



Office of the United Nations
High Commissioner for Human Rights

Please accept the enclosed contribution by the Ombudsman for Equality in Finland submitted for the report prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(C) of the annex to Human Rights Council resolution 5/1 for the Universal Periodic Review of Finland during the 27th UPR session to be held in 2017.

The Ombudsman for Equality is an independent authority appointed by government for a five year term whose duty is to supervise compliance with the Act on Equality between Women and Men (1986/609, hereafter the Equality Act) and to promote compliance with the intent of the Act. The Office of the Ombudsman for Equality was established at the same time as the Equality Act which entered into force on 1 January 1987.

Yours sincerely,

Anja Nummijärvi
Head of Office

A. Gender minorities need to be made visible

In her statement submitted in 2011 to the UPR Working Group, the Ombudsman for Equality expressed her concern that there were no specific provisions in the Equality Act prohibiting discrimination based on gender reassignment. An improvement took place in this respect when the Equality Act was amended in 2015 with a provision prohibiting discrimination based on gender identity and gender expression. The Equality Act was also amended with the inclusion of an obligation to the authorities, providers of education and employers to prevent discrimination against gender minorities.

However, persons belonging to gender minorities still face diverse problems in the attainment of equality. The Ombudsman for Equality has been contacted in cases of suspected discrimination that concern, inter alia, labour market, education and services, but also in various questions related to the gender reassignment process.

The Ombudsman for Equality wishes to highlight particularly the fact that trans persons are still denied the right to physical integrity and to private and family life, as the Act on the Legal Recognition of the Gender of Transsexuals (563/2002) prescribes that the gender can be legally recognised only if the person concerned is infertile.

The Ombudsman for Equality reiterates her view according to which people whose gender is reassigned must have an equal access to fertility-enhancing services, such as the deposition of reproductive cells and infertility treatment.

A Working Group set up by the Ministry for Social Affairs and Health to review the Act on the Legal Recognition of the Gender of Transsexuals concluded in 2015 in its report that the above mentioned requirement of infertility could be abolished. The question has not, however, advanced during the present Government.

The Ombudsman for Equality draws the attention to the fact that the right to physical integrity and to a life which is in accordance with the personally identified gender identity of an intersex child may be jeopardized as the sex of the child is being determined so early and the growth to the chosen sex is being directed with the help of hormonal treatment ja surgery.

B. Discrimination based on pregnancy and family leave

The Ombudsman for Equality reiterates her concern expressed in her statement to the UPR Working Group from 2011 that discrimination on the basis of pregnancy and family leave continues to be a considerable concern in Finland. A major share of cases concerning the labour market brought to the attention of the Ombudsman concern suspicions of discrimination in connection with pregnancy and family leave.

The CEDAW Committee has repeatedly – most recently in 2014 while considering the 7th periodic report of Finland – also expressed its concern over the realization of employment protection for pregnant workers or workers on family leave in Finland. In its concluding observations, the Committee recommends that the Government of Finland amend its legislation to specifically prohibit employers from not renewing fixed-term employment contracts based on family leave and from limiting their duration on that basis.

In order to increase the effectiveness of the provisions pertaining to this matter, and to make them better-known particularly on the workplace level, the Ombudsman for Equality proposed already in 2005 to the then Ministry of Labour that the Employment Contracts Act (2001/55) be amended in order to specifically prohibit employers from not renewing fixed-term employment contracts or limiting their duration on the basis of pregnancy or family leave.

The fact that legislation pertaining to employment contracts does not include provisions on the protection of the status of fixed-term employees is still deemed a shortcoming by the Ombudsman for Equality, who is of the opinion that the Employment Contracts Act needs to be amended in this respect. Such provisions would be equally important to fixed-term employees as is the provision already included in the Employment Contracts Act, whereby an employer cannot give notice of termination of a permanent employment contract on the basis of pregnancy or because an employee exercises his or her right to take family leave.

The prohibition of discrimination included in the Equality Act complements the provisions of the Employment Contracts Act mentioned above, and the sanctions for unlawful practices can be determined on the basis of both the Employment Contracts Act and the Equality Act. By contrast, prohibition of the practice of not renewing a fixed-term employment contract on the basis of pregnancy or family leave, along with the prohibition of the practice of drawing up a fixed-term employment contract to be terminated at the start of maternity leave, paternity leave, or family leave, are only provided for in the Equality Act, along with the sanctions imposed for them.

Despite the fact that discrimination on the basis of pregnancy and family leave continues to be a considerable concern, the Government of Finland has taken neither legislative nor other concrete measures necessary to prevent and abolish discrimination on the basis of pregnancy and family leave.