speech, information needs, shortcomings in the legislation and the importance of working to prevent violence against women. Among other things, the Ombudsman for Equality recommended an assessment and comprehensive amendment of the Criminal Code of Finland and the criminal justice system with the aim of decreasing hate speech and violence against women. In the Ombudsman for Equality's view, legislation should be developed to recognise gendered hate speech and crimes motivated by misogyny. For example, legislators should establish whether gender, gender identity and gender expression should be added to the statutory definition of ethnic agitation. In addition, the Ombudsman for Equality proposed an assessment of chapter 20 of the Criminal Code of Finland, which deals with sex offences, from the perspective of gender, along with changing the statutory definition of rape to be based on a lack of consent.

Genderisation of violence

When a phenomenon is 'gendered', it affects different genders differently. Violence is a gendered phenomenon with differences between men and women in aspects such as incidence, forms, motives, victims and perpetrators.

The Programme of Prime Minister Sanna Marin's Government and the Government action plan for gender equality 2020-2023 contain a number of entries related to violence against women. Several legislative and assessment projects have been launched in the administrative branch of the Ministry of Justice in particular. Some of these address the recommendations made by the Ombudsman for Equality.²¹¹ The Government report on equality policy under preparation contains the ambitious objective of significantly reducing intimate partner violence and making Finland a country where no one dies or loses their health as the victim of gendered violence.²¹² It is important to make these entries and objectives a reality, implement the legislative reforms and assess their effectiveness. Sufficient financial resources must also be set aside for anti-violence work.

Both national and EU-level victim studies indicate that the forms and incidence of violence are strongly differentiated by gender.²¹³ The majority of violence in Finland is committed by men against men, and a significant percentage of homicides involve male marginalisation and abuse of alcohol or other intoxicants.²¹⁴ The Ombudsman for Equality has proposed a study of the risks and effects of marginalisation and poverty from a gender perspective.²¹⁵ Gender-typical risk behaviours should be identified, harmful gender stereotypes deconstructed and the need for gender-sensitive action considered in the prevention of and interventions in marginalisation and violence.

5.2 THE PREVENTION OF VIOLENCE AGAINST WOMEN REQUIRES PERMANENT STRUCTURES

In the Ombudsman for Equality's opinion, violence against women is one of Finland's most serious human rights issues. As a result of the Ombudsman for Equality's report for 2018, Parliament adopted a position requiring the Government to look into the possibility of appointing an independent body for the monitoring and evaluation of the implementation of the obligations imposed by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and preparing any required legislative amendments in that regard (EK 49/2018 vp). In response, a government proposal for a new independent rapporteur on violence against women was presented to Parliament in late 2021.²¹⁶ The duty of the rapporteur is to comprehensively monitor violence against women and intimate partner violence, the functionality of national legislation and the fulfilment of Finland's international obligations. In addition, the rapporteur monitors and evaluates measures taken to combat violence against women and intimate partner violence. With regard to intimate partner violence, the rapporteur's duties cover all types of violence irrespective of the victim's gender. The provisions on the rapporteur were added to the Act on the Non-Discrimination Ombudsman (1326/2014) and entered into force on 1 January 2022.

In the opinion of the Ombudsman for Equality, the establishment of the rapporteur will cause violence against women to be recognised better as a national phenomenon, gender-based human rights violation and equality issue. The Ombudsman for Equality considers that, if they succeed in their duties, the rapporteur will help Finland reduce violence against women.²¹⁷

211 K 22/2018 vp., p. 107. The legislative projects currently under preparation include a comprehensive reform of sex offence legislation, taking gender into account as grounds for increasing the punishment, and expressing the punishability of genital mutilation more explicitly in the Criminal Code of Finland. Currently pending development projects include an assessment of mediation cases involving restraining orders and intimate partner violence, along with a study of the chains of events leading to the killing of women by their intimate partners.

212 Advance information.

213 FRA (2014); THL: <https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/vakivalta-ja-hairinta/sukupuolistuneen-vakivalan-yleisyys>; On rape offences, see Alaattinoğlu, D. – Kainulainen, H. – Niemi, J. (2020), p. 45.

214 See Government Report on Internal Security, VNS 4/2021 vp.

215 TAS 437/2021.

216 HE 123/2021 vp.

217 TAS 481/2021 and TAS 44/2021.

Violence against women

is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 3 of the Istanbul Convention

The effective prevention of violence and protection of victims requires a female-specific and gender-sensitive approach. Gender must be understood more widely than as simply a personal attribute or identity of an individual. In the Istanbul Convention, for example, ‘gender’ means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men, while ‘gender-based violence against women’ means violence that is directed against a woman because she is a woman or that affects women disproportionately.²¹⁸

The Ombudsman for Equality stresses that the various factors exposing victims to violence and compounding their vulnerability must be assessed in violence prevention work. In addition to gender, violence is connected to other social categories, such as age, class and ethnicity. For example, women with disabilities are known to be more vulnerable to sexual violence and abuse.²¹⁹ The Ombudsman for Equality accordingly considers an intersectional perspective to be important also in violence prevention work.

The state has an obligation based on international law and the doctrine of human rights to effectively protect women from violence.²²⁰ The responsibility of the state is emphasised in cases of violence. This is stated in the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) and the opinions of the CEDAW Committee established for monitoring the implementation of the Convention, and in the Istanbul Convention. The European Court of Human Rights has also stated that the authorities have an active obligation to act when assessing the risks and threats related to every individual’s right to life and personal security. The 1990s can be seen as a watershed in international development. In that decade, the UN addressed and acknowledged the fact that, traditionally, the international human rights conventions and their interpretation practices have principally protected men and their human rights. On the other hand, forms of violence typically employed against women were often left unpunished, and states were not required to intervene in this impunity.²²¹

Violence experienced by women, including severe and even lethal intimate partner violence, is still alarmingly common in Finland.²²² In recent years, 60 % of Finnish adult female homicide victims have been killed by their spouse, partner or ex partner, while the corresponding percentage for male victims is a mere eight

218 Istanbul Convention, Article 3.

219 THL: <https://thl.fi/web/vammaispalvelujen-kasikirja/vammaisuus-yhteiskunnassa/vakivalta-ja-vammaisuus/millaista-vammaisin-ihmisiin-kohdistuva-vakivalta-on>.

220 UN Women: <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/global-norms-and-standards>.

221 General recommendation nr 19 of the CEDAW Committee (1992); Vienna Declaration and Programme of Action, adopted 25 June, 1993; Beijing World Conference, adopted 15 September, 1995.

222 FRA (2014); Statistics Finland is currently collecting data for an extensive gendered violence research project, see <https://tilastokeskus.fi/keruu/th/>.

per cent.²²³ The percentage of femicides committed by intimate partners stands out also in comparison to other EU Member States.²²⁴ It is known that, in intimate partner violence, the risk of serious violence and death increases during separation.²²⁵ The Ombudsman for Equality thus highlights the importance of a nationwide and systematic risk assessment system for reducing the incidence of, for example, severe and lethal intimate partner violence.²²⁶

There are currently two national policy programmes for preventing violence against women in Finland: the Action Plan for Combating Violence Against Women 2020-2023²²⁷ specified in the Programme of Prime Minister Sanna Marin's Government and running for the duration of the Government term, and an implementation plan for the Istanbul Convention for 2022-2025. The Commission for Preventing Violence against Women and Intimate Partner Violence (NAPE) is responsible for the implementation of the latter. NAPE is a body established by Government Decree and tasked with aligning governmental measures within its remit.²²⁸ The new legislative provision on the rapporteur on violence against women states that both the rapporteur and NAPE have the competence to monitor and assess national principles and measures arising from the Istanbul Convention.²²⁹

The Action Plan for Combating Violence against Women coordinated by the Ministry of Justice is more limited in terms of measures, the administrative branches involved, and duration than the work of NAPE and the Istanbul Convention implementation plan. The action plan can be thought of as supplementing the work of NAPE and other violence prevention activities. The cross-cutting theme of the action plan is the prevention of violence. In terms of authorities, the action plan focuses on the development of the pre-trial investigation process, the criminal procedure and the competence of the criminal sanctions authorities, as well as the work done with perpetrators. The action plan also covers honour-related violence and digital violence.²³⁰

Fixed-term projects and action plans alone will not suffice. The implementation of the Istanbul Convention and prevention of violence against women requires long-term action across government terms and administrative boundaries. In the previous report, the Ombudsman for Equality pointed out that adequate resources must be secured for violence prevention work and regions and municipalities must be involved in coordination.²³¹ Multi-disciplinary, gender-sensitive structures for preventing violence must be established and standardised at the national level as well as in municipalities and the new welfare counties.²³² These structures must be cross-administrative and permanent. Now that the social welfare and health care reform legislation has been passed in Parliament, it is high time to consider the role of the new welfare counties in violence prevention. Regional structures for violence prevention must be supported to ensure coordinated and systematic activities. Sufficient gender-aware expertise and competence in the fields of violence and its prevention must be ensured at all operative levels.²³³

223 Statistics on offences 2019, p. 18.

224 See EIGE (2017), p. 5. <https://eige.europa.eu/publications/measuring-femicide-finland>. E.g. the percentage of women killed by their current or ex-partner was the second highest out of 15 Member States in 2017.

225 Nikupeteri, A. – Lappi, C. – Lohiniva-Kerkelä, M. – Kauppi, A. – Laitinen, M. (2017), pp. 290–309; see the EIGE website on femicides, including femicides committed by an intimate partner and the risk factors for them.

226 E.g. MARAC, the Multi-Agency Risk Assessment Conference, is not currently a nationwide or statutory procedure for authorities.

227 Ministry of Justice (2020a).

228 See the Decree.

229 Act on the Non-Discrimination Ombudsman (laki yhdenvertaisuusvaltuutetusta), section 3, subsection 1, paragraph 7.

230 Ministry of Justice (2020a).

231 K 22/2018 vp, pp. 106–107.

232 Also see the Istanbul Convention, Article 18; Grevio Recommendation No. 17 and STM (2019b).

233 For example, the Finnish Institute for Health and Welfare THL has drawn up the Recognise, Protect and Act guidelines for the prevention of intimate partner violence. Municipal and regional structures could take into account these guidelines, which have not been fully implemented in municipalities to date. Publications of the Ministry of Social Affairs and Health 2008:9, Recommendations for the prevention of interpersonal and domestic violence. Recognise, protect and act. How to guide and lead local and regional activities in social and health care services.

5.3 HATE SPEECH, AMENDMENTS TO THE CRIMINAL CODE AND GENDER

The harmfulness of hate speech has been taken seriously during this government term. According to the Government Programme, systematic harassment, threats and targeting shall be addressed more systematically as part of reinforcing the rule of law. This objective is supported by an amendment to the Criminal Code of Finland extending the right to institute proceedings for menace.²³⁴ Menace is now subject to general prosecution if the victim is targeted because of their duties and the perpetrator does not work at the same workplace. In addition, a public prosecutor will also be able to institute proceedings for menace if the victim has been targeted because of their elected office. In the assessment of the Ombudsman for Equality, this amendment may decrease attempts to silence women in public debate.²³⁵ Studies have shown that women face more sexist hate speech and women working as, for example, journalists, researchers or politicians face threats with sexual overtones more often than men.²³⁶

Hate speech has now been recognised as a phenomenon and its gendered nature has been understood.²³⁷ Experiences of being subjected to hate speech and the effects of such experiences are being studied.²³⁸ Hate speech is closely connected to digital violence and harassment, as well as other new phenomena of the digital environment, such as targeting. The Ombudsman for Equality's previous report recommended including the gender perspective in all cooperation between authorities related to hate speech and hate crimes. Furthermore, it is important to ensure that information, research, action plans and other measures related to these phenomena are continuously and consistently examined from the gender perspective.

The Ministry of Justice launched the two-year Capable project in 2021 with the purpose of improving the prevention of hate crimes and harassment. A centre of competence for the prevention of hate crimes and discrimination will be planned and its functions tested as part of the project. The Ombudsman for Equality is in favour of developing competence and enhancing the exchange and collection of information in this area. If a centre of competence on hate crimes is established in Finland, it must have the expertise for a solid gender-based approach to harassment and hate crimes.

The amendment to the Criminal Code of Finland adding gender to the grounds for increasing the punishment under chapter 6, section 5 of the Criminal Code can also be seen as a significant stride for gender equality.²³⁹ In late 2021, the Government issued a proposal to Parliament for adding gender as a specific motive for committing an offence. The provision applies to 'hate motives', which can be applied to various types of offences. The amendment is justified with the social need to underline the reprehensibility of sexually tinged harassment, threats and spreading of private information, which are especially targeted at women. On the other hand, the legislators have wanted to preserve the gender-neutral wording of the Criminal Code, so the grounds for increasing the punishment can also be applied to offences against men when they are motivated by hatred of men.

