

***Gender equality and anti-discrimination law,
equality bodies, equality planning and
cooperation in equality matters in Finland.***

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1. Finnish equality legislation: amendments and proposed reform since 2009

1.1 Changing context of equality legislation

The following presentation does not repeat the description of Finnish equality law and bodies presented in NOU 2009:14, save making some observations related to the ongoing reform. Reform proposals and guidelines are presented with the caution that these were reassessed in the on-going government negotiations. The proposal prepared and published by the Ministry of Justice in 2009 did not lead to a Government Bill by the former Government (Prime Minister Mari Kiviniemi), but the present Government (Prime Minister Jyrki Katainen) which came into power after the 2011 parliamentary elections promises to present a Bill to the Parliament. The reform is under further review before it is submitted to the Parliament, however.

The context of anti-discrimination law in Finland is presently undergoing a change. Up till lately, anti-discrimination law, with a material scope the effectively concentrated on working life, was very much the province of the social partners. During the last decade, anti-discrimination is increasingly considered as an issue of human and fundamental rights. The turn to human and fundamental rights reflects the increasing emphasis of European Union law, and the changing role of law in the style of governance.

The increasing impact of constitutionalism in the Finnish society is related to the European influences since late 1980s. Becoming a member of the Council of Europe 1989, ratifying the European Human Rights Convention 1990, joining the European Economic Area in 1992 and the European Union 1995 involved a legislative programme which strengthened fundamental and human rights. The constitutional reform, carried out in two steps, 1995 (revised chapter on fundamental rights) and 1999 (reform of the rest of the Constitution) reflected these changes. The impact of European legislation on equality law has been decisive, in particular as to provisions on discrimination. As to proactive measures or positive action, the motivations and solutions have been predominantly domestic, Nordic, as well as inspired by international conventions and policies related to the United Nations.

In Finnish equality law, the connection to human rights and EU legislation via domestic fundamental rights has become important. The courts increasingly refer directly to both these

sources of law. The development of the anti-discrimination law shows how the former impact from UN and the Nordic states which is apparent in the field of gender equality (Act on Equality between Women and Men, *Lag om jämställdhet mellan kvinnor och män*, 609/1986) has given way to EU related influences, which are apparent in several amendments of the Act on Equality but especially in the Non-Discrimination Act (*Lag om likabehandling*, 21/2004) which was enacted primarily in order to implement two EU directives (directives 2000/43/EC and 2000/78/EC). A reform of the anti-discrimination law that is underway has been largely motivated by the need to implement EU law, but also to enhance the integrity of Finnish law, especially the relation of constitutional provisions and anti-discrimination law. The reform has in many ways brought to light a measure of disparity between the tradition based on corporatist labour law, and the human rights based motivations. The difference is apparent, for example, in what type of bodies are considered legitimate to handle cases of discrimination and promote equality.

Traditionally, labour market organisations have been prominent participants in all labour law preparation, including equality law. The turn to the constitution oriented, fundamental and human rights law preparation carried out by the Ministry of Justice and with only minimal involvement by the main labour market actors was exceptional. The present review of the proposed reform suggest a return to the labour market tradition, see further under 1.3 and 5.

1.2 The impact of EU law on recent amendments

While the Act on Equality between Women and Men was enacted in order that Finland could ratify the UN Convention against All Forms of Discrimination of Women, the Non-Discrimination Act was motivated by the need to implement two EU directives, Directive 2000/43/EC and 2000/78/EC. EU law has required several amendments of the Act on Equality, and also the Non-Discrimination Act which was enacted in 2004 has already been amended several times, mainly for purposes of proper implementation of EU law.

For example, Finland amended the Act on Equality in 2009 due to a reasoned opinion of the Commission that Directive 2002/73/EC was not fully transposed, because Finnish legislation did not define harassment or sexual harassment, and because compensation in cases concerning access to employment was capped for all applicants. In 2009 Non-Discrimination Act was amended in order to avoid an infringement procedure. While Finnish Non-Discrimination Act defines discrimination in a similar manner that Directives 2000/43/EC and 2000/78/EC do, the Act

permitted differential treatment on prohibited grounds in the context of access to employment, when “founded on a genuine and determining requirement relating to a specific type of occupational activity and the performance of the said activity”. The directive required that this so-called GOR (genuine occupational requirement) exception to the prohibition of discrimination is permitted only provided that its objective is legitimate and the requirement is proportionate. Finland claimed that although Non-Discrimination Act did not contain the latter qualifications, they were to be found in the Employment Contracts Act. The Commission maintained that the qualifications shall be included in the Non-Discrimination Act, and the Act was amended accordingly.

The amendments of Finnish law that have been directly required by EU law have consistently contained stricter provisions on prohibitions of discrimination, remedies and compensation. At the moment, transposition of minimum requirements concerning participation of interested associations and organisations, as well as the mandate and independence of equality bodies may raise questions of proper transposition. The fact that the provisions on compensation are not applied to the activities of the highest state officials is also problematic in the light of alleged sexual harassment of Parliament employees by some Members of Parliament, as the EU equality law contains no exception to prohibition of discrimination in employment on the basis of the high status of the harasser.

1.3 Reform of Non-Discrimination law

Ministry of Justice commissioned in January 2007 a committee (Equality committee, *jämlikhetskommissionen*) to prepare a proposal for a reform of non-discrimination law. In 2008, the committee presented an interim report¹, which presented various options of unification of the existing legislation and equality bodies. On the basis of the opinions by various stakeholders, the Committee concentrated then on the option of keeping the present two-track model with separate acts and bodies for gender discrimination (at present Act on Equality between Women and Men), and for other grounds of prohibited grounds (Non-Discrimination Act). Women’s organisations were critical of the planned unification, especially because they feared that gender equality would lose visibility and resources in unification. The social partners were also critical of unification, and

¹ *Tasa-arvo- ja yhdenvertaisuuslainsäädännön uudistustarve ja –vaihtoehdot*. Komiteamietintö 2008:1 Oikeusministeriö.

the UN CEDAW Committee also expressed a similar worry in its Concluding Observations on the Finnish periodic CEDAW report to the Committee².

The committee was in 2008 complemented by two new subcommittees, one consisting of representatives of social partners, another by representatives of the civil society. The original composition of the Committee differed from the former expertise used in preparing anti-discrimination law. The majority of members of the Equality committee were human and fundamental rights experts. The mandate of the committee also reflected an emphasis on fundamental and human rights, a solution motivated by a request of the Parliament expressed when the present Non-Discrimination Act was enacted in 2004, but also consistent with the fact that the material scope of the anti-discrimination law by far extends issues that are in the legitimate scope of corporatist decision making. In spite of being included in the final phase of the committee work, social partners, the standard parties involved in previous equality law reforms, were dissatisfied with the final report of the Equality committee. Especially employers' representative presented dissenting opinions, mainly on the unspecified and too wide scope of the proposed legislation.

