



**UNIVERSITY
OF TURKU**

This is a self-archived – parallel-published version of an original article. This version may differ from the original in pagination and typographic details. When using please cite the original.

AUTHOR	Kevät Nousiainen
TITLE	Paradoxes in Finnish gender equality law and policies
YEAR	2024
DOI	10.4324/9781003172840-3
VERSION	Publisher's PDF
CITATION	Nousiainen Kevät: Paradoxes in Finnish gender equality law and policies in Hellum, A., Ikdahl, I., Strand, V., & Svensson, E.-M. (Eds.). (2024). <i>Nordic Equality and Anti-Discrimination Laws in the Throes of Change: Legal developments in Sweden, Finland, Norway, and Iceland</i> (1st ed.). Routledge.
LICENSE	CC-BY-NC-ND

2 Paradoxes in Finnish gender equality law and policies

Kevät Nousiainen

2.1 Introduction

This chapter on Finnish equality law and politics discusses a number of developments and paradoxes in relation to gender equality in Finland. Measured against certain criteria, such as political power and participation in paid work, the situation for Finnish women appears to be rather good.¹ Both the European Gender Equality Institute's Gender Equality Index and the United Nations' Gender Inequality Index place Finland near the top of their lists, although below other Nordic states, in their comparisons of gender equality. Can we say, then – in line with the widely held view within the country – that gender equality has been achieved in Finland and that there is little need for any new political or legal measures?²

Statistics show that, in many respects, Finnish women and men lead rather different, or gendered, lives. Not only do women and men lead different lives, but their lives generally differ to the detriment of women, although in some regards it is men who are disadvantaged: they have shorter life expectancy, are more prone to accidents, and end up in prison more often than women, for example. Gender equality politics aim to reduce disadvantages experienced by men. For example, policies against students dropping out of education in the current Government Equality Programme are aimed at preventing male marginalization. Anti-discrimination law has a narrower scope than equality politics, and it does not deal with marginalization, which often has complex cultural and social causes. Anti-discrimination requires that someone can be held legally responsible for causing an alleged disadvantage.

Anti-discrimination law has been criticized by Nordic scholars for not addressing social inequalities effectively. In the view of these scholars, prohibiting discrimination can neither replace welfarist policies nor provide social justice in the traditional sense. Certain disadvantages and exclusions are based on 'ascribed

1 Statistics Finland, *Sukupuolten tasa-arvo Suomessa 2021* [Equality of the Sexes in Finland, 2021] <https://www.doria.fi/bitstream/handle/10024/184395/yyti_sts_202100_2021_23460_net_p2.pdf?sequence=1&isAllowed=y> accessed 28 August 2022.

2 Anu Pylkkänen captures the historical ramifications of the dilemma well in *Trapped in Equality: Women as Legal Persons in the Modernisation of Finnish Law* (Suomalaisen Kirjallisuuden Seura Studia Historica 2009).

otherness', which differs from differentiation on the basis of social class.³ In itself, anti-discrimination law cannot provide substantive equality.⁴ That said, the history of the legal concept of equality has been marked by dynamic historical changes.⁵ That there is legally a positive duty to promote equality,⁶ for example, is a principle recognized by international, EU, and national law, and the development of Finland's gender equality law has been greatly influenced by international standards. The Nordic welfare state played an important but ambiguous role in this development. This chapter looks at the interplay of external and internal influences in Finnish law.

Both equality politics and law necessarily depend on public opinion: if inequality goes unnoticed or is considered justified, policies against it rarely prosper. Finnish equality barometers⁷ show a consistent difference between women's and men's views on gender equality: Men believe more often than women that equality between women and men has already been achieved. In 2017, 20% of women and 45% of men in Finland believed this to be the case. Few Finnish women, and even fewer Finnish men, believe that men are in a clearly better position than women. Furthermore, 50% of men and 43% of women think that equality in the workplace has largely been achieved. Few of them observe pay, recruitment, or other work-related discrimination at their workplaces.⁸

The chapter explains how gender equality policies and law have developed in Finland as, over time, they shifted away from a focus on social and economic policies towards one on anti-discrimination measures, and away from prohibiting discrimination on the ground of sex to prohibiting discrimination on an open list of grounds. The underlying perspective of the article is that a profound change took place in Finnish politics in the 1990s, when the country's welfare state ethos was

3 Dagmar Schiek, 'Revisiting Intersectionality for EU Anti-Discrimination Law in an Economic Crisis: A Critical Legal Studies Perspective' (2016) 27(2) *Sociologia del Diritto* 23.