The Ombudsman for Equality is in favour of the amendment, but considers it too restricted in terms of gender equality and Finland's human rights obligations.²⁴⁰ The proposed amendment does not address the obligations of the Istanbul Convention in their entirety. Firstly, the Istanbul Convention provides for aggravating circumstances in substantive law and requires, among other things, that the Parties take an intimate rela-

234 The provisions (698/2021) amending chapter 25, section 9 of the Criminal Code of Finland entered into force on 1 October 2021.

235 TAS 226/2020.

236 Knuutila, A. – Kosonen, H. – Saresma, T. – Haara, P. – Pöyhkäri, R. (2019); The Nordic Council of Ministers (2021).

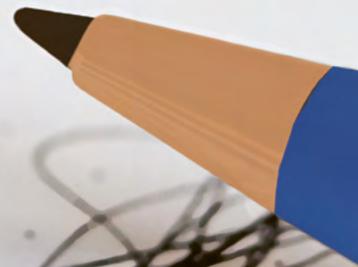
237 E.g. The Facts Against Hate project of the Ministry of Justice 2019–2021, final report, Ministry of Justice (2021); Ministry of the Interior (2019).

238 Gender Equality Barometer 2017; Ollus, N. ym. (2019).

239 HE 7/2021 vp, parliamentary hearing still underway in January 2022. The motives already listed in the provision are race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability. In addition to these, the provision adds "or another corresponding grounds".

240 TAS 340/2020 and TAS 525/2021.

Sexist hate speech
is offending speech or expression,
that incites, promotes or justifies hatred
based on gender. It stems from social power
structures and generates inequality between
the genders. Sexist hate speech is mainly
targeted at women and girls.



tionship between the perpetrator and victim into account as an aggravating circumstance in their national legislation. Intimate partner violence is being left outside the scope of the currently proposed grounds for increasing the punishment. The Government proposal does not recognise that motives of intimate partner violence, such as relationship problems, jealousy and revenge are connected to gender, which is why women are more typically victims of intimate partner violence.

In addition to the amendment to the grounds for increasing the punishment, the Government has considered amending the statutory definition of ethnic agitation to include gender in the description of the act. A comprehensive study by the Ministry of the Interior recommended these amendments to the definition of the offence.²⁴¹ This proposed provision was rejected by the Government proposal, on the grounds that the provision is intended to protect vulnerable ethnic groups with a minority status or other need of special protection. However, sexism and the historically subordinate status of women could be addressed as structural social issues like racism and racist crimes. Neither does the proposal consider the significance of gender as an established and widely prohibited grounds for discrimination. In the opinion of the Ombudsman for Equality, the fact that female or male gender is not a factor in determining minority status does not constitute sufficient grounds for rejecting the amendment to the Criminal Code in this regard.

The Ombudsman for Equality's previous report to Parliament also noted that gender identity and gender expression should be added as grounds for increasing the punishment under the Criminal Code. The currently proposed amendment to chapter 6, section 5 of the Criminal Code does not contain such explicit references.²⁴² The notion presented in the justifications for the proposal, according to which the term 'gender' would only refer to women and men, while hatred of sexual minorities would continue to be considered to constitute "other" corresponding grounds, is in contradiction to the right of non-discrimination and concepts associated with gender.²⁴³ In 2011, the legislative materials for the provision on offences motivated by hate noted that groups such as sexual minorities could be equated to the groups mentioned in the provision as groups in need of spec protection.²⁴⁴ The Act on Equality between Women and Men (Equality Act) has since been amended and it has been established that different treatment of people on the basis of gender identity and gender expression also constitutes gender-based discrimination. It is known that people belonging to sexual minorities are especially vulnerable to, for example, various kinds of harassment precisely because of their gender identity or gender expression. In addition, section 6c of the Equality Act obliges authorities to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression.

5.4 THE LEGAL PROTECTION OF HARASSMENT VICTIMS MUST BE IMPROVED

Sexual and gender-based harassment constitute discrimination prohibited under the Equality Act. In the Ombudsman for Equality's previous report to Parliament, the Ombudsman discussed the prevalence of harassment and pointed out how various authorities could simultaneously investigate cases of harassment with different powers based on different Acts.²⁴⁵ For example, a single act can constitute sexual harassment prohibited under the Equality Act, inappropriate treatment under the Occupational Safety and Health Act, and an offence meeting various statutory definitions provided in the Criminal Code. It can be difficult for victims to determine which authorities they should contact to best secure the realisation of their rights.

241 Ministry of the Interior (2019), p. 66.

242 EK 22/ 2018 vp and TAS 340/2020.

243 HE 7/2021 vp, p. 23.

244 HE 317/2010 vp., 39/I.

245 The prevalence of harassment has been studied in, e.g. the Gender Equality Barometer 2017, the national crime victim study conducted in 2018, and the School Health Promotion Study.

The reform of sex offence legislation to be carried out during this government term plans to extend the scope of sexual harassment to acts that do not include physical touching.²⁴⁶ The Ombudsman for Equality is in favour of this extension, and the amendment is also required under the Istanbul Convention.²⁴⁷ However, the proposed amendment brings the definitions of the harassment prohibited under the Equality Act and criminalised sexual harassment even closer to each other, and these differences and potential problems should be addressed both during the drafting stage and during monitoring of the impact of the provisions.

In many cases, the Equality Act provides better legal protection for harassment victims than, for example, the Criminal Code. The victim's burden of proof has been eased and a minimum amount provided for the monetary compensation in the Equality Act. Furthermore, the Equality Act does not require intent on the part of the perpetrator. Section 8d of the Equality Act provides for the employer's explicit obligation to intervene in harassment. Taking a passive stance could make the employer guilty of prohibited discrimination and liable to pay compensation. An educational institution or other entity that provides education and training can be similarly liable, as can a provider of goods and services. However, the liability of these latter parties is indicated in the Equality Act only in reference provisions and the legislative materials for the Act.²⁴⁸ On the other hand, it is not possible to claim monetary compensation from an individual perpetrator by virtue of the Equality Act. Rather, the liability for compensation always falls upon, for example, the employer or educational institution as mentioned above.

There is hardly any case law on harassment cases under the Equality Act, whereas criminal matters involving elements of harassment have been tried in the courts in recent years. The Supreme Court has considered the touching of employees by their CEO (KKO 2010:1), unwelcome touching and sexual speech on a restaurant terrace (KKO 2020:38) and a former subordinate being touched by their manager (KKO 2019:104). The Labour Court has considered harassment from the perspectives of inappropriate behaviour and grounds for dismissal, when an off-duty employee made advances to an on-duty colleague (TT:2014-79). In addition, the Helsinki Court of Appeal has given a decision related to harassment (HelHo 6.4.2021). The matter involved assessing how a superior officer had insulted his female subordinates with a series of very different acts, and the chief petty officer was found guilty of abuse of a superior position, a service offence and defamation.

The lowest standard of proof applies and the monetary compensation for sexual or gender-based harassment will probably be larger when the prohibitions of discrimination provided for in the Equality Act are applied. However, the victim's legal protection is not realised as intended by the Equality Act if harassment situations are only assessed in criminal proceedings and the victim only receives a small monetary compensation based on the Tort Liability Act.

In contrast to compensation disputes under the Equality Act, the perpetrator is personally responsible for the act in criminal proceedings. The authorities are responsible for investigating the matter and arranging a court hearing. The victim is in the role of injured party and bears no cost risk like they would as claimant in a civil matter concerning a compensation claim. However, the damages for pain and suffering under the Tort Liability Act are generally smaller than the compensation provided for in the Equality Act. It can thus be considered problematic that a victim receives a negligible compensation or no compensation at all for sexually tinged unwelcome behaviour, which is reprehensible enough to meet the statutory definitions provided for in the Criminal Code. The Ombudsman for Equality thus finds that it would be important to examine the effectiveness of legal practice and regulations in order to improve the legal protection of harassment victims.

246 Ministry of Justice (2021c); OM project OM007:00/2019, estimated publication week 4/2022.

247 TAS 370/2020.

248 HE 195/2004 vp. If a person is treated less favourably than others on the basis of gender or is otherwise treated in the manner referred to in section 7 in the action of an educational institution (section 8b) or in the access to and provision of services (section 8e), the body may be liable to pay compensation.

5.5 THE PREVENTION OF HARASSMENT MUST BE IMPROVED

The public debate on harassment launched by #MeToo must be continued. It is a welcome development that many organisations are actively investigating harassment cases on their own initiative and drawing up anti-harassment policies.²⁴⁹ The Government action plan for gender equality 2020-2023 aims to formulate recommendations for the prevention of harassment. The Ombudsman for Equality also considers it important that the prevention of harassment should receive more attention in addition to ex post facto legal remedies.

According to the Equality Act, employers and educational institutions have a special duty to promote gender equality, for example by drawing up gender equality plans. However, the prevention obligations and best practices are still often unclear in both working life and the school world.²⁵⁰ With regard to educational institutions, section 5a of the Equality Act specifically provides that gender equality plans must give special attention to the prevention and elimination of sexual harassment and gender-based harassment. As regards working life, a provision on the employer's duty to ensure that their employees are not subjected to sexual harassment was added to the Equality Act already in 1995.²⁵¹

The provisions on harassment were amended in the 2005 reform, principally due to the EU Equality Directive. In that connection, the specific mention of harassment was removed from section 6, concerning the employer's duty to promote gender equality, because a general duty to prevent discrimination was enacted for employers. This duty, currently section 6, subsection 2, paragraph 6 of the Act, is considered to include the duty to prevent harassment as well.²⁵² In the opinion of the Ombudsman for Equality, awareness of the scope of this duty is insufficient and the duty to prevent harassment should be explicitly stated in the Equality Act. Harassment should be mentioned in section 6, binding on all employers, and as part of the gender equality planning obligation provided for in section 6a.

Even though the Equality Act currently does not explicitly oblige employers to investigate and record matters related to sexual harassment as part of gender equality planning, some workplaces have already adopted this approach. According to a study by the Ministry of Social Affairs and Health, for example, some organisations that had drawn up a gender equality plan stated that they had included aspects not directly based on section 6a of the Equality Act in their gender equality plans. The prevention of discrimination, harassment and bullying was emphasised in the free-form answers (N=112) as one such aspect.²⁵³ With regard to working life, including anti-harassment guidelines in workplace gender equality plans was recommended already in the Ombudsman for Equality's previous report.²⁵⁴

5.6 RECOMMENDATIONS

- ▶ The legal protection of harassment victims must be improved. The current state of affairs and victims' access to justice should be studied and required changes assessed based on the results.
- ▶ The specific prohibitions of discrimination in the Equality Act must explicitly state that failing to intervene in harassment after becoming aware of it constitutes discrimination.
- ▶ The employer's obligation to prevent sexual harassment and gender-based harassment must be added to section 6 of the Equality Act. Guidelines for harassment situations should also be included in the gender equality plan of the workplace, or the plan should describe them and tell employees where they can be accessed. This obligation should also be laid down in the provisions on gender equality planning in the Equality Act.

249 See, e.g. Ministry of the Interior (2021); Tehy (2021); PAM (2020).

250 Attila, H. & Koskinen, H. (2020) ja Saarinen, J. – Siekkinen, K. – Laimi, T. – Ahonen, A., Bernelius, V. – Brunila, K. – Gustavsson, M. – Kauppinen, M. – Norrena, J. (2021).

251 At the same time, a provision defining negligence on the part of the employer as prohibited discrimination was also added to the Equality Act.

252 HE 195/2004 vp.

253 Attila, H. & Koskinen, H. (2020), p. 54. The other aspects were recruitment and career development (incl. training), reconciling work and family life, management culture and interactions with persons from outside the organisation.

254 K 22/2018 vp.



EQUALITY IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

6

6.1 EQUALITY REQUIRES A MORE PROMINENT PLACE IN EDUCATION POLICY

The government has implemented or launched a number of teaching and education reforms during the period covered by this report. These reforms have touched on areas as varied as early childhood education and care, pre-primary education, and student selection for higher education institutions. Reports have also been published on the fulfilment of the obligations to promote gender equality in primary education and higher education institutions alike.

For his part, the Ombudsman for Equality has issued statements on these matters and examined how primary education providers have ensured that the measures required by the Equality Act for promoting gender equality have been taken in the schools administered by them. The Ombudsman has also asked teacher education institutions to explain how they ensure that graduating teachers have sufficient information and skills for providing gender-aware teaching when beginning their careers.

Awareness of the significance of teaching and education to gender equality is quite high. This is clearly evident from the documents that address gender equality. On the other hand, taking gender equality into account in education policy documents has proven to be a challenge. The facts that gender equality receives rather modest coverage in the Education Policy Report of the Finnish Government and that gender equality is, to all intents and purposes, ignored completely in the objectives and measures outlined in the Report show that government programmes and real life still do not meet in this regard.

6.2 GENDER-AWARE ACTION AGAINST SEGREGATION

6.2.1 Deep-seated segregation is a persistent issue in Finland

The education level, degrees and professions of the Finnish population are heavily segregated by gender. Due to this segregation, competence and resources are still unequally divided between men and women and perspectives are limited.