The proposal for legislation was presented in December 2009 (*Justitieministeriets kommittébetänkande* 2009:4). The proposal for a reform of anti-discrimination law now excludes discrimination on the grounds of sex and proactive gender equality measures, with the exception of proposing that a mutual body (Equality Board, *likabehandlingsnämnden*) would have competence both as regards the Act on Equality between Women and Men, and the proposed Equal Treatment Act which is to replace the present Non-Discrimination Act. The proposal was expected to lead to a Government Bill in 2010, but this did not happen, perhaps due to the fact that there were many dissenting opinions, and due to the difficulties in proposing additional funding required for monitoring the act in the present economic circumstances. The Government presented the first report on gender equality policies to the Parliament in 2010, however. The Parliament had asked for such a report at the latest major amendment of the Act on Equality in 2005, and the report that was now delivered related to policies undertaken by several Governments during the last 10 years, and guidelines for the next decade. The discussion in the Parliament confirmed the principle that gender equality legislation and non-discrimination concerning other grounds of discrimination are to be

² The combined 6th and 7th periodic reports were presented to the CEDAW Committee in 2008. The Concluding Observations of the CEDAW Committee requested an interim report on issues related to violence against women, which was presented separately. The Committee also presented recommendations and requests concerning the 8th periodic country report. The draft of the 8th report was presented to NGOs and experts in November 2011. The report contains required information on both the position of minority women and the reform of the equality law and bodies, including resources allocated to these bodies.

kept separate. After the 2011 elections, the present Government delegated further preparation of the draft Equal Treatment Act to Ministry of Employment and Economy, and thus nearer to the accustomed sphere of corporatist decision making. So far no concrete proposal has been published. The following comments are thus based on a proposal that is likely to undergo changes.

1.4 The main innovations in the proposal for Equal Treatment Act

Material scope:

The proposal would expand the material scope of the Non-Discrimination Act to all public and private activities, with the exception of family relations and relations of private life (*förhållanden mellan familjemedlemmar, förhållanden som hör till privatlivet*). The provisions on supervision would not be applicable to parliamentary matters or activities of the president of the republic, or to the activities of the government and the courts (Section 2).

Prohibition of discrimination:

The prohibition (Section 10) and the definition (Section 11) of discrimination in the proposal contain some new features.

The personal scope of the prohibition is based on an open list of grounds (similar to the one in Constitution and in the present Non-Discrimination Act). Grounds that are explicitly mentioned are age, origin, nationality, language, religion, conviction, opinion, political activity, labour union activity, family relations, health, disability, sexual orientation or other ground that concerns his or her person. The list of grounds is longer than that in the Constitution. The proposed provision mentions “all human beings” and thus refers to natural persons only. The list of explicitly mentioned grounds is based on the Constitution, the EU directives and the Non-Discrimination Act. New grounds to be explicitly mentioned include labour union and political activities, because the proposed act would replace former provisions on discrimination in a number of acts in labour law. According to the committee report, “origin” (*ursprung*) refers to both ethnic origin and social origin (p. 65). (Social) class is not mentioned in the proposal, and there is no explanation as to what social origin covers. Different grounds of discrimination are not usually given an explicit definition under Finnish law, because the open list of prohibited grounds usually prevents cases of discrimination

falling outside the list of grounds (although there is not always a legal remedy or compensation for all violations on these grounds).

Discrimination is prohibited also on multiple grounds, one of which may be gender (*diskriminering på flera grunder*); and on a ground that is not real but presumed (*presumtiv diskriminering*), and by association with a ground (*en orsak som har samband med en närstående*). Thus, when a person believes another person to belong to a protected group (e.g. an ethnic minority) and discriminates against the person under this mistaken assumption, the act is to be considered discrimination.

Extending the prohibition of discrimination to presumed grounds follows the arguments of the European Human Rights Court in *Timishev* (discrimination based on presumed ethnic origin of a person is prohibited, irrespective of whether the presumption was correct or not). Thus, discrimination by association with a ground is motivated by the case law of the European Court of Justice, Case Coleman (discrimination of an employee because he had a disabled child, p. 66 of the report).

Multiple discrimination, intersectional discrimination or cases where discrimination is at hand only when more than one ground is considered simultaneously, is regulated in the proposed Act on Equal Treatment. Where discrimination may be stated independently on several grounds, the case is to be handled under both Act on Equality and the proposed Act on Equal Treatment. The proposed provision or the report text does not explain how evidence of discrimination is to be presented in these situations. Problems are often met in presenting proof of direct discrimination, if the treatment of the victim in intersectional discrimination has to be compared with the treatment of another person with opposite personal characteristics in a similar situation. The definition of direct discrimination in the proposed act, as well as the definition in the present Non-Discrimination Act, is similar to the ones in directives 2000/43/EC and 2000/78/EC. The preparatory works also refer to the 'general principle of equality' which requires that like cases are treated alike. The provision would not necessarily require comparison between concrete present situations, as comparison could be made to 'how other persons have been treated previously, or how other persons are generally treated, or could be assumed to be treated in a comparable situation. How persons are generally treated or may be assumed to be treated is especially significant in cases of multiple discrimination, where it may be difficult to point out a concrete comparator (p. 67 of the committee report).

Also in indirect discrimination, the choice of comparator is often difficult where multiple grounds of discrimination are present (p. 66 of the report). In the context of the definition of discrimination the committee report states that a factual comparator is not always needed. A comparator does not

need to be present simultaneously, or comparison may be based on how persons are generally treated. The comparator may also be hypothetical. Extending the comparison in this manner is important in cases of multiple discrimination (p. 67). The proposal does not elaborate the issue of evidence further in this respect, however. It is obvious, however, that where a person is discriminated simultaneously on several grounds, especially where these grounds are intertwined in a manner typical for intersectional discrimination, it is in practice impossible to compare two groups of persons in a statistical or similar empirical manner. The wording seems to open various ways to present evidence, even without a concrete comparator.

Definition of discrimination contains definitions of direct and indirect discrimination (*direkt diskriminering, indirekt diskriminering*), and of harassment (*trakasserier*). Failure to undertake appropriate modifications is also defined as discrimination (*underlåtelse att vidta rimliga anpassningsåtgärder*). The definitions follow from those in the directives 2000/43/EC and 2000/78/EC, and the present Non-Discrimination Act. Retaliation (*repressalier*) against a person who has used the remedies or followed the obligations under the act is also prohibited under Section 14 of the proposed act.

Exceptions and justifications:

The present Non-Discrimination Act does not recognise the distinction between exceptions to the prohibition of discrimination, and justifications. The EU directives 2000/43/EC and 2000/78/EC allow an exception based on ‘genuine occupational requirements’ (the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement), provided that the objective is legitimate and the requirement is proportionate (Directive 2000/43/EC, Article 4). The Non-Discrimination Act provision was amended in 2008 in order to correct implementation of the directives (see above under Impact of EU law). The complicated distinctions made between different grounds of discrimination follow the minimum requirements of EU law, and its present hierarchy of protection, which is different by ground.

