



ANNUAL REPORT
2022
BY THE OMBUDSMAN
FOR EQUALITY

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I 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.

Master of Laws Jukka Maarianvaara serves as Ombudsman for Equality until 27 November 2022. After he moved to another employer, Senior Specialist Pirkko Janas acted as the deputy of Ombudsman for Equality. The five-year term of Ombudsman was announced to be applied for in November 2022.

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

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

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

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

2 A WORD FROM THE OMBUDSMAN FOR EQUALITY

The gendered face of war

The year 2022 was exceptional in many ways. In February 2022, just as the coronavirus pandemic plaguing the world began to let up, a war started in Europe. The war in Ukraine has touched everyone, also in Finland. War causes fear, anxiety, uncertainty and, above all, human suffering.

As a result of Finland's changed security situation, the Government issued a report on changes in the security environment in April 2022. The report assessed the fundamental change in Finland's security environment caused by Russia's attack on Ukraine. The Ombudsman for Equality was also heard in connection with the Parliamentary hearing on the report. Finland also applied for NATO membership in the reporting year.

War and violent crises affect people of all genders. Respect for and observation of human rights and fundamental rights take on particular significance in unstable and insecure times.

Discrimination occurs in all areas of society

The Act on Equality between Women and Men, i.e. the Equality Act, prohibits discrimination based on gender, gender expression and gender identity. Not all discrimination comes to the attention of the Ombudsman for Equality or other authorities. For example, members of various minorities may not report discrimination against them in daily life, and thus do not receive assistance from the individual legal remedies laid down in the Act. Some cases of discrimination involve factors with origins or root causes that are difficult to identify. The justice system does not always recognise such structural factors, but only their individual manifestations. The forms of discrimination prohibited by the Equality Act presumably also occur much more often than reported to the Ombudsman for Equality.

The Ombudsman for Equality performs their enforcement duties especially on the basis of reports made by clients about various discriminatory situations. The Ombudsman also monitors, within the resources available, the implementation of the planning obligations laid down in the Equality Act at workplaces and educational institutions. The number of written reports made to the Ombudsman has increased in recent years. In 2022, the Ombudsman received 56% more written reports than in 2019, for example.

Most reports made to the Ombudsman involve working life, where discrimination is regrettably common. Typical suspicions of discrimination involve pregnancy and family leave, recruitment or pay.

However, the Ombudsman for Equality receives reports concerning discrimination in practically all areas of life. Examples include reports of suspected discrimination in educational institutions and product and service pricing, as well as sexual or gender-based harassment.

Gender equality promoted by legislative means

The Government action plan for gender equality 2020–2023 included several legislative projects. A government proposal for an act on the legal affirmation of gender, i.e. the “Trans Act”, designed to improve the status of gender minorities, was submitted to Parliament in the reporting year. In future, applications for the affirmation of gender will be based on the individual's own gender experience. The sterilisation requirement for affirming one's gender, which violated Finland's human rights obligations, will be repealed and the legal affirmation of gender will be separated from medical procedures. The Act is not perfect, however, and issues such as treatment practices for intersex children must be revisited from the perspectives of personal integrity and the rights of the child in the near future.

The Equality Act was also amended in the reporting year. The amendment extends the obligation to draw up a gender equality plan to early childhood education and care. The Ombudsman for Equality has considered it important that early childhood education and care be gender- and equality-aware. To be successful, equality work requires the commitment and systematic and continuous training of personnel working in early childhood education and care.

The comprehensive reform of sexual crime legislation that entered into force at the beginning of 2023 must be considered a significant step forward in the reduction of violence against women and intimate partner violence. In future, the Criminal Code will define rape on the basis of consent. Lack of consent is also a key component of other sex offences. Sexual harassment does not require touching the victim. Spreading sexual images without permission has been added to the Criminal Code as a new offence. The punishments for sex offences were also increased. Criminal legislation was also strengthened by making amendments to restraining orders and adding gender to the grounds for increasing the punishment for an offence.

Even though many legislative projects did move forward in the reporting year, it is extremely unfortunate that the promotion of pay equality and prevention of discrimination based on pregnancy and family leave through legislative means did not go through. The Ombudsman for Equality has found both amendments to be highly commendable. In the Ombudsman for Equality's opinion, effective intervention in pay discrimination would require information on peer pay and thus improving the employee's right of access to information. For several years now, the Ombudsman for Equality has also been recommending that a prohibition against failing to renew a fixed-term employment contract due to pregnancy or family leave as well as a prohibition against setting the duration of such contracts to end at the beginning of pregnancy leave or family leave should be added to employment contract legislation.

The family leave reform could balance the distribution of family leaves

The use of family leave is highly uneven between the genders in Finland. Fathers have accounted for only approximately 11% of all family leaves

taken in Finland. The uneven distribution of care duties has been seen as one of the key problems in gender equality in Finland and has been a major factor in hindering the realisation of gender equality in working life.

In November 2022, Statistics Finland published a study on how women and men use their time. According to the study, the total working hours spent by both genders on housework and gainful employment was, for the first time in measurement history, roughly equal in 2020–2021. Men have started spending less time in gainful employment and more time on housework. In particular, men are now spending more time caring for their children. Women, on the other hand, are spending less time on both housework and gainful employment.

The family leave reform entered into force on 1 August 2022. The reform aims to balance out the distribution of family leave and care duties between the parents. No data is available yet on whether the reform has increased the amount of family leave taken by fathers. A more even distribution of care duties has been thought to have a positive effect on, for example, decreasing the average pay gap between women and men, and improving the status of women in the labour market in general. It is to be hoped that the study referred to above also portends a change in the distribution of family leave.

The Ombudsman's 2022 Report to Parliament provides a comprehensive picture of the state of gender equality in Finland

Issuing a report on the state of gender equality to Parliament every four years is one of the duties of the Ombudsman for Equality. In April 2022, the Ombudsman for Equality gave the second report of this kind, which discussed topics such as development needs regarding legal protection and the enforcement of the prohibitions of discrimination laid down in the Equality Act.

Relatively few disputes based on the Equality Act are taken to court. The low number is partially explained by the legal cost risk, which affects the possibility to bring action of any kind in the courts. The Constitution of Finland obliges public authorities to safeguard the realisation of fundamental

rights and human rights, which also requires effective measures designed to promote the enforcement of prohibitions of gender-based discrimination.

In their report, the Ombudsman for Equality recommends several measures that could improve the legal protection of victims of discrimination prohibited under the Equality Act. Among other things, the Ombudsman for Equality proposes looking into the possibility of expanding the Ombudsman's powers to cover "intersectional discrimination", which currently lies outside the Ombudsman's competence. Consideration should also be given to the adoption of class action and giving the Ombudsman for Equality an independent right to bring charges in matters involving gender equality. The right to bring action would allow the Ombudsman for Equality to submit matters of fundamental importance to the courts in the Ombudsman's own name. The Ombudsman for Equality should also have the opportunity to be heard in court in matters pertaining to the application of the Equality Act.

The Ombudsman for Equality has considered it important that persons suspecting discrimination should have access to low-threshold redress, which could improve the availability of compensation and potential damages under the Equality Act. One option could be to grant individuals the right to bring cases to the National Non-Discrimination and Equality Tribunal. The Ombudsman for Equality has also proposed an examination of the possibility of developing the role of the Tribunal into a more clearly defined low-threshold redress body.

In their report to Parliament, the Ombudsman for Equality recommends that a study on improving access to legal protection in matters involving gender-based discrimination be conducted in the next government term.

Those violating the special prohibitions laid down in the Equality Act can be ordered to pay compensation. The Ombudsman for Equality has recommended expanding the scope of compensation to discrimination in the exercise of official authority, discrimination preceding a recruitment decision, and discriminatory practices by the purchasers of leased work that have an impact on the continuation of the employee's employment.

Determined equality policy must continue in the next government term as well

The Government issued an Equality Policy Report in the summer of 2022 (Publications of the Finnish Government 2022:49), which sets the long-term goals for equality policy in Finland. The report provides a comprehensive review of problems with gender equality and structural inequality based on gender in Finland. Eliminating these issues will require determined and goal-oriented equality policy.

Questions of equality concern everyone, in practice, throughout their lives. I hope that the Equality Policy Report and the Ombudsman for Equality's Report to Parliament will provide a foundation for measures making Finland an even more equal country and society.

Helsinki, 24 February 2023

Pirkko Janas
Ombudsman for Equality
(1 January – 16 April 2023)







3 REPORT 2022 TO PARLIAMENT BY THE OMBUDSMAN FOR EQUALITY

In accordance with section 5 of the Act on the Ombudsman for Equality (1328/2014), the Ombudsman issues a report to Parliament on the realisation of gender equality every four years. Ombudsman handed over the 2022 report to the Parliament on 27 April 2022.

3.1 Statements to the Employment and Equality Committee regarding the Ombudsman's Report to Parliament 2022

The Ombudsman for Equality was heard by the Employment and Equality Committee of Parliament on their report to Parliament on 25 May 2022.

In the statement they gave to the Employment and Equality Committee of Parliament, the Ombudsman for Equality discussed the recommendations and some key themes of the 2022 Report to Parliament:

- problems relating to legal protection and the needs to improve legal protection
- equality issues relating to working life, such as pay transparency and the family leave reform
- the needs to change the legislation on trans people and the status of gender minorities
- gendered violence, hate speech and harassment and
- issues relating to equality in educational institutions.

1. Improving the legal protection of discrimination victims

There are a number of practical problems in access to legal protection

Obtaining a resolution and compensation under the Equality Act for the infringement is an essential component of discrimination victims' legal protection. The premise of the Equality Act is that discrimination victims' primary remedy is claiming compensation by legal action brought at the District Court. The Ombudsman for Equality also has the power to promote a settlement between the parties in a discrimination matter, which has been hoped to improve the legal protection of discrimination victims and decrease the need for expensive judicial processes. However, both parties must be willing to seek a settlement for one to be achieved.

It is not possible to claim compensation under the Equality Act for all violations of the Act, however. Discrimination in the exercise of official authority, discrimination preceding a recruitment decision, and discriminatory practices by the purchasers of leased work that have an impact on the continuation of the employee's employment do not entitle the victim to compensation under the Equality Act. The scope of the compensation procedure should be extended to cover these situations as well.

According to studies carried out by the Ombudsman for Equality, disputes concerning the Equality Act are taken to the courts quite rarely. This does not mean the absence of discrimination based on gender, gender identity or gender expression, nor even the absence of disputes concerning discrimination.

In the Ombudsman for Equality's opinion, the majority of employment-related discrimination disputes are settled, often with the support of a trade union. The greatest single explanatory factor for the low number of discrimination disputes in the courts is probably the high expense risk, which has an equal effect on the opportunity to bring action in civil cases of all types. It must also be noted that the amount of compensation imposed by the court is usually not very large, especially when compared to the potential costs.

The threshold for bringing a discrimination action can be high for the individual suspecting discrimination, and not only for financial reasons or due to the duration or uncertainty of the process. Employees can be afraid of retribution by the employer or, in some cases, their other colleagues. The comparison to other employees, often related to the assessment of discrimination, can also feel unpleasant.

In principle, the Ombudsman for Equality can assist victims of discrimination in a trial if the Ombudsman deems the matter to have considerable significance with regard to the application of the law. This option has never been exercised, however – firstly due to the resourcing of the Ombudsman and secondly because the plaintiff assisted by the Ombudsman would be liable for the counterparty's legal fees should the case be lost.

Suggestions relating to the improvement of legal protection

In the Ombudsman for Equality's opinion, it would be necessary to conduct an extensive study of options for improving access to legal remedies in matters involving gender-based discrimination. The study should address at least the following points:

The Ombudsman for Equality's independent right to bring action in discrimination disputes based on the Equality Act. Cases involving the prohibitions of discrimination are often collective by nature: the need for legal remedies in a single matter can involve a large group of people, for example in cases of pay discrimination. In such cases, individual action is not, as a rule, the best way to address a discriminatory state of affairs.

On the other hand, many discrimination disputes involve a public interest to obtain a court decision clarifying the interpretation of the law. Therefore, the Ombudsman for Equality finds that the Ombudsman should be given the right to bring action under their own name in matters involving the application of the Equality Act. Due to the collective nature of cases involving the prohibitions of discrimination, it should also be studied whether trade unions and possibly other organisations should also be given the right to bring action (union action).

Hearing the Ombudsman for Equality in court. The Ombudsman for Equality should have the opportunity to be heard in court in matters pertaining to the application of the Equality Act. The Non-Discrimination Ombudsman already has this opportunity by virtue of the Non-Discrimination Act.

Development of the National Non-Discrimination and Equality Tribunal's role and the individual's right to institute proceedings. The Tribunal has been seen to play an important role in providing low-threshold legal remedies. However, the Tribunal does not have the right to order the payment of compensation under either the Equality Act or Non-Discrimination Act, but only the power to prohibit the continuation or repetition of the discriminatory practice. The right to order the payment of compensation has been proposed for the Tribunal in connection with the partial amendment of the Non-Discrimination Act.

In the Ombudsman for Equality's opinion, the Tribunal's operations should be developed from an enforcement-oriented body (prohibition order) to a low-threshold legal redress body. Expanding the right to bring cases to the Tribunal should be examined as part of this development – at present, only the Ombudsman for Equality and central labour market organisations have this right – as should giving the Tribunal the opportunity to order the payment of compensation also in matters concerning the Equality Act.

In the opinion of the Ombudsman for Equality, it would also be important to examine the legal protection systems provided by the Equality Act and the Non-Discrimination Act in parallel instead of independently from each other. It is problematic for the equality of discrimination victims if these systems of legal protection differ substantially from each other.

Law enforcement and ensuring legal protection require resources

The main duty of the Ombudsman for Equality is to monitor the prohibitions on discrimination laid down in the Equality Act, and the Ombudsman performs this duty principally by reacting to reports from citizens. The Ombudsman for Equality also monitors compliance with the obligations to promote equality laid down in the Equality Act: approximately 3,500 educational institutions and 8,000 workplaces are required to draw up a gender equality plan at regular intervals. This obligation is now being extended to around 3,500 early childhood education and care establishments (more on this under section 5).

At the time of writing this statement, there are eleven permanent positions in the Office of the Ombudsman for Equality. This scarcity of resources means that especially the monitoring of the obligations to promote equality can be performed – as stated in the rationale for the Equality Act (HE 57/1987 vp) ”within the limits of the resources available”. The Ombudsman for Equality still considers it important that the Ombudsman should be granted more resources to improve the impact of the Ombudsman’s monitoring of the Equality Act and promotion of equality. If the Ombudsman is assigned new duties due to legislative amendments, it is especially important to also grant the Ombudsman a corresponding increase in resources.

2. Equality in working life

Challenges to equality in working life remain much the same

In their previous report, the Ombudsman for Equality dealt extensively with topics such as pregnancy-based discrimination and intervention in this, and gender equality planning in the workplace. According to reports made to the Ombudsman for Equality, discrimination relating to pregnancy and family leave remains common in working life.

In their previous report to Parliament in 2018, the Ombudsman for Equality proposed improving temporary employees’ protection against pregnancy-based discrimination in employment legislation. Even though this proposal was included in the programme of Prime Minister Sanna Marin’s government, it was not implemented during this government term. However, the Ombudsman for Equality considers pregnancy-based discrimination to be such a serious problem, especially when committed against fixed-term employees, that this recommendation has been reiterated in this report.

The state of gender equality planning in the workplace was analysed quite extensively in the previous report. That analysis was based not only on the regular enforcement work of the Ombudsman for Equality, but also on targeted enforcement operations conducted in 2016–2018 (covering 60 municipalities and 20 companies). On the basis of their observations, the Ombudsman for Equality highlighted problems relating to gender equality plans and issued recommendations, especially with regard to the pay surveys included in gender equality plans.

On the basis of the Ombudsman for Equality’s enforcement observations, it can be stated that the challenges in workplace gender equality planning have not changed. As a rule, the plans fall short regarding every requirement set for gender equality plans: assessments of the state of gender equality are inadequate, development measures are seldom described in concrete terms, and the impact of previous measures is generally not analysed. Pay surveys do not usually analyse the causes for differences in pay, insofar as they can even be revealed by the surveys, and no need for corrective measures is seen.

A study of the prevalence, coverage and quality of gender equality plans in the private and public sectors (2020) commissioned by the Ministry of Social Affairs and Health and implemented by Statistics Finland, as well as a study of the promotion of gender equality and non-discrimination at institutes of higher education (2020), came to similar conclusions.

Increasing pay transparency can improve pay equality

In their previous report, the Ombudsman for Equality issued recommendations on both the right of the individual to obtain “peer pay” information in pay discrimination cases and on the development of the pay surveys in gender equality plans. Increasing the transparency of pay information has been discussed by two tripartite working groups since the report was issued. A working group instituted by Minister for Equality Annika Saarikko looked into increasing pay transparency through legislative means in the early spring of 2019, while a working group instituted by Minister for Equality Thomas Blomqvist continued this preparatory work in 2020–2021. The latter working group published its report in the autumn of 2021.

