



ANNUAL REPORT
2023
BY THE OMBUDSMAN
FOR EQUALITY

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I THE YEAR 2023: New Ombudsman

I took up the post of Ombudsman in April 2023. As the Ombudsman changed, we took the opportunity to assess and revise the Office's strategy together with our staff. Intervening in discrimination, that is, the legal assessment of the discrimination experienced by people contacting the Ombudsman for Equality and helping discrimination victims gain access to justice, was defined as the focus of the Ombudsman's operations. The second main objective is to prevent discrimination related to gender, gender identity and gender expression by drawing attention to discrimination and presenting solutions to the problems caused by it. Both objectives are reflected in this Annual Report's case descriptions and the work of the Ombudsman for Equality described in other parts of the report.

Discrimination as seen through the Ombudsman for Equality's work with clients

The cases reported to the Ombudsman for Equality are representative of the state of gender equality in Finland. About half of discrimination cases reported to the Ombudsman concern discrimination in working life. The most common causes of such reports are discrimination based on pregnancy and family leave, discrimination in recruitment and pay discrimination.

Based on the reports concerning pregnancy and family leave, it is apparent that neither employers nor employees are sufficiently familiar with the prohibitions of discrimination in the Equality Act, for example when a fixed-term employee gets pregnant. The problem is that the prohibition of discrimination cannot be fully understood simply by reading the Act, but one has to be familiar with its application practice as well. With regard to fixed-term employment contracts, for example, the legal practice has become established: a chain of fixed-term employment contracts may not be broken at the start of family leave if the work would have continued without the pregnancy. The Ombudsman for Equality has been proposing for a long time that the prohibition of discrimination be clarified in the legislation by spelling out in the Equality Act or Employment Contracts

Act what the prohibition of discrimination means in practice for pregnancy and family leave.

Discrimination in recruitment and pay discrimination occasionally still occur when a man is hired for a position even though there would have been a more qualified woman among the applicants or women doing work of equal value get less pay than men. The Ombudsman for Equality has proposed that some cases of pay discrimination could be prevented by giving employees or job applicants suspecting such discrimination more transparent information on the pay of other employees. The preparation of such legislation has not gone forward in Finland, but the EU Pay Transparency Directive will compel even Finland to change its legislation in this government term. If the Directive's requirement of equal pay for work of equal value is taken seriously, the Directive can also help narrow the pay gap between male- and female-dominated professions in the future.

The family leave reform was intended to improve gender equality by encouraging men to use an equal share – or at least more than before – of family leave in order to participate in childcare and the everyday life of the family. Already in the preparation stage of the reform, the Ombudsman for Equality pointed out that many collective agreements provide men with shorter periods of paid parental leave than women. Even though most collective agreements have been amended to be gender equal, some still provide men with shorter paid leave. In my legal opinion published in 2023, I stated that such practices violate the prohibition of discrimination provided for in the Equality Act and employers cannot justify pay discrimination by pleading to the discriminatoriness of the collective agreement. This question is important and interesting in many ways. It shows that the promotion of gender equality is about more than just intervening in discrimination faced by women. In this case, the pay discrimination targets men, but the overall effect of the discrimination is felt by women and men both, as men take less parental leave due to discriminatory collective agreements.

THE PROHIBITION
OF DISCRIMINATION
BASED ON PREGNANCY
AND FAMILY LEAVE MUST
BE CLARIFIED IN THE
EQUALITY ACT

Legal protection must be improved

Most of this Annual Report consists of the Ombudsman's legal opinions, grouped by form of discrimination. However, statements assessing discrimination are only a part of the Ombudsman's work to address discrimination. Most of the cases reported to the Ombudsman are resolved on the basis of the instructions and advice given by the Ombudsman for Equality. Promoting awareness of anti-discrimination legislation is important so that people are able to better recognise discrimination. Cases that are found not to have involved discrimination are also important. Discrimination violates the sense of fair treatment and erodes trust in the guilty party, such as the employer. All suspected cases of discrimination should thus be investigated and cleared up.

The Ombudsman seeks to ensure that the discrimination victim gains access to justice. That requires an overall assessment of, for example, the support available to the victim. A significant percentage of alleged discrimination in working life is investigated and cleared up with assistance from the labour unions. In such cases, the Ombudsman's role is limited to drawing up a legal opinion. The legislation gives the Ombudsman extensive powers to decide the forms of assistance and support offered by the Ombudsman in each case. The volume of cases reported to the Ombudsman, and especially its constant growth, requires the Ombudsman to carefully consider how to use the resources at the Ombudsman's disposal most effectively to address and prevent discrimination.

To better achieve the strategic objective of the realisation of discrimination victims' rights, the Ombudsman for Equality has been more active than before in offering to promote reconciliation in discrimination cases investigated by the Ombudsman. When the Ombudsman establishes that discrimination has occurred in a case, the Ombudsman can enquire about the parties' willingness to come to an agreement and propose an appropriate compensation for the discrimination. If the matter is judicially significant or important in principle, the Ombudsman can inform the parties that the matter will be referred to the National Non-Discrimination and Equality Tribunal if an amicable settlement cannot be reached.

The Ombudsman for Equality must use all means provided for the Ombudsman by law to intervene in discrimination and promote equality. In addition, the Ombudsman must evaluate and even propose new, more effective ways of preventing and addressing discrimination.

The Ombudsman for Equality has proposed to Prime Minister Petteri Orpo's Government, elected in 2023, that the Equality Act be strengthened with legal remedies adopted and found effective in the Non-Discrimination Act. These include hearing the Ombudsman for Equality in discrimination cases in court, the right to intervene in intersectional discrimination, and expanding the scope of compensations to discrimination committed in the course of official duties as well as discrimination in recruitment before the recruitment decision. The obligation to prevent harassment, provided for employers in the Equality Act, should also be reinforced. According to a Statistics Finland study published in 2023, 54 % of women had experienced sexual harassment in working life. The employer's retrospective obligation to intervene in harassment is not sufficient to address issues such as the aggravated sexual harassment experienced by employees in many service occupations. The harassment faced by gender minorities at work is a particularly serious problem.

Adequate resources for promoting equality

Reports made to the Ombudsman for Equality have increased by 42 % from 2020. No corresponding increase to the Ombudsman for Equality's resources has been made in the same time, however. Discrimination based on gender, gender expression or gender identity is a serious threat to fundamental rights and opportunities to improve Finnish society together. Discrimination is often structural and thus difficult to prevent and combat. The Ombudsman for Equality's lack of resources should not be an obstacle to the realisation of discrimination victims' rights. I would like to thank the staff of the Office of the Ombudsman for Equality for their flexibility and determined efforts to intervene in discrimination and promote equality in these difficult circumstances.



Helsinki, 22 February 2024

Rainer Hiltunen
Ombudsman for Equality



How to eliminate the pay gap between the genders?

THE OMBUDSMAN FOR EQUALITY'S SPEECH TO THE LABOUR MARKET ORGANISATIONS AT THE EQUAL PAY SEMINAR

The pay gap between the genders can be said to be the biggest problem in gender equality. It also constitutes structural discrimination, as the pay of full-time employed women is only 84 % of men's pay. This is partly because of our exceptionally segregated labour market, which works like the medieval gender system with men's work and women's work, the latter meriting less pay.

We can only achieve pay equality by using all means at our disposal to decrease pay differences. To be concise: since some of the pay difference is due to the pay discrimination of individuals, we must implement pay transparency to ensure that such individuals have the opportunity to compare their pay with others doing equally demanding work. At the same time, if evening out the differences in pay between women and men requires higher-than-average raises in female-dominated sectors, we should not, at the very least, legislate against such raises.

The labour market organisations have a pronounced responsibility – they must not simply study and survey issues but find solutions to them as well.

The clauses of collective agreements may not be discriminatory. The family leave reform was intended to balance childcare duties by creating a parental leave available to all parents. As I have stated before, terms entitling the parent who gave birth to both the pregnancy allowance period and a longer parental leave violate the Equality Act and should be rectified immediately. The current situation is also difficult for employers bound to the collective agreements who – as has been confirmed by research – are ultimately accountable for the discriminatory practices. It is thus a question of bringing collective agreements into compliance with mandatory legislation, which both parties are obliged to do, regardless of any bargaining positions.

If we are to narrow the pay differences between women and men, women's average wages would have to increase more quickly than men's. Gender impact assessments are needed for identifying the gendered effects of collective agreements. It is a useful rule of thumb for both the legislator and the parties to the collective agreements that, if the differences in the financial and social status of women and men are not taken into account, the measures will not be gender neutral but gender blind.

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". However, different bonuses are sometimes paid to employees doing the same work, and not always with acceptable reasons for the resulting differences in pay. Furthermore, equal pay must be paid not only for equal work, but also for work of equal value. Finland has been committed to this principle since ratifying the ILO's Equal Remuneration Convention in 1962. There is no definition for work of equal value in our legislation, however. In addition, Parliament has demanded that the Government add a definition of work of equal value to the Equality Act already when it discussed the Ombudsman's report to Parliament in the spring of 2022.

The realisation of pay equality requires a significant increase in pay transparency. In the Ombudsman for Equality's view, giving employees a greater right of access to information is necessary if we are to effectively address pay discrimination.

Gender equality planning could be said to be the single most important tool provided by the Equality Act for promoting gender equality in working life, but its full potential is seldom tapped. Both gender equality planning and the Equality Act's provisions on gender equality surveys should therefore be developed. I find the observation made by some researchers that collective agreements could also issue more detailed guidelines for effective gender equality planning in their sectors to be very valuable.

The pay survey required by the Equality Act is seldom successful in identifying pay differences between work of equal value. The Pay Transparency Directive slated for implementation will require changes to the law in this respect as well. We need to create tools and methods for assessing the value of work, which employers and labour market parties can use to create assessment and classification systems for work that are free of gender-based discrimination. These criteria will then have to be applied in a way completely devoid of any direct or indirect discrimination based on gender. As I see it, this work will require an active contribution to the promotion of pay equality from the unions.

To conclude, I would like to highlight a few key recommendations for the effective promotion of gender equality to the legislator and the labour market parties.

Recommendations to collective agreement parties

- The gender impact of collective agreements from the perspective of equal pay – implementing the research project’s recommendations with a sufficient level of ambition
- It is key that the parties to the collective agreements commit to assessing the gender impacts of each proposal at every stage of the negotiations and acting on them, especially with regard to the terms of pay and the reform of the pay system
- Collective agreements can and should include various provisions that promote gender equality, such as more detailed guidance on the implementation of pay surveys in various fields, for example by better identifying work of equal value and indirect pay discrimination
- Pay transparency is considered to be a key condition for the realisation of equal pay. In the collective agreements included in the study, pay transparency was increased especially by the employee representatives’ right of access to information
- Pay differences cannot be narrowed without significant investments in education and expertise in pay systems

Key recommendations to the legislator

- Consistent assessment of the gender impact of legislation: assessing the gender impact of the Government's labour projects at a sufficiently early stage and with a real chance of affecting the result
- Sufficiently ambitious implementation of the Pay Transparency Directive
- Only a fraction of gender-based discrimination is reported to the authorities, and in even fewer cases does the victim get recompense for the discrimination. A comprehensive study should be made of improving legal protection in this regard.
- Improving the legal protection of discrimination victims, increasing pay transparency and the other recommendations of the Ombudsman for Equality for the 2023–2027 government term
- It should be kept in mind that, already when discussing the Ombudsman for Equality's report to Parliament in 2022, Parliament unanimously demanded that the Government, for example,
 - draw up a definition of “work of equal value” to be added to the Equality Act; and
 - look into the possibility of developing the National Non-Discrimination and Equality Tribunal into a low-threshold redress body that can order the payment of compensation as one option for improving the legal protection of discrimination victims.
- The cross-cutting gender equality programme described in the Government report should be comprehensive and include concrete measures, also for promoting gender equality in working life.

This text is based on Ombudsman for Equality Rainer Hiltunen's address at the launch seminar of the “Gender impact of collective agreements from the perspective of equal pay” research project (Ministry of Social Affairs and Health, 2023:25) on 5 September 2023.

Ombudsman for Equality's recommendations for the 2023–2027 government term

Key gender equality issues

We suffer from a number of persistent gender equality issues in Finland:

- The pay gap between women and men in the job market is 16 %
- According to the Ombudsman for Equality's observations made in the course of enforcement, discrimination based on pregnancy remains common
- Finland is the second-most violent EU Member State to women, and boys and men also suffer from the culture of violence
- More than half of girls in lower and upper secondary education have suffered sexual harassment
- Differences in learning outcomes both between and within the genders are growing
- Members of gender minorities face prejudice and discrimination.

The Ombudsman for Equality issues a report on the realisation of gender equality in Finland to Parliament every four years. The Ombudsman for Equality's recommendations for the 2023–2027 government term are based on the Ombudsman's report to Parliament submitted in 2022. In the report, the Ombudsman addressed, for example,

- the development needs of legal protection with regard to gender-based discrimination;

- the state of gender equality in educational institutions;
- pay equality and pregnancy-based discrimination in working life; and
- the discrimination faced by gender minorities.

The Ombudsman for Equality also issued recommendations concerning these themes in the Ombudsman's report to Parliament in 2022. In its report (TyVM 8/2022 vp), the Employment and Equality Committee of Parliament concurred with several of the Ombudsman's recommendations and, among other things, found it necessary to improve legal protection against gender-based discrimination.

Recommendations for the government programme

Improving legal protection

Only a fraction of gender-based discrimination is reported to the authorities and in even fewer cases does the victim get recompense for the discrimination – either in the courts or, for example, with the Ombudsman for Equality's assistance. A comprehensive study should be made of improving legal protection in this regard.

- For example, the Ombudsman for Equality should have an independent right of action in matters involving gender-based discrimination.

- The Ombudsman for Equality should be given powers to address intersectional discrimination. 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 – such as socioeconomic status, age and ethnic background.
- At present, the Ombudsman for Equality cannot investigate suspicions of intersectional discrimination as described above. Only the Non-Discrimination Act is applied to intersectional discrimination, even in cases where gender is an essential element in such discrimination.
- It should also be possible to apply the Act on Equality between Women and Men to cases of intersectional discrimination, with the Ombudsman for Equality also having the power to investigate and act on such cases.

Increasing pay transparency

- The pay gap between the genders is narrowing very slowly. Gender-based pay discrimination also occurs in the labour market. Both promoting pay equality and addressing pay discrimination would require more transparent information on pay.
- Pay discrimination cannot be uncovered without pay information. The more transparent processing of pay information at workplace pay surveys would help prevent pay discrimination and promote pay equality. It would be essential for this legislative project to move forward during this government term.

Eliminating pregnancy-based discrimination

- Pregnancy-based discrimination should be addressed in both legislation and equality policy.
- Improving the statutory protection of fixed-term employees against pregnancy-based discrimination did not move forward despite being included in the government programme of the previous administration. The matter should be put back on the table in this government term.
- Pregnancy-based discrimination should also be prevented by making it a focus of equality policy and taking effective measures to end such discrimination.

Improving the rights of gender minorities

- The new Trans Act is a significant step, but future development of legislation should address other questions of gender diversity as well, and children and young people in particular. The preparation of the reform should be based on human rights and the rights of children.
- The treatment practices of intersex children must be assessed in terms of personal integrity and the rights of the child. The effective realisation of the rights of intersex children should be safeguarded by an act. In the Ombudsman's reports to Parliament in 2018 and 2022, the Ombudsman for Equality recommended refraining from performing non-urgent medical procedures on intersex children until the child can give their informed consent.

Duties for the Ombudsman for Equality

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

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

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. If someone suspects that he or she has been discriminated against in a manner referred to in the Equality Act, he or she may appeal to the Ombudsman for Equality.

The Office of the Ombudsman for Equality provides advice and instructions on rights and the application of the Equality Act and, if necessary, investigates suspected cases of discrimination through a written procedure. If the Ombudsman finds that 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 they have been a victim of discrimination can take the case to a district court and claim compensation.

The five-year term of the Ombudsman was announced to be applied for in November 2022. Senior Specialist Pirkko Janas acted as deputy Ombudsman until April 16, 2023. The Government appointed Rainer Hiltunen to the position of Ombudsman for Equality in March 2023. He started his five-years-term (2023–2027) as Ombudsman on Monday, April 17, 2023.

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

The Ombudsman for Equality often makes a request for an employer to change its actions or recommends the employer to re-evaluate its policies from the perspective of equality. In some cases, the statement has led to negotiations at the workplace, resulting in a solution equally satisfying to both parties.

Similarly, after receiving the statement from the Ombudsman for Equality, for example suppliers of goods or services have reported having changed their pricing in compliance with the Equality Act. The Ombudsman for Equality may facilitate reconciliation in discrimination matters provided for in the Act on Equality between Women and Men.

The Act prohibits discrimination based on gender, gender identity and gender expression. The statutory possibility of reconciliation improves the legal protection of discrimination victims and the effective realisation of their rights.

2 SEXUAL AND GENDER-BASED HARASSMENT: EMPLOYERS HAVE A BROAD DUTY TO TAKE ACTION

Harassment is prohibited under the Equality Act

Sexual and gender-based harassment constitute discrimination prohibited under the Act on Equality between Women and Men (Equality Act). Regardless, harassment remains a serious issue in both working life and other areas of society.

Provisions obliging the employer to ensure that their employees are not subjected to sexual harassment were introduced to the Equality Act already in 1995 (HE 90/1994 vp). Neglect of this obligation was defined as discrimination. In the 2005 comprehensive reform of the Equality Act (HE 195/2004 vp), sexual harassment and harassment based on gender were defined as discrimination in section 7 of the Equality Act, and a separate section 8d on intervening in harassment at the workplace was added to the Act. The definition of harassment was clarified in 2009 (HE 44/2009 vp). Defining harassment as discrimination is based on the Equality Directive (2006/54/EC), which is binding on all EU Member States.