Under Section 12 of the proposed act, any differential treatment on the prohibited grounds may be justified, provided it has a legitimate aim, and the means used are appropriate and in proportionate to the aim (Section 12, Subsection 1). In the context of employment and access to employment, however, differential treatment is allowed only as to genuine occupational requirements (Section

12, Subsection 2). Differential treatment on the ground of ethnic origin is allowed only on where genuine occupational requirements are allowed.

The relation of the proposed Section 12 to the definition of discrimination under Section 11 is problematic. The definition is based on the EU law understanding which only allows a non-specified ‘open’ justification of differential treatment in the context of indirect discrimination. The proposed Section 12 is written so as to cover the minimum requirements of the EU directives, which have a more limited personal and material scope than the Finnish present and proposed Non-Discrimination Act. Where a ground not protected, or material scope of protection not covered by EU law, the Finnish proposed act allows justification of both direct and indirect discrimination in a similar way that the Constitution allows differential treatment: acceptable reasons justify differential treatment. The protection against discrimination is accordingly weaker. By referring to a legitimate aim and appropriate means that are in proportion to the aim in question, any differential treatment on any of the protected grounds may be justified. Such a justification differs from exceptions by giving a *carte blanche* to providers of goods, services and education to present defence based on acceptable reasons for differential treatment. The possibility of presenting justifications on an open basis makes it difficult for a victim of discrimination to assess his or her position and start compensation proceedings. The ground-specific exceptions and justifications also make it more difficult to deal with cases of intersectional discrimination.

Section 13 in the proposed act concerns positive measures (*positive särbehandling*). Special measures that aim at promoting *de facto* equal treatment, or at preventing or eliminating disadvantage based on discrimination, are not to be considered discrimination.

Proactive duties:

The proposed act, chapter 2 contains provisions on proactive duties (*främjande av likabehandling*). Section 5 contains general principles concerning proactive duties (*Allmänna krav som gäller främjande av likabehandling*). The provision refers to “official functions” (*myndigheternas verksamhet*), “education” (*utbildning*) and “working life” (*arbetslivet*) as activities in which equality is to be promoted. The motivations (p. 58) explain that the choice of terms is not intended to make a change to that it is public officials, educational institutions and employers that have the duty to promote equality. The choice of a wider term stresses the idea that the obligated actors are to cooperate with the stakeholders or interested parties. Promotion of equality shall be purposeful

and consequent. Methods used in promotion of equality shall be “effective and adequate” (*effektiva och ändamålsenliga*), taking into account the context, resources and other circumstances.

The proposed act lays a duty to promote equal treatment to the public officials (*myndigheter*, Section 6), to educational institutions (*utbildningsanordnare och läroanstalter*, Section 7) and to employers (*arbestgivare*, Section 8). All these actors are to promote equal treatment, especially by preparing an equality plan, either as a separate document (officials are to prepare *myndighetens likabehandlingsplan*), or included in another plan such as study plan, gender equality plan, occupational safety plan). The proposal extends the proactive duty of all these actors to all prohibited grounds of discrimination. Equality planning is to be done in cooperation with the groups that are discriminated against or organisations that represent them, and with the personnel or their representatives. Educational institutions are to cooperate with students or their representatives. A representative of the employees (*förtroendeman*) is to have right to be informed about the measures that the employer has undertaken to promote equal treatment in the work place.

The proactive duty of officials (Section 6) reflects the public duty to guarantee fundamental and human rights contained in Section 22 of the Constitution (see 2.1 below). Subsection 1 corresponds to Section 4, Subsection 1 of the Non-Discrimination Act, but the proposed wording (“*En myndighet ska i all sin verksamhet beakta skyldigheten att främja likabehandling, i synnerhet vid beredning av ärende och i samband med beslutsfattande*”) is meant to reflect a general duty to equality mainstreaming. The proposed wording also refers to a duty to develop administration so that administrative structures and practices safeguard promotion of equality (p. 58). The preparatory works do not explain the relation of the proposed duty to what under administrative law is considered as good administrative practice.

Official’s duty to equality planning is defined under the proposed Section 6, Subsection 2. The equality plan is to be made and updated every third year. There is to be a follow-up of the measures. The preparatory works refer also to the public duties pertaining to the UN Rights of the Disabled Persons Convention. Provision of public services and society planning shall aim at “universal design”/”design for all”. Although the Evangelic-Lutheran Church and Orthodox Church have certain official functions, these bodies are not obligated to equality planning. Neither does the duty involve private bodies with public administrative functions. All these bodies are also under the law now in force not obligated to equality planning. (p.59) Due to outsourcing of public services, the limitation has a considerable material impact. The Finnish Constitution, Section 124, sets certain

limits to outsourcing public functions (“offentliga förvaltningsuppgifter kan anförtros andra än myndigheter endast genom lag eller med stöd av lag. Uppgifter som innebär betydande utövning av offentlig makt får dock ges endast myndigheter”). When for example universities were recently turned into bodies separate from the state, they are not authorities although they have certain administrative functions, for example when they approve scientific degrees. At the moment, there is a high-level legal disagreement about whether private companies may be allowed to give parking tickets in private areas. These types of bodies would not have a duty to equality planning as officials (although they could be obligated as employers or educational institutions).

The minimum contents of the equality plan are defined under Section 6, Subsection 3. The plan is to contain a mapping of such functions of the authority in question which may have direct or indirect impact on equality from the perspective of any of the grounds of discrimination. Public bodies, including municipal officials, shall use statistics and other means to evaluate the need of services, and such mapping should be taken into account in provision of services. The aim is to stress realisation of the plans, instead of making them. It must be taken into account that many of the prohibited grounds of discrimination are such that there are not statistics available, because gathering information about a certain characteristic is prohibited. For example, there are no statistics on the ethnic composition of the population, or their sexual orientation.

The participation of interested parties in the public official’s proactive duty is regulated under proposed Section 6, Subsection 4. Groups that are discriminated against, or organisations that represent them, are to participate in the equality planning. The officials are to seek information on the experiences and needs of various groups, and cooperate with them either through hearings, by asking their opinion or inviting their representatives to participate in the working groups. Further, the personnel of the administrative body itself shall be informed of the proactive measures.

The proactive duty of the provider of education or educational institution under proposed Section 7 extends the proactive duties from what they are under law now in force. “Providers of education” refers to all levels of education, also vocational, from basic education to university level education, as well as providers of civic education (*fritt bildningsarbete*) (Section 4, Subsection 2). The educational institutions are to promote equality at access to education and under education and prevent discrimination in a manner that supports the aims of the act. The preparatory works mention activities that are to guarantee that equal criteria are used in choice of students, and that equality is maintained in teaching arrangements and assessment procedures. Educational institutions are

apparently free to apply positive action within the limits of Section 13, discussed below. Tackling indirectly discriminatory criteria in access to education, teaching and assessment is not mentioned, but the preparatory works refer to the relevant provisions in the Act on Equality between Women and Men, which obligate the provider of education to remove study materials that include stereotype representations; teaching is to promote tolerance and pluralistic values in the society. (p. 60) Equality planning is to take place every third years, and may be included in a study plan, (gender) equality plan or other plan, or prepared as a separate instrument. Cooperation with and participation of stakeholders is here limited to student representatives and the personnel, and the discriminated groups are not mentioned as parties to be heard.