The working group proposed that an employee suspecting pay discrimination should have the right to obtain the pay information of another employee from the employer in order to assess compliance with the prohibition of pay discrimination laid down in the Equality Act. The disclosure of such information would have entailed a secrecy obligation.

An amended draft government proposal, according to which the aforementioned pay information would be disclosed to a personnel representative, was circulated for comments in the spring of 2022. At workplaces without an employee representative, the employee could obtain the information through the Ombudsman for Equality.

In their report, the Ombudsman for Equality recommended that the Equality Act be amended as proposed by the working group in this regard. Even though the amended proposal would improve access to pay information, using the Ombudsman for Equality as a “post office” would be a needless and bureaucratic procedure that would also be a waste of the Ombudsman’s resources.

The pay surveys in gender equality plans should be used to ensure that there are no unjustified pay differences between women and men who are working for the same employer and engaged in either the same work or work of equal value. The pay survey should cover the whole personnel. On the basis of the Ombudsman for Equality’s observations, even in the municipal sector – in which pay information is public – pay surveys only cover 10–35% of municipal personnel in the worst cases. The reason for this is that municipalities have not wanted to include personnel groups which have not included, for example, at least six women and six men in the pay survey. The Ombudsman for Equality has thus recommended that the Equality Act should provide for processing pay information at the individual level in pay surveys, where necessary, in order to ensure the comprehensiveness of pay surveys and the analysis of differences in pay. This recommendation was also included in the aforementioned government proposal for increasing pay transparency.

Work of equal value is the “blind spot” in equal pay

International human rights conventions (including ILO Convention No. 100 on equal remuneration), European Union legislation and the Equality Act all provide that the same pay must be paid for the same work or work of equal value, regardless of gender. The public discussion of equal pay in particular is often truncated to the concept of “same pay for the same work”, even though it would be important to also consider pay for work of equal value, especially in labour markets segregated by gender.

A study project on work of equal value initiated by the Ministry of Social Affairs and Health was concluded in November 2022. The project studied and developed the assessment of the requirements of work from the perspective of pay equality. In its statement on the Ombudsman for Equality’s previous report (EK 49/2018 vp), Parliament required that the government seek to develop a method for comparing the requirements for various types of work, i.e. the equal value of such work, also between sectors. Conclusions and recommendations based on the results of the project are given in this report.

Both the ILO Committee of Experts and the European Commission have stressed the importance of a national definition of work of equal value. The Ombudsman for Equality is of the opinion that a provision defining the meaning of the concept “work of equal value” in the Equality Act should be added to the Act. The fact that the Equality Act also covers the possibility of making pay comparisons between different types of work in order to establish their equal value should be apparent from the Equality Act itself, and not only from the legislative materials for the Act.

The impact of the family leave reform requires follow-up

The family leave reform entered into force on 1 August 2022. In the Ombudsman for Equality’s opinion, the amendment is commendable and will hopefully balance the distribution of family leave between women and men.

Women currently use approximately 90% of family leave, which is problematic in terms of the internal distribution of duties in families, gender stereotypes and equality in working life alike. The new family leave model can even out these differences and encourage fathers to take more family leave. However, it is important that the more even distribution of family leave is encouraged at all levels – including in the workplace.

From the perspective of gender equality – and pay equality in particular – it is nevertheless also significant how the new family leave provisions will be taken into account in the paid family leave clauses of collective agreements. The family leave reform eliminates the current parental allowances, i.e. the provisions on maternity, paternity and parental allowances, and replaces them with a pregnancy allowance and parental allowance. The purpose of the pregnancy allowance is to safeguard the pregnant person's income during the final stages of pregnancy. The parental allowance is paid for the duration of child care, with roughly equal conditions for all parents regardless of gender.

In collective agreements, pay for family leave is often linked to the maternity and paternity allowance periods defined in the Health Insurance Act. Mothers have typically been paid for 72 working days and fathers for six working days. This difference in the duration of paid leave has been possible under the Equality Act because maternity leave and paternity leave have had different purposes, and women on maternity leave and men on paternity leave have thus not been in a comparable position.

This situation has changed with the new family leave model, however: the purpose of parental leave is the same regardless of who is taking it, so the duration of paid parental leave should be the same for mothers and fathers.

The consideration of the family leave reform in paid family leave is currently still on the table, especially in private-sector collective agreements.

It is nevertheless possible that the reform will result in the shortening of mothers' paid family leave, which would have a negative impact on their financial situation and pay equality in general. The Ombudsman for Equality accordingly finds it important that the effects of the family leave reform on paid family leave in collective agreements and the financial status of women and men be monitored.





3. Questions related to the diversity of genders

Diversity of genders in the Equality Act and in the Ombudsman for Equality's work

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

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

A number of cases of suspected discrimination against gender minorities are reported to the Ombudsman for Equality. Unlike in the Ombudsman for Equality's other enforcement work, however, relatively few of them involve working life. The threshold for contacting the authorities remains high for gender minorities.

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

The situation of gender minorities would appear to be improving, but experiences of discrimination remain common

The improvement in the status of gender minorities, reported in the Ombudsman for Equality's Report to Parliament in 2018, has continued.

Objective information and public debate on gender diversity has increased. In addition to transgender people, individuals such as genderqueer, non-binary, transvestite and intersex people have achieved greater visibility. At the same time, we have seen the rise of activity designed to call into question the experiences of gender minorities and gender diversity in general (incl. the anti-gender movement).

The European Union Agency for Fundamental Rights FRA published the results of its 2019 LGBTI Survey in the spring of 2020. The survey examined sexual and gender minorities' experiences of discrimination and hate crimes (the previous survey was conducted in 2013). There is great disparity in the results of different Member States. Finland's results are above the EU average, and some progress has been made in several issues from the previous report.

Finland's high statistics in harassment and violence remain a cause of concern. Reporting incidents to the authorities is also extremely rare. Of all Finnish respondents to the survey, 31% said that they had experienced discrimination in some area of life in the previous 12 months. Intersex individuals stood out clearly from this group, with 70% reporting experiences of discrimination. Trans people had also experienced more discrimination than the average (46%).

According to the School Health Promotion Study, young people belonging to gender minorities experience much more bullying and physical threats, as well as exhaustion and anxiety.



Trans legislation needs a reform

The Ombudsman for Equality considers a reform of “trans legislation” to be extremely important and underlines the urgency of the reform. The reform is intended to repeal the infertility requirement and separate medical treatment from the legal affirmation of gender. However, the opportunity for legally affirming one’s gender would only apply to adults.

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

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

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

Non-urgent medical procedures are still being performed on intersex children without informed consent. The Ombudsman for Equality has proposed that the medically unnecessary genital surgery of intersex children should be stopped. The Ombudsman for Equality takes the view that the violations of intersex children’s rights should, above all, be prevented as effectively as possible. Ensuring this could require amendments to legislation.

4. Genderised violence, hate speech and harassment

The prevention of violence against women requires permanent structures

In the Ombudsman for Equality’s opinion, violence against women is one of Finland’s most serious human rights issues. Violence experienced by women, including severe and even lethal intimate partner violence, is still alarmingly common in Finland.

In recent years, 60% of Finnish adult female homicide victims have been killed by their spouse, partner or ex partner, while the corresponding percentage for male victims is a mere 8%. The percentage of femicides committed by intimate partners stands out also in comparison to other EU Member States. It is known that, in intimate partner violence, the risk of serious violence and death increases during separation. The Ombudsman for Equality thus highlights the importance of a nationwide and systematic risk assessment system for reducing the incidence of, for example, severe and lethal intimate partner violence.

As a result of the Ombudsman for Equality's report for 2018, Parliament adopted a position requiring the Government to look into the possibility of appointing an independent body for the monitoring and evaluation of the implementation of the obligations imposed by the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and preparing any required legislative amendments in that regard (EK 49/2018 vp). The Non-Discrimination Ombudsman has served as the rapporteur on violence against women from the beginning of 2022. The Ombudsman for Equality finds the position to be extremely important: if they succeed in their duties, the rapporteur can help Finland reduce violence against women.

The effective prevention of violence and protection of victims requires a female-specific and gender-sensitive approach.

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

Fixed-term projects and action plans alone will not suffice. The implementation of the Istanbul Convention and prevention of violence against women requires long-term action across government terms and administrative boundaries, as well as the permanent allocation of sufficient resources to the work. Violence prevention must be addressed in municipalities and wellbeing services counties alike.

Hate speech is also gendered

It would appear that hate speech as a phenomenon is recognised and its gendered nature understood better than before. Hate speech is closely connected to digital violence and harassment, as well as other new phenomena of the digital environment, such as targeting. The Ombudsman for Equality's previous report recommended including the gender perspective in all cooperation between authorities relating to hate speech and hate crimes. Furthermore, it is important to ensure that information, research, action plans and other measures relating to these phenomena are continuously and consistently examined from the gender perspective.

The legal protection of harassment victims must be improved

Sexual harassment and gender-based harassment are forms of discrimination prohibited under the Equality Act. Sexual harassment in particular is an extremely common and gendered phenomenon: according to the Gender Equality Barometer (2017) more than half of women aged under 35 had experienced sexual harassment in the past two years while, according to the School Health Promotion Study (2021), half of girls in the 8th and 9th grades and in the upper secondary level had experienced sexual propositioning or harassment in the previous year. 20% of girls studying in vocational institutions had experienced sexual violence in the past year.

In addition to being prohibited as discrimination under the Equality Act, sexual harassment may constitute inappropriate treatment and harassment prohibited under the Occupational Safety And Health Act or may be an offence under various headings of the Criminal Code. This means that a number of authorities can process the same act as violations of different Acts. The level of initiative required from the harassment victim in investigating and pursuing the matter, the cost risk of the legal process, as well as the opportunity for compensation or damages also depend on the Act under which the matter is being processed.

The Ombudsman for Equality thus finds that it would be important to examine the effectiveness of legal practice and regulations in order to improve the legal protection of harassment victims.

5. Gender equality in teaching and education

Early childhood education and care must also be gender-aware

Gender equality must also be promoted in early childhood education and care. It is essential that gender- and equality-aware treatment of children should become standard practice in early childhood education and care.

Provisions on gender equality and equality promotion planning in early childhood education and care are currently being added to the Equality Act and Non-Discrimination Act. Even though the intent, promoting gender equality and non-discrimination, is highly commendable, the Ombudsman for Equality is concerned about certain discrepancies in the planned obligations.

A situation where the provisions of two key acts in national discrimination legislation differ from each other, as is currently the case with educational institutions, should be avoided. The current provisions cause difficulties and unnecessary confusion for the educational institutions applying them, and which usually draw up a combined gender equality and equality promotion plan. It would not be appropriate to extend this inconsistent practice to early childhood education and care.

Neither would extending the gender equality planning obligation to early childhood education and care be the most effective way of promoting gender equality in early childhood education and care in the Ombudsman for Equality's opinion. Even though the planning process can enable discussion of gender equality issues in early childhood education and care units, it would be more important to invest in the gender equality competence of their personnel. Gender equality cannot be promoted without the required competence. Equality work requires skill.

Only high-quality gender equality planning can improve an educational institution's operations

A well-prepared gender equality plan can be a useful instrument in the systematic and goal-oriented work required from educational institutions. However, gender equality planning can only develop the institution's operations if the work is appropriately planned and implemented and the entire staff of the institution, all the way up to its management, is committed to it. According to a number of studies, the promotion of gender equality in educational institutions is still fairly undeveloped even though it is required by the Equality Act and, for example, in the national core curriculum.

According to a study published by the Finnish National Agency for Education in 2020, basic education units have not invested sufficiently in the preparation of gender equality plans, at least of yet. Only half of the schools reported that their schools had drawn up a gender equality plan as required by the Equality Act.

The work of higher education institutions for the promotion of equality also appears half-hearted. According to a study conducted by the Ministry of Education and Culture in 2020, 55% of higher education institutions did not have valid gender equality plans at the time of the study. Furthermore, only 36% of gender equality plans drawn up by universities and 17% of those prepared by universities of applied sciences fulfilled all five requirements of the Equality Act included in the survey.

Teacher training should be ahead of its time in equality issues

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

Questions of promoting gender equality should feature more prominently in teacher training and continuing training at all levels of education – including early childhood education and care. (TAS 249/2022)



3.2 Recommendations by the Ombudsman for Equality

The report given by the Ombudsman for Equality to Parliament contained numerous recommendations.

The prohibitions of discrimination and development need in legal protection

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

Discrimination in working life

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

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

Gender diversity

- Non-urgent medical procedures should not be performed on inter-sex children until the child has the opportunity to give their informed consent. The effective realisation of rights should be ensured with legal provisions.
- Recognition of legal gender should not prevent access to infertility treatments.
- The manner in which gender diversity is taken into account in spaces and services differentiated by gender should be laid out at the legislative level.

Gendered violence, hate speech and harassment

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

Equality in schools and educational institutions

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

3.3 Parliamentary communication (EK 40/2022)

Parliament adopted a position on 14 October 2022 in response to the Ombudsman for Equality's report.

In its position, Parliament required the government to:

1. look into extending the Ombudsman for Equality's powers to also include cases of intersectional discrimination;
2. examine, in order to improve the legal protection of discrimination victims,
 - a) expanding the scope of compensations under the Equality Act to also apply to discrimination in the exercise of official authority, discrimination preceding a recruitment decision, as well as discriminatory practices by a purchaser of leased work that have an impact on the continuation of the employee's employment,
 - b) granting the Ombudsman for Equality an independent right to bring action in discrimination disputes based on the Equality Act, and
 - c) developing the National Non-Discrimination and Equality Tribunal into a low-threshold redress body that can order the payment of compensation;
3. prepare as quickly as possible the clarifications and additions to legislation required to prevent discrimination based on pregnancy or family leave against employees with fixed-term and variable working hours contracts;
4. draw up a definition of "work of equal value" to be added to the Equality Act;
5. draw up a provision obliging the employer to prevent sexual harassment and gender-based harassment, to be added to section 6 of the Equality Act; and
6. ensure the availability of sufficient resources for the implementation and enforcement of equality legislation.

Measures in response to the position adopted by Parliament will be launched as soon as possible in the next government term.







4 STATEMENTS FOR THE PARLIAMENT OF FINLAND AND OTHER AUTHORITIES

The Ombudsman for Equality issued a number of statements to Parliament and the authorities in 2022. A few examples of such statements requested from the Ombudsman are provided in this section.

Statement to the Employment and Equality Committee regarding the Government report on changes in the security environment (VNS 1/2022 vp)

The Ombudsman for Equality was heard by the Parliament's Employment and Equality Committee on the Government report on 29 April 2022. The Ombudsman for Equality discussed the report from the viewpoint of the Ombudsman's powers in the area of gender equality.

The changed security situation from the perspective of fundamental and human rights

The Government report on changes in the security situation clearly affirms Finland's commitment to human rights. Among other things, the report mentions information operations and hybrid operations are being used to influence opinions and public decision-making.

The Ombudsman for Equality agrees with the report's assertion that unhindered access to information during serious disruptions and emergencies is important for social stability. Open and active communications by the authorities reinforce feelings of trust, security and participation in society. At the same time, we must ensure that the parties working for fundamental and human rights, as well as the law enforcement authorities, have the capabilities and resources required for continuing their work in all circumstances.

Due to the limited resources of the authorities tasked with overseeing the realisation of fundamental and human rights, the Ombudsman for Equality hopes that the ministries would provide the authorities in their administrative branches with assistance and support for preparing for threats such as information operations and hybrid operations. Other cooperation between the authorities also plays a key role here.

Assessment of the security situation's effects on gender equality

Even though violent crises and wars affect people of all genders, they often also have gender-specific effects. UN Security Council Resolution 1325 'Women, Peace and Security' adopted in 2000 has lifted the gendered effects of conflicts to the centre stage of international politics. The objectives of the resolution are to increase the role and decision-making powers of women in the prevention and resolution of conflicts and in peace-building, improve the protection of women and girls and the realisation of their rights, and increase their security and reinforce the factors that contribute to it.

The changes in the security environment will affect all Finnish citizens and residents in one way or another. Therefore, the security situation, and questions of preparedness in particular, should also be addressed from the perspective of gender equality.

Experts who are familiar with gender equality and/or represent a diverse selection of genders in addition to their expertise in foreign, security and defence policy could complement the discussion around the government report with their diverse viewpoints. It is of course understandable that the tight schedule at which possible decisions are being made and policies formulated in the current situation can make this difficult.