Definitions are useful for identifying harassment

According to section 7 of the Equality Act, sexual harassment means verbal, non-verbal or physical unwanted conduct of a sexual nature by which a person's psychological or physical integrity is violated intentionally or factually, in particular by creating an intimidating, hostile, degrading, humiliating or offensive atmosphere. In addition to physical touching, harassment includes behaviour such as repeated sexually suggestive gestures or expressions, dirty jokes, repeated messages or calls with sexual overtones, as well as remarks about another person's body, dressing or private life.

Gender-based harassment (section 7) means unwanted conduct that is not of a sexual nature, but which is related to the gender identity or gender expression of a person, and by which the person's psychological or physical integrity is intentionally or factually violated and an intimidating, hostile, degrading, humiliating or offensive atmosphere is created. Such harassment can manifest as derogatory speech about a different gender and other degrading of another gender. Bullying at school or at the workplace also constitutes gender-based harassment if it is based on the victim's gender. The Equality Act's provisions on discrimination also apply to harassment based on gender affirmation or physical gender traits that are not unambiguously male or female.

The Equality Act obliges employers to intervene in sexual harassment or harassment based on an employee's gender, gender identity or gender expression at the workplace. Failing to eliminate harassment violates the prohibition of discrimination provided for in the Equality Act and obliges the employer to pay compensation to the harassment victim.

Employers have a duty to investigate harassment

The action of an employer constitutes discrimination prohibited under the Equality Act if, upon receiving information that an employee has been a victim of sexual or other gender-based harassment in the workplace, the employer neglects to take the steps available to eliminate the harassment. The responsibility for eliminating harassment is transferred to the employer when the employer is informed of the harassment. In other words, an employee who has experienced

harassment has a duty to tell the employer's representative, employee representative or occupational safety and health representative about it. Even an individual act can meet the definition of harassment under the Equality Act and oblige the employer to take action.

If the employee was harassed by the employer, the employee can take action directly without reporting the harassment to the employer first if, based on normal discretion, the party guilty of harassment should have known their behaviour to be harassment or otherwise unwelcome.

When the employer has been informed of harassment, it must begin investigating the matter. All parties to the incident must be heard objectively and equally by their supervisor. The person accused of harassment must also be heard. The parties can bring the employee representative, occupational safety and health representative or other support person to assist them at the hearing.

The employer is responsible for monitoring and eliminating harassment

If there is cause to suspect harassment, the employer must take the necessary action to eliminate it, for example by holding the person guilty of harassment to account for their behaviour and preventing them from continuing the harassment. The purpose of the duty to act is to make the harassment stop.

Neglect of this duty makes the employer guilty of discrimination. If the employee can demonstrate that the harassment continued even after it had been reported, the burden of proof is on the employer to show that it has taken all available measures to eliminate the harassment.

The employer can reprimand or caution the person guilty of harassment or arrange their duties or place of work to minimise contact with the harassment victim. If the harassment continues, the employer's measures cannot be considered effective if it does not employ progressively harsher measures against the harassing party. The employer must not worsen the working conditions of the harassment victim. The end of harassment must be ensured through effective monitoring.

The Ombudsman for Equality recommends drawing up guidelines for the workplace

The primary responsibility for harassment lies with the harasser. Everyone at the workplace must understand that behaviour at work is subject to different rules than behaviour in their free time. The workplace must have a safe culture and be a place where everyone behaves appropriately and can feel comfortable.

It is all too easy for an employee to become resigned to an atmosphere of harassment. New employees in particular can find themselves in circumstances in which they feel uncomfortable but are practically powerless to do anything about it. It is the supervisor's duty to keep an eye on the atmosphere at the workplace and influence it to prevent harassment.

It would be useful for employees to discuss what to do in case of harassment and how to avoid it at the workplace. The employer has a duty to prevent sexual harassment at the workplace. The Ombudsman for Equality recommends that every workplace draw up instructions on what to do if employees encounter harassment and go through these instructions with personnel representatives. Such instructions can be added to the workplace's gender equality plan. It should be noted that a simple statement of "zero tolerance at the workplace" does not give employees or supervisors the tools to raise and address issues.

The Ombudsman for Equality monitors compliance with the prohibition of sexual and gender-based harassment. If you feel that you have been harassed, you can contact the Ombudsman for Equality's helpline at +358 295 666 842 from 9–11 on Mondays and Tuesdays or 13–15 on Wednesdays and Thursdays.







3 MONITORING PROHIBITIONS OF DISCRIMINATION

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

There are three types of regulations in the Equality Act:

- regulations promoting equality
- prohibitions on discrimination and
- regulations on legal protection and monitoring.

The Act defines and prohibits gender-based discrimination. This prohibition applies to the entire field covered by the Act, meaning as a general rule all areas of social life and all situations in which discrimination may arise.

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

Two thirds of client contacts are related to discrimination in working life

The investigation of suspected cases of discrimination in working life is a key part of the Ombudsman for Equality's operations. Nearly two thirds of all customer messages sent to the Ombudsman for Equality regarding discrimination involve working life (see chapter 6 Statistics, p. 61).

3.1 DISCRIMINATION ON THE BASIS OF PREGNANCY AND FAMILY LEAVE

Discrimination on the basis of pregnancy and family leave affects the position of women in working life. Discrimination due to pregnancy or family leave particularly targets women in insecure employment. Women in fertile age who have no children may also experience discrimination related to maternity in working life, as employers may presume that they will go on a family leave.

Typical situations associated with discrimination include inappropriate questions related to family status or family-related plans during the recruitment process, discontinuation of a fixed-term contract after learning about the employee's pregnancy or plan to go on family leave, and an employee's return to work after family leave (an employee returning to work after family leave may have been replaced by a substitute, or the employee's work tasks have "disappeared").

It may also be a case of discrimination if a person is placed at a disadvantage regarding pay because of pregnancy or family leave, but also men have been discriminated against due to family leave.

For decades, contacts related to discrimination due to pregnancy and family leave have been the biggest topic of contacts related to discrimination in working life. Up to 40 % of the clients contacting the Ombudsman about working life issues reported discrimination due to pregnancy or family leave in 2023.

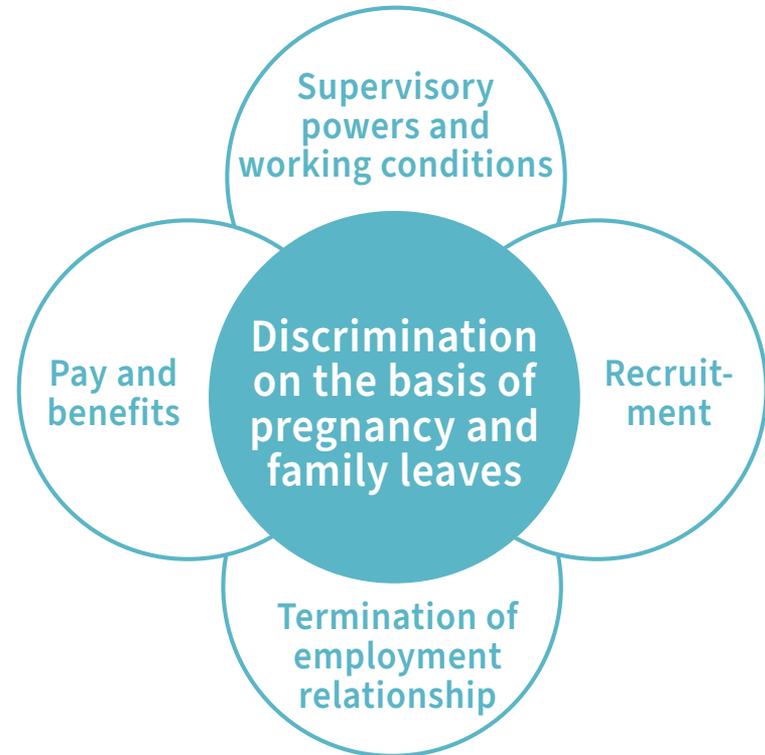


FIGURE 1. Contacts regarding discrimination on the basis of pregnancy and family leave are often also related to pay, recruitment, work management and working conditions, and termination of employment relationship.

Impacts of pregnancy and family leave on continuing fixed-term employment

Female A requested that the Ombudsman for Equality investigate if she was discriminated in a manner criminalised in the Equality Act after her fixed-term work contract was not renewed. A had worked as a substitute for a specialist doctor at a central hospital with linking fixed-term contracts without interruptions. The last letter of appointment was issued to cover the family leave, and it ended at the beginning of childcare leave. Before her family leave, A had told her supervisor that she would like to return to the same tasks after family leave. She was not offered work anymore after the family leave.

Assessment of the case

The Act on Equality is based on the notion that an employee should be treated equally to if they had never been pregnant or on a family leave. They should not be left in a weaker position than others because of a pregnancy or family leaves. A fixed-term employment relationship cannot be limited in length so that it only continues until the beginning of a maternity or parental leave, and the renewal of a fixed-term employment contract cannot be rejected if the work in question continues. Limiting the renewal of an employee's employment contract also refers to not renewing the contract of fixed-term employees. If the employer was aware of the employee's pregnancy, the employer can have the burden of proof that the pregnancy did not affect the renewal of the fixed-term contract, and that there has been another reason for it, and that it complies with the Act on Equality.

A's fixed term employment relationship was not due to substituting a specific person in office. The employer referred to the organisational guidelines according to which the letter of appointment of a person leaving for a maternal or parental leave is continued for the duration of the maternity and parental leave. In addition to this, the employer referred to a reason related to production, more specifically to the consequences of the Covid-19 pandemic, as there were less patients and less work due to the pandemic. According to the employer, the renewal of A's fixed-term contract was not offered for her after the family leave due to this reason.

AN EMPLOYEE SHOULD BE TREATED EQUALLY TO IF THEY HAD NOT BEEN PREGNANT OR ON A FAMILY LEAVE

It remained unclear based on the information provided by the employer if it had been common practice by the employer to first ask employees if they were interested in having their fixed-term contracts renewed or if this was done automatically or if an expression of interest was expected from A in order to renew her fixed-term contract. A stated that she had told her supervisor that she was interested in continuing work in the position after her family leave before starting her family leave.

The Ombudsman for Equality concluded that the central hospital had discriminated A by deciding in advance that A's employment relationship will end at the end of her family leave. Therefore, A's pregnancy and family leave were the reasons for not renewing her fixed-term contract as a substitute in office. The employer has not been able to prove that they had an acceptable reason not to continue A's substitute position as the office was not directly connected to substituting a specific person in office, and it appears that the need for labour force has continued.

The Ombudsman for Equality issued a recommendation for the central hospital to update their guidelines to correspond to the Act on Equality between Women and Men so that the duration of the employment contracts is not tied to family leaves. (TAS 320/2023)

Failure to continue fixed-term employment due to family leave

A asked the Ombudsman for Equality to determine whether she had been discriminated against in a manner prohibited by the Act on Equality between Women and Men (609/1986, Equality Act) because of pregnancy. A's fixed-term employment contract was not continued even though the family leave of the person she was substituting for continued when A's fixed-term employment contract ended while A was on family leave after her pregnancy.

The Ombudsman for Equality examined the matter within the bounds of the Ombudsman's competence, that is, compliance with the Equality Act. The Ombudsman examined the Employment Contracts Act (55/2001) insofar as necessary for evaluating the practice in light of the Equality Act. The key consideration in assessing the non-continuance of the fixed-term employment relationship is whether the employer still needed the labour. Organising the duties of an employee on family leave through internal arrangements is not a violation of the Equality Act.



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In this situation assessed from the perspective of the Equality Act, the internal arrangements made by the employer resulted in the employer continuing the fixed-term temporary post of a person in another department while failing to continue A's employment contract. In the Ombudsman for Equality's assessment, this was a violation of the prohibition of discrimination provided for in the Equality Act.

The legislation applicable to assessing the potential discriminatoriness of extending an employment contract

Pursuant to section 8, subsection 1, paragraph 2 of the Equality Act, the action of an employer shall be deemed to constitute discrimination prohibited under the Act if the employer, upon deciding on the duration or continuation of an employment relationship, acts in such a way that the person finds themselves in a less favourable position on the basis of pregnancy or childbirth or for some other gender-related reason. The employer may thus not let considerations such as pregnancy affect its decision-making concerning the employment relationship.

According to section 9a of the Equality Act, if a person considers that they have been a victim of discrimination and presents the matter to a court of law or to a competent authority, they must present facts that give cause to believe that the matter is one of gender discrimination. In order to disprove the assumption of discrimination, the employer must prove that there has been no violation of gender equality but that the action was taken for an acceptable, non-discriminatory reason.

According to chapter 1, section 3 of the Employment Contracts Act (55/2001), an employment contract may be made for a specific fixed term for a justified reason. According to chapter 6, section 1, subsection 1 of the Act, fixed-term employment contracts are terminated without giving notice at the end of the fixed period. As a rule, labour legislation does not obligate employers to extend fixed-term employment contracts.

Interpretation of the provisions on discrimination based on pregnancy

A fixed-term employment contract may not be terminated or left unextended on discriminatory grounds. A fixed-term employment contract may not be limited to last only until the start of family leave, nor may it be left unextended due to pregnancy or family leave if the work in question continues or the employer still has a continued need for labour.

The prohibition of discrimination based on pregnancy can be assessed through "self-comparison": It must be evaluated whether the employee has been treated in the same way as they would have been treated had they not been pregnant or taken family leave. In other words, they should not be left in a weaker position than others because of a pregnancy or family leaves. The starting point for assessing whether a failure to renew an employment contract constitutes discrimination is whether the contract would have been continued if the person had not been pregnant or on family leave. If the labour is still needed at the end of the fixed-term employment contract, the employer may not refuse to renew the employment contract because of pregnancy.

The cause for the employer's need for labour and thus the basis for the fixed term of the employment contract should not be given relevance in this assessment. Neither is it relevant whether labour is needed for the specific position held by the pregnant employee. Rather, the employer's overall need for labour is assessed instead.

The employee being unavailable for the position is not an acceptable reason for failing to renew an employment contract. Even though the availability of the employee is a key requirement for fulfilling the employment contract from the employer's perspective, pregnancy is not a legal basis for refusing to conclude an employment contract even if the employee is not able to work at all (a case of "a substitute for a substitute").

A was put in a less favourable position due to her pregnancy when the employer extended C's employment contract

The information obtained in the matter showed that the work A had been doing continued after the end of her fixed-term contract. The employer initially said that the reason for terminating the employment contract was that the basis for A's fixed term contract was the special maternity and parental leave, but not the childcare leave, of the person she was substituting for. The employer later pleaded that A's contribution was replaced by a fixed-term internal transfer when A's fixed-term contract ended, that is, permanent employee B was transferred from another unit into the position which A had held as a substitute.



A FIXED-TERM
EMPLOYMENT CONTRACT
MAY NOT BE TERMINATED
ON DISCRIMINATORY
GROUNDS

The reason for the need for labour or the basis for the fixed-term contract shall not be given relevance when assessing the need for labour. Neither is it relevant whether the form of the family leave taken by the employee being substituted has changed. The only factors assessed are the unbroken absence of the employee being substituted for and the continued need for labour. The fact that an employee is not available for the work is not an acceptable reason for failing to renew their employment contract.

The Ombudsman for Equality found that it had been proven that the employer had need for a substitute also after the end of the fixed-term employment contract and that the extension of C's fixed-term employment contract was based on the transfer of B to a different unit to manage the duties previously managed by A.

The Ombudsman for Equality deemed it probable that A's employment contract would have been extended after her original fixed-term contract had she not been pregnant and on family leave. A was thus put in a less favourable position in a manner prohibited by the Equality Act when the employer did not extend her fixed-term employment contract. An assumption of discrimination in violation of the Equality Act arose in the matter.

As the employer did not present an acceptable reason for not extending A's fixed-term employment contract and replacing it with an internal transfer and the extension of another employee's fixed-term contract, the Ombudsman for Equality found that this constituted discrimination based on pregnancy and family leave, which is prohibited under the Equality Act. (TAS 584/2022)

Suspicion of discrimination based on family responsibilities when terminating an employment contract

A worked as a cleaner in a property services company for about one month. A took temporary childcare leave to care for a sick child under the age of 10, first for 4 working days and again for one working day. A contacted the Regional State Administrative Agency for Southern Finland after A's employment contract had been terminated after these absences. The Regional State Administrative Agency transferred the matter to the Ombudsman for Equality by virtue of the Administrative Procedure Act, since the matter involved a suspicion of discrimination based on parenthood and family responsibilities.

The Ombudsman for Equality assessed the matter from the perspective of the prohibitions of discrimination provided for in the Equality Act and found that the chronological connection of the events created an assumption of discrim-

ination in the matter. It was also noteworthy that, even though the employer pleaded to the employee's unsuitability for working at the company, it proposed changing the employee's employment contract from a full-time contract to an on-demand contract one day before the termination.

Rules of law applicable to the matter

According to chapter 1, section 4, subsection 4 of the Employment Contracts Act, the employment contract may be cancelled by either party during the trial period. The employment contract may not, even by virtue of the Employment Contracts Act, be cancelled on discriminatory or otherwise inappropriate grounds with regard to the purpose of the trial period.

According to the government proposal for the Employment Contracts Act (HE 157/2000), such cancellation must be related to the employee's person and performance. An employment contract may not be cancelled on discriminatory grounds even during the trial period.