Employers' proactive duties, under the proposed Section 8, differ on the basis of the number of employees. All employers are, in order to promote equal treatment, to assess the prevailing situation and develop working conditions and the decision making procedures. The assessment is to be made taking into account the Act on the Protection of Privacy in Working Life (759/2004). The Act lays down provisions on processing of personal data about employees. Section 3 of the Act limits processing personal data to such information that is "directly necessary for the employee's employment relationship which is connected with managing the rights and obligations of the parties to the relationship or with the benefits provided by the employer for the employee or which arises from the special nature of the work concerned". Exceptions cannot be made to the necessity requirement, even with the employee's consent. The preparatory work of the proposed Act on Equal Treatment take this to mean that the assessment of the prevailing equality situation at the work place could be based on personnel enquiries, but not on statistic data collected by the employer. Even such enquiries are to be carried out so that they do not reveal protected individual information. The protection of privacy in employment thus seriously limits collecting data. Many grounds of discrimination, such as ethnic origin, are by nature such that data collection is prohibited even on more general grounds.

Employers of more than 30 employees have a duty provide an equality plan either as a part of safety at work plan, personnel plan, (gender) equality plan or as a separate document. Even the Act on Co-operation within Undertakings (334/2007) requires personnel and educational planning, which includes information on the personnel, and mentions the needs of the aged employees and the need to balance family and working life. It is left to the employer to decide the precise context of the equality planning. The employer should specify which discrimination grounds are to be taken into account in planning positive action. Under Section 8, Subsection 2, such assessments are to be

done in cooperation with the personnel or their representatives, and the personnel should be consulted about concrete positive action measures (see also preparatory works, p. 61). The limitations to collecting data on employees, referred to above, also apply to equality planning proper – an informative provision that refers to the Act on the Protection of Privacy is even added as Section 8, Subsection 4 in the proposal.

Appropriate modifications:

Public and private providers of education, employers and providers of goods and services are to undertake appropriate modifications (*rimliga anpassningsåtgärder*) to meet the needs of disabled persons (*personer med funktionshinder*) in each case in order that these persons have access to education, employment, and goods and services (Section 9). The appropriateness of the measures are to be assessed taking into account the size of the organisation, its economic position and the cost of modifications. The cost cannot be considered non-appropriate, if it may be met with public support. The fact that there is no public support does not render modifications non-appropriate.

The duty to make appropriate modifications would remain limited to measures needed by the disabled (as it is under Non-Discrimination Act, Section 5). The boundary between disability and sickness is not discussed in the committee report. The scope of the duty would be expanded to goods and services (the present provision obligates employers and providers of education). The proposed duty is motivated by the UN Convention on Rights of Persons with Disabilities), signed by Finland in 2007. According to the committee report, the duty to make modifications would not require that providers of goods and services change their business concept or provide alternative goods or services to the disabled (p. 64).

1.5 Amendment of the Act on Equality

As noted above, the Act on Equality between Women and men was left outside the review of non-discrimination law proposed by the Equality committee, because the proposed unification of equality laws and bodies met with criticism after the committee had presented its interim report in 2008. Critical opinions were presented by women's organisations, social partners and also many members of parliament involved in equality matters. Many MPs were surprised at Act on Equality being in the mandate of the Equality committee, because the Parliament was expecting the evaluation of the amendments made to the Act on Equality in 2005 which the Parliament had

requested to be presented by the end of 2009, as well as a Government Report on gender equality politics of several governments under the last ten years which was to be presented to the Parliament in 2010. Both these reports were considered important for an assessment of the need to amend the Act on Equality.

Assessment of the 2005 amendments by the Parliament committee took place in 2010.

Several studies on equality planning were commissioned by the Ministry of Social Affairs and Health to assess the impact of the 2005 amendment. Compared with a study made on equality planning in the public sector in 2005, before the amendment³, a study in 2008 showed a rise in the number of equality plans. In 2010, a comprehensive study on the equality planning, pay mapping in particular, based on various materials such as employer and employee interviews was finalised.⁴ The Ministry of Social Welfare and Health presented a report on the functioning of the amendments to the Act on Equality to the Parliament Employment and Equality Committee in January 2010, and the Parliament Employment and Equality Committee gave its report on the Report of the Ministry of Social Affairs and Health in 2010.⁵

The Parliament Committee considered on the basis of the Report that the Act on Equality between Women and Men is a well functioning piece of legislation. Some amendments are needed, however. The Equality Ombudsman should be given the mandate to conciliate discrimination cases, and the monitoring resources should be increased. The Committee noted that discrimination in the context of pregnancy and use of family related leaves remains common.

As to equality planning, the Parliament Committee noted that the personnel should be given adequate opportunity to cooperate in the working place equality planning. The Act should specify who acts as the representative of the personnel and the employer in equality planning. A better commitment to equality planning should be promoted. The Parliament Committee did not specify how this was to be done, but the guidelines for the next decade in the Government report contain several points in this respect. The equality bodies should have stronger position in the state organisation, and the resources of the Equality Ombudsman should be increased. The guidelines are

³ Tasa-arvosuunnittelu julkisella sektorilla, selvitys suunnitteluelvoitteen toteutumisesta. Tasa-arvojulkaissu 2005:3).

⁴ Uosukainen, K. , Autio, H.-L., Leinonen, M. and Syrjä, S., Työpaikan tasa-arvosuunnitelma ja palkkakartoitus. Tutkimus suunnitteluelvoitteen toteutumisesta sekä suunnitelmien ja kartoitusten laadusta. Sosiaali- ja terveystieteiden tutkimuskeskus 2010.

⁵ Ministeriön selvitys naisten ja miesten välisestä tasa-arvosta annetun lain toimivuudesta. Lausunto TyVL 6/2010 vp - MINS 3/2010 vp

not specific about measures to be used, which is not surprising, as the guidelines are meant for future Governments, irrespective of which parties these consist of. The Parliament Committee also noted that the Equality Ombudsman's office should have adequate resources to monitor equality planning. Pay mapping was considered the most problematic issue, because analysing and comparing pay, as well as access to relevant information on pay by representatives of the personnel remain problematic under the present legislative provisions. Pay differentials must be analyzed and pay systems made transparent. The analysis should cover all employees across collective agreements, as was intended according to the preparatory works of the 2005 amendment. The principle should be made to effective by adding a provision containing a duty to cross-collective agreement pay mapping, and by giving representatives of the personnel better access to pay information.

The Parliament Committee wanted also extend the duty to equality planning to basic education.

The Committee considered that some of the needed amendments should be prepared together with the social partners. The Parliament Employment and Equality Committee presented that the Ministry of Social Affairs and Health should start preparation of amendments to the Act on Equality between Women and Men.