Armed crises, conflicts and wars have different effects on different genders. Even though the majority of those in actual combat duties are usually men, armed conflicts frequently worsen the status of women, girls and gender minorities. Harassment, sexual violence and other human rights violations against civilians are common in war, and sexual violence is also used as a weapon. Preparedness plans should accordingly address questions such as how those in a vulnerable position could best be assisted and supported in various situations.

In war and conflicts, women participate in the maintenance of many critical functions of society, such as the social and health care services or security of supply, while at the same time taking care of children, the elderly or those otherwise in need of care. Preparedness plans should also address how the survival of different types of families, work communities and other communities could best be secured in various situations.

The Ombudsman for Equality would also like to draw attention to influencing through information, which can seek to undermine social cohesion and, for example, aggravate prejudices against certain groups. The report mentions hate crimes against immigrants, but hate speech and hate crimes can also target other groups, such as gender minorities, heightening divisions in society. Similarly, gendered hate speech against female researchers, politicians and journalists can be used to seek to influence their actions and direct public debate.

National defence obligation

According to section 127 of the Constitution of Finland (731/1999), every Finnish citizen is obligated to participate or assist in national defence, as provided by an Act. The Conscription Act (1438/2007) clarifies this obligation by providing that every male Finnish citizen is liable for military service starting from the beginning of the year in which he turns 18 years old until the end of the year in which he turns 60. The Act on Voluntary Military Service by Women (Laki naisten vapaaehtoisesta asepalveluksesta 285/2022) completes the system of national defence.

A parliamentary committee has examined the development needs of conscription and the fulfilment of the national defence obligation (Publications of the Finnish Government 2021:91). Among other things, the committee proposes extending the conscription system to cover the entire age cohort and connecting the non-military service system to comprehensive security and preparedness. It also suggests giving women the opportunity for non-military service.

The organisation of national defence is traditionally a significant equality issue. It is thus important that the promotion of gender equality is taken into account in all solutions concerning national defence and its future development.

The status of Ukrainian war refugees and intersectional discrimination

The Government report also discusses the reception of people fleeing the war in Ukraine. Refugees can experience many kinds of discrimination. For example, gender in combination with refugee or immigrant status can create situations and experiences of intersectional discrimination, for example in service use and later also in working life. The Ombudsman for Equality considers it important to pay attention to intersectional discrimination in equality and non-discrimination policy. This also highlights the necessity of cooperation between authorities and the voluntary sector. (TAS 205/2022)



VIOLENT CRISES AND
WARS AFFECT PEOPLE
OF ALL GENDERS

Statement to the Employment and Equality Committee of Parliament on the government proposal for an Act amending the Non-Discrimination Act and related acts (HE 148/2022 vp)

The Employment and Equality Committee of Parliament requested a statement from the Ombudsman for Equality on the government proposal to Parliament for an Act amending the Non-Discrimination Act and related acts (HE 148/2022 vp.). The Ombudsman for Equality was heard by the Committee on 18 October 2022.

The Ombudsman for Equality's statement assesses the government proposal from the standpoint of the Ombudsman's powers. At the same time, the Ombudsman also sought to highlight certain differences between the Act on Equality between Women and Men (Equality Act) and the Non-Discrimination Act which are especially relevant for discrimination victims' legal protection and access to their rights.

Problems relating to legal protection

The purpose of the Non-Discrimination Act (1325/2014) is to promote equality and prevent discrimination as well as to enhance the protection provided by law to those who have been discriminated against. The Act complements the equality and prohibition of discrimination provided for in section 6 (731/1999) of the Constitution of Finland. The Equality Act also complements the equality and prohibition of discrimination safeguarded by the Constitution. As a rule, the Non-Discrimination and Equality Acts apply to all public and private activities, with the exception of activities pertaining to private or family life or the practising of religion, so these Acts constitute a key part of anti-discrimination law.

The Ombudsman for Equality considers it important to examine the sanctions regimes and legal protection issues of the Equality Act and the Non-Discrimination Act in parallel. According to the Non-Discrimination Act currently in force, the Non-Discrimination Ombudsman and National Non-Discrimination and Equality Tribunal are not authorised to enforce compliance with the Act in working life.

The Ombudsman for Equality does have such enforcement powers and can also refer a matter involving discrimination in working life to the Tribunal. Correspondingly, the right to refer matters to the National Non-Discrimination and Equality Tribunal by virtue of the Equality Act is limited to the Ombudsman for Equality and central labour market organisations, whereas matters falling under the Non-Discrimination Act may be referred to the Tribunal also by discrimination victims and communities promoting equality in addition to the Non-Discrimination Ombudsman.

The different powers of the authorities enforcing these Acts are a source of confusion, uncertainty and misunderstanding to discrimination victims. This is often particularly problematic in matters of intersectional discrimination, which are currently exclusively subject to the Non-Discrimination Act, even if one of the elements in the intersectional discrimination is gender, gender identity or gender expression (HE 19/2014 vp., p. 57).

The government proposal for amending the Non-Discrimination Act refers to a report by the Employment and Equality Committee, according to which the Committee also found it important to clarify the duties and division of powers of the occupational safety and health authorities, the Non-Discrimination Ombudsman and the Ombudsman for Equality in cases of labour discrimination, also to enhance the enforcement of the prohibition of multiple and intersectional discrimination (TyVM 11/2014 vp, pp. 6–7, HE148/2022 vp., p. 21). The Ombudsman for Equality discussed the same matter in the Ombudsman's report to Parliament in 2022. Among other things, the Ombudsman for Equality proposed that the Ombudsman be enforcement powers over cases of intersectional discrimination in which gender is a factor (e.g. K 1/2022 vp., p. 23).

The government proposal for amending the Non-Discrimination Act does not devote much thought to questions of intersectional discrimination. Indeed, the Ombudsman for Equality would have hoped that the government proposal would have addressed this issue as well, which imposes significant restrictions on the scope of application of the Equality Act and the Ombudsman for Equality's possibilities for enforcing the prohibitions of discrimination and promoting equality. Many important and topical equality issues, such as those concerning women and men of immigrant backgrounds, are easily excluded from the powers of the Ombudsman for Equality.

Discrimination in working life

According to the Non-Discrimination Act currently in force, compliance with the Act is enforced by the Non-Discrimination Ombudsman, National Non-Discrimination and Equality Tribunal and occupational safety and health authorities. Expanding the Non-Discrimination Ombudsman's powers to include the enforcement of the prohibition on discrimination in working life is now being proposed. The Ombudsman for Equality considers this proposal to be commendable, as it enhances the enforcement of the prohibitions of discrimination. The Non-Discrimination Ombudsman has also accumulated solid and diverse special expertise on questions of discrimination on various bases.

According to the draft government proposal, however, the Non-Discrimination Ombudsman's enforcement instruments in questions involving working life would differ from those in other areas of life, to the effect that the Non-Discrimination Ombudsman would not be able to refer a labour-related discrimination matter to the National Non-Discrimination and Equality Tribunal. This is because the National Non-Discrimination and Equality Tribunal would not be competent to hear labour-related matters falling within the scope of the Non-Discrimination Act (HE 148/2022 vp. p. 72). The proposed restriction to the Tribunal's competence does not appear to be justified. The Tribunal has the power to hear labour-related discrimination matters by virtue of the Equality Act, in addition to which the Non-Discrimination Ombudsman would be given the power to process labour-related discrimination cases.

The proposal refers to the objective of making the various bases of discrimination subject to similar remedies and sanctions, as stated in the Constitutional Law Committee's opinion (PeVL 10/2003 vp., p. 2). The statement draws attention to the monitoring of equality and discrimination issues in working life and, among other things, to the fact that labour-related matters fall outside the National Non-Discrimination and Equality Tribunal's competence. The Committee has accordingly stated that the differences in the competence of the Tribunal in non-discrimination and equality issues may pose practical problems, especially in the processing of intersectional discrimination cases (PeVL 31/2014 vp., pp. 9–10).

The Employment and Equality Committee has also expressed serious concerns over the legal status of discrimination and harassment victims in its discussion of the Government of Finland Report on Human Rights Policy. According to the Committee, the development of enforcement systems related to the realisation of victim protection is of paramount importance (TyVL 2/2022 vp., pp. 6–7).

Compensation

The government proposal for amending the Non-Discrimination Act suggests that the National Non-Discrimination and Equality Tribunal could recommend the payment of compensation in matters not related to working life. (TAS 500/2022)

Statements to the Education and Culture Committee and the Employment and Equality Committee of Parliament on the government proposal for extending the gender equality planning obligation to early childhood education and care (HE 177/2022 vp)

The Ombudsman for Equality has issued statements to both the Education and Culture Committee and Employment and Equality Committee of Parliament on a government proposal for extending the gender equality planning obligation to early childhood education and care (ECEC).

However, despite certain concerns, the Ombudsman for Equality supports the goals of the proposal. The Ombudsman for Equality considers it important that gender equality is promoted in early childhood education and care as well, and that the early childhood education and care provided to children is gender- and equality-aware. To be successful, this requires commitment and competence.

Equality work requires commitment and competence

Staff competencies play a key role in the promotion of gender equality in early childhood education and care. There is currently a great deal of variation in the equality expertise of those working in the field of early childhood education and care, due to factors such as the heterogeneous educational backgrounds of the personnel. That is why the gender- and equality-aware treatment of children should be taken into account both in the basic and in the continuing training of early childhood education and care personnel.

Inconsistent provisions create unnecessary confusion

Despite the clear improvements made in the newly completed draft, the Ombudsman for Equality presents their concern that, in the Equality Act and the Non-Discrimination Act, the proposal would still enact provisions with different content on the obligation to promote non-discrimination on the one hand and gender equality on the other in early childhood education and care.

The Ombudsman for Equality hopes that the Government would find a common will to avoid a situation in which the entries in the Equality Act and the Non-Discrimination Act on promoting non-discrimination and gender equality in early childhood education and care would differ from each other.

This is the current situation regarding provisions on educational institutions. The current differing provisions cause difficulties and unnecessary confusion for schools and educational institutions applying the current provisions. It is not in anyone's interest to expand the current inconsistent practice to early childhood education and care.

The Ombudsman for Equality stressed the same issue in the statement they submitted to the Ministry of Justice on the partial reform of the Non-Discrimination Act (TAS 159/2022, 19 May 2022) and also statements to the Ministry of Social Affairs and Health (TAS 58/2020, 3 March 2020 and TAS/192/2022, 25 May 2022).

The promotion of equality should be regulated in the Early Childhood Education Act

The Ombudsman for Equality reminds the Ministry of Social Affairs and Health of the fact that the gender equality planning obligation alone will not guarantee any results. When well prepared, a gender equality plan can be a useful instrument in the systematic and goal-oriented equality work to which early childhood education and care must also commit itself. First and foremost, the gender equality plan should be seen as an opportunity to evaluate and develop the respective operations of establishments providing early childhood education and care from the perspective of gender equality.

Legislation or the obligation to prepare an equality plan provides only limited opportunities to affect the promotion of gender equality. To be successful, equality work requires – in addition to provisions – the commitment and systematic and continuous training of personnel working in early childhood education and care. (TAS 473/2022, TAS 499/2022)

Ombudsman for Equality's statement to the Legal Affairs Committee of Parliament on the government proposal for an Act on the affirmation of gender and related acts (HE 189/2022 vp)

The Ombudsman for Equality is in favour of amending the legislation concerning the affirmation of gender. It is important to improve the individual's right to self-determination by separating the legal affirmation of gender from medical examinations and treatments.

When realised, the reform would improve transgender individuals' right to self-determination and promote gender equality. Eliminating the infertility requirement is in line with Finland's human rights obligations and an important and long-awaited amendment that will improve gender equality.

The European Court of Human Rights, among others, has found the infertility requirement to be in violation of the European Convention on Human Rights. Finland is the only Nordic country that still imposes an infertility requirement for the legal affirmation of gender.

Among other things, the Ombudsman for Equality has recommended in the Ombudsman's report to Parliament (K 22/2018 vp) that the infertility requirement be eliminated, and the legal affirmation of gender be separated from medical examinations and treatment. The Ombudsman for Equality's report to Parliament (K 1/2022 vp) recommends, among other things, adopting a legislative position on how gender diversity shall be taken into account in spaces and services segregated by gender.

The Ombudsman for Equality finds that the reform should pay more attention to the status of minors. Based on the impact assessment in the government proposal, for example, the Ombudsman for Equality finds the 17 years' and six months' age requirement for filing a gender affirmation application to be overly restrictive. The Ombudsman for Equality emphasises that all amendments should be based on human rights and take the interests of the child into account.

The Ombudsman for Equality finds it commendable that, in addition to transgender individuals, the provision-specific rationales address the position of non-binary and intersex individuals as potential applicants for gender affirmation.

The proposal expands the Digital and Population Data Services Agency's duty to notify from spouses to the registered partners of individuals affirming their gender. This duty to notify is unnecessary in the opinion of the Ombudsman for Equality. The duties of authorities do not typically include notifying a person about matters concerning their spouse. (TAS 516/2022)

Statement to the Ministry of Finance concerning the reform of the personal identity code system and gender-neutral personal identity codes (VNS 25041/2020 vp)

In their statement, the Ombudsman for Equality commented on the draft government proposal that proposes changes to legislation including the Act on the Population Information System and the Certificate Services of the Digital and Population Data Services Agency (Population Information Act 661/2009) and the Data Protection Act (1050/2018). One of the aims of the proposal is to enable the adoption of gender-neutral personal identity codes by removing the gender marker from the structure of personal identity codes.



The Ombudsman for Equality is in favour of the proposal. Inclusion of information concerning gender in personal identity codes and excessively extensive use of this information exposes people to discrimination based on gender, gender identity and expression of gender. The use of gender-neutral personal identity codes may also help reduce gender discrimination related to automatic algorithmic decision making.

In addition to their primary purpose of unambiguous identification of a person, personal identity codes are currently also used to help identification in various service situations. A person may be requested to provide their personal identity code for the purpose of verifying their identity when managing their affairs, and significance may be assigned to the gender marker included in the personal identity code even when identifying the person as a woman or a man is not necessary. This causes problems particularly for persons whose gender identity or gender expression does not correspond to the gender entered in the Population Information System.

The proposed change would prevent discrimination, improve the protection of the privacy of transgender people and reduce misgendering. Because the plan is to not introduce gender-neutral personal identity codes until the start of 2027, in the future, persons who have obtained their personal identity code before 2027 may need to change their personal identity code if necessary.

The Ombudsman for Equality also noted that the change affects the practices and data management of organisations that need to process gender data. Starting from 2027, information regarding a person's legal gender would be disclosed from the Population Information System as a separate piece of information in accordance with the principles laid down in Chapter 4 of the Population Information Act. The Ombudsman for Equality finds it positive that the change would compel organisations to more carefully consider whether their operations require the processing of data subjects' gender information.

However, the proposal does not clarify situations in which organisations would be allowed to determine a separate data field regarding gender in their own data systems and the data entered in such field. Attention should

also be paid to situations in which organisations can determine and decide whether the gender data of a data subject refers their legal gender entered in the Population Information System or whether gender data can in some cases be based on self-identification. It is important to remember that the legal gender of a person is not sensitive personal data. However, information on a person's transgender background, gender affirmation or belonging to a gender minority is within the scope of privacy protection.

The Ombudsman for Equality considers it important that gender data referred to as legal gender continues to be recorded into the Population Information System and that the data is available in situations when it is justifiably needed. Gender data is important when monitoring the status of women and men in society and when planning and implementing socio-political measures on the basis of this information. Gender data is also needed for promoting equality between women and men in institutions, workplaces, and official activities. (TAS 8/2022)

Statement on the draft Government proposal for the amendment of section 1 of the Personal Files Act (wellbeing services counties and joint authorities, pay publicity) (VN 32046/2021 vp)

The Ombudsman for Equality has been asked for a statement on the draft Government proposal referred to in the title. The said Government proposal proposes expanding the scope of the Personal File Act (Nimikirjalaki, 1010/1989, section 1) to make the information possessed by wellbeing services counties and joint authorities on the pay and pay components of their personnel public as they are in municipalities and joint municipal authorities. The Ombudsman for Equality is in favour of amending section 1 of the Personal Files Act as proposed.



The Ombudsman for Equality has drawn attention to the need to amend the Personal Files Act, for example in the Ombudsman's statement to the Employment and Equality Committee of Parliament issued on 11 March 2021 regarding the Government proposal to Parliament for legislation concerning the establishment of wellbeing services counties and the organisational reform of the healthcare and social welfare services and rescue services.

In addition, the Ombudsman for Equality has expressed concern over the publicity of pay information in a statement given to the Ministry of Social Affairs and Health on 25 September 2020 regarding a draft Government proposal for legislation for an organisational reform of the healthcare and social welfare services and rescue services and the establishment of counties.