Section 7 of the Act on Equality between Women and Men (Equality Act) prohibits direct and indirect discrimination based on gender, which includes treating someone differently on the basis of parenthood or family responsibilities. Section 8 of the Equality Act includes more detailed provisions on the prohibition of discrimination in working life and subsection 1, paragraph 5 of the section prohibits employers from terminating an employment relationship on discriminatory grounds, such as on the basis of parenthood or family responsibilities.

According to section 9a of the Equality Act, if a person considers that they have been a victim of discrimination and presents the matter to a court of law or to a competent authority, they must present facts that give cause to believe that the matter is one of gender discrimination. In order to disprove the assumption of discrimination, the employer must prove that there has been no violation of gender equality but that the action – in this case, the termination of the employment contract – was for an acceptable, non-discriminatory reason.



AN EMPLOYMENT CONTRACT MAY NOT BE CANCELLED ON DISCRIMINATORY GROUNDS DURING THE TRIAL PERIOD

According to chapter 4, section 6 of the Employment Contracts Act, if the employee's child who is under 10 years of age falls suddenly ill, the employee shall be entitled to temporary child care leave for a maximum of four working days at a time in order to arrange for care of the child or to care for the child personally. The employee shall notify the employer of temporary child care leave and of its estimated duration as soon as possible. If the employer so requires, the employee shall present a reliable account of the grounds for temporary child care leave.

According to section 12 of the collective agreement for the property services sector, which is binding on the employer in question, if an employee's child under the age of 10 falls suddenly ill, the employee shall receive pay according to section 11 of the agreement if a short absence is necessary for caring for the child or arranging such care, the care or its arrangement will take 1, 2, 3 or 4 days, and if the employee has notified the employer of the absence and, if possible, its duration without delay and delivered equivalent proof of the child's illness as required for the employee's own illness.

Assessment of the case

A's employment contract was cancelled by the employer during the trial period. The matter came down to whether the employer's cancellation of the employment contract during the trial period was discriminatory and based on the employee's family responsibilities, or did the employer have non-discriminatory grounds under the Employment Contracts Act for terminating A's employment contract during the trial period.

Neither the employer nor the client company whose premises A had been cleaning had given A negative feedback for A's work before the termination of A's employment. On the contrary, A said that A's manager had told A that the illnesses of A's children were a problem, and that they did not want to get a phone call in the morning saying that A cannot come to work.

A had notified A's manager of A's final absence by both SMS and telephone call. A did not take the child to a doctor, however, but received care instructions for the infection from a nurse via the Maisa service. The employer said that it required both a notification of absence to the manager and the proof specified in the collective agreement for evaluating the basis for salary payment and for assessing the permissibility of the absence.





This was A's first job in Finland. The parties disagreed on the content and scope of the orientation related to absences due to illness provided to A, who does not speak Finnish. The parties expressed conflicting views on whether A was aware of the practices concerning absences and on why A only provided proof for A's first absence too just one day before the termination of A's employment.

According to the report, A's manager offered A another job with another client as an alternative to cancellation during the trial period. According to A, this was an on-demand contract by which A could have been called up to work at different client properties. The parties disagree on what happened next. According to the employer, the manager had reconsidered the matter and decided that A was not suitable to continue working for the company. A, on the other hand, says that A asked the manager for more time to consider the new terms and, one day after that, the manager cancelled A's employment contract.

According to the Ombudsman for Equality, an assumption of discrimination based on family responsibilities was created in the matter, since the termination of employment occurred when the employee had just been absent from work due to their child's illness and the absences due to illness and the nature of their employment contract had been discussed with their manager at the workplace. Therefore, in order to disprove the assumption of discrimination, the employer should prove that it had a non-discriminatory basis related to the employee's person and performance for terminating the employment contract during the trial period.

Not all of the parties' claims could be verified in the written procedure employed by the Ombudsman for Equality. Ultimately, the employer's conduct and the existence of possible grounds for dismissal related to the employee's person and performance would have to be decided in court.

According to the Ombudsman for Equality, the fact that the employer had offered A a new employment contract can be considered to demonstrate that the employer's representative did not consider A to be unsuitable just a day before the termination of the employment contract. (TAS 512/2022)

3.2 PAY DISCRIMINATION

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

The Equality Act prohibits gender-based discrimination regarding pay. In general, the Equality Act concerns differences in pay between employees of the same employer. Applying pay terms in a way that places an employee or employees in a less favourable position because of their gender than one or several other employees doing the same or same level of work for the same employer constitutes discrimination, unless there is an acceptable reason for this. If the employer's remuneration system is non-transparent, the employer has the burden of proof that the system, in whole or in part, is not in violation of the Equality Act.

Majority of the reports made to the Ombudsman for Equality in 2023 suspecting pay discrimination were related to discrimination on the basis of pregnancy or family leave. More reports related to pay and family leave were made by both women and men.

Performance bonus rights of an employee on family leave

On several occasions in previous years, the Ombudsman for Equality has commented on various personnel fund and performance bonus schemes operated by employers and urged them to bring these schemes into compliance with the Equality Act by ensuring that they do not put employees who have taken family leave in a less favourable position without justification (e.g. TAS/518/2020).

In 2023, the Ombudsman for Equality examined whether a financial undertaking's performance bonus scheme was discriminatory. The Ombudsman for Equality found the company's performance bonus scheme to be discriminatory and thus in violation of mandatory law, as it completely excluded employees who take a longer family leave of more than six months from receiving a performance bonus for the year in question. Also the fact that only 30 days of maternity leave under the legislation in force before the family leave reform was counted as equivalent to active employment constituted a violation of the Equality

Act. The Ombudsman for Equality urged the company to change its system in order to bring it into compliance with the Equality Act (TAS/301/2023, issued on 5 January 2024).

The Ombudsman for Equality also gave advice to many people contacting the Ombudsman about performance bonus schemes and the Ombudsman for Equality's statements. For example, the Ombudsman advised an employer representative on the effects of the family leave reform that entered into force on 1 August 2022 on the right to a performance bonus as well as on the legal effects of the Ombudsman for Equality's statement. (TAS/642/2022, issued on 20 June 2023).

Questions asked from the Ombudsman for Equality regarding employers' performance bonus schemes and the answers to them have been compiled on this page. They can be helpful for assessing the lawfulness of such schemes and the right of parents who have given birth or taken other family leave to them at the workplace, as well as in calculating these parents' lawful shares of such bonuses.

Legal provisions on pay discrimination

Section 8, subsection 1, paragraph 2 of the Act on Equality between Women and Men (Equality Act) prohibits the employer from acting in such a way that a person finds themselves in a less favourable position on the basis of pregnancy or childbirth or for some other gender-related reason when deciding on pay. Discrimination on the basis of "some other gender-related reason" also refers to putting someone in a less favourable position based on parenthood and family responsibilities. The provision thus covers, for example, family leave defined in the Employment Contracts Act in addition to pregnancy and maternity leave.

The Equality Act has been complemented over the years to bring it into alignment with the EU law binding on Member States and its legal practice. Provisions of EU law that require particular attention include the prohibition of pay discrimination in the CSC Treaty and the Equality Directive (2006/54/EC), as well as the provision of the Directive on Work-Life Balance (2019/1158/EU) according to which rights that have been acquired or that are in the process of being acquired by workers must be maintained until the end of the employee's family leave. The provision is intended to prevent the loss or reduction of rights based on an employment contract that have already been acquired, or that are in the process of being acquired, when the employee begins their family leave. The purpose is to guarantee that the employee will have the same status with regard to these rights at the end of the leave as before it.

When evaluating the right to a performance bonus, the employer must take into account the ruling of the Court of Justice of the European Union, according to which an employee on family leave must be considered equivalent to those who are actively employed with regard to retroactive pay. According to the Court's ruling in case C-333/97 Lewen, the work performed by an employee on family leave in the year in question must be taken into account in their pay. The employee would otherwise be put in an unfavourable position, violating the prohibition of discrimination.

The Lewen ruling contains legal norms on taking the maternity leave of a pregnant employee and other statutory family leave into account. These norms are discussed in more detail in the following sections.

MATERNITY LEAVE
MUST BE COUNTED
AS EQUIVALENT TO
ACTIVE EMPLOYMENT
WHEN CALCULATING
THE PERFORMANCE
BONUS RIGHTS

Why must maternity and pregnancy leave be considered equivalent to active employment?

Maternity leave must be counted as equivalent to active employment when calculating the performance bonus rights of an employee who has been pregnant and has given birth. Any other approach would constitute direct discrimination based on gender, with the female employee being discriminated against solely in the capacity of an employee, since the period in question would have been counted as active employment if she had not been pregnant. Maternity leave may not reduce payments made to an employee. This rule is based on the special protected status of pregnancy and maternity in Union law.

The Ombudsman for Equality stresses that, when considering case C-333/97 Lewen, it must be noted that the Court ruled that an employee who gives birth may not be put in a discriminatory position during maternity leave, because that period would have been counted as active employment without the pregnancy and maternity leave. The 30 days referred to in the judgment was based on the national legislation of the state that requested the preliminary ruling. This does not permit the conclusion that this period would also be 30 days in Finland, since the statutory maternity leave has been 105 working days here. The maternity leave under the Pregnancy Protection Directive must be counted as equivalent to active employment in its entirety. Any other interpretation would put the employee taking maternity leave in an unfavourable position based on pregnancy and giving birth, since the period would have been counted as active employment in its entirety if the employee would not have been pregnant and on maternity leave.

After the family leave reform, family leave now only constitutes a pregnancy allowance period of 40 working days under the Health Insurance Act and the corresponding pregnancy leave under the Employment Contracts Act, as well as the parental and child care leave following this period. The share of family leave that must be counted as fully equivalent to active employment in terms of the right to a performance bonus can be interpreted in a number of ways, which are discussed in the Ombudsman for Equality's statement TAS/301/2023. Putting parents in an unequal position during parental leave in terms of the time counted as equivalent to active employment and only paying the salary of the parent who gave birth could be considered to violate the Equality Act.

The Ombudsman for Equality finds that the pregnancy leave of 40 working days provided for in the Employment Contracts Act, i.e. the period for which the employee is entitled to the pregnancy allowance, must be counted as equivalent to active employment.

Is a different approach to different types of leave justified?

The scheme evaluated in statement TAS/301/2023 excludes all employees who have been absent from work for more than 6 months from the right to a performance bonus, regardless of the grounds for the absence. According to the employer, this is in line with the principle of equal treatment. Employers have also invoked the same justification in some of the other schemes evaluated in the past.

The Ombudsman for Equality stresses that the use of family leave is protected by the prohibition of indirect discrimination based on parenthood or family responsibilities under section 7, subsection 3 of the Equality Act. The status of an employee taking family leave must be considered equal to active employment and cannot be directly compared to other types of absence. When evaluating the right to retroactive pay in light of the prohibitions of discrimination, employees on parental and child care leave are equivalent to actively employed persons and not to those absent for other reasons, whose status is not addressed in this statement.

The possible justification of indirect discrimination will then need to be assessed. Putting an employee in an unequal position is not prohibited by the Equality Act if the discrimination is indirect and the action is aimed at achieving an acceptable objective and if the chosen means must be deemed appropriate and necessary in view of this objective. Discrimination based on parenthood and parental and child care leave can be justified under section 7, subsection 3 of the Act if it is aimed at achieving an acceptable objective and the chosen means are appropriate and necessary.



In such cases, the employer must demonstrate that its refusal to pay employees who have taken family leave their share of the performance bonuses is aimed at achieving an acceptable objective and that the chosen means must be deemed appropriate and necessary in view of this objective. According to legal practice, the chosen means must be necessary for achieving the objective in an assessment of the action's proportionality. The Ombudsman for Equality notes that the employer did not refer to any objective it would consider acceptable to justify the discriminatory practice.

What does proportionality mean and how are the performance bonus rights of an employee on parental or child care leave calculated?

Parenthood and family responsibilities are independent grounds for indirect discrimination in the Equality Act. The provision protects women and men who take family leave equally.

The Ombudsman for Equality considers a performance bonus scheme in which an employee on family leave does not receive a performance bonuses even for the time they have been actively employed or on maternity or pregnancy leave during the performance bonus period to be in violation of mandatory legislation. An employee taking family leave must receive their share of the performance bonus, which is deemed to constitute retroactive pay, by virtue of the prohibitions of discrimination.

The absence of an employee taking maternity leave or pregnancy leave under the current legislation must be considered equivalent to active employment for which the employee accumulates performance bonus rights. It is not necessary to take the share of other types of family leave into account in the same manner as equivalent to active employment if such absence is not based on maternity or pregnancy leave. However, other types of family leave must be taken into account when evaluating the employee's right to a proportional share of the performance bonus. Family leave may not cause an employee to lose their right for the whole year's performance bonus. Therefore, the employee must have a right to a proportional share of the year's performance bonus according to the pro rata temporis principle.

The significance of individual performance in the assessment of performance bonus rights

Requiring employees to fulfil personal performance requirements in order to be paid a performance bonus is acceptable, provided that the employer's performance bonus scheme includes a personal performance requirement.

In the scheme evaluated in matter TAS/301/2022, the amount of the performance bonus is influenced by the achievement of the employee's personal target or targets, team-specific targets and the employer's general targets for all employees. The team-specific targets with relevance for the entitlement to a performance bonus have been the same for years, although they have been re-confirmed each year. Furthermore, a part of the performance bonus is linked to the employer's result, and receiving the performance bonus did not require a personal input from A for this part. A stressed that she had been working in the same position for years and some parts of her personal targets had not changed during that time. According to the information provided by A, her supervisor had also assessed her performance for 2022. In the Ombudsman for Equality's estimate, A must be considered to have also met her personal performance criteria for 2022 in a manner entitling her to her share of the performance bonus.

The Ombudsman for Equality has stated in previous statements that the greater difficulty of assessing the performance of employees on family leave cannot be considered an acceptable reason for indirect discrimination. The performance of employees who have been on family leave can be assessed in relation to their period of active employment.

Legal protection of an individual who experienced pay discrimination on family leave

In statement TAS/301/2023, the Ombudsman for Equality urged an employer to change its system to bring it into compliance with mandatory legislation. The Ombudsman for Equality also urged the company to pay the employee who had brought the matter to the Ombudsman their share of the 2022 performance bonus. Section 11 of the Equality Act also entitles the employee who suffered discrimination to a monetary compensation from her employer for the violation of the prohibition of discrimination.

In communication TAS/642/2022, the Ombudsman for Equality was asked, among other things, how other employers should take into account the Ombudsman's statement TAS/518/2020 from 2021 regarding the right to a performance bonus on family leave, especially for the years 2019–2021. In this regard, the Ombudsman for Equality stated that its statements are recommendations by nature and thus have no direct legal effects, but that the Ombudsman's position on the right to performance bonuses is based on the judgments of the Court of Justice of the European Union. In matter TAS/518/2020, the Ombudsman for Equality evaluated an employer's performance bonus scheme for 2019 and 2020 and found it to be in violation of the Equality Act's prohibitions of discrimination. These matters should also be taken into account by other companies with performance bonus schemes when assessing the right of employees who have taken family leave to a share of the performance bonus for previous years.

A claim for compensation under section 11 of the Equality Act for a violation of the prohibition of discrimination should be brought in the court with general jurisdiction over the employer within two years of the discriminatory decision if the parties cannot otherwise reach an amicable settlement in the matter. For performance bonuses, the Ombudsman for Equality considers this to mean the general payment date on which the performance bonuses from the previous period are paid to the company's employees as retrospective pay. The Employment Contracts Act's provisions on period of limitation apply to pay receivables. (TAS 301/2023)

3.3 DISCRIMINATION IN RECRUITMENT

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

In accordance with the Equality Act, the employer's conduct should be considered prohibited discrimination if the employer, when hiring or when selecting for training, displaces a person who is more meritorious than the selected person of the other gender, unless the employer's action was due to an acceptable reason other than gender or if there is no pressing and acceptable reason for the procedure due to the quality of the work or task.





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

Potential discrimination is assessed in two stages: First, the merits of the person suspecting discrimination and the person chosen for the position are compared. This ultimately comes down to which of the applicants has the best professional and other qualifications for the appropriate and successful performance of the duties entailed by the position. If an assumption of discrimination arises based on the applicants' merits, in order to disprove it, the employer must demonstrate that the person chosen for the position is more suitable for the position than the more merited applicant who was not chosen, for example due to their personal characteristics, and that this was the actual and acceptable reason for the choice. The burden of proof lies with the employer.

Suspected discrimination of a trans person in recruitment

A job applicant asked the Ombudsman for Equality to determine whether they had been discriminated against in recruitment in a manner prohibited by the Act on Equality between Women and Men (Equality Act). The person suspected that they had not gotten the job they applied for because of their gender identity.

The employer had invited the applicant to an official job interview, in which they were asked about their military service, among other things. The job applicant had answered that they had not been conscripted because they have a female personal identity code and are thus not liable for military service. After that, the employer had asked the applicant about their examination period, treatments and procedures related to transgenderism as well as about their childhood as a trans person.

The employer justified its decision not to recruit the applicant by stating that their studies and work experience were not sufficient at the time.

The Equality Act prohibits discrimination based on gender, gender identity and gender expression. Applicants may not be placed in an unequal position in recruitment procedures or decisions unless necessary due to the nature of the work.

An assumption of discrimination in recruitment arose from the material submitted to the Ombudsman for Equality. The employer did not give any other grounds for not recruiting the applicant apart from their insufficient studies and work experience – factors that the employer was aware of before inviting the applicant to an interview. There is a temporal connection between the basis for discrimination, the employer’s awareness of it and the suspected discrimination. The employer was not able to disprove the assumption of discrimination by demonstrating that the negative recruitment decision would have been due to other acceptable reasons than the applicant’s gender identity.