The Government's report to the Parliament on equality policies contains a report on gender equality policies of several Finnish Governments from the end of 1990s to 2010, and guidelines for gender equality policies up to 2020.⁶ The guidelines also refer to legislative amendments. The guidelines on gender equality law consist of four points:

- (1) Equality planning provisions in the Act on Equality are amended, especially as to pay mapping, and provisions on transsexuals are included in the Act.
- (2) Equality legislation is amended to be based on as uniform systematic as possible, without regression of the level of regulation of the present protection. The knowhow acquired in the context of Act on Equality is used in the context of other prohibited grounds of discrimination. A provision on multiple discrimination is added to the Act.
- (3) Gender impact analysis is to be made also of other relevant legislation, such as legislation on fixed term work, dismissal, family related leaves, and advertising.
- (4) The monitoring system of the Act on Equality is made more effective, so that even the proactive duties are monitored. Access to the Equality Board must be opened to other organisations beside the

⁶ Valtioneuvoston selonteko naisten ja miesten välisestä tasa-arvosta. Sosiaali- ja terveystieteiden ministeriö Julkaisuja 3010:8

social partners. The Government aims at unification of the Equality Board and Discrimination Board.

The guidelines on gender mainstreaming further consist of several points. The regulation on mainstreaming is to be specified in the Act on Equality. Gender mainstreaming should be done by each ministry, but it should also be made a part of other means of administrative development. Mainstreaming should thus no longer be the duty of the Equality Unit of the Ministry of Social Affairs and Health, as it is now. Each ministry's equality working group should have direct contact to the minister, and work under a regular procedure. The guidelines do not present a definite model for each ministry, however.

According to these guidelines, the supervision of the Act on Equality between Women and Men should be strengthened, especially as to the supervision of the proactive measures. The Equality Ombudsman's mandate should be extended to conciliation, and an easier access to remedies should be provided by allowing access to the Equality Board to other organisation besides the labour market organisations. The Government in this document confirms the aim of combining the Equality Board and the Discrimination Board into one body, Board of Equal Treatment.

The Parliament Employment and Equality Committee gave its report on the matter ⁷ in 2011. The Parliament Committee regretted that the report was presented to the Parliament so late before the next election, which prevented the Report from being discussed by all Parliament Committees. The Employment and Equality Committee heard a high number of experts in order to form a balanced opinion in the matter.

The Parliament Committee was positive to the Government guidelines concerning organisational changes and increasing the resources in equality politics. The independence of the Equality Ombudsman is to be enhanced, and resources increased. The Ombudsman has been given new tasks several times without a corresponding increase of resources, effective monitoring depends on adequate resources. Both the Government report and the Parliament Committee were regrettably silent on figures (numbers of persons or other tangible targets for increase of resources). Also the Gender Equality Unit should be located higher in the administrative hierarchy, but no definite placement was proposed. Gender mainstreaming should be promoted by nominating persons with competence and time resources into each ministry, into the regional administration and municipal administration, but an exact proposal on how this should be done is lacking. Gender impact

⁷ Valtioneuvoston selonteko naisten ja miesten välisestä tasa-arvosta. TyVM 18/2010 vp – VNS 7/2010

assessment of all big reforms should be carried out. The Committee also referred to its former statement (see above) on the amendments of the Act on Equality. Act on Equality should explicitly cover transsexuals. The preparation of the amendments including more specific duty to pay mapping, increasing the personnel's access to equality planning and information, and extending the equality planning to basic education and the Equality Ombudsman and Board of Equality should be given the mandate to conciliate discrimination cases.

2. Supervisory bodies:

The proposed Equal Treatment Act would maintain not only the two-track model of two separate acts, but also the bifurcation of supervision under the present Non-Discrimination Act. Supervision under the Act is now divided between the Minority Ombudsman who supervises provisions against ethnic discrimination, except in employment, where occupational safety officials supervise the Act against discrimination on all prohibited grounds. Sections 15 – 24 maintain the present system of supervision in relevant respects. The Occupational Safety and Health (OSH) authorities consist of the Department for Occupational Safety and Health at the Ministry of Social Affairs and Health, plus regional bodies, consisting of occupational safety and health divisions of the Regional State Administrative Agencies. The Ministry directs the OSH administration, develops OSH practices and prepares legislation, and the OSH authorities monitor compliance with occupational health regulations plus discrimination under the Non-Discrimination Act. When the monitoring of the Non-Discrimination Act was added to the list of OSH duties with the adoption of the Non-Discrimination Act in 2004, no additional resources were given to these authorities. The positive side of involving OSH authorities lies in the fact that these bodies have a regional and local presence at work places. The Equality Ombud and Minority Ombud have no regional offices.

The proposed reform would not end the present situation in the sense that a specific equality body for all types of matters would only exist for gender equality and discrimination. The Occupational Health authorities, which are responsible for supervision of the present Non-Discrimination Act in issues concerning working life cannot be considered specific equality bodies. The Minority Ombudsman is a specialised equality body monitoring the Non-Discrimination Act, but the Minority Ombudsman only has a mandate to monitor ethnic discrimination outside working life, and trafficking in human beings, as well as to promote good ethnic relations in society. At present,

the Ombudsman's office is placed in the Ministry of the Interior.⁸ The promotion of equality on other grounds than ethnicity is limited to a very general official duty, which is not supervised by any specific authority under the Non-Discrimination Act. The Ministry of the Interior gives guidelines as to how ethnic equality planning is to be carried out, but there is little in the way of real supervision of the provision. The Equality Ombudsman has a duty to counselling in legal gender equality matters, and similarly the Minority Ombudsman does counselling in matters concerning ethnic minorities.

According to the proposal for Equal Treatment Act which would replace the Non-Discrimination Act, the occupational safety officials may refer a case to the expertise of the Discrimination Ombudsman (former Minority Ombudsman) by asking for an opinion. The latter official's supervisory powers would cover other areas of life covered by the act (Section 17). Thus, the proposal widens the mandate of the Ombudsman, and provides better access to an equality body. The Discrimination Ombudsman may assist a victim of discrimination and conciliate parties who consent to conciliation. The proposal contains no provisions or guidelines as to equality mainstreaming activities similar to the provisions and bodies concerned with gender equality, however.

The situation where two ministries are responsible for equality issues including proactive duties would continue even after the proposed reform. In this sense the Finnish equality law and bodies are not unified. There is a two-track model of specific equality bodies, but which operate under different ministries. Thus, several administrative branches are involved in equality matters and legal monitoring of equality law. The division of equality tasks is to continue under the draft legislation.

Further, there is a division of work concerning different types of gender equality issues among several gender equality units. At present, there are three gender equality bodies under the Ministry of Social Affairs and Health, but the Minister responsible for gender equality is not necessarily the Minister for Social Affairs and Health. Gender equality matters are often administrated as 'cross-administrative' issues by several ministries. This is the case for example concerning the National programme for reducing violence against women. The three equality bodies under the Ministry for Social Affairs and Health are not linked to the head of the ministry as a directorate, however, and of

⁸ <http://www.vahemmistovaltuutettu.fi/swedish>

these three only the Government Equality Unit is involved with Government gender equality policies, including gender mainstreaming.