In the above-mentioned statements, the Ombudsman for Equality found it problematic that the pay information of the personnel of wellbeing services counties and joint authorities had not been decreed public by law, as has been done for other public sector personnel. The Ombudsman for Equality also noted in the statements that a lack of pay transparency hinders the detection of pay discrimination and prevents the realisation of the principle of equal pay.

The rationale for the draft Government proposal mentions the statement of the Employment and Equality Committee of Parliament (TyVL 3/2021 vp.), in which the Committee considered it important that "the publicity of pay information be extended to also apply to the pay of the personnel of the future wellbeing services counties". It should also be noted that section 8, subsection 1, paragraph 3 of the Act on Equality between Women and Men prohibits the application of the pay or other terms of employment in such a way that one or more employees find themselves in a less favourable position based on their gender than one or more other employees in the employer's service.

The successful investigation of suspected pay discrimination and realisation of the principle of equal pay requires the availability of effective legal remedies to those who suspect discrimination, and above all the right to be informed of the pay of possible individuals in equivalent posi-

tions. The publicity of pay information provided for in the Personal Files Act has made this possible for public sector personnel. The Ombudsman for Equality accordingly commends the fact that the amendment to the scope of section 1 of the Personal Files Act will ensure that personnel moving from municipalities and joint municipal authorities to the service of wellbeing services counties and joint authorities will retain this opportunity in future as well. (TAS 620/2021)

Statement of the Ombudsman for Equality to the parliamentary Employment and Equality Committee on the Government of Finland Report on Human Rights Policy (VNS 10/2021 vp)

The Ombudsman for Equality considers it commendable that the Government of Finland Report on Human Rights Policy reviews equality matters both as a cross-cutting issue and particularly in the chapter on non-discrimination, gender equality and participation rights as priorities. In addition to the said chapter, the report covers the rights of gender minorities, the equality of genders in the development of technology and the combatting of hate speech and online harassment, among other issues.

Gender equality should be promoted by authorities with measures such as gender impact assessments. A gender impact assessment refers to assessing the effects of a measure, a political decision or legislation in advance from the perspective of its potential gender impact. On the basis of this assessment, it is possible to propose corrective measures to reduce discrimination or undesired effects, to promote equality and to eliminate obstacles to equality.

The Ombudsman for Equality considers it important that the report also highlights hate speech and its significance to the functioning of a democratic society. Hate speech is a gender-based phenomenon that can limit the willingness of the target to participate in discourse and decision-making in society. That is why it must be addressed with determination.

The report states that Finland has received several recommendations on the rights of gender minorities, the amending of legislation pertaining to legal gender recognition, in particular. The report does not consider inter-sex or non-binary people.

The Ombudsman for Equality wishes to emphasise the need for clear regulations on legal gender recognition. The goal on respecting the right to self-determination requires that the persons involved have correct and reliable information on the legal effects of legal gender and its recognition. In the Ombudsman for Equality's opinion, minors should also be taken into account in the reform of trans legislation. The preparation of the reform should be based on human rights and the rights of children.

The Ombudsman for Equality considers it unfortunate that equality issues in working life are not discussed in the report. Equality issues in working life, such as equal pay (receiving the same pay for the same work and work of equal value) is extensively regulated in international human rights agreements and statements of related regulatory bodies regarding Finland. Discrimination in working life is also featured strongly in the work of the Ombudsman for Equality and in contacts regarding discrimination submitted to the Ombudsman. Furthermore, the COVID-19 pandemic has influenced more strongly the position of women than men in the labour market.

International agreements and the statements of related regulatory bodies are also of significance regarding the Finnish gender equality legislation and practices to promote equality. Hence, the Ombudsman for Equality finds it important for Finland to be active in the promotion of gender equality also through international organisations and the European Union. (TAS 79/2022)

Statement on the Government Equality Policy Report (VNS 5/2022 vp)

The Ombudsman for Equality was heard by the Employment and Equality Committee of Parliament on the Government Equality Policy Report on 30 November 2022. The Equality Policy Report examines the various areas of

public life in a comprehensive manner. The Report sets seven main goals as well as a number of sub-goals related to them. In the statement, the Ombudsman focused especially on the goals set in the following chapters: Equal and Non-Discriminatory Finland, A Finland Free of Gender-Based Violence and A Finland of Financial Equality and Equal Work and Education.

Equal and Non-Discriminatory Finland

The Ombudsman for Equality finds it commendable that the Report emphasises the fulfilment of Finland's international commitments to the prevention of gender-based discrimination. This also requires the prompt implementation of the decisions and recommendations issued by the human rights conventions' supervisory bodies. The functionality and possible amendment needs of the Act on Equality Between Women and Men (Equality Act) should be assessed in light of our international commitments and recommendations, especially with regard to sufficient legal protection.

Development needs of legal protection

The Report defines equality as a public priority. The realisation of equality requires sufficient monitoring and legal remedies. As stated in the Report, Finland should conduct a comprehensive study of the functionality of the Equality Act and prepare the required amendments based on the results.

The Ombudsman for Equality has discussed the amendment required to the Equality Act and the legal protection needs of discrimination victims in the Ombudsman's report to in the spring of 2022. Among other things, the Ombudsman for Equality has recommended granting the Ombudsman an independent right to bring action. It would also be important to give the courts the opportunity to consult the Ombudsman in matters concerning the application of the Equality Act. As discrimination cases are becoming increasingly complex, the Ombudsman considers it important to be granted powers over intersectional discrimination including gender, gender identity or gender expression as a basis for discrimination.

There is clear need for low-threshold, expert remedies. Developing the National Non-Discrimination and Equality Tribunal into a body providing low-threshold legal remedies would improve the legal protection of discrimination victims. In this connection, it would be important to deter-

mine whether the Tribunal could order the payment of compensation for violations of the prohibitions of discrimination provided for in the Equality Act, or at least recommend the payment of compensation, as is proposed in connection with the partial reform of the Non-Discrimination Act.

The Report notes that the Ombudsman for Equality has insufficient resources in relation to the duties assigned to the Ombudsman and the enforcement needs of the Equality Act. Effective law enforcement requires adequate resources, as has been noted by the Employment and Equality Committee.

Taking the diversity of genders into account

Our society and its services are currently not tailored to take the diversity of genders into account. The Ombudsman for Equality commended the Report for addressing this issue and supports the assessment of the necessity of gendered administrative practices proposed in it. Services must be developed to take into account the diversity of genders and the special needs of different groups of people.

A Finland of Financial Equality

The Report sets the objective of halving the average pay gap and lifetime income gap between the genders by the end of the decade, which can be considered to constitute a necessary objective for the promotion of equality.

In line with the Report, the Ombudsman for Equality finds that, in order to achieve equal pay, the State must bear its responsibility for the implementation of international human rights commitments and the actual realisation of fundamental rights.

As described in the Report, achieving this objective will require addressing pay discrimination, fixing unequal pay structures and reassessing the complexity of various industries and jobs. A provision defining the meaning of the concept ‘work of equal value’ should be added to the Equality Act.

The Ombudsman for Equality thus finds it important to assess the gender impact when passing labour legislation. That is the only way they can be taken adequately into account when resolving questions of labour law.

The Ombudsman for Equality emphasises the importance of assessing the gender impact also in the preparation of the social security reform. The different labour market positions of the genders and the unequal distribution of care responsibilities between them also affects pensions, social security and services, so this impact assessment must not be neglected.

Progress towards equality policy objectives must be monitored

The Report sets national objectives for equality policy across administrations, which have been lacking in Finland in the past. The Ombudsman for Equality finds it essential for the effectiveness of these objectives set down in the Report that they be translated into concrete measures in the programs of future governments. The Ombudsman for Equality proposes the allocation of responsibilities to within each administrative branch to ensure progress towards these objectives and the monitoring of such progress.

Furthermore, the Ombudsman for Equality proposes looking into the possibility of conducting an interim assessment to ensure the advancement of the equality policy objectives set in the Report. (TAS 578/2022)

Statement on the Ministry of Justice’s memorandum on the regulation of online targeting and shaming under criminal law (VN 4305/2022 vp)

The Ministry of Justice has invited statements on a memorandum assessing the need for changes to criminal legislation in order to regulate online targeting and shaming. The memorandum considers it appropriate to make online targeting and shaming a criminal offence. Both initiating online targeting and shaming and participating in it would be made punishable. Online targeting and shaming would be an offence subject to public prosecution.

The Ombudsman for Equality supports the memorandum's conclusions regarding the need for the regulation of online targeting and shaming under criminal law and finds that its criminalisation under its own heading in the Criminal Code should go forward. The criminalisation of online targeting and shaming can serve as a general deterrent. It would protect individuals targeted with such acts and promote the realisation of fundamental rights. The proposed amendment is also intended to safeguard the conditions required for a functional democracy, the work of the authorities, research and free media.

The gender perspective is essential for understanding the phenomenon

The Ombudsman for Equality finds it unfortunate that the gendered nature of online targeting and shaming is not taken into account in the memorandum's discussion of the phenomenon as a whole and in terms of specific professions or in the justifications for the proposed legislative amendments.

The prevention of online targeting and shaming also requires taking into account the gendered nature of the phenomenon and identifying the link between gendered violence and racialisation. If the gender perspective is not taken into account in the assessment of legislative amendment needs this could be reflected in the handling and monitoring of possible online targeting and shaming offences.

A broad-based impact assessment is a key part of high-quality legislative drafting. The memorandum discusses the social and financial effects of the proposed amendments. This discussion does not cover their gender-specific impact, however. Gender impact should be assessed in all law drafting and its preparatory stages.

The Ombudsman for Equality would like to remind the authors that the Act on Equality between Women and Men (609/1986) obliges the authorities to purposefully and systematically promote equality between women and men. These obligations apply to all aspects of the government's work and thus also to law-drafting processes.

In their reports to Parliament (K 22/2018 vp and K 1/2022 vp), the Ombudsman for Equality has recommended including the gender perspective in all studies and measures concerning hate speech and hate crimes.

Gender-based systematic harassment and hate speech

Gender-based harassment, sexual harassment and misogyny are systemic social problems that erode the conditions for a functional democracy.

On average, harassment, hate speech, persecution, online targeting and shaming, and sexual violence manifest as different phenomena when committed or experienced by women and men. For example, female journalists, researchers or politicians are publicly threatened with sex offences more often than their male counterparts. Female decision-makers also report more gender-based hate speech than their male counterparts. This can decrease active participation by women and thus narrow the representativeness of social decision-making.

Finland's human-rights obligations, EU initiatives and national equality and human-rights policy documents should be taken into account in further preparation

The Government Equality Policy Report (VNS 5/2022 vp) sets Finland the national target that gender-based discrimination or hate speech will not restrict anyone's freedom of expression and participation in society.

The spirit of the report is in alignment with recent EU initiatives. The European Parliament has urged the Commission and Member States to include misogyny in the forms of hate speech and recognise misogynistic assault as a hate crime (European Parliament Resolution 2022/C 251/01).

The European Commission's proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence (2022/0066 (COD)) should be taken into account in preparing the regulation of online targeting and shaming under criminal law. Finland's international human-rights obligations also require Finland to take action to prevent all forms of violence against women. (TAS 530/2022)

Statement to the Ministry of Justice concerning the punishability of forcing a person into marriage (criminalisation of forced marriages) (VNS 4063/2021 vp)

The Ombudsman for Equality commented on the Ministry of Justice's assessment memorandum on the punishability of forcing a person to enter into a marriage.

In the view of the Ombudsman for Equality, international treaties binding on Finland oblige us to recognise forced marriages as a form of gender-based violence. Forcing a person into marriage should be acknowledged in the Criminal Code of Finland.

Forced marriage is a human rights violation. The right to self-determination is violated and the person forced to enter into a marriage may need to give up fundamental rights and freedoms, including their right to sexual integrity.

The Ombudsman for Equality wishes to draw attention to the fact that the assessment memorandum does not recognise and examine forced marriages as a gender-based phenomenon. The current situation and impacts of the legislative options are not assessed from the perspective of gender and the matter is not examined as an issue related to gender equality. UNICEF has estimated that only approximately one sixth of children entering into marriage are boys.

International law defines forced marriages as a form of gender-based violence against women. Both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention on preventing violence against women and domestic violence (Istanbul Convention) require Finland to recognise, combat and eliminate violence against women, including forced marriages.

According to the CEDAW Committee monitoring compliance with the CEDAW Convention, States Parties must ensure criminalisation of different forms of violence and make sure that legislation does not allow for certain forms of violence, such as child marriages or forced marriages. Furthermore, Article 37 of the Israel Convention explicitly obliges States Parties to criminalise intentional conduct of forcing a person to enter into a marriage. Forcing applies to both adults and children.

The assessment memorandum examines four options for acknowledging forced marriages in the Criminal Code of Finland:

- applying existing provisions of the Criminal Code without any amendments or specifications;
- amending the provision on trafficking in human beings (Criminal Code, Chapter 25, Section 3) by adding forcing a person to enter into a marriage as a purpose of offence;
- making the offence of forcing a person to enter into a marriage separately punishable under the Criminal Code provision on coercion;
- enacting a new separate provision in the Criminal Code.

GREVIO, the expert body responsible for monitoring the implementation of the Istanbul Convention, evaluated Finland's situation in their 2019 report and proposed that Finland should enact a statutory definition of offence for forced marriage. The UN Human Rights Committee also recommended in the spring of 2021 that Finland should explicitly criminalise forced marriage as a part of actions aimed at eliminating violence against women.

The Ombudsman for Equality does not wish to comment on which legislative option would be the best option. However, preparations should continue taking into consideration the severity of the violation and the significance of the amendment to gender equality. In the view of the Ombudsman for Equality, explicitly including forced marriage in the Criminal Code would mean that the human rights violation typically committed against women and girls would be taken seriously in national legislation. Even if the number of people subject to forced marriages in Finland is estimated to be low, the need for specific legislation must be considered more carefully considering the severity of the violation. (TAS 573/2021)



5 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.

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.

5.1 Discrimination on the basis of pregnancy and family leave

Workplace discrimination based on pregnancy and parenthood, including taking family leaves, has continued for decades in Finnish society. Up to one half of the clients contacting the Ombudsman about working life issues report discrimination due to pregnancy or family leave, also in 2022.

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

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

Termination of a pregnant person's employment during the trial period

The termination of a pregnant person's employment during the trial period can be examined in view of the provisions of the Employment Contracts Act and Act on Equality between Women and Men (Equality Act). If there is a suspicion that the employment has been terminated because of pregnancy, the Ombudsman for Equality can investigate the matter. With regard to the Employment Contracts Act, the competent authority are the occupational safety and health authorities of the Regional State Administrative Agency (AVI).

According to chapter 1, section 4 of the Employment Contracts Act, the employment contract may be cancelled by either party during the trial period. The employment contract may not, however, be cancelled on discriminatory or otherwise inappropriate grounds with regard to the purpose of the trial period. The grounds for cancellation must be related to the employee's person or performance and must give the employer valid cause to consider that the employment contract concluded with the employee does not meet the requirements set for it by the employer.

The OSH authorities referred two cases involving the cancellation of a pregnant person's employment contract during the trial period to the Ombudsman for Equality in 2022. In both cases, the OSH authorities had determined that the pregnancy had not been a factor in the cancellation of the employment contract. The grounds for cancellation were based on law and appropriate with regard to the purpose of the trial period in both cases, being essentially connected to the employee's work performance.

These cases primarily involved the interpretation of the Employment Contracts Act's provisions on cancellation during the trial period, which also decided whether the conduct violated the Equality Act. The matter could involve discrimination based on pregnancy, which is prohibited under the

Equality Act, if the employment contract had been cancelled in violation of the Employment Contracts Act, i.e. without an acceptable reason other than pregnancy.

Ultimately, the unlawfulness of the conduct will be decided in the District Court, however, where the matter can be examined from the perspectives of both the Employment Contracts Act and the Equality Act and the right to compensation under these Acts can be decided.



In a trial concerning the unlawfulness of cancellation during a trial period, the person suspecting discrimination is personally responsible for invoking section 8, subsection 1, paragraph 5 of the Equality Act in addition to the Employment Contracts Act and for claiming compensation for gender-based discrimination under section 11 of the Equality Act if they consider that their employment was cancelled in the trial period because of pregnancy. (TAS 572/2022; TAS 53/2022)

5.2 Discrimination in recruitment

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

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

The impact of work experience in recruitment

Man A asked the Ombudsman for Equality to determine whether he had been discriminated against in violation of the Act on Equality between Women and Men (Equality Act) when filling the position of a city procurement manager. A had over 20 years' experience in procurement. He had nearly 2.5 years' experience in public procurement, whereas woman B, who was appointed to the position, had less than a year's experience in public procurement. A considered himself more qualified on the basis of his education, competence and experience than B, who was recruited.