Public debate has drawn attention to the changes in Finland's PISA scores, along with differences in learning and success at school between the genders.²⁵⁵ Marginalisation is more common among boys and men, and this should be addressed. On the other hand, experts have highlighted the stressfulness and underpayment

255 HS (9 August 2020): Mitä pojille tapahtuu ekaluokan jälkeen?; Suomen Kuvalehti (14 August 2020) Ei ole koulun vika: Pojat pärjäävät koulussa tyttöjä huonommin; YLE online news (16 November 2020): Monet pojat eivät koe koulua omaksi jutukseksi – näillä keinoilla poikien koulumenestystä voitaisiin parantaa; Ilta-Sanomat (6 August 2019): Opetusneuvos: Miesopettajien lisääminen alaluokille voisi kohentaa poikien koulumenestystä; HS (17 February 2020): Poikien aivot eivät sittenkään kasva hitaammin – Vääräksi osoittautunut käsitys voi vaikuttaa asenteisiin ja haitata poikien oppimista. All articles in Finnish.

of certain female-dominated professions.²⁵⁶ Concern over the fact that girls do not pick school subjects that support careers in technology or science has been expressed in Europe and globally.²⁵⁷ As a result, the digitalisation of society and the future labour market favours men.²⁵⁸ Equality projects for mitigating segregation are only very rarely targeted at getting boys or men to enter female-dominated professions.²⁵⁹

The numerous teaching and education projects launched by the government aim not only to improve the standard of education at all levels of the education system, but also promote equality, for example by narrowing the learning gaps between the genders and evening out highly gendered education choices.

**Traditional gender roles influence children's thinking at an early age.
Children shall be encouraged to not let their choices be limited
by gender. This requires gender/equality awareness from
education and teaching professionals.**

6.2.2 Learning differences are not explained by gender alone

Prime Minister Sanna Marin's Government Programme lifts up education as one of the key factors in securing the future of Finland as a successful welfare state.²⁶⁰ On the other hand, both the Government Programme and Government action plan for gender equality 2020-2023 note that educational inequality has increased.²⁶¹ The education level of parents is increasingly affecting their children's standard of education. In other words, education is becoming hereditary. Other significant factors include regional and socio-economic differences, along with immigrant background and gender.²⁶²

The Ombudsman for Equality is concerned by the increasing inequality of education. In the Ombudsman's previous report to Parliament in 2018, the Ombudsman for Equality recommended analysing the causes of learning differences and paying attention to safeguarding opportunities for further studies and preventing marginalisation.²⁶³

Even though average differences in learning, well-being, interests and educational choices have been identified between girls and boys, these differences must not be over-simplified and reduced to gender, which can even reinforce harmful stereotypes.²⁶⁴ Educational equality shall be promoted through measures based on intersectional and multi-perspective attention to intersecting differences and designed to deconstruct narrow gender roles.²⁶⁵

256 E.g. Regarding the NEET debate, see Government action plan for gender equality, p. 18; Hiilamo, H. – Määttä, A. – Koskenvuo, K. – Pyykkönen, J. – Räsänen T. – Aaltonen, S. (2017). Public debate on the pay issues affecting female-dominated professions has been raised by, e.g. the Ei leikkirahaa (No Play Money) movement. For more information, see the Finnish Facebook page <https://www.facebook.com/EILEKKIRAHAA/>.

257 UNESCO (2019); UNESCO (2017); EIGE (2017).

258 Interestingly, this has not been explicitly addressed in Finnish equality policy. But see, e.g., the NAU Project, in which five universities of applied sciences, three universities and the Tekniikan akateemiset TEK union of academically educated technology professionals focus on equal career opportunities for women, especially in the technology industry, in a collaborative project running from 2020 to 2022 and funded by the European Social Fund. See <https://tasaarvoisestiuralle.fi/in-english/>

259 Saarinen, J. – Siekkinen, K. – Laimi, T. – Ahonen, A. – Bernelius, V. – Brunila, K. – Gustavsson, M. – Kauppinen, M. – Norrena, J. (2021), p. 79.

260 See the strategic theme "Finland that promotes competence, education, culture and innovation" of the Government Programme.

261 Ministry of Social Affairs and Health (2020a), p. 29.

262 Saarinen, J. et al. (2021).

263 K 22/2018 vp, p. 73.

264 Saarinen, J. et al. (2021), pp. 83, 91, 97, 99–100, 110, 118; Lahelma, E. – Lappalainen, S. – Kurki, T. (2020).

265 Saarinen, J. et al. (2021), pp. 74–75, 81.

Even though gender alone cannot explain differences in learning and education, traditional views about gender continue to have a powerful impact on education choices. An extensive survey of equality in primary education conducted by the Finnish Education Evaluation Centre (Karvi) showed, among other things, that girls and boys have different points of attachment to their schools, which in turn affects their motivation and differences in learning.²⁶⁶ It has been shown that interest in school and well-being at school decrease when pupils move to lower secondary school.²⁶⁷ However, it appears that teachers let boys give up on school more easily and do not ensure active attachment in their cases.²⁶⁸

Behavioural challenges are more readily met with discipline for boys than girls. Furthermore, boys have stricter prevailing social norms stipulating that one should not openly like or enjoy school. Success in school is also linked to the varying notions of manhood prevailing in different social classes, with success potentially exposing the pupil to bullying in the most working-class schools. In learning differences between the genders established by PISA tests, for example, it has also been typical that boys who do poorly typically have a difficult relationship with their teacher. Regional differences have also been identified in boys' educational goals, with boys in sparsely populated areas setting goals related to local employment opportunities instead of more ambitious plans for further education, which can lead to school being viewed as a necessary evil.²⁶⁹



Gender awareness means identifying the cultural and social assumptions, prejudices and conceptions linked to different genders in everyday life and speech.

Gender awareness also includes the identification and critical analysis of gender stereotypes, as well as awareness of gender diversity.

266 Saarinen, J. et al. (2021), pp. 136–138. Attachment refers to a sense of belonging, active participation and taking responsibility for achieving objectives. For more information, see p. 137 of the above-mentioned publication.

267 School Health Promotion Study 2019; also see Saarinen, J. et al. (2021), p. 136.

268 Saarinen, J. et al. (2021), p. 137.

269 Saarinen, J. et al. (2021), p. 128.

6.2.3 Gender still influences education choices

Less than 10% of the Finnish workforce is currently employed in equal professions.²⁷⁰ According to Statistics Finland, this percentage has remained more or less constant for a long time now.²⁷¹

Traditional ideas about gender are reflected in the subject choices of young people at an early stage. Boys choose mathematical subjects and natural sciences more often than girls in the last grades of primary school and in secondary education. Girls choose foreign languages more often than boys.²⁷² This feeds the traditional notion that boys are more talented mathematically and girls more talented verbally.²⁷³ It can be said that gender stereotypes limit the education and profession choices made by children and young people.²⁷⁴

At the upper secondary level, the majority of girls (65 % in 2020) primarily apply for general upper secondary school, while the majority of boys (53 % in 2020) primarily apply for upper secondary vocational education and training.²⁷⁵ Gender segregation is at its highest when young people move from primary school to upper secondary vocational education and training.²⁷⁶ More than 80 % of upper secondary level social and welfare students are female, while the technology and transport sector, natural sciences, and rescue and security sectors are especially male-dominated.²⁷⁷

The Government action plan for gender equality 2020-2023 of Prime Minister Sanna Marin's administration has set goals for promoting gender equality and non-discrimination systematically in early childhood education and care and all stages of the education system. Furthermore, it is one of the objectives of the Government Equality Policy Report that education, working life and care responsibilities would no longer be divided according to gender in Finland. One of the targets toward this object is to double the number of people employed in equal professions by the end of 2020.²⁷⁸ The target is ambitious, because there has been no increase in the proportion of equal professions, and the dream professions of young people conform to the traditional distribution of work between the genders.²⁷⁹

The Ombudsman for Equality has emphasised the significance of equality- and gender-aware teaching and the systematic promotion of equality at all levels of teaching. In the Ombudsman for Equality's previous report to Parliament, the Ombudsman noted that the focus of equality promotion in educational institutions should be shifted from drawing up documents to concrete action.²⁸⁰ Continuous long-term work, the impact of which is assessed, is essential to the achievement of targets and success of equality promotion. Equality and gender awareness should begin in early childhood education and care.

270 Equal profession means professions in which the share of men and women is at least 40 %.

271 Stat: Large groups of professions left the equal professions category in 2013, such as sales representatives, postmen and postwomen, as well as administrative and business development specialists, reducing the percentage of equal professions.

272 Council for Gender Equality (2021), p. 13.

273 Lahtinen, J. & Vieno, A. (2019); Finnish Institute for Health and Welfare (2020b).

274 Council for Gender Equality (2021), p. 13.

275 Gender Equality Statistics 2021.

276 Lahtinen, J. & Vieno, A. (2019).

277 In addition, 99 % of those who accepted a position in building services engineering studies through the joint application system in 2018 were men, while the corresponding percentage in electricity and automation studies was 96 %. In the hair industry, 97% of new students were female. Saari, J. & Lahtinen, J. (2019); Tanhua, I. (2018).

278 Government draft, objective number 6.

279 Youth Barometer.

280 K 22/2018 vp, pp. 65–66.

6.3 WELL-BEING OF CHILDREN AND YOUNG PEOPLE AND PREVENTING HARASSMENT

6.3.1 School is an essential environment for supporting well-being

School must be a safe place for all children and young people, where no-one has to fear bullying or harassment. Educational institutions and education providers have a special duty to promote equality between the genders. Teaching, research and study materials shall support gender equality and contribute to the prevention of discrimination based on gender, gender identity and gender expression. Children have the right to appropriate information and sexual education. This requires information and competence from both teachers and student welfare services. The development and growth of children must be supported in a gender-aware manner and taking into account the diversity of genders.

From primary education onwards, the systematic promotion of equality in educational institutions requires paying special attention to sexual and gender-based harassment and efforts to both eliminate and prevent harassment. The situation in each educational institution shall be monitored on a regular basis, harassment situations identified, measures taken to rectify problems, and the impact of measures monitored. If an educational institution does not take the available measures to rectify the situation after being informed of harassment committed against its pupil or student, it may be required to pay a compensation to the harassment victim under the Equality Act.

In the Ombudsman for Equality's previous report to Parliament, the Ombudsman recommended that educational institutions and education providers should be obliged to monitor the incidence of sexual harassment and the effectiveness of measures with data such as the school-specific information from the School Health Promotion Study.²⁸¹ The results of the latest School Health Promotion Study, conducted in 2019, are alarming, especially with regard to harassment experienced by girls. However, the Ombudsman for Equality is not aware of schools using the information obtained from the survey systematically in their equality work. The Ombudsman for Equality considers the School Health Promotion Study and other recurring surveys to be useful tools for monitoring and assessing the state of equality among children and young people.²⁸² The purpose of equality planning as a continuous tool for promoting gender equality would be fulfilled better if the existing data sources and chronologically comparable data would be systematically used by educational institutions.

**School must be a safe place for all children and young people,
where no-one has to fear bullying or harassment.**

An equality survey conducted by KARVI showed that learning is affected by a variety of everyday matters related to everyday school life, such as restrictive norms, fear of violence, racism, discrimination and bullying. The health and well-being of young people is connected to their subjective experiences of inclusion, equality and acceptance. But schools rarely have the skills to respond to diversity, which causes problems for pupils and students. Furthermore, problems related to well-being are often laid at the feet of individuals instead of the structures that are causing the problems. KARVI's survey accordingly recommended that well-being skills should be made part of school culture. It is not enough to have pedagogically sound teaching and highly educated teachers if the young people feel that there are no reliable and safe adults at school with whom they could discuss things that weigh on their mind.²⁸³

281 K 22/2018 vp, p. 73.

282 E.g. Youth Barometer, Vocational College Barometer, Gender Equality Barometer.

283 Saarinen, J. et al. (2021), p. 138.

6.3.2 The well-being of gender-diverse young people needs effort

Rainbow youth²⁸⁴ face far more challenges related to their health and well-being than other young people. The well-being and experiences of rainbow youth have been studied both in Finland and at the Nordic level in recent years, and the results are alarming.²⁸⁵ A study conducted by the Finnish Institute for Health and Welfare based on the 2019 School Health Promotion Study found, among other things, that young people belonging to gender minorities have experienced bullying and physical menace at school more often than other young people.²⁸⁶ Overall, rainbow youth have also experienced several difficulties related to school and life in the school community, such as experiences of bullying and loneliness.²⁸⁷ More than half of them reported truancy and school exhaustion. Anxiety was also thrice as common for them as for other young people.²⁸⁸

According to the 2019 School Health Promotion Study, more than one in ten young people belonging to a gender minority had experienced bullying once a week, while only three per cent of other young people of the same age had such experiences.²⁸⁹ According to the survey by the Finnish Institute for Health and Welfare, especially the identification and treatment of acute mental health problems and the prevention of violence require immediate action in schools and services used by young people.²⁹⁰

Gender and sexuality are a part of young people's lives, which is also reflected in everyday school life.²⁹¹ Sexual orientation and the diversity of genders is increasingly being taken into account in curricula of various stages.²⁹² In part, normative assumptions of "the right kind of" girlhood and womanhood and, on the other hand, boyhood and manhood have partly been called into question, as has the practice of considering heterosexuality as the default starting point.