Of the two other gender equality bodies, the Council for Gender Equality (Delegationen för jämställdhetsärenden) is a parliamentary delegation. The Council was historically the first equality body to be established in 1972. The Council members represent political parties, and certain women's NGOs act as permanent experts in the Council. In the past, the Council had a broader mandate and also several divisions, such as division on violence against women, on research etc. At present, there are two subdivisions, one on gender and power, and another on men. Even the coordination of women's studies was formerly in the mandate of the Council. Today, the Council's resources are scarce, and consist of a permanent Secretary General. The Council is a discussion forum which channels equality issues to the political system on a broader basis than the Ministry's Equality Unit, which has the mandate to act in government gender equality policy issues. - The third gender equality body, the Equality Ombudsman, has the mandate to monitor the Act on Equality, including both the prohibition of discrimination and the proactive duty to equality planning. Thus, gender mainstreaming and gender equality planning are divided to different bodies.

The only unification of present bodies would be the proposal that the present Discrimination Board (*Diskrimineringsnämnd*) should become Board of Equal Treatment (*Likabehandlingsnämnd*), with a mandate both as to the Act on Equality between Women and Men and the proposed Equal Treatment Act. The Board could confirm conciliation between parties, and give opinions to courts, Discrimination Ombudsman or other officials and to associations on application of the Equal Treatment Act (Section 18). Cases could be brought to the Board by the parties together, or with their consent, by the Discrimination Ombudsman, in order that conciliation is confirmed. An alleged victim could bring cases to the Board.

The resources of the monitoring bodies are limited. The latest annual report of the Minority Ombudsman is for 2009. At that time, the personnel consisted of 9 officials and a number of civilian servicemen, trainees and fixed-term employees; the budget allocation for staff was 585000 euro. The mandate of the Minority Ombudsman in monitoring anti-discrimination law at present only covers ethnic discrimination in other areas than employment. The Ombudsman has other tasks, however, concerning national minorities, foreigners and trafficking in human beings. The proposed extension of the mandate to other prohibited discrimination grounds would necessitate a bigger

budget allocation and increase of personnel – which is one of the reasons why the proposal of the Equality committee did not lead to a Government Bill under the present Government.

Monitoring Non-Discrimination Act in employment concerning all grounds protected under the Act is done by occupational safety officials. The occupational safety authorities act on a regional basis, and thus are the only monitoring authorities in anti-discrimination with a regional organisation.

When monitoring Non-Discrimination Act was added to the mandate of these authorities, no additional funding or personnel was dedicated to these tasks, however. The traditional mandate of the occupational safety officials is grounded in labour law, and anti-discrimination law does not have a central place in their activities. Several studies on discrimination in Finland consistently show that discrimination cases on the grounds covered by the Non-Discrimination Act are based on the Penal Code, not on the Non-Discrimination Act. Thus, they are concerned with quite evident cases of direct discrimination in access to services or in employment. The occupational safety officials may also be more familiar with the Penal Code provisions that penalise certain forms of discrimination than with the more complicated provisions in anti-discrimination law proper.⁹

The provisions on supervision of the gender equality law and the tasks of equality bodies were renewed in 2001. The gender equality bodies have different tasks, but they are all administratively established under the Ministry of Social Welfare and Health. Supervision of gender equality law remained in the mandate of the Ombudsman for Equality (*jämställdhetsombudsmannen*). The Equality Board also supervises the Act on Equality; both these bodies were established by Act on the Ombudsman for Equality and the Equality Board 610/1986. Under Section 2 of the Act, the Equality Ombudsman supervises that the Act on Equality between Women and Men is followed and especially that the prohibition of discrimination is obeyed. The Ombudsman also is to promote the aim of the Act on Equality by initiative, counsel and instructions, to inform on equality law and its application, to follow that gender equality is realised in different areas of the society. The Ombudsman may also assist a person who has been discriminated against, also in court, provided that the Ombudsman considers the case is significant for law application (Section 3).

Altogether, the personnel of the Finnish gender equality bodies in 2011 consisted of 15 offices. The Government Equality Unit had personnel of eight officials, two administrative staff, two part-time secretaries and two project workers. The Equality Ombudsman's office consisted of the

⁹ See Aaltonen, M., Joronen, M., Villa, S. (2009) *Syrjintä Suomessa 2008*. Ihmisoikeusliitto: Helsinki, and Aaltonen, M., Joronen, M. and Villa, S. (2009) *Syrjintä työelämässä – pilottitutkimus työsuojelupiirien aineistosta*. Sisäasiainministeriön julkaisu 43/200). Painoyhtymä: Helsinki.

Ombudsman, six officials and four administrative staff, and the Council for Gender Equality had, as already stated, only the Secretary General. The Equality Ombudsman has an office in the Ministry of Social Affairs and Health, and is not independent in the sense that the budget of the Ombudsman's office is a part of the organisation of the Ministry. EU law sets minimum criteria on equality bodies that are to supervise gender equality provisions under Directive 2002/73/EC and ethnic equality under Directive 2000/43/EC. These criteria consist of a mandate to provide independent assistance to victims of discrimination in their complaints about discrimination, conduct independent surveys concerning discrimination, and publish independent reports and make recommendations on any issue relating to discrimination. After the reform of 2001, the Equality Ombudsman is no longer involved in law preparation and equality policy, but a supervisory body which is in this sense independent from Government politics. None of the Finnish equality bodies are independent in the sense of having an independent budget. The equality bodies are not established at the highest level of administration.

The Equality Board handles and decides cases on request by the Equality Ombud or central labour market organisations in a case on gender discrimination, and the Equality Ombud may bring a case on failure to make an equality plan to the Equality Board (Section 20 of the Act on Equality). The Board may not handle cases concerning activities of the Parliament, the President, the Government, the Ministries, the Chancellor of Justice, the Parliamentary Ombudsman, Supreme Court or Supreme Administrative Court. The Equality Board may prohibit a continuation or recurrence of a discriminatory act on threat of administrative fine (vite, Section 21). A fine may also be set for a body that has failed to make an equality plan, and against failure to produce information or documents (Section 21 a). Courts may also ask for the opinion of the Equality Board. The body consists of a chairperson and four other members, nominated by the Government Section 9 of the Act on the Ombudsman for Equality and the Equality Board, Section 9). Knowledge on equality issues and working life, both men and women shall be represented in the Board; the chair and vice-chair shall be lawyers (Section 10). The Equality Board has no full-time members or officials or secretary. The case load of the Board has remained low. Thus the proposed reform of equality legislation, which would combine the present Equality Board and the present Discrimination Board, contains some improvements. The proposed new Board would consist of part time members, but there would be a full time secretary, and the Board could have full time or part time officials (föredragare i huvudsyssla eller bisyssla, Section 6 of the proposed Lag om likabehandlingsnämnden). The Equality Ombudsman's opinion on the Government's Report on equality policies is published in the Ombudman's

website¹⁰. The Ombudsman stressed that gender equality planning is not sufficiently supervised due to lack of resources. The Ombudsman's Office had in 2009 10.5 personnel years at its disposal. No new resources were added at the amendment of the Act on Equality in 2005. The Equality Committee proposal that the Boards that monitor sex discrimination and other discrimination legislation should be unified was supported by the Equality Ombudsman, but the Ombudsman at that point assumed that the Board would also monitor working life. As the proposal now is that the occupational safety authorities would supervise discrimination in working life respecting other grounds than sex, the Ombudsman was critical of the solution.