According to established legal practice, even major differences in service years do not necessarily mean that the longer-serving person should be considered more qualified. Only considerable differences in service years have been considered significant. However, a certain amount of experience is needed to gain familiarity with the duties of any position. The amount of experience considered sufficient varies from position to position. With regard to the contents of work experience, it is not decisive in itself whether the individual has acquired their experience in a position corresponding precisely to that being applied for. Rather, they may have accumulated suitable experience in other positions as well.

According to the recruitment notice, the procurement manager's duties include the guidance, development and overall coordination of the city's procurement. The position includes advising procurement units on the preparation of procurement and drawing up procurement agreements. The procurement manager is also responsible for maintaining the city's procurement strategy and guidelines, the implementation of the guidelines, as well as the administration and archiving of procurement. According to the recruitment notice, the qualification requirements for the position are an applicable degree from an institute of higher education and sufficient experience of the management of procurement matters. Among other things, familiarity with procurement legislation and versatile knowledge of various procurement procedures are considered to the applicant's benefit.

The city's report to the Ombudsman for Equality stated that knowledge of public procurement, work experience and the results of the interviews were weighted in the comparison of the applicants' merits. With regard to relevant work experience, B had less experience of public procurement than A, but had worked in a more demanding position with a wider scope. The city also noted that the personal characteristics discovered in the interview and, in particular, knowledge of procurement legislation showed that B was clearly the most suitable candidate for the position when assessed as a whole.

The Ombudsman for Equality found it problematic that the municipality's report only considered work experience in the public sector. The recruitment notice required experience in procurement, but not specifically in public procurement. A had approximately 2 years and 5 months of experience of procurement in the public sector as well as over 20 years' experience in the private sector. B had just under four years of work experience as a whole, of which approximately 10 months was in public procurement. The Ombudsman for Equality found over 20 years' difference in work experience to be significant, so a presumption of discrimination arose in the matter based on A's longer and more diverse work experience.

The employer can overturn the presumption of discrimination by demonstrating that the appointed person was more qualified than the one passed over, and that this was the actual and acceptable reason for the choice. The city has stated that B had the best qualifications for the position of procurement manager based on her application documents and the interview, but has not provided any further justifications to support this view. In a possible compensation trial, the city thus bears the burden of proof on these matters and the greater suitability of the person appointed to the position. (TAS 81/2022)

5.3 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 giv-

en 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.

Discriminatory nature of a job advertisement limited to a specific gender

An advertisement for girls or women to work as salespersons was posted on a Facebook page. The company justified its advertisement with the fact that the company offered sewing services and operated a clothes retail business. According to customer feedback received by the company, some female customers would feel uncomfortable having a male salesperson take their measurements.

In its report to the Ombudsman for Equality, the company stated that there had been a mistake in the formulation of the advertisement and that all applicants would be considered for the position, regardless of gender. No one had been recruited for the position when the report was made. The company changed the advertisement after being contacted by the Ombudsman for Equality. In their statements, the Ombudsman for Equality urged the employer to ensure that its practices would comply with the provisions of the Equality Act going forward. (TAS 393/2022)

According to section 14 of the Equality Act, announcements of job vacancies may not invite applications from exclusively either women or men, unless there is a weighty and acceptable reason for doing so relating to the nature of the job or task. For example, a person of the client's preferred gender may be recruited as a personal assistant due to the intimate nature of the employment relationship.

The other derogation from equality in recruitment permitted by the Equality Act is that laid down in section 9, paragraph 4, i.e. that a job ad-



A JOB ADVERTISEMENT
CAN ONLY BE AIMED
AT A SPECIFIC GENDER
FOR WEIGHTY AND
ACCEPTABLE REASONS



vertisement aimed exclusively at either women or men is part of temporary, special actions based on a plan and which are for the purpose of promoting effective gender equality. It is important to state this in the job advertisement. Nevertheless, the employer must take into account the obligation to promote equality between women and men within working life in a purposeful and systematic manner, laid down in section 6 of the Equality Act, and act in such a way that, for example, job vacancies attract applications from both women and men.

5.4 Pay discrimination

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

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

Acceptable reasons for pay differences

Woman A asked the Ombudsman for Equality to determine whether she had been discriminated against in violation of the Act on Equality between Women and Men (Equality Act) when three male colleagues had been paid hundreds of euros more even though she had worked more and in more demanding duties.

When evaluating the pay discrimination referred to in the Equality Act, it must first be determined whether the work being done by the employee suspecting discrimination and the employee of the opposite gender being paid more are the same or equal in value. If the positions are the same or equal in value, a presumption of discrimination based on gender arises.

Even if the employer applies the terms of pay in a manner that puts one or more employees in a less favourable position based on their gender than one or more other employees of the same employer doing the same work or work of equal value, the conduct does not necessarily constitute discrimination.

Acceptable grounds must conform to the principle of proportionality. This means that the conduct must have an acceptable goal and the means selected must be appropriate and necessary with regard to that goal. According to the legislative materials of the Equality Act, acceptable reasons for pay differences can include at least the difficulty of the position, personal performance, longer work experience and special responsibilities.

For a special reason and a limited period of time, pay differences can be justified by market factors influencing pay. In other words, the market situation can be a temporarily acceptable reason for pay differences. Because the market situation can only be accepted as a reason for a limited time, the employer has an obligation to seek to eliminate any pay differences caused by the market situation, that is, harmonise pay in a reasonable period of time.

The pay component based on the difficulty of the task, i.e. the task-specific pay, must be equal for employees doing the same work or work of equal value. The total pay of the employees does not have to be equal if the differences in pay can be justified acceptably.

According to the employer's report, the company pays its employees a total salary that is not broken down in to task-specific pay or, for example, components based on the difficulty of the work or the employee's performance. In this regard, the Ombudsman for Equality noted that it was difficult to estimate from the employer's report how the total salaries of A and her reference employees were constituted, that is, how factors such as the difficulty of their duties affected their pay. The company's pay system appears to be non-transparent in this regard.

The employer said that it had been forced to agree to the pay demands of two of the reference individuals due to the market situation, even though their duties were similar to A's. The Ombudsman for Equality found that a presumption of discrimination arose in the matter. However, it remained unclear whether or not the presumption of discrimination had been reversed, since the two-year transition period was still ongoing when A resigned. According to the National Non-Discrimination and Equality Tribunal, approximately two years can be considered a reasonable transition period.

In order to reverse the presumption of discrimination, a company should first be able to demonstrate that it was not able to eliminate the pay differences resulting from market conditions immediately, but required a transition period to do so. In the Ombudsman for Equality's view, the actual circumstances prevailing in the company and possible objective impediments, which the company must be able to prove, should also be taken into account when assessing the duration of the transition period.

The employer and A gave differing views on whether the work of A and the third reference individual was of equal value and whether their pay was in the right proportion to the difficulty and overall efficiency of their work. Due to these differences, the existence of a presumption of discrimination remained open with regard to this reference individual. (TAS 286/2021)

A suspected case of discrimination relating to work of equal value

Woman A, who works as a senior security trainer, asked the Ombudsman for Equality to determine whether she had been discriminated against in a manner prohibited by the Equality Act when she was paid a smaller salary than men working as senior fire inspectors.

A had a fixed-term position and at first received the same pay as the senior fire inspectors working in the same team. When the senior security trainer's fixed-term contract was extended, however, the employer announced that her task-specific pay component would be reduced. The justifications given for the pay decrease included the fact that the senior security trainer's duties no longer included certain planning tasks that used to be part of her responsibilities. The pay component determined by the requirements of the position had been higher for A's predecessor.

The matter involved determining whether the position of senior security trainer should be considered the same or equal in value to the position of senior fire inspector.



The concept of “work of equal value”

The Equality Act in itself does not define the concept of “work of equal value” but, according to the legislative materials for the Act (HE 57/1985, p. 19), the nature and content of the duties as well as the conditions in which the work is performed should be taken into account in the comparison of work. Making such a comparison requires identifying and comparing the requirement components typical for different jobs. Two jobs can be of equal value, even if their requirements consist of different components. The comparison must be based on the employees’ actual duties and their requirements.

On the burden of proof and acceptable reasons

The principle of “shared burden of proof” is followed in discrimination cases. The burden of proving that two positions are the same or of equal value lies with the person suspecting discrimination. If an assumption of discrimination arises, the employer must disprove it by demonstrating that the practice was due to another, acceptable reason rather than the employee’s gender.

Acceptable reasons for differences in pay can include those relating to the requirements of the tasks, personal performance, longer work experience or special responsibilities. When assessing the acceptability of a reason, it is essential to consider whether the regulations or practices resulting in unequal pay are substantively acceptable from the perspective of the Equality Act. In other words, acceptability is not decided by formal considerations, such as whether the regulations are based on a collective agreement or a workplace practice based on other grounds.

The employee’s personal attributes or performance should not be taken into account in the assessment of the job’s requirements, but they can be acceptable reasons for paying different salaries for people doing the same work or work of equal value. If the employer pleads such personal attributes or performance, the employer must be able to prove the existence of those differences between the employees.

The pay component based on the requirements of the task, i.e. the task-specific pay, must be the same for employees doing the same work or work of equal value. The total pay of the employees does not have to be equal if the differences in pay can be justified acceptably. However, any bonuses paid in addition to the task-specific pay must be non-discriminatory. Therefore, if the employer is able to present an acceptable reason for pay differences in an individual case, it must still be assessed whether that reason can explain the entire difference in pay or only a part of it (e.g. the Court of Justice of the European Union’s decision in matter C-127/92, Enderby).

To be transparent, a pay system must permit employees to determine which factors affect their pay as well as the weighting of those factors. If the pay system is not transparent in this manner, the employer must be able to prove that their pay practices are not discriminatory in the event of a legal dispute.

On the transparency and openness of pay systems

In their statements, the Ombudsman for Equality has stressed that pay systems should be transparent and open enough for employees to be aware of how their pay and its components are determined. In this matter, the Ombudsman found that this would have required at least informing the employees of how the positions of senior safety trainer and senior fire inspector and the potential differences between them had been assessed at the level of individual requirement components.

The employer did not explain the model used in its pay system for assessing the requirements of different tasks in any detail, nor did it elaborate on which tasks were being compared or their differences in relation to the requirement components mentioned in the model. The impact of the competence, knowledge and skill requirements mentioned in the task requirement assessment model, as well as the impact of social interaction skills and working conditions on the assessment of difficulty, appeared to have been glossed over in the reports obtained by the Ombudsman for Equality.

The Ombudsman for Equality considers it important that employees be informed of the determination of their pay, for example when moving to a new position or after a reorganisation of duties. According to the Court of Justice of the European Union, it can also constitute pay discrimination if an employer pays less to an employee than it did to a previous employee who is deemed to have performed the same work or work of equal value.

Discrimination matters are ultimately decided by the court. If the parties are unable to reach a settlement concerning pay, the employee suspecting pay discrimination can claim compensation from their employer in the district court. An employer that has violated the prohibition of discrimination laid down in the Equality Act can be ordered to pay compensation. The employee can also demand payment of the difference in pay due to pay discrimination. (TAS 305/2021)

5.5 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. However, the Act on Equality Between Women and Men (Equality Act) prohibits the use of this right to manage work to put one or more employees in a less favourable position than other employees on the basis of gender.

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.

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.

Suspected discrimination in access to training and the restriction of duties based on gender

Woman A contacted the Ombudsman for Equality, saying that, at her workplace, only men were provided access to training and the distribution of duties was restricted based on gender.

Access to training

A had repeatedly expressed her interest in training that would also be of use in A's supervisory position, since some of her subordinates had completed the training in question. A had also been prevented from accepting a position because she had not completed the training required for it. Her supervisors had been recommending that A attend the training in performance reviews since 2015, and A had also expressed her interest in the training. In A's opinion, the people proposed for the training over the years had not applied for the training themselves, but the training had been suggested to them. A considered herself to be more qualified for the training than the men selected for it.

The employer stated in its report that supervisors propose their subordinates for the training. The qualifications of the individuals proposed had not been compared in a way that could be verified after the fact. The report stated that A had less experience than those proposed for the training.

Based on the information provided, the Ombudsman for Equality found that the training selections appear to have been made in a non-transparent manner, since A and one person from the reference group that had taken the training said that they were not aware of the grounds for making the selections. The employer also gave contradictory information on the qualifications of those selected for the training. A also said that some of the positions she had worked in had not been taken into consideration in the employer's studies and comparisons of qualifications. Regardless of

these uncertainties, the Ombudsman for Equality found that at least two people from the reference group selected for the training were less qualified than A. The Ombudsman for Equality also noted that A was highly experienced and had subordinates who had completed the training. In the Ombudsman for Equality's opinion, the employer had not provided clear and credible reasons for bypassing A in training selection, so a presumption of discrimination arose in the matter.

Restricting duties based on gender

A said that her supervisor had sent her an order by email stating that female employees could not take part in a task. The supervisor justified this order with reasons of safety, saying in the message that female employees would not necessarily be seen as employees but as women. In its report, the employer considered that the supervisor had acceptable grounds for issuing this order. A noted that women had received the same training as the men so had equal capabilities for performing the task.

According to the legal literature, different treatment based on gender is not discrimination if, due to the nature or context of certain duties, the characteristic in question is a real and decisive requirement related to the work. However, such goals must be justified and requirements proportionate. In *Kreil (C-258/98)*, the Court of Justice of the European Union found that gender can be a decisive requirement in the professions of prison guard and senior guard, in police duties related to serious internal unrest, or in the duties of certain special forces. The dangerous or uncomfortable nature of the work, for example, is not a justified or acceptable reason for gender restrictions. On the other hand, the fact that the law specifically forbids using women for certain duties does constitute a justified and acceptable reason.

In the Ombudsman for Equality's opinion, the employer did not have acceptable grounds for not selecting female employees for a specific task based on their 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. (TAS 514/2021)

5.6 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.

Suspected harassment at an Olympic preparation camp

The Ombudsman for Equality was asked to determine whether the employer had violated section 8d of the Act on Equality Between Women and Men (Equality Act) when an employee was subjected to sexual harassment on a work-related trip. The employee had tried to discuss the matter with the employer after the incident, but nothing was done to address the matter.

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 accordance with the legislative materials of the Equality Act, sexual harassment may occur as obscene language or dirty jokes. It is a case of harassment, where the perpetrator should have exercised good judgement and should have known that their behaviour was unwanted. The legal literature explains that one may tell dirty jokes and amuse one's friends in one's leisure time, but similar language does not belong in the workplace. In accordance with the legislative materials of the Equality Act, the responsibility for harassment is primarily borne by the perpetrator him- or herself. The perpetrator may have to bear not only criminal liability for their actions, but they may also be held liable under the Tort Liability Act.

According to section 8d 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.

The question to be resolved in the matter consisted of whether the individual was in a position equivalent to an employee pursuant to section 3, subsection 1 of the Equality Act, in which case section 8d of the Equality Act would apply. According to section 3, subsection 1 of the Equality Act, 'employee' means a person who, by contract, undertakes to perform work for another party (an employer) under the latter's direction and supervision in return for pay or other remuneration, or who is in a public-service employment relationship or another comparable employment relationship with the State, a municipality or other public body (an authority). This Act's provisions on employees also apply as appropriate to persons working in other legal relationships that are treated as employment relationships. The Ombudsman for Equality found that, in this case, the individual was in a position comparable to an employment relationship as referred to in the Equality Act with both the Finnish Athletics Federation and Finnish Olympic Committee.

In their reports to the Ombudsman for Equality, both the Finnish Olympic Committee and Finnish Athletics Federation stated that they had been informed of the incident immediately but had not been aware of its investigation as potential sexual harassment before it was reported in the media.



According to the legislative materials of the Equality Act, taking the alleged harassment seriously and initiating an immediate investigation is deemed to be an efficient measure taken to address harassment. Another effective measure is deemed to be subjecting the perpetrator to steps under employment legislation or to disciplinary action corresponding to the nature and seriousness of the harassment.

Based on the employer's right of supervision, after having been informed that harassment has taken place, the employer has sufficiently effective powers and means to also take action in relation to the person guilty of harassment. Depending on the level and recurrence of the harassment, the measures to be taken include a caution or a reprimand imposed on the perpetrator, their lay-off, and, in the final stage, dismissal or termination of the employment relationship. (TAS 156/2022)

5.7 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 other's 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.

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

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

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

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

The university's Faculty of Sport and Health Sciences announced that starting in spring 2022, it has changed the selection criteria. Gender quotas have been removed from the student selection of the Bachelor's and Master's Program in Sport Pedagogy, as well as from the first-stage certificate and entrance exam selection and the second-stage aptitude test, and thus also from the final selection. (TAS 87/2022)

The granting of a single bonus point to female applicants in the student selection for basic Border Guard training is justified

The Ombudsman for Equality was asked to examine, whether the student selection process of the Border and Coast Guard Academy is in compliance with the Act on Equality between Women and Men, since one bonus point is granted to female applicants.