Even though more and more rainbow children and young people are getting support, persistent, exclusive and heteronormative practices partially explain the more common experiences of loneliness and fewer experiences of inclusion among such children.²⁹³ For example, school anti-bullying programmes do not pay sufficient attention to otherising or discriminatory structures behind the bullying.²⁹⁴ Furthermore, attitudes in rural areas, for example, were generally felt to be harsher and young people concealed their sexuality and gender experiences more often there.

The pressures and conflicts caused by gender norms have the greatest effect on trans youth. When the School Health Promotion Study charted young people's willingness to move, non-heterosexual men felt that their situation would improve if they moved to study elsewhere, but trans youth did not feel that any place would be safer for them than their present location.²⁹⁵

The Finnish Institute for Health and Welfare's study found that improving the well-being and safety of rainbow youth also supports the well-being of all young people. Curricula and the legislation require educational institutions to safeguard the well-being of all pupils and students. A comfortable and safe school environment does not necessarily require radical measures or changes, but simply rethinking matters from a different perspective.²⁹⁶

284 Term rainbow youth refers to young people with diverse gender identities and sexual orientations (LGBTIQ).

285 Jokela, S. – Luopa, P. – Hyvärinen, A. – Ruuska, T. – Martelin, T. – Klemetti, R. (2020); Nordic Council of Ministers (2021); See also Ministry of Justice (2021e), pp. 20–24.

286 Jokela, S. et al. (2020), p. 29. The results of the target group for the survey are analysed for 8th and 9th grade students, 1st and 2nd year upper secondary school students, and 1st and 2nd year vocational college students.

287 Jokela, S. et al. (2020); Saarinen, J. et al. (2021), p. 120.

288 Jokela, S. et al. (2020), p. 20.

289 Ministry of Justice (2021a), s. 138.

290 Jokela, S. et al. (2020).

291 Jokela, S. et al. (2020), pp. 29–30.

292 Ministry of Justice (2021a), p. 137.

293 Ministry of Justice (2021a), s. 138.

294 Ministry of Justice (2021a).

295 Lehtonen, J. (2020), pp. 140–142.

296 Jokela, S. et al. (2020).

The Ombudsman for Equality already drew attention to gender-diverse children and young people's experiences of harassment and discrimination in the Ombudsman's previous report to Parliament.²⁹⁷ Already then, the Ombudsman for Equality pointed out the importance of taking the gender experiences of children and young people seriously. For example, using a name conforming to the identity of the child or young person and preferred by them at school promotes their well-being.

The report also emphasised that teachers and student welfare services staff need the appropriate competencies to protect gender-diverse children and young people from bullying and discrimination.²⁹⁸ More information and research on the problems faced by children and young people is now available. A number of reports have proposed concrete measures, many of them specifically for the school setting, to improve the situation. The Ombudsman for Equality considers this to be an appropriate approach. Education and school must not repeat the inequalities of surrounding society in their own practices, and inequality must be prevented and diversity valued at all levels of the education system.

6.3.3 Girls are facing an alarming amount of issues

The well-being of girls has taken a concerning turn in the 2010s. The Ombudsman for Equality and Ombudsman for Children have jointly drawn attention to the situation of Finnish girls.²⁹⁹ In the past two years, girls' experience of the meaningfulness of their life has deteriorated even further.³⁰⁰ In 2017, one in five girls were very satisfied with their lives, whereas only one in eight girls feel that way today. Similar changes have not occurred in the happiness of boys, as one in three boys reported being very satisfied with their lives in the surveys of both 2021 and 2017.

An increasing number of girls experience exhaustion and anxiety and are worried about their own mood. As many as one in three girls reported moderate or severe anxiety, and more than half of girls have been worried about their own mood. At the same time, pressures related to success at school, appearance and activities have increased and social relations deteriorated. One in four girls said that they are lonely.³⁰¹

The School Health Promotion Studies have shown that girls' growth environments include several factors that decrease safety. Girls are subjected to mental and physical violence by the adults caring for them more often than boys - and also witness domestic violence more often than boys. According to child victim studies, experiences of sexual harassment had been decreasing steadily since the 1980s, until they once again took an upturn in the 2019-2021 School Health Promotion Studies. In 2021, no less than half of girls reported having experienced unwelcome sexual propositioning or harassment in the past year. Nearly one in five girls have experienced sexual violence. Girls have been subjected to sexual harassment especially on the internet, but also in public spaces.

Girls are doubly marginalised by their gender and age, exposing them to many kinds of discrimination. Experiences of discrimination become more common when girls enter teenage, which is why discrimination and violence against girls must be stopped in time. The UN Committee on the Rights of the Child (CRC) and Committee on the Elimination of Discrimination against Women (CEDAW) published a joint statement in 2019 demanding an end to discrimination against girls. The committees propose anti-discrimination measures in various countries and recommend hearing the views of girls of various ages when planning them.³⁰² The OECD's recent SSES study shows that the differences between girls and boys are greater in Finland than in the other countries included in the study, especially in energy and optimism.³⁰³

297 K 22/2018 vp, pp. 82–83.

298 K 22/2018 vp, p. 83.

299 Statement of the Ombudsman for Equality and Ombudsman for Children, 11 October 2021 (in Finnish).

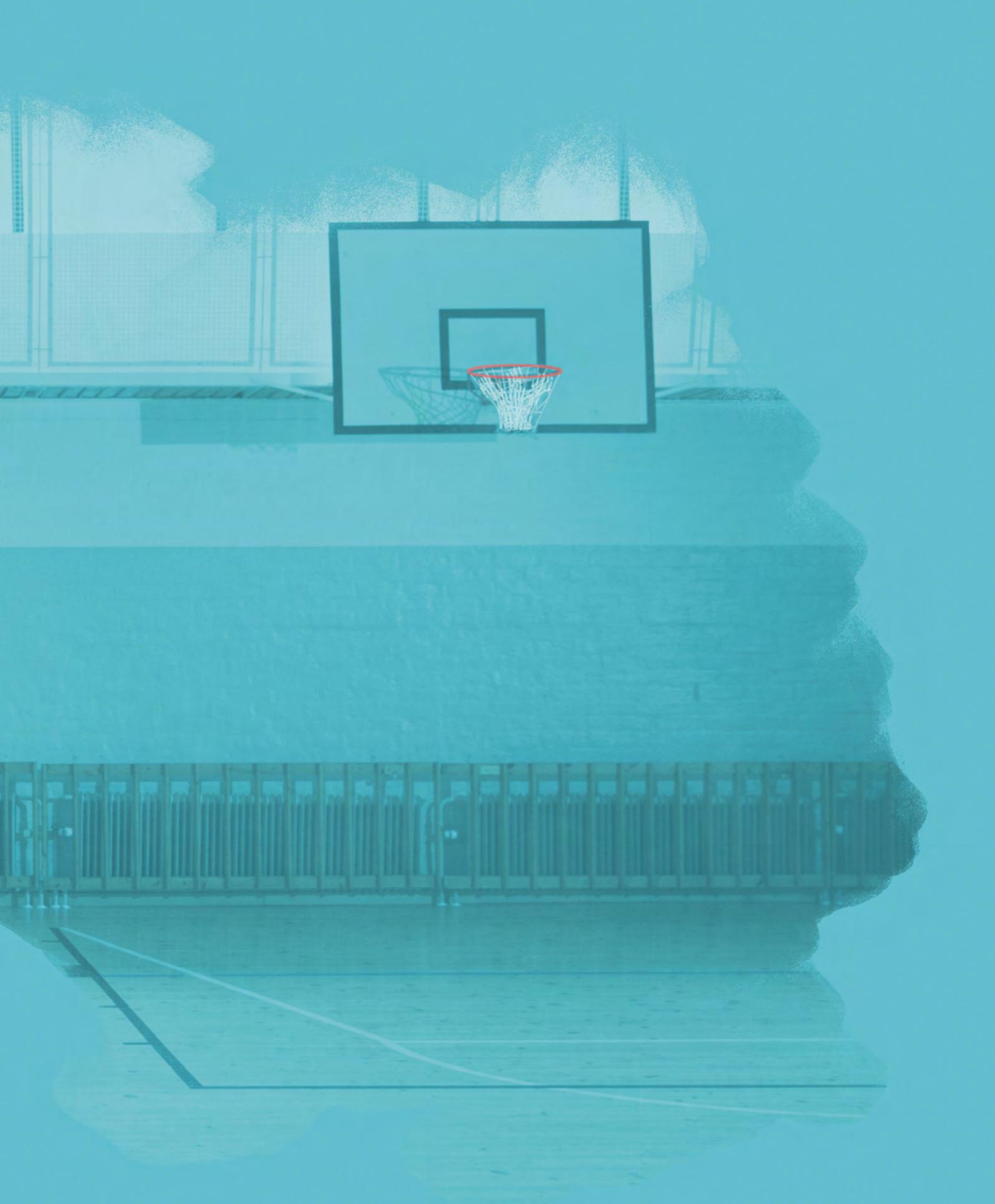
300 School Health Promotion Study 2017, cf. 2019.

301 Finnish Institute for Health and Welfare (2021). School Health Promotion Study 2021.

302 Joint Statement by the United Nations Committee on the Elimination of all forms of Discrimination against Women and the United Nations Committee on the Rights of the Child. Protecting and empowering girls and demanding equality, 11 October 2019.

303 OECD (2021). SSES study.





Support programmes for girls must be launched in Finland too, and efforts made to guarantee a safe growth environment for girls. If girls' experiences of insecurity and exhaustion are not addressed in time, the issues may become aggravated by studying and working age.

In the view of the Ombudsman for Equality, sexual violence and harassment can be effectively prevented by beginning sexual education at an early stage, intervening in all cases of harassment, and identifying potential perpetrators and harassment situations.

6.4 GENDER AWARENESS IS REQUIRED IN EARLY CHILDHOOD EDUCATION AND CARE

6.4.1 The government has decided to extend the equality planning obligation to early childhood education and care

According to Prime Minister Sanna Marin's Government Programme, equality and non-discrimination planning obligations should be extended to also apply to early childhood education and care.³⁰⁴ Gender-aware early childhood education and care would be important according to the Government action plan for gender equality 2020-2023.³⁰⁵

The Ombudsman for Equality is in favour of promoting gender equality in early childhood education and care.³⁰⁶ Gender roles and stereotypes begin to form at an early age and influence later choices in school subjects and fields of education and, ultimately, the segregation of the labour market. It is essential that gender- and equality-aware treatment of children should become standard practice in early childhood education and care. This is emphasised in both the Act on Early Childhood Education and Care (540/2018) and the national core curriculum for early childhood education and care.³⁰⁷

However, the provision of the Equality Act on gender equality planning in educational institutions is not very suitable for early childhood education and care. Section 5a of the Equality Act provides that the gender equality plan must be drawn up in cooperation with staff and pupils or students. Furthermore, the gender equality plan must include an assessment of the pupils or students' opinion of the gender equality situation within the institution and jointly agreed measures to promote gender equality. It is not enough to implement the gender equality plan jointly. It must also be drawn up in cooperation. Extending the gender equality planning obligation provided for in the Equality Act to early childhood education and care, in which the children are mostly aged 1-5, is thus not the best method for promoting gender equality in early childhood education and care.

6.4.2 The promotion of gender equality should be provided for in the Act on Early Childhood Education and Care

The objective of promoting gender equality laid down in the Act on Early Childhood Education and Care could be recast into more concrete terms with the introduction of new provisions to the Act. At present, the Act on Early Childhood Education and Care includes the objective of promoting gender equality. However, the Act does not contain provisions or concrete obligations to secure or fulfil this objective.

More than 50 %
of girls have experienced
sexual harassment
during the past year.

304 Finnish Government (2019), p. 169. See also Ministry of Social Affairs and Health (2020), p. 34.

305 Ministry of Social Affairs and Health (2020), p. 29.

306 TAS 58/2020, 3 March 2020.

307 Finnish National Agency for Education (2018).

The national core curriculum for early childhood education and care confirmed by the Finnish National Agency for Education could also consolidate and put into concrete terms the ways in which the gender- and equality-aware treatment of children should be taken into account in local early childhood education and care curricula.

Staff competencies play a key role in the promotion of gender equality in early childhood education and care. Gender- and equality-aware early childhood education and care requires sufficient competence from early childhood education and care providers, service providers and early childhood education and care personnel. The gender- and equality-aware treatment of children should be taken into account better in the basic and supplementary training of early childhood education and care personnel. In the Ombudsman for Equality's view, there is currently a great deal of variation in the equality expertise of those working in the field of early childhood education and care, due to factors such as the mixed educational backgrounds of the personnel.