Recruitment procedures and gender-based harassment

With regard to the interview procedure, the Ombudsman for Equality pointed out in their statement that asking about military service in a job interview is only permitted if directly necessary for the position. As gender may not be given significance in the choice of employees, asking about military service or discussing gender affirmation and gender identity in recruitment constitutes conduct that cannot be considered to comply with the Equality Act.

The Ombudsman for Equality also pointed out that the employer has an obligation to purposefully and systematically prevent discrimination based on gender identity and gender expression. The employer has a pronounced responsibility for the course and lawfulness of a recruitment discussion. The employer should ensure that the employee does not disclose sensitive information even on their own initiative. If this happens, the employer should steer the conversation to other topics. This is also important to avoid violating the mental integrity of the job applicant. In the Ombudsman for Equality’s opinion, the employer’s representatives should have understood based on normal discretion that continuing the discussion about matters involving gender affirmation was not necessary or appropriate. Questions related to the subject cannot be justified by the fact that the applicant disclosed being part of a gender minority on their own initiative.

Harassment based on gender can also be evaluated as discrimination prohibited by section 7 of the Equality Act. An act that is not sexual in nature can still constitute gender-based harassment (HE 195/2004 vp, p. 13). Even a single act can meet the definition of prohibited harassment. An act can be considered to constitute gender-based harassment even if it is not intended to humiliate the subject. It suffices that the act has de facto violated the subject’s mental or phys-

ical integrity and created a threatening, hostile, degrading, humiliating or oppressive atmosphere. Based on the information obtained on the matter, the Ombudsman for Equality found that the employer’s conduct meets the definition of gender-based harassment and was thus in violation of the Equality Act. (TAS 432/2022)

Suspicion of discrimination in filling the position of a municipal administrative director

Woman A asked the Ombudsman for Equality to evaluate whether she had been discriminated against in the recruitment process for a municipal administrative director. Man B was chosen for the position. Applicants A and B progressed to the final evaluation stage in the recruitment process. They were equally educated and had roughly the same amount of experience in the municipal sector.

The applicants were interviewed and their merits were compared at various stages of the recruitment process. An independent operator also assessed the applicants’ suitability for the position. In addition, a more extensive written overall assessment was conducted of these two applicants. Applicant B was seen as the most suitable choice for both the position and the requirements of the operating environment and was also chosen.

An assumption of gender-based discrimination in recruitment arises if a person who was not chosen for the position can demonstrate that they had more merits for the job than a person of the opposite gender who was recruited for it. In order to disprove the assumption of discrimination that arose based on the applicants’ relative merits, the employer must then find another reason than gender for their choice.

The assessment criteria or procedure for filling a position may not be discriminatory on the basis of gender. However, the employer is free to assign different weights to the factors being assessed as appropriate for the position. These factors must be applied equally to all applicants.



The Ombudsman for Equality evaluated the choice of administrative director in this case based on the materials submitted to the Ombudsman and found that the employer was within its rights to weigh the applicants' merits as appropriate for the position. In this case, no such difference in the merits of the two final-stage applicants, based on which A would have been clearly more qualified for the position than B as referred to in the Act on Equality between Women and Men (Equality Act), could be established in an objective assessment. Therefore, it cannot be said that A would have been discriminated against based on her gender. (TAS 141/2023)

3.4 DISCRIMINATORY JOB ADVERTISEMENTS

The Ombudsman for Equality is also regularly contacted with regard to job advertisements, where either only men or only women are able to apply. Under the Equality Act, a job may not be advertised just for women or men unless there is a pressing and acceptable reason for doing so given the nature of the work or task. For example, a person may be chosen for the role of a dancer or actor if he or she is of the gender that character calls for. The personal nature of the employment relationship can also be regarded as a weighty reason that justifies selection on the basis of gender when selecting a personal assistant.

A woman or non-binary employee was sought for a position – all genders were considered

A company had posted a job advertisement for a short-term job in the film industry, looking for a woman or non-binary person. This was justified by the theme of the project and the make-up of the project team. Women and non-binary persons are a minority in this specialised field, so the company wanted to offer them an opportunity to gain work experience in the field through positive special treatment.

The company received four applications for the position. The applicants included both men and women, and all applicants were included in the selection process. The employer used competence and experience in the field, along with the rate offered by the applicant in relation to the project's costs, as the most important criteria for filling the position.

Since all applicants were considered regardless of gender, there was no discrimination based on gender in the recruitment process. The Ombudsman for Equality recommended that, going forward, the company's job advertisements should clearly state how the nature of the work or need for positive special treatment comply with the requirements of the Equality Act. Alternatively, the company can simply state in its job advertisement that applications from all genders are welcomed.

A more even gender distribution and diversity of perspectives in the industry are acceptable recruitment objectives as such, but publishing a job advertisement for a specific gender alone requires particularly weighty and acceptable reasons. (TAS 624/2022)

3.5 DISCRIMINATION IN WORK SUPERVISION AND WORKING CONDITIONS

As a rule, the employer has the right to manage the work of their employees, distribute tasks to them and otherwise arrange their working conditions. The employer is guilty of discrimination if they manage work, distribute tasks or otherwise arrange working conditions in such a way that one or more employees find themselves in a less favourable position than other employees on the basis of gender, gender identity or gender expression. It is also prohibited to use the right to manage work to put one or more employees in a less favourable position than other employees on the basis of parenthood or family responsibilities.

The management of work includes the supervision of work and the use of working hours, the organisation of the work facilities, the distribution of tools as well as the development of the employee's duties and professional skills. Examples of discrimination include distributing duties so that the most repetitive and unpleasant duties are always given to employees of one gender or, for example, a pregnant employee. If only men are given the opportunity to work overtime or only women are switched to working part time, this also constitutes discrimination.

The distribution of duties is especially significant if the nature of an employee's duties determines their possibilities for advancing to new, better-paid positions. An employer is not guilty of discrimination if they can demonstrate another, acceptable reason than the employee's gender for their conduct.

Assigning tasks that include physical restraint to male employees

A has requested the Ombudsman for Equality to review if tasks have been assigned in a manner based on gender and in breach of the Equality Act at a State-owned residential unit of child welfare services. A has stated that there was a silent agreement at the workplace according to which men were responsible for tasks including restraint, restriction and placing in isolation. The male employees have pointed out that dividing tasks by gender does not come across as present-day policy.

In accordance with the legislative materials of the Equality Act, the management of work includes, among other things, the organisation of activities and the development of an employee's tasks and professionalism. Dividing work tasks so that employees of one gender are assigned more monotonous and dull tasks than the employees of the opposite sex in the same position, or that the opportunity for overtime is only offered to employees of one gender. The distribution of duties is especially significant when the nature of an employee's duties determines their possibilities for advancing to new, better-paid positions.

The employer is tasked with developing working conditions to ensure they are suitable for both women and men. It is the employer's duty to promote equality at management level. Discriminating management can be demonstrated in many ways. When telling apart permitted and forbidden measures, attention must be paid to the prevailing non-discriminating policy or practice.

Assessment of the case

In its statement, the employer highlighted the importance of safety aspects. According to the employer, the goal is to ensure a sufficient employee resource and, when needed, to prioritise that there is staff in the different wards to ensure daily routines go well and safety is guaranteed. It is pointed out in the statement that the workplace does not have a culture of women not participating in tasks involving physical restraint. According to the employer, it is natural that some instructors have a better competence for challenging situations while some need more help from their co-workers. Some employees ask the male employees to become involved in challenging situations, and these situations have been discussed at ward meetings. Staff training has also been offered. The statement notes that it is, however, an inevitable fact and a law of nature that men are usually physically stronger than women and their appearance can help to secure the situation.

A has pointed out that the tasks of the instructor are the same for all, but in practice the tasks including physical restraint are assigned to the men. The screenshots attached to A's rejoinder indicate that men have been repeatedly requested to take shifts and to visit other wards during the shift. The Ombudsman for Equality also took notice that women miss the opportunity to earn added compensation if only men are asked to work certain shifts.

The dangerous or uncomfortable nature of the work, for example, is not a justified or acceptable reason for gender-based restrictions. On the other hand, the fact that the law specifically forbids using women for certain duties does constitute a justified and acceptable reason. Therefore, the references made in the employer's statement to a fact and law of nature regarding the physical strength of men and the safety aspect are not an acceptable reason to request men to take certain shifts or be present in the situations.

In the opinion of the Ombudsman for Equality, the employer did not have acceptable grounds to assign the tasks concerning using physical restraint to men alone, *id est* to divide tasks based on gender. The Ombudsman for Equality urged the employer to ensure that, going forward, tasks would not be distributed on the basis of gender without an acceptable reason. The employer must ensure that the working conditions are equally suitable for women and men. The employer must therefore ensure that both men and women can do all the tasks of an instructor, including the situations that require physical restraint. Employees must also be informed that not only men will be asked to take shifts or that help is not asked only from men. (TAS 176/2023)

3.6 SEXUAL HARASSMENT AT WORKPLACES

Sexual and gender-based harassment constitute discrimination under the Equality Act. Sexual harassment means verbal, non-verbal or physical unwanted conduct of a sexual nature by which a person's psychological or physical integrity is violated intentionally or factually, in particular by creating an intimidating, hostile, degrading, humiliating or offensive atmosphere.

Gender-based harassment means unwanted conduct that is not of a sexual nature, but which is related to the gender identity or gender expression of a person, and by which the person's psychological or physical integrity is intentionally or factually violated and an intimidating, hostile, degrading, humiliating or offensive atmosphere is created.

Sexual harassment can manifest in at least the following ways:

- sexually suggestive gestures or facial expressions;
- vulgar comments, dirty jokes and remarks or questions
- about someone's body, dress or private life;
- pornographic material and sexually tinged letters, emails, text messages or phone calls;
- touching;
- suggestions or demands concerning intercourse or other sexual interaction; and
- rape or attempted rape.

When harassment does occur, the priority is to make it stop. If the victim of harassment feels that the employer has neglected their duties to take the available measures to eliminate sexual or gender-based harassment upon becoming aware of it, they can claim compensation for discrimination under the Equality Act in the district courts. The claim for compensation must be brought within two years of the violation of the prohibition of discrimination.

The perpetrator of the harassment may suffer consequences for their acts under the Criminal Code and Tort Liability Act. Harassment at work can also meet the statutory definition of a work discrimination offence or be a violation of the Occupational Safety and Health Act.



Employer duty to investigate suspected harassment

Person A and eight other persons requested that the Ombudsman for Equality investigate if they had been subjected to sexual harassment at the workplace. The applicants of an opinion described how an employee in a supervisory position had subjected them to sexual harassment. The sexual harassment included, inter alia, sexually suggestive gestures and facial expressions, obscene talk, dirty jokes, comments about appearance, touching and hugging.

Assessment of the case

According to section 8 d of the Equality Act, the action of an employer shall be deemed to constitute discrimination prohibited under the Act if, upon receiving information that an employee has been a victim of sexual or other gender-based harassment in the workplace, the employer neglects to take the steps available to eliminate the harassment. An employer must secure that an employee is not faced with sexual or gender-based harassment in working life and intervene, with sufficient measures, if harassment takes place. It is the duty of the person subjected to harassment to inform the harasser that their activities are unwanted. An employer representative, trustee or occupational safety and health representative can also be informed of the harassment. When an employer's activities are assessed, it can also be determined if there are guidelines in place at the workplace for incidents of harassment and, if so, how well information has been provided about them.

It is a case of harassment, where the perpetrator knows or should have known after exercising good judgement that their behaviour or actions are unwanted. The basic precautions of preventing and avoiding harassment include taking other people into account and respecting peoples' freedom and autonomy. In this case, the supervisory position of the person suspected of harassment means that they have a special duty to behave in an exemplary manner and to ensure that the workplace culture is safe, and everyone can feel comfortable, people behave in a decent manner and no-one is subjected to harassment or inappropriate treatment of another kind. In the Ombudsman for Equality's opinion, the person suspected of harassment should have understood, based on normal judgement, that dirty jokes and similar behaviour do not belong to the workplace.

The burden of proof is transferred to the employer when there is reason to suspect that an employee has been subjected to harassment at the workplace. The employer has an opportunity to prove that they have met the obligations of a

diligent employer. According to the Ombudsman for Equality, it has been determined, based on the information provided by the applicants of opinion and the report ordered by the employer that the employees have been subjected to sexual harassment. Therefore, this case reviews the employer obligation to prove that they have met the obligation of a diligent employer in intervening in the harassment.

It is indicated in the report ordered by the employer that sexual harassment has been long ongoing. The Ombudsman for Equality finds that the employer should have, at least after receiving the report in question, started an investigation of the extent of employees being subjected to harassment and to take the necessary measures to stop it.

Based on the reports received, the Ombudsman for Equality is of the impression that the employees found the measures taken by the employer insufficient. It has remained similarly unclear to what degree the harassment has been investigated by the employer and if the harassment has continued after it was made known to the employer. It does appear, based on the reports received, that the employer has only investigated the harassment against A, and the report commissioned by the employer was completed based on this action.

The Ombudsman for Equality finds that the employer had and still has the duty to take steps available upon becoming aware of the sexual harassment, as referred to in section 8 d of the Equality Act. If the employer does not take these measures or has not done so, an obligation to bring compensations is realised in accordance with Section 11 of the Equality Act. The Ombudsman for Equality concluded that the employer cannot avoid its obligation to take action based on the intention not to investigate at all the unwanted behaviour experienced by others than A. (TAS 30/2023)

3.7 DISCRIMINATION IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

The Equality Act prohibits discrimination in educational institutions based on gender, gender identity or gender expression. The prohibition of discrimination also applies to the education providers and schools as referred to in the Basic Education Act.

The Equality Act prohibits educational institutions and other communities offering education and training from treating a person less favourably than others on the basis of gender, gender identity or gender expression in

- student selections
- the organisation of teaching
- the evaluation of study performance
- any other regular activity of the educational institution or community a manner that is referred to in the regulation regarding the general prohibition of discrimination.

The actions of an educational institution will be considered prohibited discrimination if a person is subjected to

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

The school and education provider has not only the right, but also the obligation to intervene in harassment and discriminatory behaviour

The Ombudsman for Equality was asked to give a statement on the ability of the school to prohibit a work by a pupil or student that contains a message against members of sexual and gender minorities. The statement was requested especially concerning the phrase “there are only two genders”.

According to the Equality Act, education providers are obliged to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. The educational institution must also take this into account in the preparation of its gender equality plan and in decisions regarding measures to promote gender equality.

Upon receiving information on harassment or activities that are discriminatory or endanger the safe learning environment, the education provider and school

must take measures to prevent and remove the harassment, discrimination or activity that endangers the safe learning environment. If an educational institution or education provider should fail to take the available measures to prevent further harassment or discrimination, the educational institution or education provider would be guilty of discrimination prohibited by the Equality Act.

The Ombudsman for Equality notes in the Ombudsman's report to Parliament in 2022 and 2018 as well as the Ombudsman's report on the status of gender minorities in 2012 that gender is a diverse phenomenon that cannot be reduced to two clearly distinct sexes.

Gender identity means an individual's own experience of their gender. The preliminary work on the Equality Act states that a person can feel that they are agender or partially a woman and partially a man. As for gender expression, it means expressing one's gender through clothing, behaviour, or by other means. The guide “Tasa-arvotyö on taitolaji” (‘The work on equality requires skill’) by the National Board of Education published in 2015 and targeted at basic education also states that an individual's experience of their own gender does not always fit in a binary gender system.

The Ombudsman for Equality reminds the provider of basic education and the school that both have an obligation based on the Equality Act to ensure that the prohibition against discrimination based on gender, gender identity and gender expression is followed.

The provider of basic education and the school have not only the right, but also the obligation to intervene in a situation or, for instance, actions of an individual pupil that violate or discriminate against other pupils who are members of a gender minority. Furthermore, the education provider and the school are obliged to promote gender equality and take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression.

Therefore, under the Equality Act, the school not only had the right, but also the obligation to prohibit a work by a pupil that contained a message violating and discriminating against sexual and gender minorities.



THE SCHOOL HAS AN OBLIGATION TO PREVENT AND INTERVENE IN HARASSMENT

The Ombudsman for Equality received plentiful feedback on the statement

The statement caused an avalanche of feedback to the Ombudsman for Equality and made the news in both the traditional and social media. The feedback was overwhelmingly about the definition of gender and not so much about the school's actions.

In the responses to the feedback, the Ombudsman for Equality pointed out that the interpretation made in the statement was based on the Equality Act and its rationale. According to the Act, schools have an obligation to prevent discrimination based on gender identity and gender expression and to intervene in harassment. The Non-Discrimination Ombudsman and Finnish National Agency for Education have also issued statements on the matter from the perspectives of the Non-Discrimination Act, Basic Education Act and national core curriculum for basic education and come to the same conclusion that the school had the right to prohibit the student project it found discriminatory.

A written question was issued on the statement in Parliament and complaints about it were made to the supreme overseers of legality. In his reply to the written question made in Parliament, Minister for Nordic Cooperation and Equality Thomas Blomqvist stated that the Ombudsman for Equality is an independent authority and the Government or its ministers do not have the power to interfere with its solutions or statements. (TAS 89/2023)

The absence of a student due to pregnancy and family leave must also be taken into account in the open path studies of universities of applied sciences

The Ombudsman for Equality was asked to investigate whether a university of applied sciences had complied with the Act on Equality Between Women and Men (Equality Act) in not taking pregnancy and family leave into account when deciding on the duration of open path studies at the university of applied sciences. This practice by the university of applied sciences was de facto making the student pay again for the same studies to be able to complete them.

The Ombudsman for Equality asked the university of applied sciences in question and the Ministry of Education and Culture for reports on the matter.