In practice, women who have applied for basic Border Guard training have been granted a single bonus point since 2013 for having completed the voluntary military service for women. The completion of armed military service or women's voluntary military service is a statutory requirement for selection to basic Border Guard training and appointment to military office. The basis for the bonus point was changed to the applicant's gender in 2022 to reflect the actual basis for the bonus point.

The Border Guard justifies its practice with the fact that a border check may require a bodily search, for example, which is subject to both the Border Guard Act and the Coercive Measures Act. In other words, the performance of the Border Guard's statutory duties requires a sufficient number of both male and female employees. According to the Border Guard, the practice constitutes a temporary, special action based on a plan, as referred to in the Act on Equality between Women and Men and aimed at implementing the objectives of the Act. The special treatment of women will be discontinued once the percentage of female border guards has reached the target.

In practice, the percentage of female border guards can only be influenced in connection with student selection, because the Border and Coast Guard Academy is the only path to permanent office in the Border Guard. Only

8% of border and coast guards and 3% of their officers are women. The proportion of women in military office has increased by one percentage point from 2018.

The bonus point granted to female applicants is based on a temporary plan of the Border and Coast Guard Academy, which is based on the objective of promoting equality between the genders, but also on the appropriate performance of the Border Guard's statutory duties. The Ombudsman for Equality found that granting a bonus point based on gender is thus justified in terms of the Act on Equality between Women and Men. (TAS 110/2022)

Training for female scriptwriters

The Ombudsman for Equality has examined whether the Concepting Fiction Series training intended for female scriptwriters is permitted under the Act on Equality between Women and Men (609/1986, Equality Act). Men are not allowed to take part in the training in question.

The training is provided as part of a project under the Sustainable Growth and Employment 2014–2020 programme funded by the European Social Fund and Finland's structural funds. The purpose of the project is to promote the employment of female professionals in the industry. The project action plan includes the following subjects aimed at female audiovisual professionals

- mentoring
- tools for developing professionalism and employment
- unconscious bias training for decision-makers of all genders in the industry
- equality research on the industry
- a statistics development project for the industry and
- communications on the project and its results.

The training organised under the project does not provide a degree and is not open to undergraduate students.



In the training organiser's view, the training constitutes a temporary, positive action based on a plan and which is for the purpose of promoting effective gender equality, as referred to in section 9, paragraph 4 of the Equality Act. The positive action seeks to promote gender equality by improving the status of women in working life. The report also refers to the European goal of promoting gender equality in the audiovisual industry, meaning the visibility of female professionals and women in the media.

If, for example, an educational institution wants to favour the minority gender in student selection, it must be assessed whether this conduct constitutes discrimination against applicants of the other gender or promotion of gender equality under the Equality Act.

Positive actions taken under section 9, paragraph 4 of the Equality Act must be temporary and based on a plan. A positive action meeting these criteria shall not be deemed to constitute discrimination based on gender, even though the conduct as such could meet the definition of discrimination under the Equality Act. In the interpretation of the Equality Act, it has been established that a 'positive action' must be based on the less favourable position of the other gender, and not solely on underrepresentation in a given group.

The Ombudsman for Equality assesses the equality of the audiovisual industry on the basis of the statistics compiled by Yle (Finnish Broadcasting Company) and the Finnish Film Foundation on the allocation of public funding earmarked for scriptwriters between women and men. It appears that the allocation of public funding varies from year to year, and that freelancer-based employment relationships are common in the audiovisual industry. Therefore, the statistics can also vary dramatically from one year to the next.

The Ombudsman for Equality considers it important that the audiovisual industry work to promote gender equality in the industry. The project implemented in 2019–2022 is based on statistics of the gender distribution in the audiovisual industry up to 2018. On the aforementioned grounds, the Ombudsman for Equality states that the professional development oriented training offered to female scriptwriters under the on-going project can be considered to constitute a temporary positive action based on a plan, which seeks to fulfil the purposes of the Equality Act.

Therefore, limiting the fiction series concepting training to female applicants only does not constitute discrimination under the Equality Act. However, the discriminatory conduct must be discontinued once the objectives of equal opportunities and equal treatment have been achieved or the conduct could otherwise turn into discrimination. (TAS 300/2021)

5.8 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.

Reform of trans legislation

In 2022, the Ombudsman for Equality issued statements to the Legal Affairs Committee and Social Affairs and Health Committee of Parliament on the government proposal for an Act on the affirmation of gender and related acts (HE 189/2022 vp). The reform aims at improving the individual's right to self-determination by separating the legal affirmation of gender from medical examinations and treatments. In future, an application for the affirmation of gender would be based on the individual's own gender experience. Proposals for the parenthood of persons who have had their gender confirmed legally and the application of social security legislation will also be made in connection with the reform.

In their statements, the Ombudsman for Equality emphasised that the reform would improve transgender individuals' right to self-determination as well as equality between the genders. Eliminating the infertility

requirement is in line with Finland's human rights obligations and an important and long-awaited amendment that will improve gender equality.

The Ombudsman for Equality finds that the reform should pay more attention to the status of minors. In the Ombudsman for Equality's opinion, the majority requirement included in the government proposal is not in the best interests of children.

Ombudsman for Equality's recommendations in 2022

In their report to Parliament, the Ombudsman for Equality discussed the status of gender minorities and the urgent need for a reform of trans legislation. The Ombudsman issues the following recommendations to improve the status and rights of gender minorities:

- Non-urgent medical procedures should not be performed on intersex children until the child has the opportunity to give their informed consent. The effective realisation of rights should be ensured with legal provisions.
- Recognition of legal gender should not prevent access to infertility treatments.
- The manner in which gender diversity is taken into account in spaces and services differentiated by gender should be laid out at the legislative level.

Contacts relating to gender identity or gender expression

The Ombudsman for Equality investigated several issues relating to gender identity and gender expression in 2022. People asked advice on, for example, gender issues in job applications and the use of gendered spaces. Some of those contacting the Ombudsman had experienced harassment due to their gender identity or gender expression. Recently, the customers contacting the Ombudsman have included an increasing number of parents concerned about the affairs and treatment of their children belonging to gender minorities.



University user IDs and individuals affirming their gender

The Ombudsman for Equality was requested to comment on equality of university IT systems when it comes to individuals changing their name as a part of gender affirmation. The person contacting the Ombudsman said that the user IDs used by universities are created using the initials of the former names of individuals who have transitioned. The user ID does not include the former name in full, only a number of initial letters, but the impact on the well-being of transgender students and employees is significant.

The course teacher sees that the student has a user ID that does not correspond to their name. In such case, the reason for the name change is speculated on without the student's consent. This may lead to avoiding studies, increased anxiety and eventually termination of studies. User IDs are also visible to all participants during online meetings attended by employees.

According to the person who contacted the Ombudsman, it would be important for universities to establish shared practices for correcting initials in user IDs when the name of a student or an employee changes in connection with gender affirmation. These situations are currently being processed on a case-by-case basis.

Practices for changing the user ID to correspond to the new name differ from university to university and may also vary within the same university. In practice, transgender people cannot change their user IDs to correspond to their new names, or the process is very difficult. Transgender people and IT personnel making changes to user IDs must deal with the same situation over and over again.

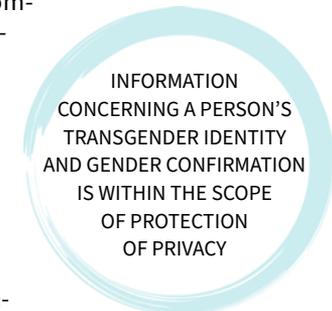
The Ombudsman for Equality noted that the Act on the Population Information System and Certificate Services of the Digital and Population Data Services Agency (661/2009) provides for restrictions on disclosure of information on gender confirmation of a transgender person and information on their former personal identity code and any former first name.

The Equality Act prohibits discrimination based on gender identity and gender expression. These prohibitions protect particularly gender minorities, such as transgender people, from discrimination. The Equality Act also

sets an obligation for authorities, education providers and employers to take pre-emptive action against discrimination based on gender identity or gender expression. This obligation must be taken into consideration in the equality plans of educational institutions.

The Ombudsman for Equality noted that information concerning a person's transgender identity and gender confirmation is within the scope of protection of privacy. Revealing of a person's transgender identity may subject them to discrimination. Privacy protection and discrimination prevention issues related to user IDs containing initials of a former name are not as significant as they would be if the entire former name or personal identity code was revealed. However, even an inconsistency with the initials of a person's new name causes concern over the person's transgender identity being revealed without their consent. References to a former name burden the well-being of students and employees who have changed their name as a part of gender affirmation.

The Ombudsman for Equality recommended that IT systems and their development should take into consideration transgender persons' need for privacy protection, and the perspective of prevention of discrimination. These could be implemented through means such as allowing for easy changing of initials included in the user ID upon request or excluding initials from user IDs altogether. (TAS 463/2021)



Suspected discrimination based on gender expression and gender identity at school

The Ombudsman for Equality was asked to determine whether a primary school had acted as required by the Act on Equality between Women and Men (Equality Act) in preventing harassment based on gender expression and gender identity. According to the child's custodian, the child had been subjected to violence and harassment at school.

An educational institution's obligation to intervene in harassment

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.

The Equality Act obliges education providers and other bodies providing education and training to take pre-emptive action in a purposeful and systematic manner against all discrimination based on gender identity or gender expression. This obligation must also be taken into account in the preparation of the educational institution's gender equality plan and when deciding on measures to improve equality.

Gender-based harassment can manifest as, for example, bullying based on the victim's gender identity or gender expression. In such cases, the bullying party must be aware of the individual's gender identity or gender expression.

According to the legislative materials for the Equality Act, the means of intervening in harassment and preventing the various situations in which harassment could occur should be specified. Harassment among children is a form of bullying in basic education, and it can be natural to address it in connection with other bullying and violence. Educational institutions also need to ensure that the pupils know who they can contact and where they can get help if they are subjected to gender-based harassment.

According to the legislative materials for the Equality Act, the educational institution's responsibility only begins when it has been apprised of the harassment. The educational institutions have an obligation to take measures to eliminate the harassment after the institution's representative has been notified of the matter. If the educational institution then fails to take the available measures in order to prevent further harassment, the conduct constitutes prohibited discrimination.

An educational institution's obligation to prevent discrimination

According to the legislative materials for the Equality Act, gender identity usually is formed and develops during childhood and adolescence and can be different at different times. In general, the relationship of children and young people to gender can vary. Discrimination based on gender identity or gender expression could be prevented in the equality planning of basic education institutions by fostering an atmosphere that prevents harassment and other discrimination, such as by intervening in bullying and name-calling and accepting children as the individuals they are. Discrimination can also be prevented by teaching the children about how people are different, the diversity of genders and how everyone is equally valuable.

According to the legislative materials for the Equality Act, the prevention of discrimination based on gender identity or gender expression should be taken into account in the preparation of educational institutions' gender equality plans and when deciding on equality-promoting measures. For example, best practices for the prevention of bullying and harassment due to gender identity or gender expression can be recorded in the educational institution's gender equality plan. It would be useful to state in the gender equality plan that the educational institution is committed to preventing harassment and other discrimination of gender minorities.

According to the legislative materials for the Equality Act, 'purposeful and systematic' means that the prevention of discrimination should be proactive and systematic. Concrete measures should be chosen based on the obligated party's circumstances, needs and resources. The most important thing is to ensure the educational institution's capability to resolve potential problems. Increasing awareness of the individuality of gender identity and gender expression would be useful for the prevention of discrimination, since a lack of information and the ensuing prejudices can lead to discrimination.

The report given by the school in question described how the incidents were investigated. The school has a plan in place for protecting its pupils from violence, bullying and harassment. The plan is also followed in con-

flicts between pupils. The school intervenes in discrimination and harassment based on gender identity or gender expression according to its gender equality and equality promotion plan. Among other things, the plan states that a pupil's self-defined gender experience is taken into account and respected, and that every teacher should strive for gender-sensitivity.

The Ombudsman for Equality noted that the parties' views of the treatment of the child differ. However, the information obtained by the Ombudsman for Equality did not clearly indicate whether the child's treatment was caused specifically by the child's gender identity or gender expression, or by some other reason. Both the custodian and school said that the other children were not aware of the child's gender identity or gender expression. Based on the information obtained, it was thus not possible to conclude that the treatment of the child would constitute discrimination based on gender identity or gender expression, prohibited in the Equality Act.



The Ombudsman for Equality found that the school's gender equality and equality promotion plan had taken into account the diversity of genders and the prevention of discrimination based on it as required by the Equality Act. The school has instructions in place for harassment cases and has intervened in harassment brought to its attention. There was no need for the Ombudsman for Equality to take further measures in the matter. (TAS 80/2022)

5.9 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.

Finlayson Oy again runs a campaign violating the Equality Act; matter processed by the National Non-Discrimination and Equality Tribunal

The Ombudsman for Equality found that the campaign "Kuka petti naisen?" (Who betrayed the woman?), implemented by Finlayson Oy in March 2022, was in violation of the Equality Act. This was the third Finlayson Oy campaign found to violate the Equality Act by the Ombudsman for Equality.

The week-long campaign gave women and those identifying as women a hefty discount on select products. With its campaign, Finlayson Oy wanted to participate in the public debate on pay equality between women and men.

The Equality Act allows the provision of goods and services exclusively or mainly to representatives of one gender only in certain limited circumstances.

If the duration or monetary value of a campaign aimed at consumers is problematic with regard to the Equality Act, the campaign must clearly indicate that everyone actually has the opportunity to enjoy the campaign benefits without specifically requesting to do so. If this is not the case, the campaign violates the Equality Act.

Finlayson Oy's campaign investigated in this instance did not clearly indicate that everyone would actually have had an equal opportunity to enjoy the price discount provided by the campaign. The fact that a man could have obtained the financial benefit provided by the campaign by stating that he identifies as a woman was not considered appropriate.

The campaign implemented by Finlayson Oy in March 2022 was more than twice the length of that implemented in 2018 and found to be in violation of the Equality Act. The discount given in the spring 2022 campaign was also greater than in the campaign implemented in 2018.

Gender equality cannot be promoted by violating the prohibitions of discrimination laid down in the Equality Act

In their statement, the Ombudsman for Equality reiterated their position that gender equality cannot be promoted by violating the prohibitions of discrimination laid down in the Equality Act. The Ombudsman for Equality noted that the implementation method of the campaign – a discount on textiles – was not sufficiently connected to Finlayson Oy’s stated goal of promoting pay equality between women and men to credibly justify the lawfulness of the campaign’s implementation.

In their statements issued in August 2017 and June 2018, the Ombudsman for Equality addressed campaigns by Finlayson Oy, which also sought to draw attention to pay equality between the genders. In their statement issued in 2018, the Ombudsman for Equality noted that the prohibitions of discrimination laid down in the Equality Act had been sufficiently explained to Finlayson Oy. Should Finlayson Oy nevertheless persist in its campaigning in violation of the Equality Act, the Ombudsman for Equality would consider referring the matter to the National Non-Discrimination and Equality Tribunal.

In their statement concerning the March 2022 campaign, the Ombudsman for Equality noted that Finlayson Oy had not provided any information that would give cause to change the Ombudsman for Equality’s assessment of the compliance of Finlayson Oy’s activities with the Equality Act given in the Ombudsman’s earlier statements. Therefore, the Ombudsman for Equality decided to take the matter to



the National Non-Discrimination and Equality Tribunal and ask the Tribunal to prohibit Finlayson Oy from implementing campaigns in violation of the Equality Act in future. The National Non-Discrimination and Equality Tribunal had not issued a decision in the matter by the end of 2022. (TAS 125/2022)

5.10 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.

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 duty of authorities to promote equality not properly realised when constructing sports facilities

The Ombudsman for Equality was requested to investigate whether the City of E has treated riding as a hobby and riding clubs with the majority of members being female in an unequal manner when deciding on construction of sports facilities. The Ombudsman requested the City, the Ministry of Education and Culture, the Regional State Administrative Agency for Southern Finland and the Equestrian Federation of Finland to provide clarification on the matter.

In their statement, the Ombudsman for Equality stated that the City of has not acted in violation of the prohibition of discrimination under the Act on Equality between Men and Women, even though the City has not implemented construction of sports facilities supporting riding activities over the past five years. In municipal construction of sports facilities, the City has used discretion provided to it by the Act on the Promotion of Sports and Physical Activity. The Ombudsman for Equality nevertheless estimated that the kind of investments riding as a hobby requires are quite ill-suited to the existing state aid schemes.

In their statement on the use of private sports facilities back in September 2006 (Rec. no. 5/51/04, 13 September 2006), the Ombudsman for Equality notes that “it is probably worth considering whether the public aid policy has, in practice, driven women to a situation in which they need to set up sports facilities using private funding to be able to practice the sport they wish.”