The provisions should be drafted on the basis of needs identified in early childhood education and care and focus on measures for safeguarding the gender- and equality-aware treatment of children. Measures must be taken to ensure that gender- and equality-aware early childhood education and care is included in the basic and supplementary training of everyone working in early childhood education and care.

Laying this down in the Act on Early Childhood Education and Care and national core curriculum for early childhood education and care would also avoid the problems arising from having different provisions on the promotion of gender equality and non-discrimination in early childhood education and care in the Equality Act and Non-Discrimination Act. This problem is currently obvious with regard to the provisions on promoting gender equality in educational institutions.

- When drafting the provisions, care should be taken to make the provisions on the promotion of non-discrimination and gender equality in early childhood education and care as consistent as possible. The most appropriate approach would be to add the equality-promotion obligations concerning early childhood education and care to the Act on Early Childhood Education and Care.
- Staff competencies play a key role in the promotion of gender equality in early childhood education and care. Gender- and equality-aware early childhood education and care requires sufficient competence from early childhood education and care providers, service providers and early childhood education and care personnel. The gender- and equality-aware treatment of children should be taken into account better in the basic and supplementary training of early childhood education and care personnel. This also requires guidance and practical manuals.

6.5 HIGH-QUALITY GENDER EQUALITY PLANNING CAN IMPROVE THE SCHOOL'S OPERATIONS

6.5.1 Gender equality plans must be school-specific

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. The objective of this provision is to ensure that educational institutions promote gender equality in a systematic manner according to the individual needs of each institution.-

With the exception of schools, this provision has applied to all forms of teaching and education since 2015. Schools have also been required to draw up gender equality plans meeting these obligations from the beginning of 2017.³⁰⁸

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.³⁰⁹ 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.³¹⁰ 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.

"Contrary to popular opinion, the school is not a discrimination-free space. But it should be."³¹¹

For the gender equality promoting measures recorded in the gender equality plan to be effective, they must be based on the individual equality situation in each educational institution and its development needs. The measures must thus be planned on an institution-specific basis. The purpose is to assess and develop the educational institution's operations from the perspective of gender equality and reflect this in the documentation guiding these operations. A gender equality plan drawn up by the education provider or management of the educational institution does not meet the requirements of the Act. The education provider should nevertheless issue guidance, recommendation and general policies in this area to schools, and naturally also give feedback on the work done in the educational institution.

6.5.2 Gender equality and non-discrimination planning obligations should be harmonised

An educational institution can draw up a combined operative gender equality and non-discrimination plan.³¹² Several institutions have also done so. The requirements for the gender equality plan must still be met if it is combined with another plan drawn up by the educational institution.

The *Tasa-arvo on taitolaji* (Promoting gender equality takes skill) guide for schools was published in 2015. It offers practical examples of systematic work for the promotion of gender equality and drawing up the operative gender equality plan required by the Equality Act. That guide only covers gender equality planning, but the *Mukana!* (Involved!) guide for upper secondary education, drawn up under the direction of the Finnish National Agency for Education in 2019, covers the planning obligations of both the Equality Act and the Non-Discrimination Act. The guide implements the objective of increasing equality awareness and gender equality planning in upper secondary education, set by the Government action plan for gender equality 2016-2019. The guide was expanded to cover non-discrimination in addition to gender equality because it is often appropriate to discuss these subjects together.

308 Act on implementing non-discrimination legislation (Laki yhdenvertaisuutta koskevan lainsäädännön voimaantulusta) 1347/2014, 30 December 2014.

309 Elo, S. – Lempinen, M. – Nousiainen, K. – Onwen-Huma, H. – Salo, A. – Vacker, R. (2019), p. 56.

310 Jääskeläinen, L. – Hautakorpi, J. – Onwen-Huma, H. – Niittymäki, H. – Pirttijärvi, A. – Lempinen, M. – Kajander, V. (2015), p. 54. See also HE 19/2014 vp, p. 34; TAS 255/2014, 20 August 2014.

311 Ylikruuvi, S. (2020).

312 HE 19/2014 vp, p. 111.



Drawing up the guide for upper secondary education showed that combining the different provisions of the Equality Act and Non-Discrimination Act into a single set of coherent guidelines is not an easy task. The challenge can be even greater for the end users, that is, the educational institutions. A report assessing the functionality of the Non-Discrimination Act, published in the autumn of 2020, states that the differences in the provisions on promoting equality poses practical challenges, especially in the monitoring and updating of combined non-discrimination and gender equality plans. The report thus proposes harmonising the provisions of the Equality Act and Non-Discrimination Act in the area of gender equality and non-discrimination planning and promotion.³¹³

It is also the Ombudsman for Equality's view that it would be important for the promotion of gender equality and non-discrimination in educational institutions that the provisions of the Equality Act and Non-Discrimination Act on the obligations for planning and promoting equality and non-discrimination in educational institutions should be as consistent as possible.

- It would be important for the successful promotion of non-discrimination and gender equality in educational institutions that the provisions of the Equality Act and Non-Discrimination Act on the obligations to promote gender equality and non-discrimination in educational institutions should be as consistent, clear and concrete as possible.

6.6 MEASURES FOR PROMOTING GENDER EQUALITY IN BASIC EDUCATION

6.6.1 Realisation of the basic education provider's responsibility

The Ombudsman for Equality noted in the Ombudsman's report to Parliament in 2018 that, in future, the Ombudsman would focus its monitoring of basic education on education providers instead of individual schools.³¹⁴ In 2019, the Ombudsman for Equality launched a joint monitoring campaign with the Non-Discrimination Ombudsman with the purpose of finding out how education providers have ensured the fulfilment of the requirements for the form and content of gender equality planning at schools.³¹⁵ The Ombudsman for Equality's examination was limited to the work of education providers and did not assess the quality of the gender equality plans of individual educational institutions.³¹⁶

The Ombudsman for Equality and Non-Discrimination Ombudsman sent a joint questionnaire to all basic education providers in 2019. The questionnaire was thus sent to 325 Finnish-language and 33 Swedish-language education providers.

The education provider has a responsibility to ensure that the schools administered by it work to promote gender equality on the basis of a school-specific plan as required by the Equality Act. This requires commitment at all levels, up to the management, and sufficient gender equality expertise from the education provider.

313 Nieminen, K. – Jauhola, L. – Lepola, O. – Rantala, K. – Karinen, R. – Luukkonen, T. (2020), pp. 159–160.

314 K 22/2018 vp, p. 69.

315 TAS 20/2019.

316 The Government action plan for gender equality 2016–2019 states that the Finnish National Agency for Education would assess compliance with the gender equality planning obligation at schools.

A total of 153 (43 %) education providers completed the questionnaire, representing 1,155 schools, which is almost precisely half of Finnish schools.³¹⁷ Half of the twenty largest municipalities according to the population statistics of 2018 did not reply.³¹⁸ A total of 356 schools were active in these ten municipalities in 2018, while the ten large municipalities that did reply to the questionnaire operated 362 schools in 2018.³¹⁹

In addition to the above-mentioned questionnaire, the monitoring campaign included meetings with basic education providers. From October 2019 to March 2020, the Ombudsman for Equality met with both those education providers who had replied to the questionnaire and those who, for one reason or another, had not done so.³²⁰

The meetings with education providers confirmed the concern expressed in the questionnaire, namely that the division of responsibilities between the education provider and school for promoting gender equality was generally still quite unclear.

6.6.1.1 According to the replies, most schools have a gender equality plan in place

According to the education providers that replied to the questionnaire, most schools have a gender equality plan in place as required by the Equality Act.

Of the education providers that completed the questionnaire, 150 (98%) reported that the schools administered by them had drawn up gender equality plans aiming to develop the educational institution's operations in accordance with the Equality Act. Only three education providers reported that the schools administered by them did not have gender equality plans or that only a part of the schools had drawn up gender equality plans.

This result does not automatically mean that practically every school had a gender equality plan in place for developing its operations under the Equality Act. It shows that the majority of education providers believed this to be the case. In addition to the three negative answers referred to above, nine answers to other questions in the questionnaire revealed that the schools administered by the education providers in question did not have the institution-specific gender equality plans required by the Equality Act.

The most common reason for this was that the gender equality plan turned out to have been drawn up at the municipal level and applied to all schools in the municipality. The education providers gave answers such as "the schools operate according to a gender equality plan drawn up for the entire City" or that "the plan has been drawn up at the municipality level". The Ombudsman for Equality's other enforcement duties have also revealed concerns that the information given by some education providers in the questionnaire was not accurate in all respects.

These concerns were well-founded. According to a survey conducted by the Finnish National Agency for Education in 2020, only about half of the surveyed schools had a gender equality plan drawn up by the school itself as required by the Equality Act.³²¹

One of the observations made in the Ombudsman for Equality's survey of upper secondary education institutions and higher education institutions in 2009-2014 was that it was very common for the educational institutions to be incapable of distinguishing between the gender equality planning obligation intended to develop the educational institution's own operations and the gender equality planning related to the

317 According to Statistics Finland, there were 2,234 schools active in Finland at the end of 2018.

318 The Cities of Espoo, Vantaa, Jyväskylä, Kuopio, Hämeenlinna, Seinäjoki, Rovaniemi, Kotka and Salo, as well as the Finnish-language education department of the City of Vaasa, did not reply to the questionnaire.

319 The Cities of Helsinki, Tampere, Oulu, Turku, Lahti, Pori, Kouvola, Joensuu, Lappeenranta and Mikkeli.

320 The coronavirus restrictions in effect from the spring of 2020 cancelled several already scheduled visits.

321 Mikkola, A. (2020).

workplace's HR obligations.³²² This same observation would now appear to repeat itself with regard to basic education providers. In contrast to the workplace gender equality plan, the size of the educational institution or number of people employed by the school has no bearing on the gender equality planning obligation related to the development of operations.

The education providers were also asked to report how the promotion of gender equality in schools was monitored, that is, how they obtained information on whether the promotion of gender equality in the schools administered by them fulfils the minimum requirements of the Equality Act.

Four of the education providers that replied to the questionnaire said that they did not monitor the schools' work for the promotion of gender equality in any way. Of these four, only one education provider had said in its answer to the previous question that the schools administered by it had not drawn up the gender equality plans required by the Equality Act.

According to one answer, monitoring was not required because "the plans have been drawn up according to instructions". Another answer stated that the education provider did not monitor the work being done in schools because it had "trusted the work being done in the school". A third answer simply noted that "if issues are found, they will be addressed". These answers were given in spite of the fact that the promotion of gender equality also requires other measures. A few answers also referred to a lack of resources. A further six respondents stated that monitoring was not systematic or that it was occasional.

6.6.1.2 Not all schools have received instructions

It is recommended that the education provider issue instructions, recommendations and general policies regarding the gender equality planning obligation provided for in the Equality Act to the schools administered by it. There is no direct statutory obligation to do so. The education provider is obliged to ensure that schools work systematically to promote gender equality on the basis of a gender equality plan as required by the Equality Act.

It should be in the education provider's interest that the work being in the schools administered by it complies with general guidelines. This gives the education provider comparable data on the operations of its schools. And access to comparable data enables the clarification of common practices when required. It is also easier to track the school's development and the results of its work when it is done according to the same guidelines each year.

Of the education providers that answered the questionnaire, 99 (65%) did state that they had instructed their schools on what is required from the systematic promotion of gender equality and how school-specific work should be done to that end. Of these 99 respondents, 22 providers (14% of all respondents) said that schools had been instructed to follow national guidelines or the instructions and manuals of the Finnish National Agency for Education. A number of answers said that the provider had used the Finnish National Agency for Education's guide published in 2015, *Tasa-arvotyö on taitolaji: Opas sukupuolten tasa-arvon edistämiseen perusopetuksessa* (Promoting gender equality takes skill: A manual for the promotion of gender equality in basic education).

Of the education providers who took the questionnaire, 19 (12%) said that they had not given the schools administered by them instructions on what should be taken into account in school-specific work for the promotion of gender equality or how such work should be carried out. A survey of gender equality planning in schools, published in 2020 by the Finnish National Agency for Education, reached similar conclusions. According to the survey, education providers have not provided sufficient support to their schools.³²³

322 See also Ministry of Social Affairs and Health (2010), p. 26.

323 Mikkola, A. (2020), p. 24.

The education providers gave different reasons for not instructing their schools. Some of these reasons included "a lack of resources", "has not been deemed necessary", "no specific need has arisen", "school boards draw up their own instructions" and "our schools are self-governing".

Furthermore, no less than 35 answers (23%) did not make it clear whether the education provider had given instructions to the schools or not. Examples of such answers included "the school operates according to the legislation and general guidelines", "discrimination is not tolerated" or "the plans drawn up provide sufficient guidelines for everyday operations".

The respondents were also asked to describe the instructions they had issued, if any, or explain why no instructions had been given. None of the answers described in detail what kinds of instructions had been issued to the schools, or how the education provider had instructed the schools under its administration to promote gender equality in a systematic manner. However, several of the answers seemed to indicate that the education provider had provided its schools with training related to the gender equality planning obligation.