The representatives of the employer organisations and labour unions gave a common dissenting opinion on two main and several minor points. The organisations opposed extending remedies that entitle the victim of discrimination to compensation, claiming that as compensation does not require negligence, the right to compensation should be clearly defined. Right to compensation on the basis of an open list of prohibited grounds are unclear as to what is prohibited discrimination. The other big issue was that the organisations are not willing to give a mandate to act in labour issues to a board consisting of others than labour market actors. The organisations proposed that the mandate of the Labour Council which now has the competence to give opinions on interpretation on legislation on working time would be extended to discrimination in working life.

Motivations behind developing the monitoring system seem to be divided. The stakeholders that emphasise anti-discrimination as a means of upholding human and fundamental rights prefer equality bodies of the human rights monitoring type. Such bodies are built on the so-called Paris principles on human rights bodies, which stress a mandate to independent monitoring and reporting. The labour market related actors, on the other hand, would maintain the traditional tripartite bodies with social partner representation. Proposed amendments of gender equality law concentrate on relatively complicated forms of discrimination (pay discrimination, fixed-term work of pregnant employees) in the labour market, where use of statistics and indirect discrimination play an important role. These issues are in the traditional interests of the social partners.

3 Supervision of international human rights obligations

3.1 The impact of constitutionalism

¹⁰ Lausunto selvityksestä eduskunnan työelämä- ja tasa-arvovaliokunnalle naisten ja miesten välisestä tasa-arvosta annetun lain toimivuudesta (TAS/84/2010).

The Finnish Constitution of 2000 in many ways stresses fundamental rights. Chapter 1, Section 1 Subsection 2 expresses the value basis of the Constitution, which requires that the Constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society. The provisions on basic rights in the Finnish Constitution were revised separately in 1995, and were in the reform of 2000 included into the new Constitution as its Chapter 2. Most of the civil rights under Chapter 2 are rights for everyone (as opposed to rights of citizens only in the former Constitution), to be interpreted in the light of corresponding human rights. Under Chapter 2, Section 22, public authorities shall guarantee the observance of basic rights and liberties and human rights. Under Chapter 10, Section 106 of the Constitution, a court of law shall give primacy to the provision in the Constitution in cases where the application of an ordinary act would be in evident conflict with the Constitution. The provision introduces judicial review to the Finnish legal system. Before the reform, constitutional review was carried out only by the Parliament in the form of preview of the proposed legislation by the (standing) Constitutional Committee of the Parliament - the courts were prohibited from considering whether an act violates the Constitution. Even after the reform the courts have a limited mandate to do so in case the parliament already has explicitly considered that a provision is in line with the Constitution.

After the reform of the basic rights provisions, both basic rights and human rights are often referred to in court decisions. The tradition of relying on constitutional preview by the parliament continues, but the reform enhanced constitutionalism in the sense that the Finnish courts are to interpret legal norms in the light of the Constitution. Section 106 allows the courts to carry out constitutional scrutiny only where the conflict with the Constitution is “evident”. The courts have not used the power of judicial review overmuch. Many legal scholars opine that there is no evident conflict with the Constitution, if the Parliament preview already considered the alleged contradiction at the time the act was passed. Such an interpretation stresses the primacy of the democratic decision making, but there are also legal opinions that would give the courts more leeway in enhancing the primacy of the constitution. In any case, references to both fundamental rights and human rights in Finnish case law have become commonplace, and are recognised as sources of law.

3.2 Provision on equality in the Constitution

A more comprehensive formulation of fundamental rights is quite apparent concerning the constitutional provision on equality, Section 6. In its present form, the provision of equality contains four subsections, each of which concern a different aspect of equality. Section 6, subsection 1 contains the traditional provision on equality before the law. The provision is taken to refer to formal equality, and be aimed at rational administrative practices which require that like cases are treated alike. The preparatory works of the Constitution are clear in stating that not merely formal but *de facto* equality is referred to under Section 6, however. Subsections 2-4 give new substance to the equality principle.

Section 6, Subsection 2 contains a prohibition of discrimination, under which

“No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.”

The prohibition is typical for constitutional and human rights instruments in that it contains an open-ended list of prohibited grounds, and allows justification for differential treatment where an acceptable reason is at hand. According to the preparatory works, the grounds that are explicitly mentioned in the list contain the prohibited grounds which are especially important in the Finnish society, but such grounds as social position, property, association membership, marital origin, sexual orientation and place of residence may qualify as “other reasons”.

Due to the fact that the basic rights in the Finnish Constitution are to be interpreted so as to coincide with human rights, especially the European Human Rights Convention, it must be kept in mind that the European Human Rights Court in its case law has been strict as to what may be considered acceptable reasons for differential treatment in the context of certain prohibited grounds of discrimination (especially race and sex). In this sense, some of the grounds in the list under Section 6 (2) are ‘suspect’ grounds, concerning which the margin of appreciation allowed to the state parties of the Convention is very limited. In practice, direct discrimination on the grounds of race (which in the Finnish tradition is covered by ‘origin’) can never be acceptable. As to sex, the Human Rights Court case law seems to allow some leeway for differential treatment where social rights are concerned, but otherwise there are no acceptable reasons for treating a person differently on the

grounds of sex. In any case, the Human Rights Court require very strict limits to differential treatment on certain grounds, while allowing more margin of appreciation on some others.

Section 6, subsection 3 concerns equal treatment of children, and subsection 4 gender equality. The latter provision reads as follows:

“Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.”

The Constitution thus contains an obligation to legislate on promotion of gender equality. The formulation refers to the Act on Equality between Women and Men, which was already in force at the time of the Constitutional reform, but the preparatory works on Section 6 clarify that not merely the Act on Equality but even other legislation is to give substance to gender equality. The provision gives a strong legal ground for proactive gender equality measures. A similar explicit constitutional support for proactive duties on other discrimination grounds is lacking.

3.3 The Government reporting on human rights treaties

Reporting to the monitoring bodies of human rights treaties is mainly a task of the Ministry of Foreign Affairs. The Government encourages non-governmental organisations to participate in the human rights reporting. The NGOs are asked to provide their views on the information to be included in the report, and invited to a discussion on the draft report before its finalisation. NGOs are also encouraged to do ‘shadow reporting’, or send parallel reports to the human rights treaty monitoring bodies. The Finnish delegation to the hearings of the treaty monitoring body is chaired by a member of the Human Rights Unit of the Ministry for Foreign Affairs in charge of the reporting, and a member of the Constitutional Law Committee of the Finnish Parliament takes part in the work of the delegation. The recommendations of the treaty monitoring body are translated into the national languages of Finland and disseminated, as well as published in the Internet. The Foreign Ministry cooperates widely with NGOs, and supports their activities. The cooperation brings critical insights in the reporting and helps to insemminate human rights issues, but Finnish reporting (for example the CEDAW reporting) at times is done so that it is difficult to separate Government activities from those of NGOs, also in matters which are the duty of the state. The

CEDAW Committee's new reporting guidelines should bring some clarity on the matter. Finland's 8th periodic country report is made in conformity with these new guidelines.