The policy document on construction of sports facilities, adopted in 2014, states that funding for construction of sports facilities should be used to steer actors involved in physical activity in a direction promoting equality by emphasising “circumstances for sports favoured by girls and women, such as riding, ringette, figure skating and gymnastics in aid policy”.

Based on the clarifications received, it is difficult to come to the conclusion that over the past five years particular efforts would have been made to steer state aid to construction of sports facilities to riding as a hobby favoured by girls and women as specified in the policy document on construction of sports facilities.

The Ombudsman for Equality considers the principle specified in the legislative materials for the Act on the Promotion of Sports and Physical Activity (HE 190/2014 vp, s. 22) commendable: “granting state aid also for sports facilities intended for the needs of other than large user groups would contribute to enhancing equality between women and men”. In his statement, the Ombudsman for Equality reminded authorities of the fact that it does not suffice that an authority acts in a non-discriminatory manner. The authority must also promote gender equality in all its activities. The promotion of gender equality as part of normal preparation of affairs and decision-making by authorities is a statutory procedure.

The provision on the duty of authorities to promote gender equality lays foundations for mainstreaming the gender perspective, according to which the gender perspective is included in the preparation of affairs and decision-making. Mainstreaming refers to such modes of administration and operation that support the promotion of gender equality in accordance with the Act on Equality between Women and Men as part of government activities, preparation and administration. One method used for mainstreaming is the assessment of gender impact.

The assessment of gender impact in, for example, municipal construction of sports facilities means that the impacts of projects under preparation on all genders are assessed in advance, so that the implementation of the project will not generate discriminating gender impacts and that, when implemented, it promotes gender equality. A well-conducted assessment of gender impact provides decision-makers with sufficient amount of information on different solution options and their consequences. The objective is high-standard preparation, decision-making and implementation.

The assessment of gender impact in municipal construction of sports facilities is an administrative means for implementing the duty of authorities to promote gender equality laid down in section 4 of the Act of Equality between Women and Men.

The Regional State Administrative Agency for Southern Finland stated in its clarification that it does not conduct a separate assessment of gender impact when preparing construction of sports facilities. The other clarifications received also showed that assessment of gender impact had not been conducted at all or not as a systematic procedure.

The Ombudsman for Equality reminded the City, the Regional State Administrative Agency (AVI) and the Ministry of Education and Culture about the duty of authorities, in all their activities, to promote equality between women and men purposefully and systematically, and wished that, in the future, this duty would be observed in a clearer manner when applying for and granting state aid for construction of sports facilities. (TAS 124/2022)



THE AUTHORITY'S
DUTY IS TO PROMOTE
EQUALITY IN ALL ITS
ACTIVITIES

5.11 General prohibition of discrimination

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

Way of serving notice of a decision concerning early childhood education and care and pre-primary education

The Ombudsman for Equality was asked to investigate whether City's practices for processing early childhood education and care and pre-primary education applications complied with the Act on Equality Between Women and Men (609/1986), i.e. the Equality Act.

The Ombudsman for Equality was informed that the mother was informed of the decision concerning early childhood education and care or pre-primary education even though the application had been filed by the father. The justification for this practice was that the mother was the primary contact person for the family.

In its report to the Ombudsman for Equality, the City said that it had a client information system for early childhood education and care and pre-primary education. Applying for early childhood education and care and registering for pre-primary education are implemented electronically with this client information system.

Either of the child's custodians can file the application in the system. The information of the child and their custodians are saved in the electronic application. The system makes the custodian entered in the application immediately after the child's information the "first custodian". The first custodian is informed by text message when an early childhood education and care decision or pre-primary education decision has been made for the child. The custodians entered in the application can read the decision in the electronic service. The first custodian entered in the application is only informed by text message that a decision has been made.



The City considers its practices for applying for early childhood education and care and pre-primary education to be in compliance with the Equality Act, since both custodians can access the decisions concerning the child through the electronic service. Only the text message notification of a decision is currently being sent to one of the custodians.

Provisions of the Equality Act

According to the Equality Act, authorities must in all their activities promote equality between women and men purposefully and systematically, and must create and consolidate administrative and operating practices that ensure the advancement of equality between women and men in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances which prevent the attainment of gender equality must be changed. The same provision also states that, in the availability and supply of services, the promotion of equality between women and men must be taken into account in the manner referred to above (section 4).

Direct and indirect discrimination based on gender is prohibited under the Equality Act. Direct discrimination means, for example, treating women and men differently based on gender. Indirect discrimination, on the other hand, means, among other things, treating someone differently by virtue of a provision, criterion or practice that appears to be gender-neutral in terms of gender, gender identity or gender expression, but where the effect of the action is such that the persons may actually find themselves in a less favourable position on the basis of gender. (section 7).

The Ombudsman for Equality's statement

In the opinion of the Ombudsman for Equality, the text message concerning an early childhood education and care or pre-primary education decision must also be sent to both custodians. The Ombudsman for Equality does not find it an acceptable reason that an information system defines the first custodian, who is the only one informed by text message that a decision has been made. The Ombudsman for Equality urges the city to change its practice so that the text message will be sent to both custodians. (TAS 208/2022)

The effect of military service on the student loan compensation paid by Kela

The Ombudsman for Equality was contacted several times in 2022 regarding the impact of military service on the student loan compensation paid by the Social Insurance Institution of Finland (Kela). The messages pointed out that individuals who do their military service in the first year of their studies run into problems. Studies cannot normally be started in the spring term so, in practice, a person admitted to an institute of higher education has to be absent for the entire academic year even if they complete their military service in the autumn term. In such cases, Kela only extends the time limit for completing the person's studies for the autumn term, even though military service is the reason for absence in the spring term as well. Students taking family leave do not face similar problems.

The purpose of the student loan compensation is to encourage students to complete their degrees quickly and secure repayment of the loan. Therefore, completing one's studies in a certain time depending on the extent of the degree programme is a requirement for the payment of student loan compensation. According to the law, this time limit is longer than the target time for completing the studies depending on the extent of the degree programme. The time limit is also extended for military service and, among other things, reasons related to illness or parenthood, with identical terms.

The student loan compensation will be paid if the time taken to complete the degree exceeds the statutory target time for completing the studies by no more than one term or one academic year, depending on the extent of the degree programme. The time taken to complete a degree is calculated from the start of the term in which the student first accepted a place at the institute of higher education.

The Ombudsman for Equality issued a statement in 2020 noting that the issue involves the provisions of the Act on Financial Aid for Students and thus falls within the scope of legislative power. The Ombudsman for Equality does not have the power to affect the actual contents of the law.

According to the Constitution, legislative power in Finland is exercised by Parliament, and only Parliament can change the rights and obligations provided for citizens in the law. The Ministry of Defence is responsible for preparing statutes issued on national defence and military service, the Ministry of Education and Culture is responsible for the development and amendment of the provisions of the Act on Financial Aid for Students, while the Ministry of Social Affairs and Health coordinates equality policy.

The recipient of a student loan is entitled to student loan compensation even if they take more time to complete their degree than described above, provided that the recipient of the loan has been serving under the Conscriptio Act, Non-Military Service Act or the Act on Women's Voluntary Military Service. If there is a long period of time, that is, at least a whole term between the military service and the start of studies, it reduces the student's chances for receiving student loan compensation.

According to Kela's report, this also applies to other bases for extending the study time provided for in section 15d of the Act on Student Financial Aid. Periods of sickness allowance, parental allowance and other benefits referred to in the section can begin and end at any time. As a result, they can also lead to situations in which studies cannot be begun or beginning studies would not be sensible immediately after the end or before the start of the benefit period.

Therefore, the provisions on student loan compensation in the Act on Student Financial Aid have sought to take into account the extension of studies caused by completing military service, even though the conditions of student loan compensation may put the student in an unfavourable position due to military service in certain situations.

The Ombudsman for Equality considers it important that military service be taken into account when passing laws, so that students will not be unjustifiably put in an unfavourable position due to their gender in other connections because of completing military service, and so that completing military service would cause the minimum hindrance to students.

5.12 Promoting reconciliation

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

The possibility for reconciliation is important for both parties of the dispute. The process can be a good alternative to a trial that can be expensive and protracted and uncertain in terms of results. The Ombudsman for Equality seeks to help parties to disputes reach an understanding over their issues.

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

During 2022, the Ombudsman for Equality promoted reconciliations and supported reconciliation processes, which the parties finally resolved between themselves.



6 PROMOTING EQUALITY

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

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

6.1 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.

6.2 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.

The composition of the council of an association of municipalities must be assessed as a separate unit

A statement was requested from the Ombudsman for Equality on whether the composition of the council of an association of seven municipalities was in accordance with the Act on Equality between Women and Men. The council of the association of municipalities has 21 members. The memberships are divided so that each member municipality has three representatives along with their deputy representatives. The actual members of the council of the association of municipalities include 7 women and 14 men, and their personal deputies include 8 women and 13 men.

According to section 4, subsection 1 of the Equality Act, authorities have an obligation to promote equality purposefully and systematically and create and consolidate administrative and operating practices that ensure the advancement of gender equality in the preparatory work undertaken on different matters and in decision-making. In particular, circumstances which prevent the attainment of gender equality must be changed.

According to section 4a, subsection 1 of the Equality Act, the proportion of both women and men in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40%, unless there are special reasons to the contrary.

Therefore, the so-called quota requirement applies to the councils and executive boards of associations of municipalities as well as other joint bodies of municipalities, such as boards, commissions and advisory councils for regional cooperation. The requirement on the representation of different genders also applies to municipal decisions, in which the municipality selects its representatives for the bodies of an association of municipalities (KHO 1990 A 31).

In their statement, the Ombudsman for Equality emphasised the responsibility of the preparatory authority. Attention should be paid to the binding force of the quota requirement already when bodies are being established. The preparatory authority must ensure that the legality of the final composition is ensured through negotiations between the municipalities. Even when the selection is based on relative political strength or otherwise on negotiations between different groups, the quota requirement must be taken into account in the negotiations.

After the candidates have been named, the authority must prepare a composition proposal that meets the quota requirement. An exception to the quota requirement can be made for special reasons. An exception is always a special circumstance, and its necessity must be considered carefully and justified in advance. The special reason must exist already when the body is appointed.

The Ombudsman for Equality requested clarification from the association of municipalities and its seven member municipalities on how the requirements of the Equality Act have been taken into account in selecting the council of the association of municipalities. Some of the member municipalities considered it sufficient that the appointment decision of an individual municipality for the council of the association of municipalities met the requirements of the Equality Act.

In the statement, the Ombudsman for Equality found that even though the different parties ensure the even distribution of genders in appointing their own representation, the composition of the final body must be examined as a separate unit. When calculating whether the requirement is met, it must first be calculated how many members 40 per cent of the

number of members of the body constitutes. If the result is not a whole number, it is always rounded up to the next whole number, which then indicates the minimum number of women or men in the body. For both actual and deputy members, the number of both women and men in a group of 21 persons must be at least nine.

The Ombudsman for Equality found that the gender distribution of actual and deputy members of the council of the association of municipalities is not compliant with the requirements of the Equality Act, and that the association of municipalities and its member municipalities should endeavour to correct the membership so that it is compliant with the law. (TAS 78/2022)

6.3 Equality in schools and educational institutions

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

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

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

educational institution should be seen as a tool that supports the promotion of gender equality in all aspects of the institution's operation.

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

The tasks of the Ombudsman for Equality include supervising compliance with the obligation to promote gender equality plans at educational institutions, and the Ombudsman participates actively in developing the contents of this requirement. This has been one of the priorities of the Ombudsman's activities also in 2022.





Personnel and appropriations

In 2022, the Office of the Ombudsman for Equality had on average 10,3 man-years at its disposal. It is 0,4 man-year less than in previous year.

During the year of the review, the appropriation for the Ombudsman for Equality was 1,03 M€. 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.

7 STATISTICS

For the most part, enquiries received by the Ombudsman for Equality are submitted by individual clients, and they consist of cases of suspected discrimination and different requests for information on the content of the Equality Act, or the operations of the Ombudsman for Equality.

The issues discussed also concern the monitoring of equality plans, or consist, for instance, of statements made by the Ombudsman for Equality to other authorities.

In 2022, the details of 645 new cases were logged in the Ombudsman's register, and decisions were reached on a total of 664 cases. The majority of cases entered into the register were related to performing the statutory duties of the Ombudsman for Equality.

In 2022, the Ombudsman for Equality received a total of 929 enquiries. Of these, 69% (645 cases) were submitted in writing and 31% (248 cases) were telephone enquiries.

Written and telephone enquiries in 2022

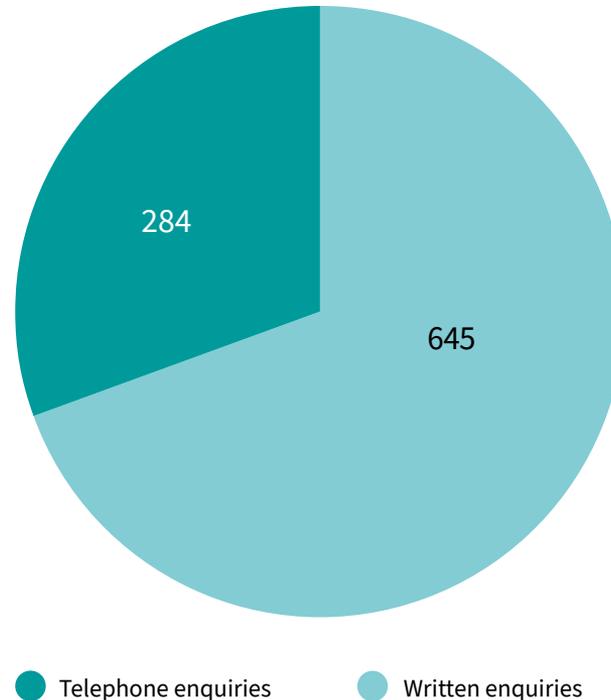
About 35% of the written enquiries (233 cases) concerned questions of discrimination, and about 60% of these cases were related to discrimination in employment (114 cases).

Over 50% of telephone enquiries (153 cases) concerned discrimination. Nearly 80% of telephone enquiries concerning discrimination were related to employment. Every third case was related to discrimination on the basis of pregnancy and family leave. Other telephone calls related to powers of Ombudsman for Equality concerned discrimination in fields other than the world of work or gender equality planning.

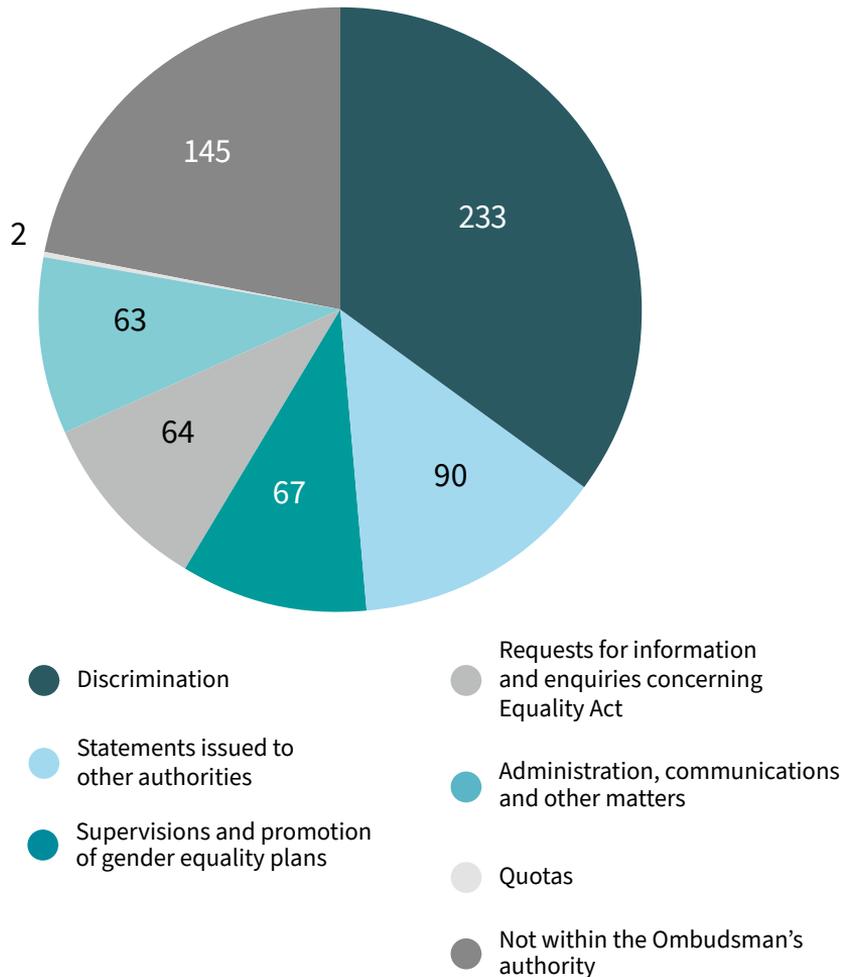
The Ombudsman for Equality's legal helpline is serving in four working days (totally 8 hours a week).

