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High Commissioner for Human Rights
uprsubmissions@ohchr.org

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 13th UPR session to be held in 2012.

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,

Pirkko Mäkinen
Ombudsman for Equality

Mailing address	P.O.Box 33, 00023 GOVERNMENT, FINLAND	Tel	+358 9 16001
Visiting address	Meritullinkatu 1, Helsinki, Finland	Fax	+358 9 1607 4582
E-mail	tasa-arvo@stm.fi	Internet	www.tasa-arvo.fi

A. Gender minorities need to be made visible in legislation

1. In the context of the comprehensive reform of the Equality Act in 2005, the Employment and Equality Committee of the Parliament of Finland stated that the provisions of the Equality Act shall also cover any discrimination on the basis of gender reassignment¹. However, other ways of protecting trans persons from discrimination were left open, but the Employment and Equality Committee was, nonetheless, of the opinion that these should be clarified in the future.

2. The Ombudsman for Equality has considered that gender minorities (trans- and intersexual persons) shall be covered by the anti-discrimination protection as provided in the Equality Act. The guidelines and the supervisory work of the Ombudsman for Equality are based on the premise that at least until the protection of people belonging to gender minorities against discrimination is clearly established by law, the Equality Act shall be interpreted so as to also apply more broadly to transgender people and not just to persons who have undergone gender reassignment surgery.

3. Discrimination and discriminating practices against people belonging to gender minorities as well as violations of fundamental and human rights of such persons must be identified and properly addressed. Persons belonging to gender minorities 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 cases related to the gender reassignment process.

4. The Ombudsman for Equality wishes to highlight particularly the fact that trans persons are 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.

5. According to the Ombudsman for Equality, people whose gender is reassigned must have an equal access to fertility-enhancing services, such as the deposition of reproductive cells and infertility treatment.

6. Making gender minorities visible in equality legislation is a prerequisite for an effective protection against discrimination. However, a significant shortcoming with legal provisions on anti-discrimination protection is the fact that the Equality Act contains no specific mention on the application of the Act on gender minorities.

7. In March 2011, in the context of the discussion of the Government report on gender equality,² the Parliament decided that the Government shall

¹ Report of the Employment and Equality Committee of Parliament (TyVM 3/2005 vp).

² Ministry of Social Affairs and Health, publication 2010:8.

prepare amendments to the Equality Act in order to ensure the protection of gender minorities³.

8. In order to ensure the abolition of discrimination against people belonging to gender minorities, national legislation in Finland need to be developed, without delay, so that it includes specific provisions concerning not only the anti-discrimination protection of gender minorities, but also provisions on the promotion of their equal status in society.

9. All administrative sectors should also explore other necessary practical measures – besides legislation – in order to improve the position of gender minorities.

B. Discrimination based on pregnancy and family leave

10. 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 for Equality concern suspicions of discrimination in connection with pregnancy and family leave.

11. The CEDAW Committee – most recently in 2005 while considering the 5th and 6th periodic reports of Finland – has also expressed its concern over the realization of employment protection for pregnant workers or workers on family leave in Finland. The Committee urged the Government of Finland to take concrete measures to prevent the practice of illegal dismissal of women in cases of pregnancy and childbirth.⁴

12. The widespread nature of discrimination on the basis of pregnancy, childbirth and family leave has also become apparent in surveys made to labour market organisations⁵. Pregnancy is also a common basis for discrimination in lawsuits concerning the application of the Equality Act. Likewise, discrimination based on pregnancy is most often involved when a court of law applies the prohibition of occupational discrimination, as defined in the penal code, on the basis of gender.

13. The amendments to the Equality Act made in the 1990s aimed to clarify the provisions on discrimination based on pregnancy, particularly in fixed-term employment and to make the sanctions for this type of discrimination commensurate with sanctions for any other action taken by an employer that is prohibited in the Equality Act.

³ Parliament Letter 51/2010 vp.

⁴ UN doc. CEDAW/C/FIN/CO/6, paragraph 26.

⁵ A 2002 survey by the Ombudsman for Equality and a 2009 report by the Work Research Centre of the University of Tampere.

14. It is time to assess the efficiency and effectiveness of the legislation in this respect and to find ways to decrease discrimination on the basis of pregnancy and family leave. Often the discrimination on this basis takes place in the context of fixed-term employment.

15. 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 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.

16. 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.

17. 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.

18. As the discrimination on the basis of pregnancy and family leave continues to be a considerable concern, the Ombudsman for Equality considers that the Government of Finland should take legislative and other concrete measures necessary to prevent and abolish discrimination on the basis of pregnancy and family leave.