6.6.1.3 Less than half of education providers have given feedback to schools

In addition to instructions, education providers should give their schools feedback on the work they have done to promote gender equality. The questionnaire thus asked education providers whether they had given schools feedback on the quality of their systematic work towards promoting gender equality. Less than half of the education providers that took the questionnaire (65 respondents or 43%) said that they had given schools feedback on their promotion of gender equality. On the contrary, more than half (85 respondents or 57%) said that they had not given feedback to schools.

Even fewer respondents reported having given positive feedback to schools. Education providers that had also given positive feedback according to their answers said, for example that "positive feedback has been given on work that has progressed well", "every school has been given written feedback on their objectives and measures in connection with drawing up [the plans]", or that "feedback has been given, and it has been constructive and mutual".

Some education providers described continuous and mutual feedback practices, especially during meetings with the Ombudsman for Equality. Regular and constructive dialogue between the education provider and schools can generally be considered the most appropriate way of ensuring the flow of information, also with regard to questions related to the promotion of gender equality.

Some answers were interpreted to mean that feedback would only be given if the work at the school gave cause for complaint. For example, one education provider answered that "feedback will be given if it turns out that the plan is not being implemented". Several education providers justified not giving feedback precisely thus, that no need to give feedback had arisen. Such answers stated, for example that "we have not given feedback because things have been handled well here", "no shortcomings have been identified", "we have not considered it necessary", "there has been no cause for complaint in the work of the schools and we have found its quality to be sufficient" or, like one education provider put it, "no shortcomings referred to in the legislation, such as inappropriate treatment, bullying, discrimination or conscious harassment have been identified among the personnel or pupils".

Some education providers also explained not giving feedback by stating that the work for promoting gender equality had not yet begun in earnest, so the time for feedback had not yet come. Such answers stated, for example that "the promotion of gender equality and non-discrimination is relatively new for the schools" or that "systematic work was only begun in 2018, so the time for giving feedback has not yet come".

Giving feedback should not be limited to issues or shortcomings found in the promotion of equality in individual schools. Feedback can also be given for a job well done. If the education provider finds a school's work for the promotion of gender equality to be effective and appropriate, it should let the school know.

6.6.1.4 Education providers benefit from training too

The education providers were asked whether they had attended training related to gender equality in the past two years. The questionnaire also asked if the education provider felt the need for training in the systematic promotion of gender equality in particular.

A clear divide between education providers that took a positive view of equality training and those that did not emerged from the answers.

Of the respondents, 38 % (58 providers) said that they had attended gender equality training in the past two years. More than half of these education providers (30 or 52 %) said that they needed further training. Some answers said that themes related to gender equality had been discussed in several training sessions, but there was still much room for improvement. The answers also called for concrete tools and guidance for the systematic promotion of gender equality. A total of 43 % (66 respondents) of education providers who took the survey felt that they needed training on the subject or considered training to be welcome.

The answers also indicate that a clear majority (90 or 59 %) of education providers who answered the questionnaire had not participated in gender equality training in the past two years. Of these 90 respondents, only 40 % (36 providers) felt that they needed training on the subject. A considerably larger percentage (51 providers or 57 %) of respondents did not see the need for training in the future either.

The education provider must be able to give schools instructions and feedback, and to assess whether the schools have worked to promote gender equality sufficiently and in compliance with the obligations imposed by the Equality Act. This requires expertise in gender equality. In the course of the Ombudsman's monitoring of education providers, the Ombudsman for Equality has noted that the education providers' expertise regarding the obligations of the Equality Act requires improvement.³²⁴

- Sufficient gender equality expertise must be secured among education providers. Education providers require sufficient expertise and resources for carrying out their obligations to promote gender equality.

6.6.2 Promotion of gender equality in basic education

According to the Government action plan for gender equality 2016-2019, gender equality planning in schools and institutions of upper secondary education should be supported with up-to-date manuals, training and supervision. The action plan states that the Finnish National Agency for Education should assess the realisation of the gender equality planning obligation in basic education.³²⁵

The Finnish National Agency for Education carried out surveys of the monitoring of gender equality plans in general upper secondary schools, vocational colleges and liberal adult education institutions in 2010 and 2013.³²⁶ In the Ombudsman for Equality's Report to Parliament 2018, the Ombudsman noted that the realisation of the obligation to promote gender equality in basic education should be studied correspondingly. The study should also take into account the fulfilment of the obligation to promote gender equality laid down in the national core curriculum for basic education.³²⁷

324 TAS 255/2014, 20 August 2014.

325 Government action plan for gender equality 2016-2019, objective 4.3. Ministry of Social Affairs and Health (2019).

326 Ikävalko, E. (2010) and (2014).

327 K 22/2018 vp, p. 73.

The 2014 national core curriculum for basic education contains several commitments to the promotion of gender equality. It stipulates that teaching shall be gender-aware and every subject must promote gender equality in its own way.³²⁸ In addition, every pupil must be assisted in identifying their own potential and building their learning path without role models tied to gender.

6.6.2.1 Shortcomings in awareness of the obligation to promote gender equality under the Equality Act

The Finnish National Agency for Education conducted a study in 2020 of the first years of the gender equality planning obligation in basic education.³²⁹ The study was based on a questionnaire sent to schools. The questionnaire was answered by 1,003 schools, representing approximately 45% of all schools providing teaching under the Basic Education Act.³³⁰

Only slightly over half of the respondents reported that their schools had drawn up a gender equality plan as required by the Equality Act. The study accordingly found awareness of the obligation to promote gender equality to be lacking.

According to the study carried out by the Finnish National Agency for Education, the systematic promotion of gender equality in basic education is of mixed quality. On the other hand, a gender equality plan is but a piece of paper in a folder in the teachers' room. Some respondents thought the promotion of gender equality to be important but considered the plan unnecessary. The study also notes that, according to several respondents, the gender equality plan is irrelevant because there are no equality issues in the school.³³¹

Kokko presents a similar assessment in their Master's thesis.³³² According to the thesis, school gender equality plans are by no means always drawn up in the manner required by the Equality Act. Only roughly a half of the gender equality plans used as material for the thesis had been drawn up in cooperation with the pupils as required by the Equality Act. Lauren-Kotiranta states in their Master's thesis that much work remains to be done, especially in increasing awareness of the diversity of gender, before schools can treat all pupils equally.³³³ Even though the samples for these theses are small, they do not give a particularly flattering picture of the prevailing situation.

6.6.2.2 Not enough resources are being allocated to the preparation of gender equality plans

In the practical work to promote gender equality in educational institutions, special attention must be given to pupil or student selections, the organisation of teaching, learning differences and the evaluation of study performance, and to measures to ensure the prevention and elimination of sexual harassment and gender-based harassment. Purposeful and systematic pre-emptive action against all discrimination based on gender identity or gender expression is also required.

In the study conducted by the Finnish National Agency for Education, 69% (n=690) of respondents said that they had addressed the prevention and elimination of sexual harassment in their work to promote gender equality. On the other hand, 45% (n=456) of respondents reported having taken action to narrow the learning gaps between the genders, and only 36% (n=364) said that they had addressed gender diversity.³³⁴

Only 36 % of schools have addressed gender diversity in their work to promote gender equality.

328 Gender and equality awareness in physical education has been studied in, for example Berg, P. – Kokkonen, M. (2020 a) and (2020 b) and Kokkonen, M. (2020).

329 Mikkola, A. (2020).

330 The final report on the Government action plan for gender equality, published in 2019, claims that the study had been implemented during the government term, even though it was not begun until the autumn of 2019 in reality.

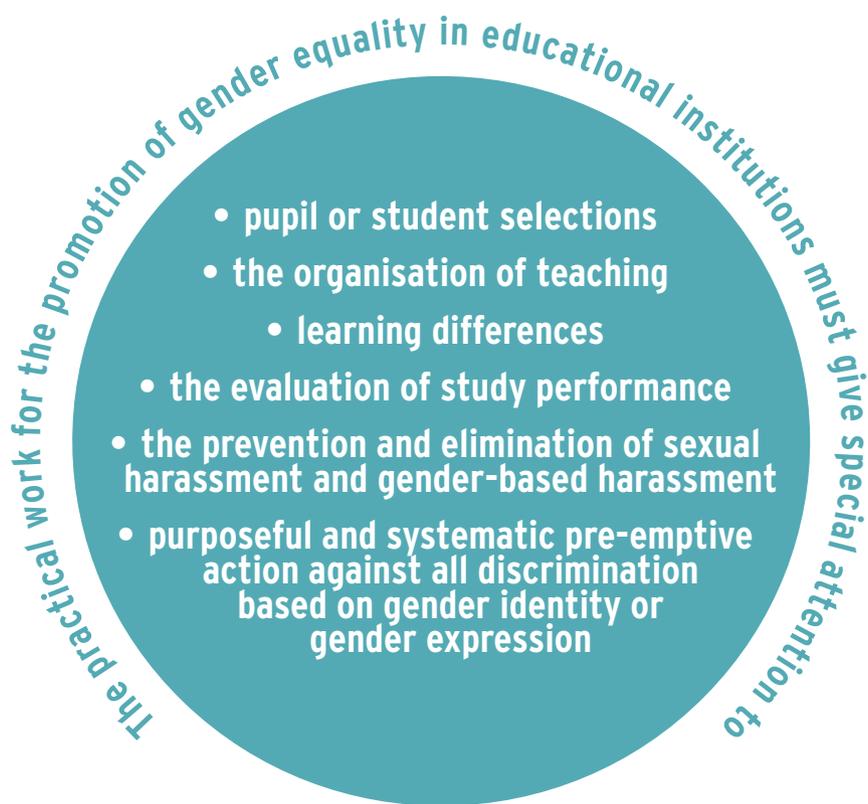
331 Mikkola, A. (2020), p. 31.

332 Kokko, K. (2020). Master's thesis, University of Helsinki.

333 Lauren-Kotiranta, T. (2021). Master's thesis, University of Turku.

334 Mikkola, A. (2020), pp. 17–18.

The Finnish National Agency for Education's study of school gender equality plans shows that measures for promoting gender equality are often too general in nature. The lack of concrete measures also makes it more difficult to monitor the realisation of the plan. According to the study, "when the effects are not identified, it is easy to view gender equality planning as an unnecessary burden."³³⁵ The study notes that schools do not always have sufficient resources for the systematic promotion of gender equality, and the objectives recorded in gender equality plans too often remain "ambiguous and empty words."³³⁶ It appears that schools have not invested sufficient effort in drawing up their gender equality plans, at least to date.



6.6.2.3 Working towards a gender-aware learning environment

The Sanna Marin administration has set the objective of improving the level of education and competence at all levels of education and to narrow learning gaps, for example by uniting pre-primary education and primary education into a more comprehensive and flexible whole.³³⁷ The Act on a Two-Year Pre-primary Education Trial is based on these objectives.³³⁸ It is thought that narrowing learning gaps will improve not only the status of less advanced pupils and students, but also gender equality.

335 Mikkola, A. (2020), p. 38.

336 Kokko, K. (2020), p. 53.

337 HE 149/2020 vp, p. 3.

338 Act on a Two-Year Pre-primary Education Trial (1046/2020)

The legislative materials for the Act on a Two-Year Pre-primary Education Trial state that, since pre-primary education is gender-aware and gender-sensitive, the trial is estimated to also promote gender equality in the long term.³³⁹ However, it offers no resources for ensuring that teachers have the competence to offer gender- and equality-aware teaching.³⁴⁰ Merely stating that teaching is gender-aware does not make it so. Lofty goals will not be achieved in practice unless measures are taken to ensure it.

Making gender- and equality-aware teaching established practice from early childhood education and care onwards is one way of deconstructing gender stereotypes. Gender- and equality-aware teaching can only be implemented in pre-primary education if every teacher and other education professional has the required competencies and capabilities. Starting with pre-primary education, each child must be guaranteed the right to have their personal experience heard and to be treated as an individual, free of rigid conceptions and expectations related to gender. Early childhood education and care, pre-primary education and basic education must permit children to make choices and develop their abilities without presumptions or restrictions based on gender.

The creation of a gender- and equality-aware learning environment will be best supported by including mandatory modules on gender equality and gender awareness in basic and supplementary studies for teachers.³⁴¹

6.7 EQUALITY IN HIGHER EDUCATION

6.7.1 Equality in teacher training

According to the national core curriculum for basic education, teaching must be gender aware. Every subject must promote gender equality in its own way. The national core curricula for general upper secondary school and vocational qualifications are also committed to the promotion of equality in many respects. This requires extensive equality competencies from the teacher. Gender awareness is thus a part of the professional skillset of every good teacher.³⁴²

6.7.1.1 The importance of equality is acknowledged in teacher training

In order to determine the equality competencies of people studying to become teachers, the Ombudsman for Equality asked eight teacher training units in 2020 to describe how teacher training ensures that graduating class teachers and subject teachers have the required knowledge and skills to provide gender- and equality-aware teaching and fulfil the requirements regarding the promotion of equality set in the national core curriculum when they enter working life.