The number of written enquiries has increased every year. They have increased by 56% compared to year 2019 (251 written enquiries more than a year 2019).

WRITTEN AND TELEPHONE ENQUIRIES 2022 (929 in total)



CASES HANDLED IN WRITING 2022



About 35% cases handled in writing (233 cases) concerned the prohibition of discrimination under the Equality Act. Suspected discrimination were related as follows:

- general prohibition of discrimination: 70 cases
- discrimination in access to and pricing of goods: 36 cases
- pay discrimination: 28 cases
- discrimination on the basis of pregnancy and family leaves: 23 cases
- discrimination in recruitments: 21 cases
- discrimination in work supervision, working conditions etc.: 17 cases
- discrimination at educational institutions: 14 cases
- discriminatory advertising: 9 cases
- harassment in the workplace: 9 cases
- termination of employment: 5 cases
- employer countermeasures: 1 case

Compared to the year 2021, the distribution of numbers is similar. Among issues related to discrimination, issues concerning the general prohibition of discrimination were dealt with the most in both years. In 2022, twice as many issues related to pay discrimination were decided compared to the previous year (a total of 28 cases in 2022 vs. 14 cases in 2021).

The monitoring of equality plans and promotion of gender equality, such as municipality plans, were under discussion in 42 cases, and 2 cases were related to the composition of institutional bodies. Totally 67 cases were promoting equality in general.

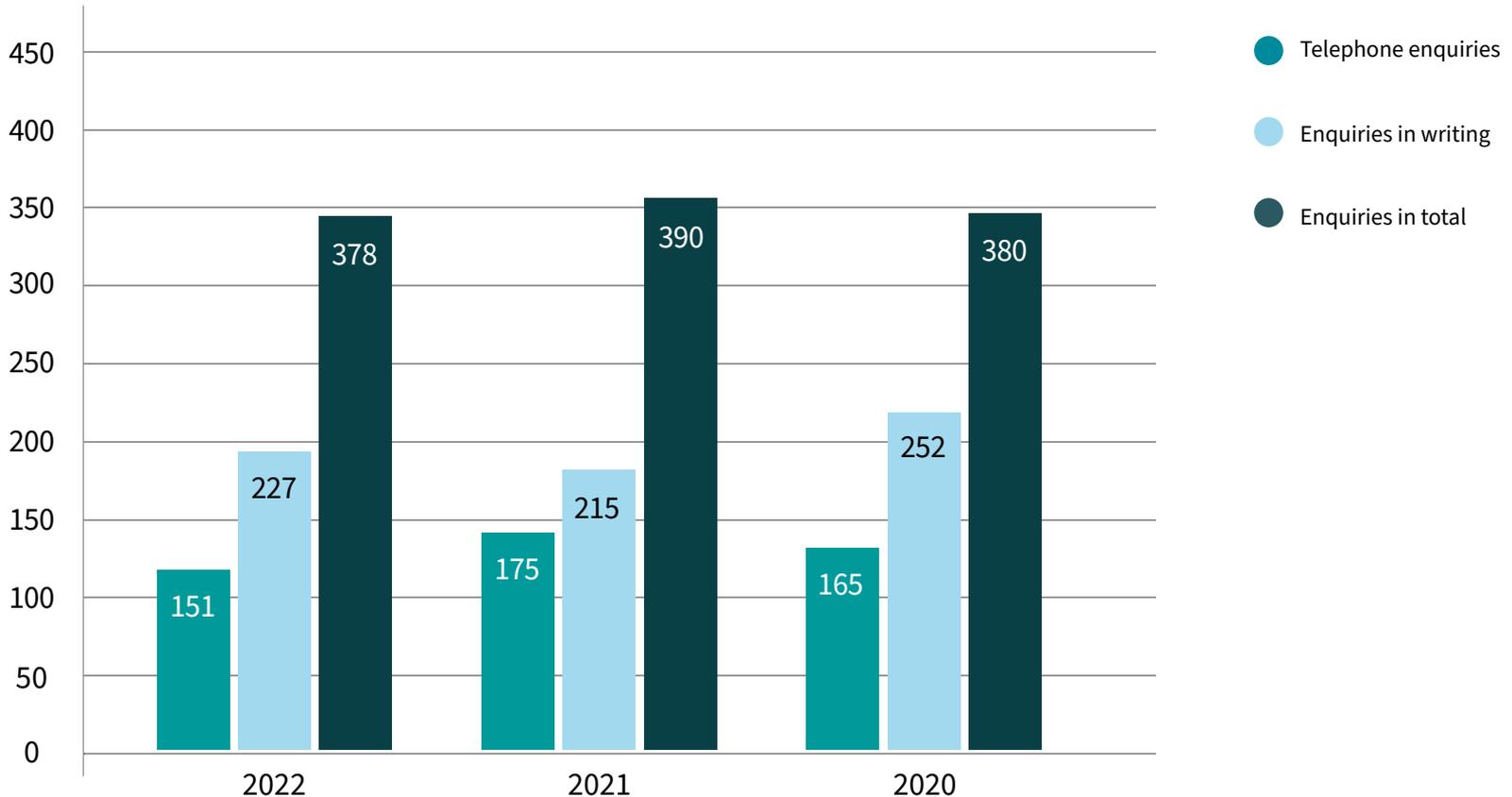
To different requests for information on the Equality Act and Ombudsman's operation was replied 64 cases.

The Ombudsman for Equality issued 90 statements to other authorities and international actors. 81 statements of them were to domestic authorities.

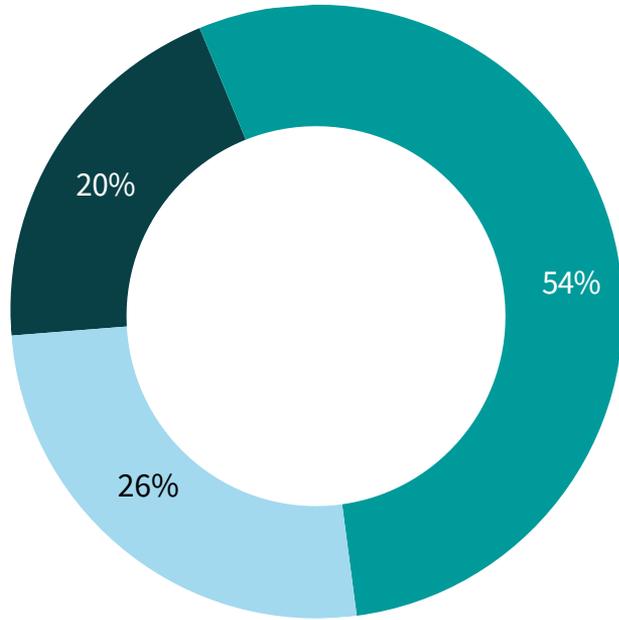
Also 145 cases entered into the register were not related to performing the statutory duties of the Ombudsman for Equality. If necessary, the customer was directed to the competent authority. Other entered matters were related to communication, the economy and administration (58 cases in total).

In 2022, the Ombudsman for Equality received slightly less client enquiries related to discrimination than in 2021. In 2022, there were a total of 378 written and telephone enquiries, whereas in 2021 there were a total of 390 written and telephone enquiries and in 2020 in total 380 cases.

WRITTEN AND TELEPHONE ENQUIRIES CONCERNING DISCRIMINATION 2020-2022

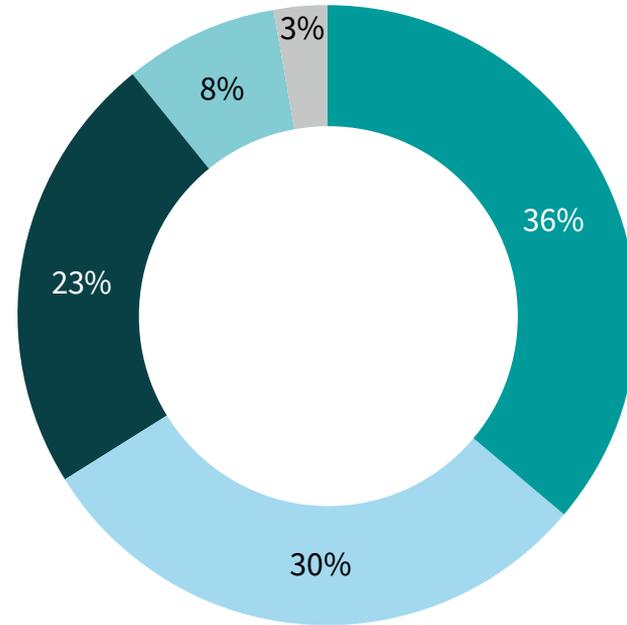


TELEPHONE ENQUIRIES 2022 BY THE CLIENT
(%, est.)



● Woman
 ● Man
 ● Authority, trade union, employer, media

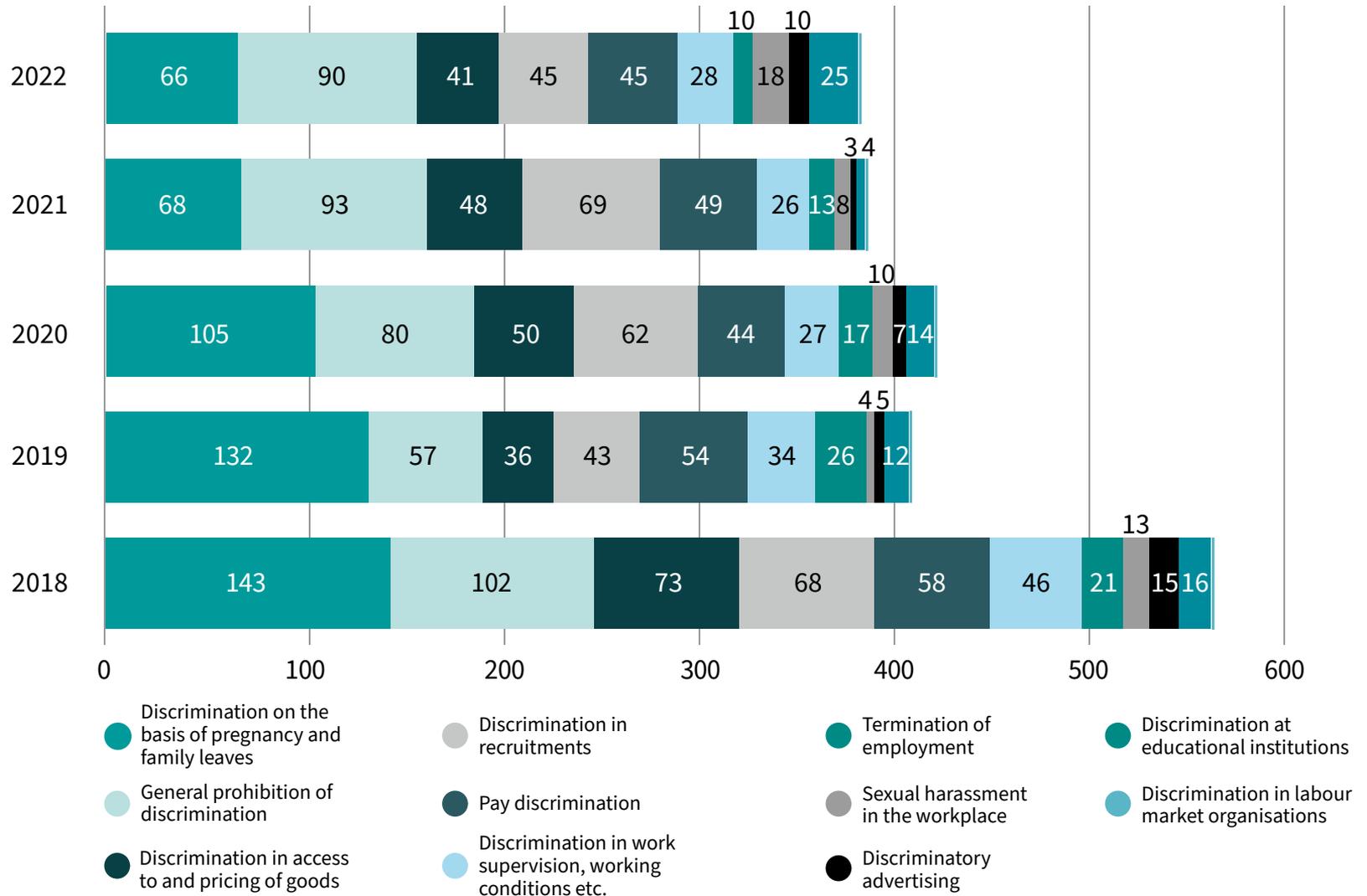
WRITTEN CASES IN 2022 BY THE CLIENT
(%, est.)



● Woman
 ● Man
 ● Authority, trade union or other
● Ombudsman's own initiatives
 ● Unknown

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.

CLIENT CONTACTS RELATED TO DISCRIMINATION MADE IN WRITING AND ON TELEPHONE IN 2018–2022



8 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
- Manifold More project's steering group / Finnish Institute for Health and Welfare (THL)
- NAPE – Committee for Combating Violence against Women and Domestic Violence / Ministry of Social Affairs and Health (THL)
- 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
- 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
- Monitoring and assessment group of the Trans Act reform / Ministry of Social Affairs and Health
- Steering group of the "Dismantling segregation - tools for a more equal working life" development project / Finnish Institute for Health and Welfare (THL)
- 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

Participation and meetings

The Ombudsman for Equality and experts employed by the Office of the Ombudsman were invited to give expert talks at events such as:

- Regional self-assessment quality team of the Lahti region (topic: primary education and gender equality planning)
- Viikki Teacher Training School, introduction to teacher students doing their teacher trainee period (topic: equality promotion and gender equality planning at educational institutions)
- Introduction to the National Sports Council's Section for Sports Conditions and Facilities (topic: exercise facility construction)
- Introduction to the Regional State Administrative Agency on exercise facility construction (topic: the authorities' duty to promote gender equality)
- Introduction to the Tatsi support foundation for unemployed union members on discrimination in job-seeking
- Talk at the Local Government Fair (Kuntamarkkinat) on the municipality's role as a teaching and education provider
- Introduction to the Equality Act for participants in forensic interpretation specialisation training (the training was organised by Diak, the University of Tampere and Humak University of Applied Sciences)
- Meeting with Minister of Employment Tuula Haatainen (topic: gender equality issues in working life)
- Round table discussion with Minister for Nordic cooperation and Equality Thomas Blomqvist and Minister of Science and Culture Petri Honkonen on sexual harassment in the culture sector
- Young People, Values and EU – Rights and inclusion of gender minorities and sexual minorities in Europe (panel discussion part of the European Year of Youth 2022)

- Meeting with the Finnish Olympic Committee (topic: gender equality in exercise and sports)
- Round table meeting with the Finnish Center for Integrity in Sports (FINCIS) on gender equality and non-discrimination in sports

International cooperation

The Ombudsman for Equality is a member of Equinet (the European Network for Equality Bodies). Experts employed by the Office of the Ombudsman for Equality were members of the following working groups in 2022: Gender Equality, Communication Strategies and Practices; as well as the Pay Transparency Task Force.

The meeting of Nordic equality and non-discrimination ombudsmen was held in Iceland in May 2022 after a two-year break. 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 Ombudsman for Equality's operations were also the subject of international attention. The Ombudsman spoke about the Ombudsman for Equality's operations and the Finnish Equality Act to, e.g. a delegation of the Independent Commission for Human Rights and a delegation of Lithuanian local government officials. The Ombudsman for Equality also met with representatives of the embassies of the United States, Germany and France to discuss the state of fundamental rights and human rights in Finland.

Communications

The Ombudsman for Equality in the media

Ombudsman for Equality Jukka Maarianvaara and experts working at the Office of the Ombudsman for Equality gave media interviews on subjects such as sexual harassment in society and the harassment case in the Finnish Olympic Committee, pay transparency, pay differences between women and men, the family leave reform and salary payments related to family leave.

Publications

Tasa-arvoaltuutetun kertomus eduskunnalle 2022
 Jämställdhetsombudsmannens berättelse 2022 till riksdagen
 Report 2022 to Parliament by the Ombudsman for Equality

Tasa-arvoaltuutetun vuosikertomus 2021
 Jämställdhetsombudsmannens årsberättelse 2021
 Annual Report 2021 by the Ombudsman for Equality

OMBUDSMAN FOR EQUALITY ON SOCIAL MEDIA AND INTERNET

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48 204 VISITS*, 45 831 VISITORS*

MOST VISITED TOPICS 2022:

- Sexual harassment
- The Equality Act in a nutshell
- Equality planning in workplaces
- Discrimination in recruitment
- Pay discrimination

*The figures describe only visits and visitors when the cookies have been allowed.



Ombudsman for Equality

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