According to the university of applied sciences' report, the Universities of Applied Sciences Act's provision stating that non-attendance due to pregnancy or family leave is excluded from the normative duration of studies is not applied to open path students. Therefore, the university of applied sciences considered that the open path student had not been discriminated against as prohibited by the Equality Act.

The Ministry of Education and Culture did not give an unequivocal answer to the question whether the above-mentioned provision of the Universities of Applied Sciences Act is applied to open path students.

In his statement, the Ombudsman for Equality emphasises the obligation to promote equality between the genders. A university of applied sciences exercises public authority, and it is thus not enough for it to simply act in a non-discriminatory manner. An institute of higher education is also required to promote gender equality in all of its operations.

The Equality Act's provision on the promotion of equality imposes specific obligations to collect information on impediments to equality and develop measures to eliminate such impediments. Bodies exercising public authority must determine which factors prevent the realisation of gender equality in any given situation and take action to eliminate such factors. Assessing the gender impact of acts, decrees and other regulations at the preparation stage is one of way of collecting such information.

The Ombudsman for Equality has consistently found that a provision, regulation or practice affecting studies that puts students in a less favourable position due to pregnancy, family leave or other family obligations is problematic in light of the Equality Act.

In his statement, the Ombudsman for Equality notes that the university of applied sciences' practice has put the open path student in a less favourable position based on pregnancy and family leave. Since the educational institution has not presented any information that would disprove the assumption of discrimination that arose in the matter, the Ombudsman for Equality finds that the university of applied sciences' interpretation has placed the student in a less favourable position as prohibited by the Equality Act.

According to the Ombudsman for Equality, an interpretation respecting gender equality and fundamental rights and taking into account the prohibition of discrimination provided for in the Equality Act and the obligation imposed by the Act to promote gender equality purposefully and systematically would have been possible in the matter. (TAS 538/2023)

3.8 GENDER IDENTITY AND GENDER EXPRESSION

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

Contacts relating to gender identity or gender expression

The Ombudsman for Equality has repeatedly expressed the necessity and urgency of reforming the “Trans Act”. For example, the Ombudsman for Equality has issued recommendations for reforming the Act in the Ombudsman’s reports to Parliament in 2018 and 2022. The Act on Legal Recognition of Gender (295/2023, HE 189/2022 vp) was approved in Parliament in February 2023 and entered into force in April the same year. With the Act’s entry into force, the sterilisation requirement for affirming one’s gender, which violated Finland’s human rights obligations, was repealed and the legal affirmation of gender was separated from medical procedures.

The Ombudsman for Equality considers it important that Parliament required the Government to assess and prepare the necessary amendments to legislation for promoting the right to self-determination of children and young people in the affirmation of gender. Parliament also required the Government to assess the Act’s impact on sports and, if necessary, to take action to support sports associations in dealing with the change and draft the required legislation. The subject is discussed in more detail in section 3.10, Exercise and sports (p. 40).

After the reform of the Trans Act, the Ombudsman for Equality was contacted more often than in previous years by customers on subjects such as spaces segregated by gender and the application of the Equality Act to such situations.

With regard to suspected cases of discrimination last year, the Ombudsman for Equality investigated cases involving service pricing, choice of employees and job advertisements, in which the basis for discrimination was gender identity

or gender expression. A sample case of suspected discrimination against a trans person in recruitment is described in section 3.3 (see p. 31). The Ombudsman for Equality also issued a statement on the obligation of schools to intervene in harassment and discriminatory behaviour (see section 3.7 p. 37).

Trans hate material distributed into mailboxes

An individual contacted the Ombudsman for Equality regarding trans hate material distributed into mailboxes. The material said that God created men and women – there are no other genders, and directed readers to a website containing “conversion therapy” material.

Conversion therapy is in itself discriminatory

“Conversion therapy” refers to various interventions seeking or alleging to seek to change an individual’s sexual orientation to heterosexual or gender identity to cisgender (Towards a more inclusive Finland for LGBTIQ people, Publications of the Ministry of Justice 2021:26, p. 108 (in Finnish)).

In his report to the UN Human Rights Council (A/HRC/44/53), the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity appointed by the UN Human Rights Council has stated that conversion therapy is targeted at a specific group of people specifically based on their sexual orientation or gender identity, specifically to violate the personal integrity and right to self-determination of these people. Therefore, such practices are inherently discriminatory. In his report, the Expert calls for UN member states to ban conversion therapy and protect children and young people from such activities.

No specific legislation banning conversion therapy or regulating alternative medicine has been enacted in Finland. However, the Rikkomaton citizen’s initiative aiming to ban conversion therapy collected the required number of signatures in June 2023 to be discussed in Parliament.

The Ombudsman for Equality finds that, in order to clarify the legal situation, a ban on conversion therapy should be enacted.



CONVERSION
THERAPY IS DISCRIMINATORY AND SHOULD
BE BANNED BY
LEGISLATION

The Act on Equality between Women and Men prohibits discrimination based on gender identity

The Act on Equality between Women and Men (Equality Act, section 7) prohibits discrimination based on gender, gender identity and gender expression. Harassment based on gender also constitutes discrimination as referred to in the Equality Act.

Gender-based harassment means unwanted conduct that is not of a sexual nature but which is related to the gender identity or gender expression of a person, and by which the person's psychological or physical integrity is intentionally or factually violated and an intimidating, hostile, degrading, humiliating or offensive atmosphere is created. Such behaviour can manifest as derogatory speech about a different gender and other degrading of another gender.

The Ombudsman for Equality does not rule out an interpretation that these materials would meet the definition of gender-based harassment under the Equality Act, since people can feel that it creates an intimidating, hostile, degrading, humiliating or offensive atmosphere. Several international human rights organisations have also explicitly found conversion therapy to be discriminatory.

The Criminal Code also includes provisions for intervening in hate speech. These include the provision on agitation against a population group, according to which it is punishable to make available to the public or otherwise disseminate among the public information, an opinion or another message where a certain group is threatened, defamed or insulted on a basis listed in the provision or on another comparable basis. Trans and intersex people can be considered to belong to the groups of people protected by this provision. (TAS 397/2023)

3.9 DISCRIMINATION IN ACCESS TO AND PRICING OF GOODS AND SERVICES

The Equality Act prohibits discrimination on the basis of gender, gender identity or gender expression in the availability and offering of goods and services available to the public.

The pricing system used by a trader cannot thus be based on the customer's gender. The purpose of the Equality Act is not to prevent all different treatment of men and women. It aims to prevent any different treatment based on gender

that is clearly unfair. For example, offers related to Mother's Day, Father's Day or the International Women's Day and aimed exclusively at one gender are possible if they are available only very seldom and their financial value is relatively low.

The Equality Act also does not prohibit offering goods or services exclusively or mainly to one gender on the grounds of a legitimate objective. In addition, the restrictions must be appropriate and necessary in terms of the objective.

In 2023 as in previous years, the Ombudsman for Equality was contacted on subjects such as only offering housing to people of one gender, female-only gyms and gender-based pricing in hair salons.

3.10 DISCRIMINATION IN SPORTS

The realisation of gender equality in sports continues to pose challenges. The Ombudsman for Equality has been regularly asked to assess whether various activities and practices related to sports and physical activity are in accordance with the Equality Act. Numerous cases handled by the Ombudsman for Equality have shown that in order to achieve gender equality, systematic work promoting equality must be done at all levels of operations. This requires a change in operating methods and attitudes, but also the courage to address the grievances that have arisen.

Equality should be viewed as the provision of equal opportunities and resources and equitable treatment, attitudes and everyday acts. It is important for gender equality that society equally supports sports activities of girls, boys, women and men as well as trans people. Everyone should have equal opportunities to engage in sports and physical activity, receive competent coaching, participate in competitions and receive equal recognition for their performances. The requirement for the realisation of actually non-discriminatory and equal conditions should be observed in all decision-making related to sports and physical exercise.

The Ombudsman for Equality regularly discussed currently relevant issues with sports organisations in the reporting year. In the discussions with the Finnish Olympic Committee and various sports associations, for example, the key issue was consideration of gender minorities and safeguarding their opportunities to practise their chosen discipline safely.

The Ombudsman for Equality considers it important that every sports association approve guidelines for dealing with gender minorities. By doing so, the sports association sends a strong and clear message of its commitment to ensuring that everyone, regardless of gender, gender identity or gender expression, can fully participate in the association's activities in a safe environment.

3.11 GENERAL PROHIBITION OF DISCRIMINATION

The Equality Act provides for a general prohibition of discrimination based on gender which, like the Act itself, has a wide scope of application. With a few exceptions, the Act applies to all societal activity and all areas of life. The Equality Act also includes special prohibitions applying to discrimination in working life, educational institutions, and organisations representing labour market interests, as well as in matters involving the availability and provision of goods and services.

Those guilty of violating the special prohibitions can be ordered to pay compensation under the Equality Act. The significance of the general prohibition of discrimination has decreased as more special prohibitions have been enacted. These special provisions still do not cover all forms of discrimination, however, and in some cases, discrimination is still prohibited under the general prohibition.

In 2023, for example, the Ombudsman for Equality examined a case under the general prohibition of discrimination, in which the distribution of trans hate material into mailboxes may have constituted gender-based harassment. The case is described on page 39.

3.12 PROMOTING RECONCILIATION

The Ombudsman for Equality has been given the possibility to promote reconciliation in situations in which the prohibition of discrimination provided for in the Act on Equality between Women and Men (Equality Act) can be considered to have been violated. The possibility of promoting reconciliation provided for in the Act improves the legal protection of discrimination victims and promotes the fulfilment of their rights in practice. The process can be a good alternative to a potentially expensive and protracted trial.

The possibility for reconciliation is important for both parties of the dispute. The purpose of the reconciliation procedure is to encourage the parties to settle the dispute. The initiative for reconciliation can come from either party, both parties or the Ombudsman for Equality. Reconciliation can be sought in a variety of ways. For example, the Ombudsman for Equality can arrange meetings between the parties for reaching a settlement.

The reconciliation procedure is voluntary and based on the parties' wish to settle the matter amicably. The reconciliation can also include a monetary compensation, for example. The Ombudsman can submit a proposal for an amicable settlement in the matter to the parties, taking the parties' opinions, the nature of the matter and other factors into consideration as appropriate. In addition, the Ombudsman is obliged to explain the nature of the reconciliation procedure, the significance of reconciliation and the procedure for confirming it, as well as the duration of the statute of limitations period to the parties.

Reconciliation must be sought in good time before the expiry of the statute of limitations period for seeking compensation through the courts. 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.

If the parties are unable to come to an amicable settlement in the matter, it will be settled finally in the courts.

In 2023 as in previous years, the Ombudsman for Equality promoted reconciliation and supported reconciliation processes in which the parties ultimately settled the matter between themselves.

4 SUPPORTING THE PROMOTING OF GENDER EQUALITY

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

The Equality Act also obliges authorities to promote gender equality in all their activities and contains provisions on the composition of public administration bodies and bodies exercising public authority.





4.1 EQUALITY PLANNING AT WORKPLACES

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

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

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

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

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

Monitoring of equality plans

The Ombudsman for Equality receives equality plans for the review in different ways. The Ombudsman for Equality has for a long time followed a practice according to which the Ombudsman requests those workplaces that have had

suspected cases of discrimination to submit their gender equality plans for assessment. Equality plans were also requested if the Ombudsman finds that a plan had not been drawn up or did not meet the statutory requirements.

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

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

4.2 QUOTAS

One of the basic objectives of the Equality Act is to ensure that women and men can participate equally in societal planning and decision-making.

Section 4a of the Act on Equality between Women and Men requires that all Government committees, advisory boards and other similar administrative bodies have at least 40 % of both women and men, unless there are special reasons to the contrary.

In established use, the quota provision has also been deemed to apply to bodies appointed by ministries, such as working groups. Likewise, municipal and inter-municipal co-operation bodies, municipal councils excluded, must have at least 40 % of both women and men, unless otherwise dictated by exceptional circumstances.

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

Promoting equality

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

Adherence to the quota principle is mandatory in municipally owned companies and recommended in bodies for exerting influence in wellbeing services counties

The Ombudsman for Equality was asked to issue a statement on the Board composition of a municipally owned company in terms of the Act on Equality between Women and Men (Equality Act). The Ombudsman has also received an inquiry about the composition of a body for exerting influence in wellbeing services counties.

For the municipally owned company, the party contacting the Ombudsman wanted to know whether companies in which a municipality owns a majority share or exercises actual decision-making authority are required to follow the Equality Act's quota principle on minimum gender representation. The Ombudsman was also asked whether the subsidiaries of a group of companies owned by a municipality are required to comply with the Equality Act's quota principle in the same way.

According to section 4a, subsection 1 of the Equality Act, the proportion of both women and men in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation must be at least 40 per cent, unless there are special reasons to the contrary. This provision does not apply to elected bodies, such as municipal councils.

The municipal executive board or other authority specified in the municipal rules of procedure must thus comply with the quota principle on gender representation when deciding on the Board composition of a company majority-owned by the municipality. The party affiliation or lack thereof of the chosen elected official is irrelevant in this regard.

The quota principle must be separately met by both the ordinary members and their deputies (KHO 1997:49). The party proposing the members must propose one woman and one man for each position.

The party preparing the institution of the body must ensure compliance with the quota principle. Once the candidates have been named, the party preparing the institution must strive to propose a composition that conforms to the quota principle. Minimum gender representation can only be derogated from for special reasons. If the quota is not observed, the reason for this must be justified in the appointment decision. (TAS 182/2023)

The composition provided for in the Equality Act is recommended for bodies for exerting influence in wellbeing services counties

Wellbeing services counties are new legal entities under public law that have been operating since the beginning of 2023. Wellbeing services counties comprise several municipalities and are tasked with duties previously performed by individual municipalities or joint municipal authorities in their areas.

Public administration activities are generally regulated by the “general administration acts”, which include the Equality Act. The general administration acts always apply to the processing of administrative matters and to other official activities unless otherwise provided.

The wellbeing services counties have a variety of bodies for exerting influence, such as the youth council, council for elderly people and council for people with disabilities.

According to the legislative materials of the Act on Wellbeing Services Counties, the bodies for exerting influence in wellbeing services counties are not decision-making bodies referred to in section 35 of the Act, which consist of authorities charged with the exercise of public authority in the wellbeing services county. Therefore, bodies for exerting influence in wellbeing services counties are not bodies exercising public authority as referred to in subsection 1 and section 4a of the Equality Act, and the 40 per cent gender quota does not have to be applied to their composition. The legislative materials for the Act specify the express goal that both men and women be appointed to bodies for exerting influence in wellbeing services counties in the most equal proportions possible. (HE 241/2020 vp, s. 546)

Taking into account the obligation imposed by the Equality Act on authorities to promote equality between women and men in all of their activities, it is justified to strive for the most equal gender representation possible in the appointment of representatives to the youth council, council for older people and council for people with disabilities.

In seeking to achieve balanced gender representation, the Ombudsman for Equality considers the minimum representation provided for in the Equality Act to be an appropriate goal for bodies for exerting influence in wellbeing services counties. When various parties are requested to name their candidates for bodies for exerting influence in wellbeing services counties, they should be reminded of the goal of balanced representation of women and men. (TAS 427/2022; TAS 182/2023)

4.3 EQUALITY IN SCHOOLS AND EDUCATIONAL INSTITUTIONS

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

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

Drawing up a gender equality plan is not an end in itself. Rather, the success of gender equality planning is measured by how the plan supports and guides the educational institution in the promotion of gender equality and achieves the required concrete changes to practices.

Indeed, a gender equality plan aiming to improve the operations of the educational institution should be seen as a tool that supports the promotion of gender equality in all aspects of the institution's operation.

The obligation to draw up a gender equality plan is intended to ensure that educational institutions work systematically to promote gender equality. However, the promotion of gender equality in an educational institution can only develop the institution's operations if the work is appropriately planned and implemented and the entire status of the institution, all the way up to its management, is committed to it.

The tasks of the Ombudsman for Equality include supervising compliance with the obligation to promote gender equality plans at educational institutions, and the Ombudsman participates actively in developing the contents of this requirement. This has been one of the priorities of the Ombudsman's activities also in 2023.

4.4 GENDER EQUALITY IN EARLY CHILDHOOD EDUCATION AND CARE

The obligation to draw up a gender equality plan for promoting equality between the genders, provided for in the Act on Equality Between Women and Men (Equality Act), was extended to early childhood education and care on 1 June 2023.

The gender equality plan is a tool for developing the operating culture of early childhood education and care units. It has a particular focus on the practices of the adults working in early childhood education and care. The aim is to promote gender equality in a systematic and target-oriented manner in the everyday work of early childhood education and care units.

The obligation to draw up an operative gender equality plan applies to day care centres. Municipalities will draw up common gender equality and equality promotion plans for family day care and municipal open early childhood education and care in cooperation with the service providers in their area. The gender equality plan must be updated annually or at least every three years.

In May 2023, the Finnish National Board of Education launched a website on gender equality and equality promotion planning in early childhood education and care. The site is intended to support early childhood education and care personnel in their work and in drawing up gender equality and equality promotion plans. The Ombudsman for Equality participated in the creation of the site's content.





5 STATEMENTS FOR THE PARLIAMENT OF FINLAND AND OTHER AUTHORITIES

The Ombudsman for Equality issued a number of statements to Parliament and the authorities in 2023. A few examples of such statements requested from the Ombudsman are provided in this section.