4. Aims and plans for gender equality

The Government report to the Parliament on gender equality of 2010, referred to above, gives a detailed description of the various equality policies under four Finnish Governments, from the end of 1990s to 2010. The Government report lists policies in a number of fields, including decision making, education, higher education and research, working life, conciliation of family and working life, men and gender equality, violence against women, Finland's role in international equality politics, relation of gender equality policies and other equalities, gender perspective in economy politics, gender perspective in reducing poverty, aims and follow-up of equality politics, as well as the issue already presented above concerning equality law, position and resources of equality bodies. Gender mainstreaming is also considered in the report. Under each of these titles, guidelines were given for the next decade.

The guidelines are too detailed to be presented here. The policies on violence against women should be noted, as there is also a national action plan to reduce violence against women was presented in 2010¹¹. The action plan was motivated by the repeated observations of the CEDAW committee, and finally the fact that Finland was requested to provide a special report on measures to reduce such violence in 2008. The action plan includes several branches of administration and various policies, but the extra resources to be used are very limited.

5. Gender equality bodies and cooperation with other organisations

The equality policy guidelines for the next decade were discussed in the former Government's report on gender equality, as mentioned earlier.

As also explained above, the Equality Unit (*jämställdhetsenheten*) was established in 2001 to prepare government equality policy and legislation – the body is not a supervisory body, but a body for promotion of equality. Although the Equality Unit is in the Ministry of Social Affairs and Health, the post of minister responsible for equality matters may be any minister (at the moment, equality issues are a part of the tasks of the minister for culture and sports). The Government's

¹¹ Naisiin kohdistuvan väkivallan vähentämisen ohjelma. Sosiaali- ja terveysministeriö, Julkaisuja 2010:5.

equality programmes are multi-ministerial policy programmes. After 2001, the Equality Unit became the main tool for Government equality policy, including preparatory work for law amendments which before 2001 was done by the Equality Ombud's office. The Equality Unit also follows EU policies and law, participates in the equality policy of the Nordic Council of Ministers, Council of Europe and the United Nations. In the area of proactive measures, the division of tasks between the Equality Ombudsman and the Equality Unit is not very clear-cut.¹²

The oldest gender equality body, the Council for Gender Equality (*delegationen for jämställdhetsärenden*) is a board connected to the Parliament and acts as a platform for equality policy discussions. The Council has no independent staff of its own, as its secretary being administratively a part of the Equality Unit. The position of the Council for Gender Equality and consequently the link between equality policies and the Parliament in practice became weaker when the present division of work between the three gender equality units were given separate mandates.

The gender equality bodies in Finland have no local or regional organisation. Municipal officials, as well as all officials, are obligate to promote equality under the Act on Equality between Women and Men, but in practice only ca 10 municipalities have their own equality boards.¹³ Taking into account that there are at present 336 municipalities, the number of municipal equality boards is quite low. In a comparison on the resources of the equality bodies in Europe in 2006, the Finnish Equality Bodies were presented to have personnel of 15. There have been no substantial changes in the number since then.

Cooperation among the political parties' women's organisations is the task of the Coalition of Finnish Women's Associations (NYTKIS). Founded in 1988, the coalition is a forum for all sorts of women's associations, but its member organisations include only some organisations besides the political party associations. The Association for Women's Studies in Finland and the Feminist Association Unioni are such extra-political member organisations. The Coalition works for advancement of women and de facto gender equality, and is subsidised from public funds. The Coalition also monitors legislation and decision making, and takes initiatives concerning women's rights and social issues. Neither the Coalition, nor any other women's organisations have a recognised official status in the Finnish Gender equality machinery.

¹² Holli, Anne Maria, Rantala, Marjo; Tasa-arvoviranomaisten institutionaalinen asema. Sosiaali- ja terveysministeriö Selvityksiä 2009:54, Helsinki 2009.

¹³ Valtioneuvoston selonteko naisten ja miesten välisestä tasa-arvosta, Sosiaali- ja terveysministeriö Julkaisuja 2010:8,79.

The social partners have a more established status in gender equality policy cooperation between the Government and non-governmental organisations. The central labour market organisations have a standing cooperation group for gender equality issues, “Equality Round Table”. The cooperation started in 1997, and the main issues discussed have concerned the equal pay programme (see below), conciliation of working life and family, gender impact assessment of collective agreements and reporting on proactive duties on the European level. The equality law reform has also been discussed in this context, and while the employees’ organisations have been more positive towards extending the compass of equality law in various ways than the employers’ representative (The Confederation of Finnish Industries has held that no major amendment of equality law is needed), both Finnish social partners agree on keeping gender equality and other equality strands under separate acts and bodies. The Social Partners Dialogue of the EU has brought a new mode of cooperation for the central organisations. The Finnish social partners were active in the proceedings for the revision of the Parental leave directive¹⁴, which led to a revised agreement¹⁵, and further to a new directive

Pay differentials have been on the agenda of the social partners in many forms. Social partners have had working groups and programmes aimed at producing statistics on the pay differentials, working groups on work assessment procedures. A high-level Equal Pay Programme was coordinated by the Ministry of Social Welfare and Health in 2007- 2010. A report on the results of the programme was published recently.¹⁶ The programme aimed at reducing the gender pay differentials, and contained eight separate aims. The factors that were followed were collective agreements, introduction of analytical pay systems, equality planning, pay surveys and career development of women. The outcome was that the average gender pay gap had been bridged by one percent during the evaluation period. The gender segregation of occupations and professions, which was seen as one of the main causes to the differentials, had not undergone a change, the reforms of the family leave system and the high number of fixed-term employment contracts among women had not changed. According to the assessment, the social partners play a key role in promoting the goals of the Equal Pay Programme.

¹⁴ Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the EAY (now ETUC)

¹⁵ Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

¹⁶ Salenius, J. Samapalkkaisuohjelman kokonaisarviointi 2007-2010. Sosiaali- ja terveystieteiden ministeriö 2011.

Organisations of various types play an important role in promoting gender equality. An important source of funding for all sorts of non-governmental organisations which have social aims is Finland's Slot Machine Association (Raha-automaattiyhdistys, RAY), which channels the profits from slot machines to social purposes. The funding from RAY, as well as EU funding on promoting gender equality, is channelled to short term projects. RAY supports many activities aiming at help to victims of gendered violence, for example. A recent doctoral thesis has labelled the dominant Finnish mode of relying on short term funding for equality work 'Projectisation of the equality work'.¹⁷

¹⁷ Brunila, K. Parasta ennen: Tasa-arvotyön projektitapaistuminen. Helsingin yliopisto: Helsinki 2009.

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