4 Kevät Nousiainen, 'Anti-Discrimination Law Setting the Standard for Social Europe' in Kerstin Ahlberg and Niklas Bruun (eds), *The New Foundations of Labour Law* (Peter Lang 2017).

5 Kevät Nousiainen, 'On the Limits of the Concept of Equality: Arguments for a Dynamic Reading', in Eva-Maria Svensson, Anu Pylkkänen, and Johanna Niemi-Kiesiläinen (eds), *Nordic Equality at a Crossroads: Feminist Legal Studies Coping with Difference* (Routledge-Cavendish 2004).

6 Both national law and international law have developed towards an understanding that states have a duty to carry out positive action to promote freedom and substantive equality; see Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2010).

7 The Ministry of Social Affairs and Health has provided information on experienced equality since 1998. The latest Barometer was provided in 2017; see Ministry of Social Affairs and Health, 'Tasa-arvobarometri 2017' [Gender Equality Barometer 2017] <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160920/STM_08_2018_Tasa-arvobarometri%202017_net.pdf?sequence=4&isAllowed=y> accessed 20 August 2022.

8 Statistics Finland, 'Työ syrjintää tai eriarvoista kohtelua eri tilanteissa kokeneiden palkansaajien osuus 2018' [The Percentage of Employees Who Have Experienced Discrimination or Unequal Treatment at Work 2018] in *Sukupuolten tasa-arvo Suomessa 2021* [Gender Equality in Finland 2021] <https://www.stat.fi/tup/julkaisut/tiedostot/julkaisuluettelo/yyti_sts_202100_2021_23460_net.pdf> accessed 9 February 2023.

replaced by a political regime attuned to liberalism and neoliberalism. Since then, anti-discrimination has come to play an increasingly prominent role in Finnish politics. A turn to ‘gender’ rather than ‘sex’ and the extension of protection to cover new grounds of discrimination further changed the landscape of equality politics in Finland a decade later.

These developments in Finland have depended on both national and international pressures that will be discussed in this chapter. The particular legal instruments – both prohibitions on discrimination and the requirement of positive action – that were chosen to combat gender discrimination also reflect those pressures. Gender equality has increased during the years in which explicit equality law has been in place, but the extent to which anti-discrimination law has played a decisive role in that development remains unclear.

Finnish equality and anti-discrimination law does not provide powerful tools for promoting equality or reducing discrimination. The paradox of a relatively high level of gender equality under relatively weak equality law indicates that other processes besides law have had an impact on the situation in Finland. The historical changes that have taken place in Finnish politics grant us insight into the effects of different approaches: while welfare state policies improved social conditions to help women gain economic and social rights, these policies failed to address violations of individual integrity. With the more individualistic approaches adopted under a more liberalistic regime, the safety net provided by the public sector on which women could rely socially and economically became weaker, but more attention was directed towards the personal integrity of women than had previously been the case. The ugly problem of violence against women was revealed.

In Part 1, as well as throughout the chapter, the social, political, and economic forces behind particular developments in Finnish legislation are considered. One of the issues examined is the strong position of women in politics in Finland, along with other sources of power in Finnish society that seem to oppose feminist politics. Corporatism plays a powerful role in the definition of labour-related issues, including legislation, and it is important to understand the ambiguous role of social partners in the development of Finland’s gender equality law. In this chapter, the term ‘social partners’ refers to representatives of management and labour as key actors within systems of industrial relations.