A MORE DETAILED GENDER IMPACT ASSESSMENT IS PROPOSED FOR THE GOVERNMENT'S BUDGET PROPOSAL AND GENERAL GOVERNMENT FISCAL PLAN

The Ombudsman for Equality was heard by the Employment and Equality Committee of Parliament on 17 October 2023 on the Government budget proposal for 2024 and the General Government Fiscal Plan for 2024–2027 (HE 41/2023 vp). The Ombudsman for Equality evaluated the proposal from the perspective of the realisation and promotion of gender equality.

The obligation to promote gender equality

The obligation to promote gender equality in societal activity is provided for in section 6 of the Constitution of Finland (731/1999).

The budget proposal guides economic policy and has significant effects on gender equality. As groups, women and men are in very different positions, for example in terms of income distribution and in the labour market. Economic policy thus affects gender equality regardless of its stated objectives. Economic policy can consciously or unconsciously improve or degrade the state and development of gender equality.

Gender-aware budgeting

Gender-aware budgeting is an internationally appreciated strategy for promoting gender equality. The Ombudsman for Equality proposes that more detailed instructions should be drawn up for the administrative branches on gender-aware budgeting, as has been done for gender impact assessments in legislative projects. Gender-aware budgeting can be used to allocate public spending and income in an equality-promoting manner.

A regulation issued by the Ministry of Finance states that the justifications for the main titles in the draft budget shall include summarised analyses of activities with significant gender effects. The social impact targets for gender equality in the administrative branch and the administrative branch's expenses that could impact the realisation of gender equality shall be taken into account in these analyses.

The justifications for the main titles in the 2024 budget accordingly include measures and objectives related to gender equality. These measures are not commensurable, however, and their connection to the actual promotion of gender equality remains ambiguous in places. The measures to be taken to achieve the objectives remain largely unclear.

The Ombudsman for Equality finds it especially unfortunate that the justifications of some main titles mention the promotion of gender equality without naming a single concrete measure (for example the administrative branch of the Ministry of Agriculture and Forestry, MT 30) or gender equality is only promoted by means of statutory guidance and information (for example the administrative branch of the Ministry of the Environment, MT 35).

The combined impact of changes to social security should be assessed at the preparation stage

The justifications of the main title of the Ministry of Economic Affairs and Employment state that gender equality in working life will be promoted with employment and entrepreneurship measures, among other things. Integration and employment measures aimed at immigrant women are mentioned as one target group.

Several bills are given in connection with the 2024 budget proposal as “expenditure acts”. Some of these bills are inadequately prepared. For example, the Finnish Council of Regulatory Impact Analysis has stated that the combined effects of the proposals concerning changes to social security should have been assessed at the preparatory stage. The proposals' combined effects on vulnerable groups should have been taken into account.

A memorandum published by the Ministry of Social Affairs and Health on 9 October 2023 discusses the financial impact of the proposed changes to social security. However, the impact on fundamental and human rights is not discussed at all. It would be necessary to assess in more detail how the effects will target women and men and whether the combined effects of the changes will target the same groups.

Promotion of gender equality in the government term

The Programme of Prime Minister Petteri Orpo's Government states that the government will eliminate discriminatory practices and structures from working life by promoting compliance with the legislation concerning discrimination and taking more effective measures to prevent discrimination, especially discrimination based on pregnancy and family leave. The Ombudsman for Equality proposes that the Ministry of Economic Affairs and Employment monitor the effects of the family leave reform on paid family leave in collective agreements as well as on the employment and financial status of women and men.

The Act on Equality between Women and Men (Equality Act) will be amended during the government term, at least for the implementation of the Equal Pay Directive. The Ombudsman for Equality considers it important that the legislative amendments and measures required by Parliament with a very broad consensus when discussing the Ombudsman's report to Parliament in 2022 (Parliamentary communication EK 40/2022vp) be entered in the Equality Act in this connection. They include adding a definition of "work of equal value" to the Equality Act, preventing discrimination related to pregnancy and family leave by clarifying the prohibition of discrimination especially in atypical employment relationships and ensuring sufficient resources for supervising compliance with the Equality Act.

Effective law enforcement and promotion of gender equality requires adequate resources

The Ombudsman for Equality reminded the government that the government statement on promoting equality and gender equality seeks to reinforce the promotion of equality, not erode the preconditions for doing that work. Effective law enforcement and promotion of gender equality requires adequate resources. (TAS 628/2023)



MORE DETAILED
INSTRUCTIONS ON
GENDER BUDGETING
ARE NEEDED FOR THE
VARIOUS ADMINISTRATIVE
BRANCHES

STATEMENT REGARDING THE SOCIAL SECURITY COMMITTEE'S REPORT ON THE SOCIAL SECURITY REFORM

The Ombudsman for Equality has issued a statement regarding the intermediary report of the Social Security Committee (issued by the Government, record no. VN/1646/2020 vp). The committee has a working term of two government terms, and it is tasked with the preparation of the social security reform.

The Ombudsman for Equality finds that promoting gender equality should be introduced as one of the starting points of further preparatory work.

The reform's gender impacts must be assessed

The Act on Equality between Women and Men (609/1986) sets forth that authorities must promote equality between women and men in all their activities and must create and consolidate administrative and operating practices that ensure the advancement of equality between women and men. The Ombudsman for Equality considers this duty of advancing equality an essential approach in the social security reform.

The Ombudsman for Equality is in favour of the intermediate report's proposal that the assessment of gender impacts should take place in the preparation of guidelines for standardising and merging basic social security and its benefits. It is essential that the guidelines of the social reform and relevant proposals are assessed from the viewpoint of gender equality.

The assessment must be carried out for the purpose of the duty to promote equality, which is laid down in the Constitution of Finland. The realisation of equality in practice must be set as a goal. The intersectional viewpoint must also be taken into consideration as a part of the assessment, as this means that other factors defining an individual are considered.

Diversity of families

The Ombudsman for Equality endorses the clarification of family concepts of social security legislation, as proposed in the intermediary report, and the impacts of their standardisation with regard to genders and gender equality.

Family types are more diverse than the legislation at present understands, which means that the social security reform and construction of the authorities' services must take into account the diversity of various life situations and families. The status of shared parenting families should be improved with regard to social security to support equality in parenting.

The report includes a proposal for a study to establish if the benefits system works appropriately with regard to people with low income and families with children facing poverty, and the Ombudsman for Equality finds this work important. The Ombudsman for Equality similarly considers it important that the benefits system is examined from the viewpoint of diverse family types. Furthermore, the assessment of impacts of children of the proposals is a good idea.

Capacity and incapacity to work

The average pay gap between women and men is significant and one of its reasons is that women and men take positions in the different levels of hierarchy in the labour market with different demand levels. This is also reflected in the unemployment benefits paid to women and men. The challenges related to the work and family life balance impact the employment rate and participation in the labour market, in particularly due to the gendered nature of care. In this context, the Ombudsman for Equality wants to highlight, again, the importance of gender impact assessment.

The intermediate report proposes that the needs for reform in the labour market subsidy in situations where there are complications in the access or return to the labour market should be studied. The Ombudsman for Equality finds that the factor of gender should be discussed when the issues connected to the access and return to the labour market are addressed as a part of this study. Discrimination due to pregnancy can be manifested as difficulties in returning to work after a parental leave, for example. Also men are increasingly subjected to discrimination due to parental leaves.

Equality in education and participation

The intermediate report indicates that the benefits systems should contribute to continuous learning and equality of participation of people. The education choices of young people are very visibly divided by gender. It is the opinion of the Ombudsman for Equality that in the social security reform, special attention should be paid to measures that could help to tear down the segregation associated with educational choices and by so doing, promote gender equality. Offering young people information and guidance about further education is of very important.

Clear differences in learning results by gender can be detected. The Ombudsman for Equality considers it important that the possible reforms seek to support those who are most vulnerable and need support and their possibilities to make choices that will contribute to finding work and securing their future.

The Ombudsman for Equality also agrees with the intermediate report's proposal for a study on the social security of young people. The gender impacts of the reforms on educational policy that were carried out in recent years would be an interesting topic of study for this project.

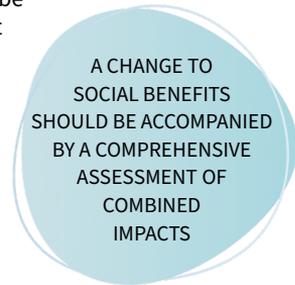
It is alarming how inequality is increasing in education, and social exclusion is also an alarming phenomenon. The Ombudsman for Equality wishes to advocate for better possibilities for unemployed persons to study without losing their right to unemployment benefits and promoting their opportunities. (TAS 189/2023)

THE PROPOSED CHANGES TO UNEMPLOYMENT SECURITY HAVE A NEGATIVE IMPACT ON GENDER EQUALITY

The Ombudsman for Equality was heard by the Employment and Equality Committee of Parliament on 27 October 2023 on the government proposal for acts amending the Unemployment Security Act and certain other acts (HE 73/2023 vp).

The Ombudsman for Equality expressed their serious concern that the cuts proposed in the bill would especially target women in many respects and thus degrade equality between the genders. The Ombudsman reminded the government that the obligation to promote gender equality also applies to the legislator.

The proposed amendments concern, for example, the employment condition for wage earners, the adjustment of unemployment benefits and the beginning of the right to unemployment benefits, as well as the child increases granted to unemployment benefits.



Amendment of the employment condition

An amendment is proposed to the wage-earners' employment condition is proposed according to which the employment condition for receiving a daily unemployment allowance would, in future, be determined according to the income obtained from the work. The employment condition would also be extended from the current six months or so to 12 months. The derogations applying to sectors with unusual working hours would be repealed for teachers, those working from home, and creative workers or performers.

According to the government proposal, the extension of the employment condition would concern women more than men in all age brackets below 50. The amendment would especially target women aged 30–39. The amendment would also affect a large number of people in total. Extending the employment condition will have a particular impact on female-dominated industries in which fixed-term employment is common, such as substitute teachers employed for one school year.

On the other hand, making the employment condition income-based will have a particular impact on people working on and off. Workers doing occasional part-time jobs or temporary jobs are mentioned as an example. This amendment would also apply to a large number of people, since 37 % of earnings-related unemployment allowance recipients are estimated to be in such circumstances.

The Ombudsman for Equality noted that fixed-term and part-time employment contracts as well as discrimination based on pregnancy and family leave should be examined more broadly when assessing the impact of the proposals.

a) Fixed-term employment contracts are more common among women than men

In 2021, 19 % of female wage earners and 14 % of male wage earners had a fixed-term employment relationship. According to Statistics Finland, there were 365,000 wage earners with a fixed-term employment contract in Finland in 2021. Women accounted for 214,000 and men for 151,000 of these. The number of fixed-term employees had increased by 43,000 from the previous year. The most common (71 %) reason given for fixed-term employment was a lack of permanent employment. Nearly half of new employment contracts were fixed-term. This was more often the case for women than for men.

b) Women work part-time more than men

In 2021, there were 473,000 part-time employees in Finland, representing 19 % of all employees. Of the part-time workforce, 264,000 (24 %) were women and 122,000 (13 %) men. The number of part-time employees had increased by 58,000 from the previous year. A total of 118,000 part-time employees would have liked to work full time.

c) Discrimination based on pregnancy and family leave is regrettably common in Finland

This is also apparent in the employment-related reports made to the Ombudsman for Equality. Discrimination based on pregnancy and family leave are some of the most common reasons for contacting the Ombudsman. It manifests as, for example, limiting the duration of fixed-term employment contracts due to pregnancy or family leave, or as difficulties when returning to work after family leave.

In the Ombudsman for Equality's reports to Parliament in 2018 and 2022, the Ombudsman has proposed reinforcing the protection of fixed-term employees against pregnancy-based discrimination in employment legislation. Employment legislation should provide for a prohibition of failing to renew a fixed-term employment relationship based on pregnancy or family leave, along with a prohibition of limiting the duration of fixed-term employment relationships to the start of pregnancy or parental leave.

The government programme of Prime Minister Petteri Orpo states that it should be possible to make fixed-term employment contracts for one year without special grounds. Together with the proposed amendments to unemployment security legislation, the potential realisation of this entry would especially target women of child-bearing age.

Based on the above, the Ombudsman for Equality has expressed their extremely serious concern over the impact of the proposed amendments on women and gender equality.

Adjustment of the employment condition

A person who has accepted part-time or short-term work is paid an adjusted unemployment benefit. The government has proposed removing the exempted amount, that is, the portion of income not taken into account in calculating the adjusted unemployment benefit, from the adjusted unemployment benefit.

Furthermore, the government proposes an extension of the deductible period to seven days from the current five. A holiday remuneration paid at the end of full-time employment lasting more than two weeks would also prevent payment of the unemployment benefit for the period over which the holiday remuneration is allocated.

According to the government proposal, the removal of the exempt amount is estimated to affect women in particular. In 2022, 64 % of all adjusted daily allowance recipients were women (61 % of all recipients of unemployment benefits paid by the Social Insurance Institution of Finland). Women are the majority among recipients of adjusted earnings-related unemployment allowance or adjusted unemployment benefits in all age groups. Removing the periodisation of holiday remuneration would also affect women more than men, because more women than men have been given periodisation decisions in the 30–59 age bracket.

The Ombudsman for Equality expressed serious concern over the proposed amendments to the adjustment of unemployment benefits. Proposed amendments that mainly target women to such an extent cannot be considered acceptable in terms of gender equality.

Child increases to unemployment benefits

The proposal suggests abandoning the child increase to unemployment benefits. According to the proposal, approximately 81,000 beneficiaries received child increases to their unemployment benefits in 2022. Of all child increases, 58 % were paid to women and 42 % to men.

The Ombudsman for Equality noted that the amendment should also be evaluated from the perspective of single-parent families, of which there are 120,000 in Finland. The majority of single parents (87 %) are women. The proposed amendments would probably have significant effects on not only the income of these families, but on gender equality and child poverty as well. (TAS 664/2023)



A GENDER IMPACT ASSESSMENT SHOULD BE CONDUCTED ON THE INDEX INCREASES OF CERTAIN SOCIAL BENEFITS AND SUMS

On 8 November 2023, the Ombudsman for Equality issued a written statement to the Employment and Equality Committee of Parliament on the index increases of benefits and sums linked to the National Pensions Index and cost of living index in 2024–2027 as well as on the amendment to section 7 § of the Child Benefit Act (HE 75/2023 vp).

According to the government proposal, certain benefits and sums tied to the National Pensions Index or cost of living index would not be increased in 2024–2027 as provided in the Act on the National Pensions Index or in line with the change in the cost of living index. An amendment of section 7 of the Child Benefit Act is also proposed.

Freezing of index increases

The Ombudsman for Equality stressed that index freezes are actually cuts to the income of the people receiving the benefits. The cuts are extremely unevenly distributed between the genders.

The minimum parental allowance is paid much more often to women (84 % of recipients). Women are also on parental leave longer than men, so they also receive the benefit for longer. In this regard, the proposal has a pronounced effect on the financial standing of women.

General housing allowance and housing allowance for pensioners is paid more often to women than to men. According to the proposal, single parents (who are mostly women) are the second-largest group of housing allowance recipients. Freezing the housing allowance will have a direct impact on their standard of living. The payment of general housing allowance is often connected to other benefits. In single-parent families, the simultaneous enjoyment of several benefits is even more common than on average.

The Ombudsman for Equality emphasised that cumulative effects should be given particular consideration in freezing the index increases. The Ombudsman also noted that the proposal's negative effects on gender equality should not be compensated with social assistance.

Section 7 of the Child Benefit Act

According to the Social Insurance Institution of Finland's estimate, freezing the index increases would increase the number of children living in low-income families by 2.8 per cent. According to the estimate, families with small children or many children as well as single-adult households are at particular risk of poverty. The decrease in the actual level of benefits is to be compensated with proposed increases to the child benefit.

The Ombudsman for Equality found the proposed amendments to be commendable in themselves. The proposal states that child benefit is paid more often to the mother and the recipients of the single-parent supplement to the child benefit are mainly women. The proposed increases to the child benefit can thus be considered to affect women more often than men.

The Ombudsman for Equality noted that the proposal also involves factors that erode the significance of the benefit increases. Child benefit increases should cover increases in the expenses incurred from the maintenance of a child, not compensate for other cuts.

According to experts, the proposed freezes to index increases would increase the number of people receiving social assistance. The increases to child benefits will not provide additional income to these families in the lowest income bracket, since the child benefit is considered as income when calculating social assistance. The impact on, for example, the position of female single parents with very low income can remain negligible if the household is receiving social assistance at the same time.

The freezes to index increases proposed by the government, which also apply to the minimum parental allowances and childcare allowances, simultaneously have a negative impact on benefits paid to women in particular.

Even though increasing the child benefits of families at the greatest risk of poverty is a move in the right direction, it will not in reality compensate for the cuts and will thus not improve the status of low-income women.

The legislator has an obligation to promote gender equality

A comprehensive assessment of combined impacts should be made when making changes to social benefits in order to avoid unexpected or unreasonable effects. Longer-term impacts on various groups of people should also be taken into account.

The gender impact assessment included in the government proposal is very brief. Simply listing the allocation of various benefits to the genders cannot be considered to constitute a comprehensive gender impact assessment that would support decision-making. A gender impact assessment should take into account the actual impact of the proposed amendments on the realisation of gender equality.

Extensive simultaneous changes and changes affecting the same benefits at different times involve major risks to fundamental and human rights. The effects of the proposed amendments intersect significantly, which can have a major impact on gender equality in addition to their other effects.

The amendments' cumulative impact on various groups of people should be assessed. This has bearing on the assessment of the proposal's compliance with the Constitution if the cuts accumulate on the same households in a significant manner.