Six teacher training institutions replied to the Ombudsman for Equality's questionnaire. The amount of effort put into the answers varied, with some answers mostly repeating the contents of the study guide. This did not provide a comprehensive picture of how the promotion of equality awareness has been included in teacher training. But the answers also revealed many positive things.³⁴³

It was particularly positive to note that the importance of promoting gender equality has been widely acknowledged in teacher training as well. Several answers stated that issues related to the promotion of equality must be included in curricula more clearly in connection with the next curriculum update, so that they can be taken comprehensively into account in teacher training too. This objective is also recorded in the higher education accessibility plan published in 2021.³⁴⁴

339 HE 149/2020 vp, p. 23.

340 YLE 12 January 2021 a.

341 TAS 253/2020, 24 June 2020.

342 Jääskeläinen, L. – Hautakorpi, J. – Onwen-Human, H. – Niittymäki, H. – Pirttijärvi, A. – Lempinen, M. – Kajander, V. (2015), p. 18.

343 The questionnaire was taken by the University of Helsinki's Faculty of Educational Sciences, University of Oulu's Faculty of Education, Tampere University's Faculty of Education and Culture, University of Turku's Faculty of Education, University of Eastern Finland's Philosophical Faculty and Åbo Akademi's Faculty of Education and Welfare Studies. The University of Jyväskylä's Department of Education and University of Lapland's Faculty of Education did not respond. Ombudsman for Equality's questionnaire TAS 533/2020, 9 December 2020.

344 Kosunen, T. (2021), p. 197 (objective 8).

6.7.1.2 Teacher training should be ahead of its time in equality issues

Based on the results presented above, teacher training units seem to be aware of the importance of promoting gender equality. But the question remains whether teacher training offers students sufficient competencies for providing gender- and equality-aware teaching when they begin their careers.

Kristiina Brunila and Arto Kallioniemi have found that teacher training still unconsciously produces structures and conceptions that support inequality. Students in teacher training have expressed the opinion that questions of gender equality should be addressed more comprehensively in teacher training.³⁴⁵ There is cause for concern if teacher training is lagging behind in these matters, when it should be ahead of its time.³⁴⁶

Teacher training must ensure that graduating teachers have the knowledge and skills required to provide gender- and equality-aware teaching and fulfil the obligations to promote equality laid down in the national core curriculum when they enter working life.³⁴⁷

The Ombudsman for Equality noted in the Ombudsman's report to Parliament in 2018 that questions related to the promotion of gender equality should feature more prominently in teacher training and supplementary training for teachers.³⁴⁸ This recommendation remains valid.

- **Teachers require sufficient equality competencies. Teacher training should ensure that graduating teachers have the knowledge and skills required to provide gender- and equality-aware teaching and fulfil the obligations to promote equality laid down in the national core curriculum when they enter working life.**

6.7.2 The promotion of equality in higher education institutions appears half-hearted

The Ministry of Education and Culture conducted a survey of the promotion of non-discrimination and gender equality in higher education institutions in 2020. The survey, which largely focused on the employer's obligations to promote equality and non-discrimination, states that the promotion of equality and non-discrimination in higher education institutions "mostly appears half-hearted judging from the plans".³⁴⁹ The promotion of equality with the purpose of developing the educational institution's operations was only briefly touched upon in the survey.

According to the survey, there is much room for improvement in the plans as a rule. Only 36% of plans drawn up by universities and 17% of those prepared by universities of applied sciences fulfilled all five requirements of the Equality Act included in the survey. A disturbing observation made by the survey was that 55% of the plans were not in force at the time of the survey.³⁵⁰

In the surveyed higher education institutions, 55% of gender equality plans were not in force at the time of the survey.

Most higher education institutions had combined the issues which the Equality Act requires to be covered by the employer's gender equality plan and the educational institution's operative gender equality plan into a single plan. In the opinion of the Ombudsman for Equality, it is not necessarily appropriate to combine

345 Brunila, K. & Kallioniemi, A. (2018); YLE 12 January 2021; Brunila, K. (2021).

346 YLE 12 January 2021 a and YLE 12 January 2021 b; Myyry, S. (2020), p. 341.

347 See also the Goals for Teacher Education document approved by the Teacher Student Union of Finland (SOOL) in 2019 and the Education Policy White Paper approved by SOOL in 2020.

348 K 22/2018 vp, p. 68 and 73.

349 Tanhua, I. (2020), p. 55.

350 Tanhua, I. (2020), pp. 22–23.



the gender equality plan intended to develop the higher education institution's operations with the gender equality plan required from the institution as an employer. If the same plan also includes the obligations imposed by the Non-Discrimination Act on education providers and employers, it should come as no surprise if the planning obligations get mixed up and their implementation falls short of the mark.³⁵¹

In the surveyed higher education institutions, 55% of gender equality plans were not in force at the time of the survey.

The survey will give the Ministry of Education and Culture tools to improve its dialogue with higher education institutions regarding the development of equality and non-discrimination work. Taking into account the concerning results presented in the survey, the Ministry of Education and Culture should emphasise the significance of promoting equality in its performance management of higher education institutions in order to ensure that they will promote non-discrimination and gender equality in all of their operations in a goal-oriented and systematic manner.

The higher education accessibility plan prepared by the Ministry of Education and Culture was completed in June 2021. In the view of the Ombudsman for Equality, the accessibility plan does not sufficiently address the possibilities offered by a gender equality plan intended to develop the higher education institution's operations. The process provided by the gender equality plan should be utilised more to mitigate gender segregation, narrow learning gaps, prevent and eliminate sexual and gender-based harassment, and prevent discrimination based on gender identity or gender expression. The higher education accessibility plan would be a natural instrument to address these matters.³⁵²

- **The Ministry of Education and Culture should increase the emphasis of promoting equality in its performance management of higher education institutions.**

6.7.3 The effects of the student selection reform require monitoring

After the student selection reform of 2020, more than half of study places have been filled on the basis of matriculation examination results. The aim of the reform was to make students start their studies earlier and cut back on unnecessary gap years before the start of studies.³⁵³ But the reform will inevitably have other consequences as well. An increase in the popularity of advanced mathematics has been evident from the beginning, often at the expense of language studies.³⁵⁴

The student selection reform has been predicted to have an effect on the gender distribution of students as well. In many estimates, it has been thought to further increase the percentage of women in higher education institutions. But the student selection results from the spring of 2020 proved them wrong. The percentage of men among new higher education students grew, albeit only by a little.³⁵⁵

The student selection reform may also have an impact on the well-being of upper secondary level students. Increasing the weight given to grades will probably heap even more pressure on them. The coping and well-being of general upper secondary school students is of particular concern.³⁵⁶

351 Tanhua, I. (2020), p. 22. The Ministry of Education and Culture launched an extensive survey project in 2021 to continue the work of the survey completed in 2020. One of the goals of the project, scheduled for completion in June 2020, is to determine how higher education institutions have promoted non-discrimination and gender equality in their organisations.

352 The Ombudsman for Equality issued statement TAS 214/2021 on the accessibility plan draft on 4 May 2021.

353 Ministry of Education and Culture (2017).

354 YLE 12 June 2019.

355 Karhunen, H. – Pekkarinen, T. – Suhonen, T. – Virkola, T. (2021); Helsingin Sanomat 23 January 2021.

356 For example, the Teacher Student Union of Finland's Education Policy White Paper postulated that the student selection reform will have a negative impact on the well-being of general upper secondary school students. Teacher Student Union of Finland (2020).

The School Health Promotion Study 2021 conducted by the Finnish Institute for Health and Welfare paints a concerning picture of the well-being of general upper secondary school students. Their well-being has continued to deteriorate, and girls in general upper secondary school are feeling considerably worse than boys. Girls experience harassment and feelings of inadequacy more often than boys.³⁵⁷ The question whether good grades are being emphasised too much at the expense of student well-being is thus justified.³⁵⁸

The general upper secondary school reform aims to improve student well-being by promising more comprehensive individual syllabus for every new student.³⁵⁹ Is there a risk that, in spite of the good intentions behind the reform, general upper secondary education will be transformed into a three-year entrance examination for higher education institutions? The student selection reform can have unintended consequences.³⁶⁰ It is thus vital to conduct an extensive and scientifically sound follow-up study³⁶¹ of the student selection reform, also from the perspective of gender equality.

6.7.4 Gender quotas in student selection

Gender quotas were still common and were discussed extensively in connection with the drafting of the Equality Act in the 1980s.³⁶² The use of quotas in teacher training was soon abandoned after the entry into force of the Equality Act.³⁶³

However, the question of using gender quotas in teacher training in particular and in student selection more generally is discussed at regular intervals.³⁶⁴ The Ombudsman for Equality has also issued a number of statements on this issue. The Ombudsman has found that the Equality Act does not permit the use of gender quotas in student selection.

The genderisation of certain fields of education is, above all, caused by men not entering traditionally female-dominated industries and vice versa. It would thus be important to influence the attitudes that steer people towards choosing their education or profession on the basis of gender. Pupils and students should be encouraged to make open-minded educational and career choices based on their individual characteristics, strengths and motivations, that is, also consider fields in which their own gender is the minority if this would be in their best interests. This would encourage more women to enter traditionally male-dominated fields and vice versa.³⁶⁵

The Ombudsman for Equality's most recent statement on quotas dates from January 2020. In the statement, the Ombudsman found the gender quotas used in the entrance examination of the Sport Pedagogy department of the University of Jyväskylä's Faculty of Sport and Health Sciences to be in violation of the Equality Act.³⁶⁶ According to the Ombudsman for Equality, the gender quotas placed an applicant in a less favourable position based on his or her gender if another applicant with a lower score was selected under the quota. On these grounds, the Ombudsman for Equality found the practice to be in violation of the Equality Act.

357 School Health Promotion Study 2021, Finnish Institute for Health and Welfare.

358 Sahlström, F. (2021).

359 Palmqvist, R. & Lehtikoinen, P. (2019). The 2019 national core curriculum for general upper secondary school was adopted on 1 August 2021. Finnish National Agency for Education (2019).

360 Mankki, V. & Riihinen, P. (2020).

361 Ministry of Social Affairs and Health (2020), pp. 32–33.

362 See e.g. Council for Gender Equality 1986.

363 The Ministry of Education asked the Ombudsman for Equality for a statement on the matter in 1987 (Rec. no. 126/87, 13 April 1987) and Åbo Akademi University requested a statement in 1992 (rec. no. 27/59/92, 9 November 1992).

364 In 1996, the Minister of Education Heinonen proposed the reintroduction of gender quotas in teacher training to increase the number of male teachers. In 2012 the Ministry of Education and Culture prepared a government strategy for the promotion of gender equality in education. The draft document included a proposed measure for examining how the percentage of the underrepresented gender could be increased in students of education and social work, either by giving bonus points or instituting selection quotas. Council for Gender Equality 8 July 1996; Ministry of Education and Culture (2012).

365 Ombudsman for Equality's statements TAS 431/2012, 8 January 2013 and TAS 226/2013, 17 January 2014 as well as the Ombudsman for Equality's report to Parliament in 2018, p. 70.

366 TAS 217/2017, 7 January 2020.

The University of Jyväskylä justified the gender quota, which had been in use since 1963, with ensuring equal opportunities for physical education teacher training in Finland by selecting equal numbers of female and male students. Consequently, having equal numbers of female and male physical education teachers in educational institutions would secure diverse physical education for all pupils and students. The University of Jyväskylä considered this practice to promote gender equality.

The University of Jyväskylä also announced that it would not comply with the Ombudsman for Equality's recommendation to abandon the quotas. For this reason, the Ombudsman for Equality submitted the matter to the National Non-Discrimination and Equality Tribunal.³⁶⁷

In its decision issued in December 2021, the National Non-Discrimination and Equality Tribunal found that the quotas used in student selection for the Sport Pedagogy department of the University of Jyväskylä's Faculty of Sport and Health Sciences placed applicants in a less favourable position directly based on their gender. In its decision, the Tribunal found that the University of Jyväskylä had not disproved the assumption of direct discrimination based on gender in the first-phase student selection for sport pedagogy subject teacher training and prohibited the University from continuing its discriminatory practice prohibited under the Equality Act.³⁶⁸

6.8 RECOMMENDATIONS

- ▶ It would be important for the successful promotion of non-discrimination and gender equality in educational institutions that the provisions of the Equality Act and Non-Discrimination Act on the obligations to promote gender equality and non-discrimination in educational institutions should be as consistent, clear and concrete as possible.
- ▶ Teachers require sufficient equality competencies. Teacher training should ensure that graduating teachers have the knowledge and skills required to provide gender- and equality-aware teaching and fulfil the obligations to promote equality laid down in the national core curriculum when they enter working life.
- ▶ When drafting the provisions, care should be taken to make the provisions on the promotion of non-discrimination and gender equality in early childhood education and care as consistent as possible. The most appropriate approach would be to add the equality-promotion obligations concerning early childhood education and care to the Act on Early Childhood Education and Care.
- ▶ Staff competencies play a key role in the promotion of gender equality in early childhood education and care. Gender- and equality-aware early childhood education and care requires sufficient competence from early childhood education and care providers, service providers and early childhood education and care personnel. The gender- and equality-aware treatment of children should be taken into account better in the basic and supplementary training of early childhood education and care personnel. This also requires guidance and practical manuals.
- ▶ Sufficient gender equality expertise must be secured among education providers. Education providers require sufficient expertise and resources for carrying out their obligations to promote gender equality.
- ▶ The Ministry of Education and Culture should increase the emphasis of promoting equality in its performance management of higher education institutions.