Two examples of longstanding equality problems are considered in Part 2: violence against women and pay discrimination. These two examples have partly been chosen because they represent long-term severe problems. In addition, they were selected to illustrate in detail how recognition of discrimination has been influenced by particular power structures and specific features of Finnish society. The case studies also show how national politics on equality depend not only on the government in power but also on structures supported by traditions and institutions that are difficult to change.

Part 3 discusses the provisions and limitations of past and present gender equality and anti-discrimination law in Finland in the light of recent legal developments.

Part 1: National gender equality landscape: Norms and enforcement

2.2 Finnish gender equality policies and law: Social, political, and economic context

First, a linguistic issue must be explained, as it may have an effect on how gender-related policies in Finland are understood. The Finnish language does not have a linguistic term for gender. The language is gender-neutral in terms of pronouns: *hän* means both ‘she’ and ‘he’. The Finnish word *sukupuoli* refers to biological sex (*suku* meaning ‘kin’ and *puoli* meaning ‘half’). ‘Gender’ was introduced to Finnish by feminist and gender studies as *sosiaalinen sukupuoli* (‘social sex’) in the 1980s, but the term is seldom used even in the context of gender studies, which is referred to as *sukupuolentutkimus* (literally ‘study of sex’). Legislation uses the terms ‘sex’, ‘woman’, and ‘man’, and it prefers gender-neutral formulations. Preparatory works for criminal law, for example, emphasize that gender-neutral formulations should be used. The strong emphasis on gender-neutral social practices makes gender-sensitive policies difficult to understand and implement. International and EU law distinguishes between ‘sex’ and ‘gender’, but both terms are routinely translated into Finnish using the term *sukupuoli*. The national legislature seems to pay little attention to social and cultural aspects involved in the use of the term ‘gender’.

Finnish political rhetoric often presents the country as ‘a model for gender equality’.⁹ Women’s political rights are pointed to as immutable evidence of the validity of such a claim. Finnish women’s rights to participate fully in parliamentary elections date back to 1906. The percentage of women members of parliament has risen from 9.5% following the 1907 elections, the first after women obtained the right to vote and stand for election, to 47% in 2019.¹⁰ In elections to the European Parliament in 2019 and regional elections in 2022, a majority of those elected were women. At the present time, Finland has a woman prime minister and all of the parties in government are led by women. The success of women in Finnish politics is often taken as a proof that gender equality has already been completely achieved in Finland, which makes it difficult to combat remaining inequalities.

Many positions of power show gendered patterns that favour men. Certain parliamentary standing committees have clear majorities of men (Finance, Commerce, Defence, Foreign Affairs, Constitutional Law, Agriculture and Forestry), and others of women (Social Affairs and Health, Education). High ministerial officials are more often men than women, as are the experts heard by the parliament. Three mayors out of every four are men, and less than 40% of chairpersons of municipal

9 Finnish media often refer to Finland as a model for gender equality. Lately, the reference may have an ironic undertone. For example, an article in the leading daily newspaper *Helsingin Sanomat* discusses existing gender inequalities under the heading ‘Suomi, tasa-arvon mallimaa’ [Finland, a Model for Gender Equality]; see Minna Pölkki, ‘Suomi, tasa-arvon mallimaa’ [Finland, a Model for Gender Equality] *Helsingin Sanomat* (Helsinki, 23 September 2021).

10 Finnish Parliament, Päivi Erikkilä, and Joni Krekola, ‘Women’s Suffrage 110 Years Information Package’ (May 2016) <<https://www.eduskunta.fi/EN/naineduskuntatoimii/kirjasto/aineistot/yhteiskunta/womens-suffrage-110-years/Pages/default.aspx>> accessed 20 January 2023.

councils are women. The number of women among leaders of the national employer organization is very low. Less than one-third of the board members in listed companies are women.

Finland is often described as a Nordic ‘social democratic’ welfare state.¹¹ In the pre- and post-World War II world, ‘Norden’ as a region consisting of five Nordic states was often characterized as representing a ‘middle way’ between socialism and capitalism. The concept of the ‘Nordic welfare state’ holds a privileged position in international and academic discourses on welfare,¹² as the small Nordic states had succeeded in overcoming poverty and social backwardness under democratic rule. Sweden was in practice seen as the model for Nordic innovations. Finland willingly adopted Swedish ideas and social models. For Finns, the Nordic identity also functioned as a bulwark against the Soviet Union¹³ – a feature that seems to be gaining ground again since the Russian invasion of Ukraine.