The Ombudsman for Equality suggests that, at minimum, a retrospective assessment plan be included in the bill in Parliament, especially including a gender impact assessment and sufficient resources for its implementation. (TAS 682/2023)



AMENDING THE ACT ON THE PROMOTION OF IMMIGRANT INTEGRATION WOULD WEAKEN THE STATUS OF IMMIGRANT FAMILIES

The Ombudsman for Equality issued a statement to the Ministry of Economic Affairs and Employment on the amendment of the Act on the Promotion of Immigrant Integration (VN/8329/2023). The statement reminds the Ministry of the obligation to promote gender equality in societal activities. This obligation also applies to the legislator.

Replaced provisions of the Act on the Promotion of Immigrant Integration (sections 61–62)

The proposed amendment, which reduces the period for which municipalities and wellbeing services counties will receive the calculated reimbursement for service provision, is problematic with regard to gender equality.

One of the objectives of immigrant integration is to support and promote integration and participation in Finnish society. Other objectives include promoting gender equality, non-discrimination and positive interaction between different population groups. However, the proposed amendment may lead to cutbacks of integration services in municipalities and wellbeing services counties and thus decrease the availability of services.

The government proposal identifies risks related to gender equality. The proposal states that, for women, the child care responsibilities brought by parenthood tend to accumulate on the first few years after immigration. It is harder for women to participate in language lessons while caring for small children at home, making learning Finnish or Swedish harder for women with children than it is for men. The proposal states that cutting back on integration services would impair the integration and employment of immigrants.

Furthermore, the proposal states that the availability of interpretation will have a particular impact on social and health care services. Many immigrant women are of child-bearing age and need services for securing the well-being of themselves and their children. The proposal predicts that cuts in interpretation services will hinder the detection of honour-related violence and the genital mutilation of girls and women.

Potential service cuts will create greater obstacles for the integration of women than men, and the proposed amendment cannot thus be considered compliant with the obligation to promote gender equality. The amendments do not appear to improve the position of immigrant mothers, even though that is a specific objective of the Programme of Petteri Orpo's Government.

Fee for the interpretation costs of missed meetings (section 32a)

The draft government proposal suggests that the municipality or labour authority could, subject to certain conditions, collect a fee for unused services if the provider incurred interpretation costs and the immigrant did not cancel the appointment.

The proposal notes that the collection of interpretation costs could accumulate on immigrant parents with challenges in life management skills due to mental health or substance abuse issues. Immigrant parents with several small children could also end up paying the costs, as they may forget scheduled appointments due to the stress of their everyday lives. The gender impact of this proposed amendment has not been assessed, however. Such collection is estimated to have only limited positive effects on municipal finances.

According to the proposal, interpretation costs could only be collected if the client has been informed of the possibility of such fees and given instructions for cancelling the appointment in a language they understand. The proposal also states that municipalities should take individual circumstances into account in the collection of interpretation fees in order to avoid unreasonable effects. However, the proposal does not indicate whether the costs incurred by the municipalities from investigating such cases have been taken into account in the assessment of the proposal's financial impact.

Support for unaccompanied minors (sections 34 and 69)

The draft government proposal would decrease the age limit for the support for the transition to adulthood, paid to children and adolescents arriving in Finland without a custodian, from 25 to 23 years. The proposal states that, before the Russian invasion of Ukraine, the majority of asylum seekers and children arriving without a custodian were boys and men.

Children and young people arriving without a custodian are a particularly vulnerable group. In particular, the position of 23–24-year-old young men in need of intensive support will probably deteriorate considerably due to the proposed amendment. It remains unclear whether the amendment will actually achieve the savings being sought.

SERVICE LIMITATIONS
WOULD BE TARGETED
TO PEOPLE IN A WEAKER
POSITION

The proposal notes that such young men may need adult social services, mental health services or student welfare services. Therefore, the overall savings will probably remain lower than intended. If service provision is not ensured, these men run the risk of marginalisation, poverty and the problems related to these conditions. Therefore, the proposed amendment to the age limit for support for the transition to adulthood must be considered problematic with regard to gender equality. (TAS 581/2023)

THE STUDY ON ALLOWING NON-COMMERCIAL SURROGATE CHILDBEARING RAISES DIFFICULT QUESTIONS OF GENDER EQUALITY

The Government Programme of the previous Prime Minister, Sanna Marin, stated that allowing non-commercial surrogate childbearing arrangements in cases specifically defined in the law should be examined. The Ombudsman for Equality issued a statement in response to a request for a statement on a study on allowing non-commercial surrogate childbearing arrangements in Finland (VN/5969/2019). This study updated the Ministry of Justice assessment memorandum of 2012 on surrogate childbearing arrangements and outlined potential regulatory options.

The study contains a chapter on a national statute model. It states that, due to features related to child trafficking and trafficking in human beings, the contractual terminology used in many countries that permit surrogate childbearing should be avoided. Even though the Ombudsman for Equality does not comment on whether non-commercial surrogate childbearing arrangements should be permitted at this stage, the Ombudsman finds the above to be an important starting point.

The study defines what is meant by non-commercial and commercial surrogate childbearing in general. The line between the two is blurred by payments compensating the surrogate mother for additional costs incurred from the arrangement or for the pain and disability related to pregnancy and childbirth.

The Ombudsman for Equality finds that the definitions used for surrogate childbearing should be in line with the inviolability of human dignity enshrined in section 1 of the Constitution of Finland. Surrogate childbearing arrangements involve many risks to the health of the mother and fetus, and having a child is in no sense a trivial experience for the mother giving birth.

Due to its very nature, surrogate childbearing is apt to evoke hopes and expectations in both the surrogate mother and the intended parents – possibly even contradictory ones. The regulation and terms used in it must especially safeguard the rights of the mother giving birth, and objectifying the surrogate mother must be avoided at all costs.

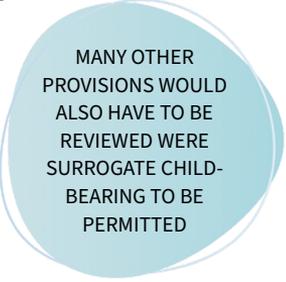
The study mentions a model based on preliminary supervision as one potential way of regulating surrogate childbearing in accordance with international recommendations. The possibility to prevent problems before they arise is given as one benefit of this model. The Ombudsman for Equality finds that this would appear to be the right way to go if non-commercial surrogate childbearing were to be permitted in Finland.

The study states that, in addition to a mechanism based on advance monitoring, counselling should be provided to the surrogate mother, intended parents and service provider.

It is proposed that such counselling would first be centralised in the public sector until best practices have been established and can be transferred to other operators. The Ombudsman for Equality proposes further consideration of this in the further preparation of the matter to ensure that suspicions of child trafficking or trafficking of human beings cannot arise in connection with the arrangement. The counselling is integrally connected to supervision. If a model based on advance monitoring were to be decided on in further preparation, counselling should also be subject to liability for acts in office.

The Ombudsman for Equality reminded the Ministry that the Act on Equality between Women and Men (Equality Act) prohibits discrimination based on gender, pregnancy and childbearing, among other things. This “general prohibition” is complemented by special prohibitions applying to different areas of life, such as working life, which protect those taking part in surrogate childbearing arrangements from possible discrimination.

Social and labour legislation also contains provisions protecting pregnant employees. These include the right to family leave and right to return to work from family leave. These provisions should also be examined in any further preparation for legislation on non-commercial surrogate childbearing. (TAS 189/2023)



MANY OTHER PROVISIONS WOULD ALSO HAVE TO BE REVIEWED WERE SURROGATE CHILD-BEARING TO BE PERMITTED

FILLING POSITIONS IN THE FINNISH BORDER GUARD WITHOUT AN OPEN APPLICATION PROCEDURE MUST NOT RESTRICT THE RIGHTS OF THOSE SUSPECTING DISCRIMINATION

The Ombudsman for Equality was asked for a statement on the government proposal for acts amending the Act on the Administration of the Finnish Border Guard and the Border Guard Act (VN 1114/2023, VN 1114/2023-SM-2 vp).

The bill suggested that certain civilian positions in the Border Guard that are important for national defence could, in some cases, be filled without an open application procedure. In special circumstances, cadets studying at the Border and Coast Guard Academy could be appointed to extracurricular duties, and cadets could be given fixed-term appointments to military offices if necessary. The Ombudsman for Equality found certain parts of the bill problematic in terms of the Act on Equality between Women and Men (Equality Act).

The public filling of positions is important with regard to gender equality and legal protection. Filling positions without a public recruitment process would affect the legal protection of people who would have been interested in the position but were not able to apply. The Equality Act prohibits discrimination in recruitment also when the position is filled without an open application proce-

dure. Individuals who have participated in the recruitment process can invoke the Equality Act’s provisions on discrimination. Simply expressing an interest in the position can make one eligible to invoke these provisions. In the Ombudsman for Equality’s view, the proposal may not curtail the legal protection and possibility for redress of those who suspect discrimination.

According to the proposal, a person suspecting discrimination could complain to the Ombudsman for Equality, among others. The Ombudsman can express their opinion on whether the appointment was made in compliance with the Equality Act but does not have the power to change appointments to office.

In order to bring a matter to court, the person suspecting discrimination must be able to prove that they would have been more suitable for the position than another person of the opposite gender appointed to it. For this purpose, the person suspecting discrimination has the right to obtain information on the selection criteria and the appointee’s education and work experience from the employer as provided for in the Equality Act. The Ombudsman for Equality considers it necessary that those suspecting discrimination have access to the materials required for bringing the matter to court if necessary.

According to the proposal, a cadet studying at the Border and Coast Guard Academy could, in the event of a serious crisis, be given a fixed-term appointment to military office even if they do not meet the eligibility criteria. Cadets serving in such office would have full powers. The fact that short, fixed-term positions can be filled without an application process and the recruitment decision is not open to appeal, compounds the problematic nature of the proposal. The Ombudsman for Equality notes that the proposal involves some of the same problems as filling civilian offices without an application procedure. A careful assessment of gender impact must be conducted of the proposal in the further preparation of the amendments.

The Equality Act obligates the authorities to promote gender equality in all their activities. UN Resolution 1325 on Women, Peace and Security, which is binding on Finland, also requires questions of security to be examined from the perspective of gender equality. According to the Finnish Border Guard’s gender equality and equality promotion plan for 2021–2022, a large majority, that is 85 % of Border Guard staff is male. From the perspective of employee gender distribution, filling positions without opening them for applications is a worrying development that could jeopardise the achievement of the Finnish Border Guard’s gender equality objectives.

The Ombudsman for Equality considers it important that the impact of the draft proposal be taken into account in the future strategies and gender equality and equality promotion plans of the Finnish Border Guard. (TAS 220/2023)

THERE IS NO JUSTIFICATION ANY MORE FOR DIFFERENT REQUIREMENTS FOR THE APPEARANCE OF WOMEN AND MEN IN THE FINNISH DEFENCE FORCES AND FINNISH BORDER GUARD

The Ombudsman for Equality is regularly requested to comment on men's appearance requirements in military service and military office. The Ombudsman for Equality undertook to investigate the matter, as it is important to review it regularly in light of social developments. The matter was previously examined in 2006.

General Service Regulations

The General Service Regulations published in 2017 include provisions on a soldier's appearance. According to the regulations, men must have short, neat and combed hair. Beards and moustaches are not allowed, and the face must be clean shaven. There are no restrictions on the length of women's hair, but long hair may not be worn loose while on duty.

Reports of the Finnish Border Guard and Finnish Defence Forces

The Ombudsman for Equality requested a report on the matter from the Finnish Border Guard and Finnish Defence Forces.

According to the Finnish Border Guard, it is lawful and justified that soldiers be treated equally regardless of whether they are serving in the Finnish Defence Forces or the Border Guard. The Finnish Border Guard considers that it cannot derogate from the General Service Regulations. The Finnish Defence Forces are responsible for the development of the General Service Regulations.

According to the Finnish Defence Forces, the current regulations have been considered to promote gender equality by encouraging women to enter voluntary military service. However, Defence Command does not see any obstacles related to training or safety to the harmonisation of current regulations. Such harmonisation would have a positive impact on gender equality and men's motivation to serve. The need to update the General Service Regulations has been recognised. Work on the update will begin in 2024, and any changes will be made then.

There are no more grounds for different treatment under the Equality Act

The Act on Equality between Women and Men (Equality Act) prohibits discrimination based on gender, gender identity and gender expression and obliges the authorities to promote equality between the genders in a purposeful and systematic manner.

The Ombudsman for Equality has previously considered that the provisions of the General Service Regulations do not place men in a sufficiently disadvantaged position compared to women to constitute discrimination prohibited under the Equality Act. However, general opinion on the appearance of soldiers and the genders has changed in Finnish society.

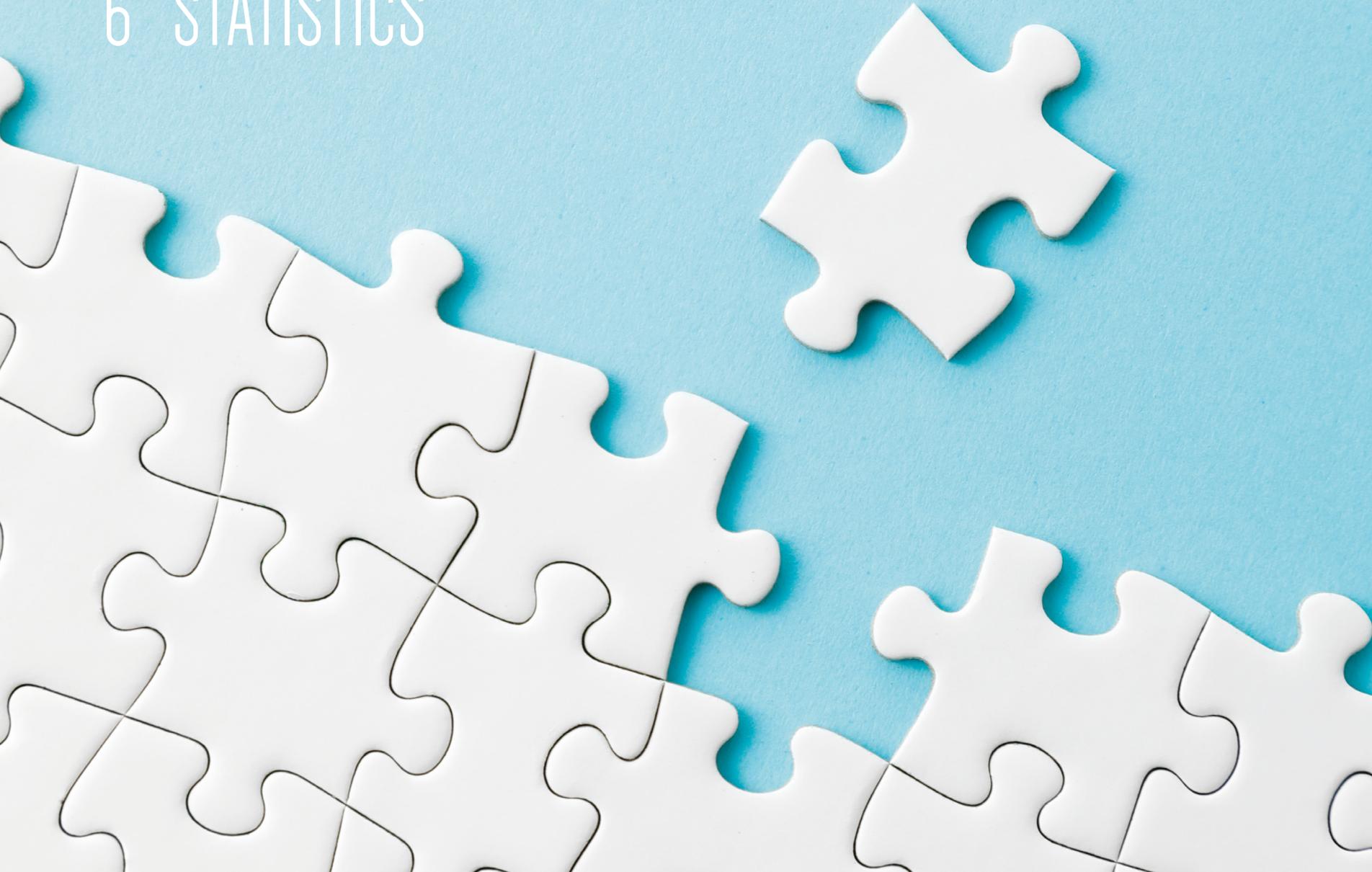
The Ombudsman for Equality refers to the prohibitions of discrimination and the authorities' obligation to promote equality between the genders provided for in the Equality Act, as well as Defence Command's own statement according to which it does not see any obstacles to the harmonisation of regulations. Based on the above, the Ombudsman for Equality finds that treating men and women differently in terms of appearance requirements can no longer be justified as required by the Equality Act. Instead, the Ombudsman for Equality finds that the demands of a soldier's duties could be justifiably taken into account in their appearance requirements.

The Ombudsman for Equality welcomes the fact that Defence Command has recognised the need to update the General Service Regulations and commends Defence Command's announcement of its intentions to amend the regulations so that the genders will be treated equally in connection with a larger update of the General Service Regulations. The Ombudsman for Equality has requested Defence Command to deliver the updated regulations to the Ombudsman. (TAS 332/2023)



TAKING THE DEMANDS OF A SOLDIER'S DUTIES INTO ACCOUNT IN THEIR APPEARANCE REQUIREMENTS IS JUSTIFIED

6 STATISTICS



For the most part, enquiries received by the Ombudsman for Equality are submitted by individual clients, and they consist of cases of suspected discrimination and different requests for information on the content of the Equality Act, or the operations of the Ombudsman for Equality. The Ombudsman for Equality issues a number of statements to Parliament and the authorities. In addition, the Ombudsman for Equality handles issues related to administration, finances and communication.