³⁶⁷ TAS 384/2020, 9 December 2020.

³⁶⁸ Rec. no. YV/Tltk 924/2020, 21 December 2021.



RECOMMENDATIONS 2022 BY THE OMBUDSMAN FOR EQUALITY

7

MONITORING THE PROHIBITONS OF DISCRIMINATION AND LEGAL PROTECTION

- ▶ Authority with regard to intersectional discrimination: The current categorical exclusion of gender-related intersectional discrimination from the Ombudsman for Equality's powers should be reviewed and reassessed.
- ▶ The scope of compensations under the Equality Act should be extended to also cover the following discriminatory situations: discrimination in the exercise of official authority, discrimination preceding the recruitment decision, and discriminatory practices by the purchasers of leased work that have an impact on the continuation of the employee's employment.
- ▶ An extensive study of the options for improving access to justice in matters involving gender-based discrimination is required. It should determine:
 - ▶ the possibility to grant the Ombudsman for Equality an independent right to bring action in discrimination disputes based on the Equality Act; and
 - ▶ the possibility of developing the National Non-Discrimination and Equality Tribunal into a low-threshold redress body that could order the payment of compensation.

DISCRIMINATION IN WORKING LIFE

- ▶ Ways of taking into account the provisions of the Equality Act on promoting equality between women and men and the pay comparisons between female and male applicants required by the prohibition of discrimination in connection with anonymous recruitment should be examined.
- ▶ The right to compensations shall be extended to discrimination during the recruitment process preceding the selection decision.
- ▶ The effects of the family leave reform on paid family leave in collective agreements and the financial status of women and men shall be monitored.
- ▶ An amendment of the Health Insurance Act should be considered, to the effect that the pregnant person could choose either the income of the 12 months preceding pregnancy or the 12 months preceding family leave as the grounds for payment of parental allowance.
- ▶ The Annual Holidays Act should be amended so that the pregnancy allowance period and parental allowance period would not be considered equal for the purposes of earning and granting annual holidays, but mothers would be credited with the same number of parental allowance days counted as working days as other parents. Neither shall pregnancy allowance and parental allowance periods be considered equal in terms of granting annual holidays.

- ▶ The qualifying period must not be reimposed on recipients of labour market subsidy if the reason for their absence from the labour market has been family leave.
- ▶ The prevention of discrimination based on pregnancy and family leave must be made a focus of equality policy and effective measures must be taken to end discrimination.
- ▶ The protection of fixed-term employees' employment relationships shall be improved. It would be important to include a prohibition of failing to renew a fixed-term employment relationship based on pregnancy or family leave in employment relationship legislation, along with a prohibition of limiting the duration of fixed-term employment relationships to the start of maternity, paternity or parental leave.
- ▶ In order to prevent discrimination based on pregnancy and family leave, the division of responsibilities between agencies and client companies should be clarified in cases when the client company's discriminatory practice has an impact on the continuation of the employee's employment. In such cases, the liability to pay compensation under the Equality Act should be extended to the client company.
- ▶ A provision defining the meaning of the concept 'work of equal value' in the Equality Act should be added to the Act.

GENDER DIVERSITY

- ▶ 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.
- ▶ Recognition of legal gender should not prevent access to infertility treatments.
- ▶ 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.

GENDERED VIOLENCE, HATE SPEECH AND HARASSMENT

- ▶ The legal protection of harassment victims must be improved. The current state of affairs and victims' access to justice should be studied and required changes assessed based on the results.
- ▶ The specific prohibitions of discrimination in the Equality Act must explicitly state that failing to intervene in harassment after becoming aware of it constitutes discrimination.
- ▶ The employer's obligation to prevent sexual harassment and gender-based harassment must be added to section 6 of the Equality Act. Guidelines for harassment situations should also be included in the gender equality plan of the workplace, or the plan should describe them and tell employees where they can be accessed. This obligation should also be laid down in the provisions on gender equality planning in the Equality Act.

EQUALITY IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

- ▶ It would be important for the successful promotion of non-discrimination and gender equality in educational institutions that the provisions of the Equality Act and Non-Discrimination Act on the obligations to promote gender equality and non-discrimination in educational institutions should be as consistent, clear and concrete as possible.
- ▶ Teachers require sufficient equality competencies. Teacher training should ensure that graduating teachers have the knowledge and skills required to provide gender- and equality-aware teaching and fulfil the obligations to promote equality laid down in the national core curriculum when they enter working life.
- ▶ When drafting the provisions, care should be taken to make the provisions on the promotion of non-discrimination and gender equality in early childhood education and care as consistent as possible. The most appropriate approach would be to add the equality-promotion obligations concerning early childhood education and care to the Act on Early Childhood Education and Care.
- ▶ Staff competencies play a key role in the promotion of gender equality in early childhood education and care. Gender- and equality-aware early childhood education and care requires sufficient competence from early childhood education and care providers, service providers and early childhood education and care personnel. The gender- and equality-aware treatment of children should be taken into account better in the basic and supplementary training of early childhood education and care personnel. This also requires guidance and practical manuals.
- ▶ Sufficient gender equality expertise must be secured among education providers. Education providers require sufficient expertise and resources for carrying out their obligations to promote gender equality.
- ▶ The Ministry of Education and Culture should increase the emphasis of promoting equality in its performance management of higher education institutions.

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APPENDIX

FIGURE 1. WRITTEN AND TELEPHONE ENQUIRIES RECEIVED BY THE OMBUDSMAN FOR EQUALITY 2017-2021

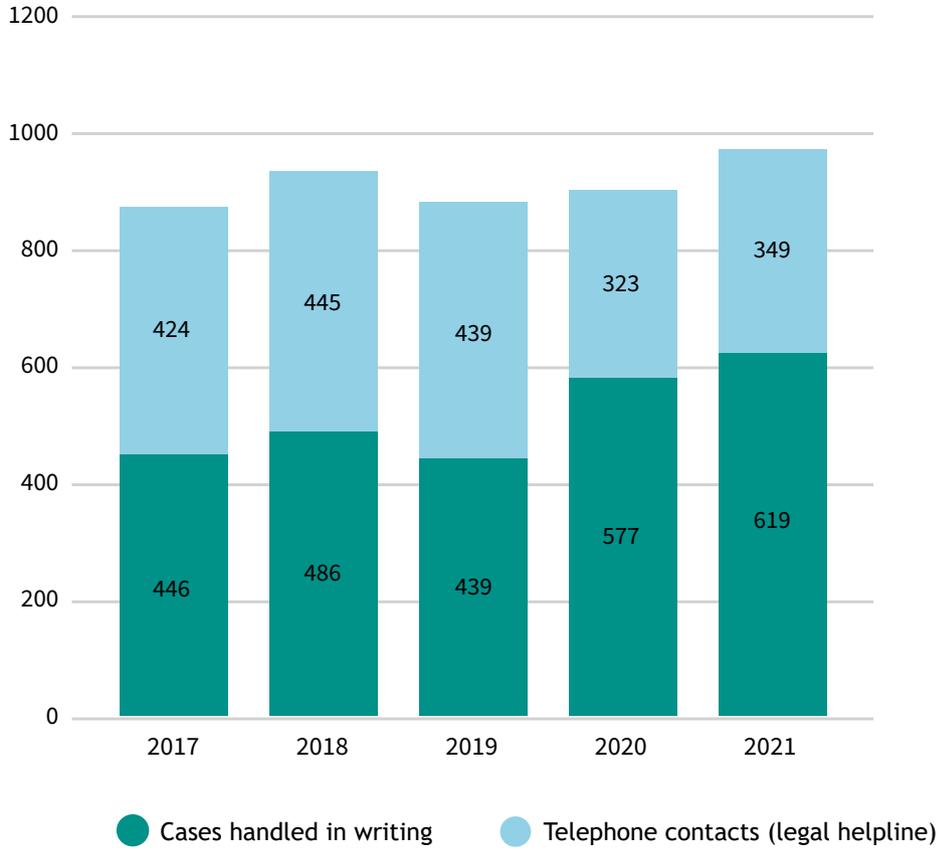
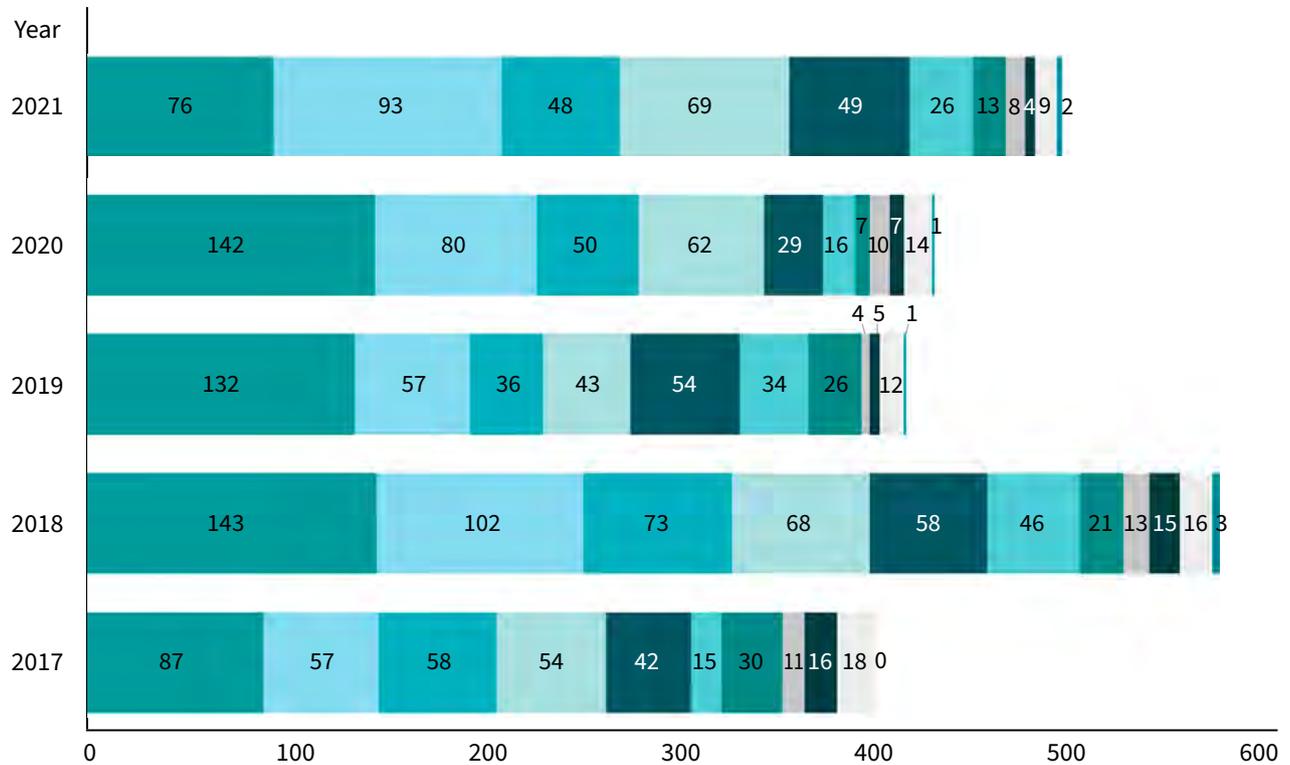
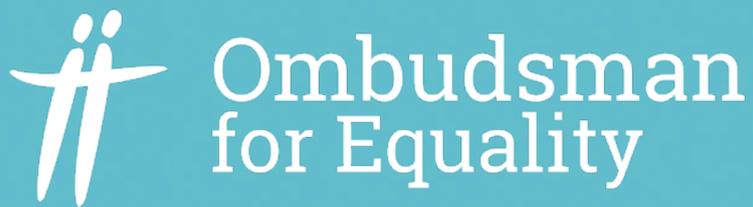


FIGURE 2. CLIENT CONTACTS RELATED TO DISCRIMINATION MADE IN WRITING AND ON TELEPHONE 2017-2021



- Discrimination based on pregnancy family leaves
- General prohibition of discrimination
- Discrimination in access to and pricing of goods and services
- Discrimination in recruitment
- Pay discrimination
- Discrimination in work supervision, working conditions etc.
- Discrimination in termination of employment
- Sexual harassment in the workplace
- Discriminatory advertising
- Discrimination at educational institutions
- Discrimination in labour market organisations



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