Contacts with the Ombudsman for Equality have increased in recent years. The number of client contacts has increased by approximately 42 % since 2020.

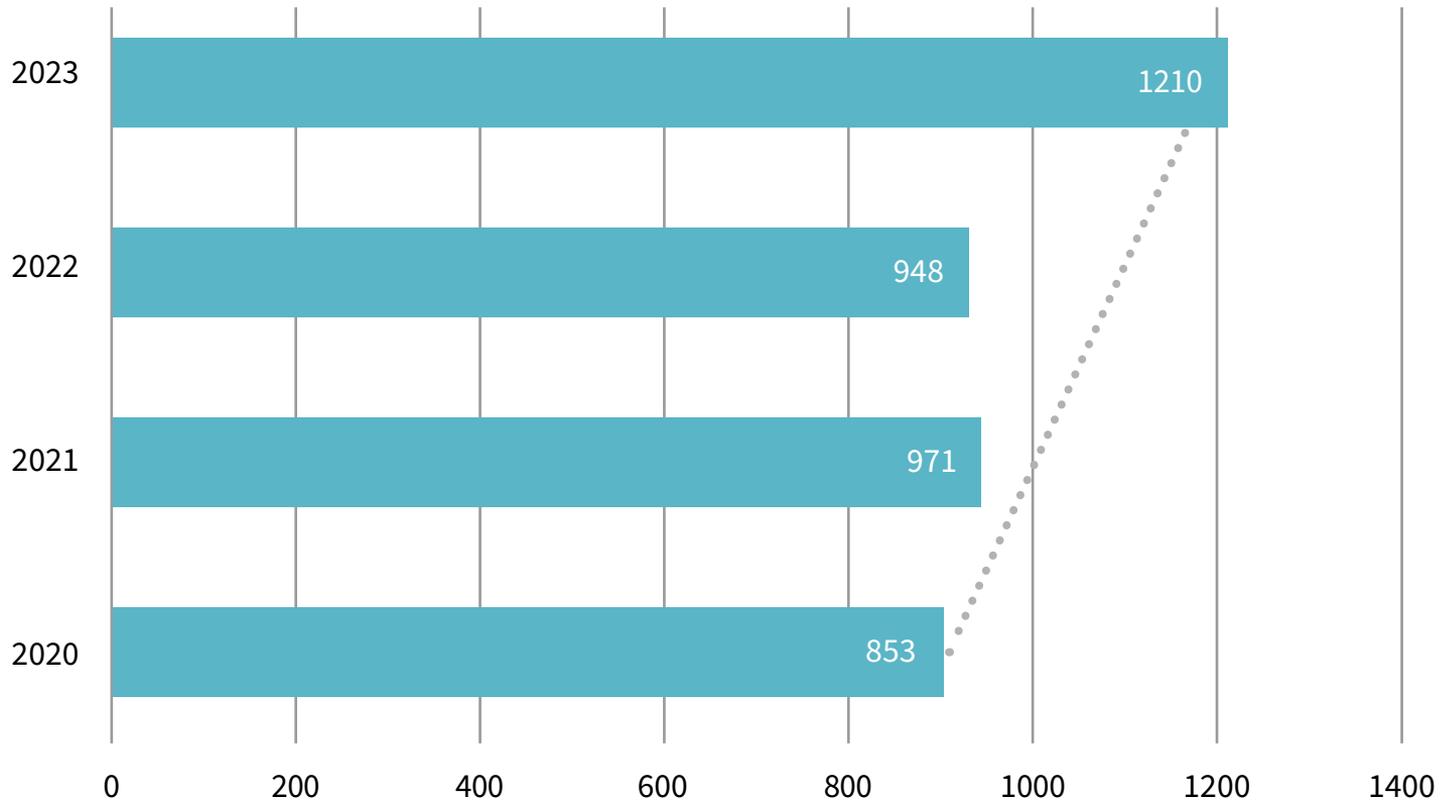


FIGURE 2. Client contacts for the Ombudsman for Equality by telephone or in writing 2020–2023

The vast majority of cases of suspected pay discrimination were related to discrimination based on pregnancy or family leave

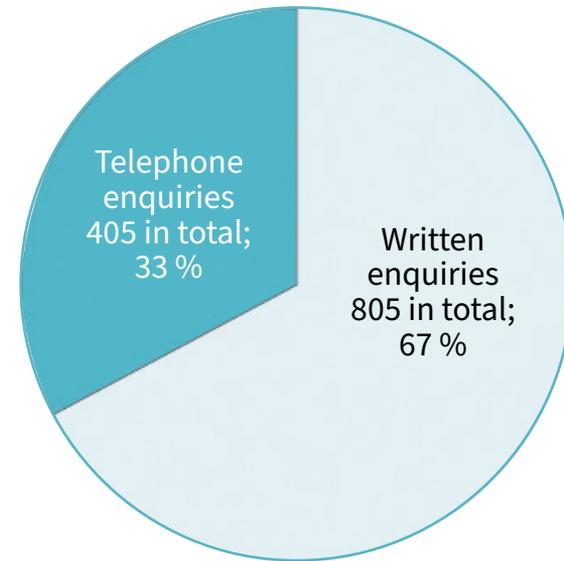


FIGURE 3. Written and telephone enquiries 2023 (1 210 in total)

Two thirds of the enquiries concerned questions of discrimination in working life. These enquiries concerned mostly discrimination in recruitment, discrimination on the basis of pregnancy and family leave, and pay discrimination. The majority of suspicions of pay discrimination were related to situations where a person suspected discrimination in salary or benefits, such as performance bonuses, due to pregnancy or family leave.

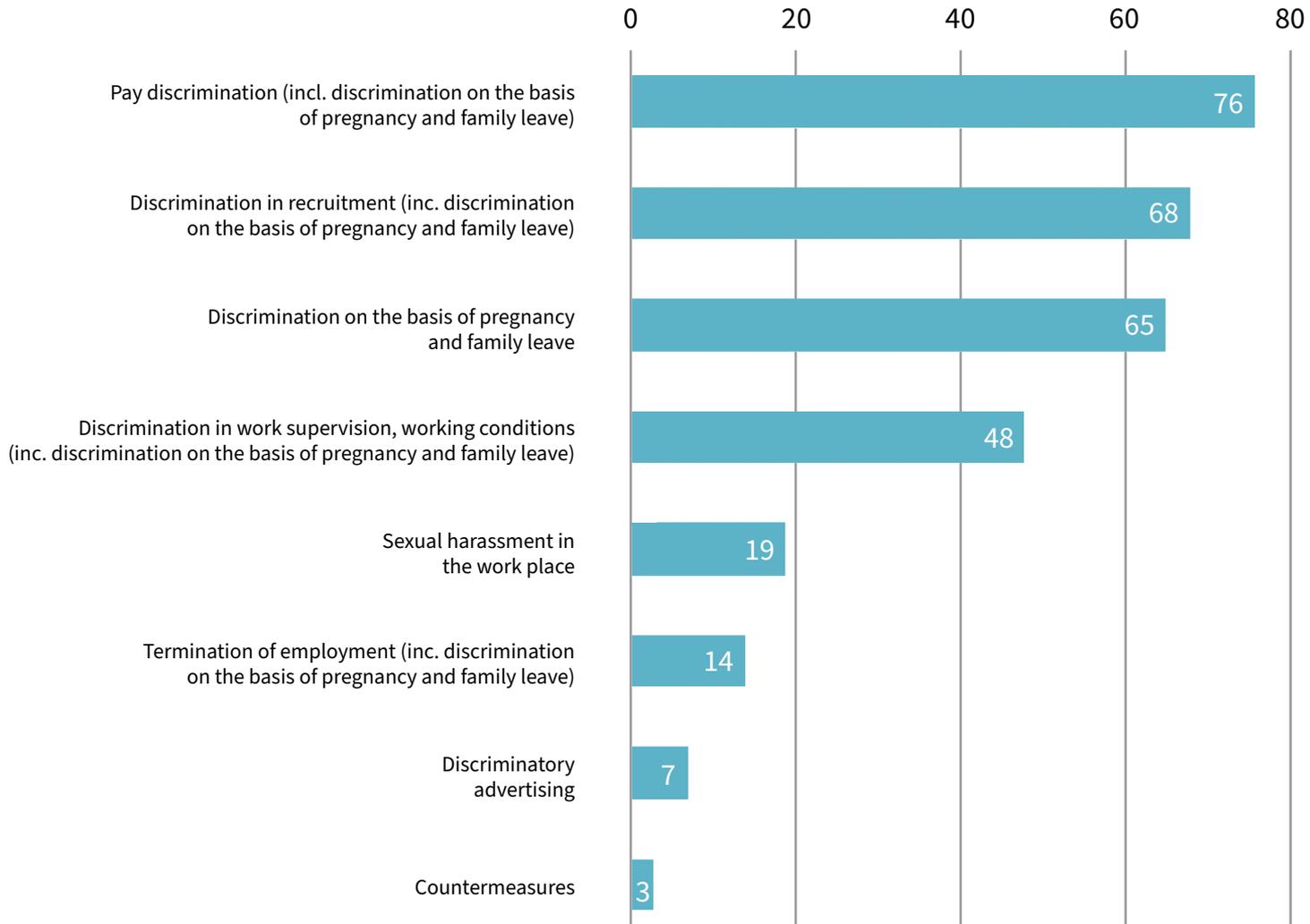


FIGURE 4. Enquiries 2023 related to working life (written and telephone enquiries)



Discrimination on the basis of pregnancy and family leave were often related to pay, recruitment, supervision of work and working conditions and termination of employment relationship.

Discrimination on the basis of pregnancy and family leave were often related to pay, recruitment, supervision of work and working conditions and termination of employment relationship. Therefore, enquiries related to discrimination on the basis of pregnancy and family leave have also been recorded in these case groups. Approximately 40 % (117) of the contacts concerning working life were related to discrimination on the basis of pregnancy and family leave.

In 2023, 805 new cases were logged in the Ombudsman's register, and decisions were reached on a total of 772 cases. The majority of cases entered into the register were related to performing the statutory duties of the Ombudsman for Equality.

The Ombudsman for Equality's legal helpline is serving in four working days (totally 8 hours a week). In 2023, about half of about half of those who contacted the helpline were women, a third were men, and about 20 % were representatives of organizations such as trade unions. The gender of the clients is based on an estimate. The Ombudsman for Equality does not record contacts according to the person's gender identity. The estimate of contacts therefore also includes persons belonging to gender minorities.

Personnel and appropriations

In 2023, the Office of the Ombudsman for Equality had 11,4 man-years at its disposal. It is 1,2 man-years more than in previous year.

During the year of the review, the appropriation for the Ombudsman for Equality was 1 095 000€. In addition to an operational appropriation, this amount includes the employees' salary costs and other administrative expenditures. About 90% of the appropriation is used for salary costs and office facilities.

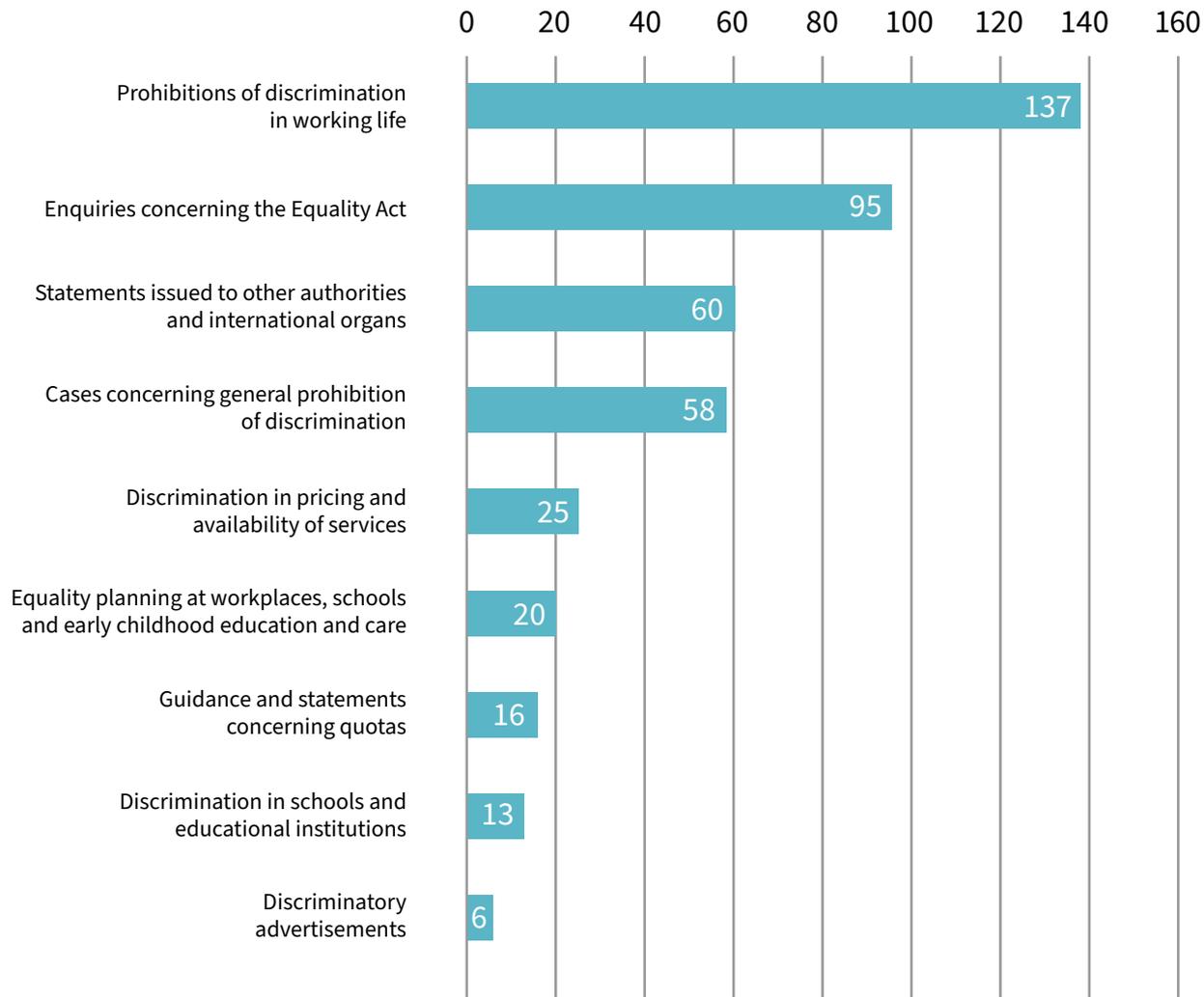


FIGURE 5. Cases logged in the Ombudsman's register according to the topic

7 COMMUNICATION AND COOPERATION

THE OMBUDSMAN FOR EQUALITY'S REPRESENTATION IN WORKING GROUPS AND BODIES

- Human Rights Delegation / Human Rights Centre
- Government network for cooperation on LGBTI issues / Ministry of Justice, Ministry of Social Affairs and Health
- NAPE – Committee for Combating Violence against Women and Domestic Violence / Ministry of Social Affairs and Health
- Guidance network for the administrative branch of the Ministry of Justice / Ministry of Justice
- Communications network of the administrative branch of the Ministry of Justice / Ministry of Justice
- The communications working group on the intranet reform of the administrative branch of the Ministry of Justice / Ministry of Justice
- Expert supervisory panel on discrimination / Ministry of Justice
- Gender equality expert network / Centre for Gender Equality Information, Finnish Institute for Health and Welfare (THL)
- Gender equality statistics expert group / Statistics Finland
- Section for Non-discrimination, Equality and Sustainable Development of the National Sports Council
- Steering group of the "Gender impact of collective agreements on equal pay" research project / Finnish Institute for Health and Welfare (THL)
- Steering group of the "Work of equal value" project / Ministry of Social Affairs and Health
- Project for establishing the Special Judicial Authorities agency / Ministry of Justice
- The procurement and deployment project for an administrative case management system for agencies in the Ministry of Justice's administrative branch (HILDA project) / Ministry of Justice

INTERNATIONAL COOPERATION

The Ombudsman for Equality is a member of Equinet (the European Network for Equality Bodies). In October, Ombudsman for Equality Rainer Hiltunen was appointed to a second term (2023–2025) on the Executive Board of Equinet.

Experts of the Office of the Ombudsman for Equality participated in the following working groups and projects in 2023: Gender Equality, Equality Law, Communication Strategies and Practices, Pay Transparency Task Force, Project on Standards for Equality Bodies, and AI Cluster.

The meeting of Nordic equality and non-discrimination ombudsmen was held in Stockholm in October 2023. The topics discussed at the meeting included current gender equality and non-discrimination issues in each country as well as procedures related to law enforcement.

The Estonian Ombudsman for Equality and Estonian experts visited to study the operations of Finland's Ombudsman for Equality. The Ombudsman also hosted a team of journalists from the United States, Great Britain, Germany, Turkey, Brazil, India, South Africa, Nigeria, Tanzania, and Tunisia, invited by the Ministry for Foreign Affairs to cover the theme of gender equality.

COMMUNICATIONS

The Ombudsman for Equality in the media

Ombudsman for Equality Rainer Hiltunen and the experts of the Office of the Ombudsman for Equality gave interviews for the media on, e.g. sexual harassment at workplaces and in sports, pay equality and the problems of the export-driven labour market model, the discriminatory nature of certain entries related to family leave in collective agreements, and the equal distribution of family leave.

PUBLICATIONS

Tasa-arvovaltuutetun vuosikertomus 2022
Jämställdhetsombudsmannens årsberättelse 2022
Annual Report 2022 by the Ombudsman for Equality





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