Even during the formative years of Finnish welfare state-building, however, it would be misleading to consider Finland a social democratic regime, as coalition governments have been the norm, and such governments have involved political denominations that spanned the range from communists to right-wing parties. Finland’s welfare state-building was based on solving societal problems by means of expansive administrative organization and regulation. National and local governments were expected to actively impact society through the provision of public goods.¹⁴

The expansion of the Finnish welfare state in the 1970s coincided with the rise of a new wave of feminism.¹⁵ The first wave of the Finnish feminist movement that had focused on formal equal rights for women had largely achieved its aims and subsided by the 1970s, while *de facto* inequality remained. Finnish feminism of the 1970s stressed women’s social and economic rights, and gender equality was promoted for its social utility.¹⁶ Women were traditionally economically active:

11 Danish sociologist Gøsta Esping-Andersen’s typology of welfare state regimes describes the Nordic model as based on universal rights and social services, rather than mere monetary social benefits that are typical for conservative welfare regimes; see Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton University Press 1990).

12 Nils Edling, ‘Introduction’, in Nils Edling (ed), *The Nordic Countries as Welfare States* (Berghahn 2021).

13 Mary Hilson, *The Nordic Model: Scandinavia Since 1945* (Reaktion Books 2008).

14 Olli Mäenpää, *Julkisen hallinnon muutosvaiheista Suomessa* [On Transitions of Finnish Public Governance] (VAPK-kustannus 1991), 36–48.

15 Solveig Bergman, *The Politics of Feminism: Autonomous Feminist Movements in Finland and in West Germany in the 1960s to the 1980s* (Åbo Akademi University Press 2002); Riitta Jallinoja, *Suomalaisen naisliikkeen taistelukaudet: Naisasioliike naisten elämäntilanteen muutoksen ja yhteiskunnallis-aatteellisen murroksen heijastajana* [The Fighting Periods of the Finnish Women’s Movement: Women’s Movement as a Reflection of Women’s Situation in Life and Societal-Ideological Turning Points] (WSOY 1983).

16 Kevät Nousiainen, ‘Utility-Based Equality and Disparate Equalities: From a Finnish Perspective’ in Dagmar Schiek and Victoria Chege (eds), *European Union Non-Discrimination Law: Comparative Perspectives on Multidimensional Equality Law* (Routledge-Cavendish 2008).

they worked on small family farms, participated in the war economy, and worked full-time already in the postwar period.

After 1968, ‘income policy agreements’ between the state and its main social partners (the national central labour market organizations) were frequently used to determine pay levels through a collective approach. Working hours, pensions, social security contributions, and, at times, even prices and rents were decided through compromises that involved political decisions.¹⁷ The aim was to keep inflation within a level conducive to productivity. These arrangements involved centralized collective agreements. In practice, pay levels were defined by the (male) export sector. Special ‘low-pay extras’ were sometimes paid to (women’s) low-pay branches. The corporatist approach to politics in Finland meant that any proposed legal reforms related to the labour market needed to be negotiated through a tripartite cooperation between the government and the main labour market organizations. Anti-discrimination law was and is consistently prepared through such negotiations and compromise. Finland has been a member of the International Labour Organization (ILO) since 1920 and has ratified the main ILO gender equality conventions.¹⁸ Implementation of those conventions, however, was (and continues to be) left largely to the government’s social partners.

In its foreign policy, Finland stressed Nordic cooperation and wished to be identified as a Nordic state in the bipolar Cold War world. Finland’s gender equality politics were also measured against related developments in the other Nordic countries. Finland participated eagerly in United Nations activities during the Cold War years, and the promotion of gender equality in foreign politics in that period has been referred to as ‘Cold War UN feminism’, as Finland was presented to the international audience as a country of advanced gender equality. The first woman deputy secretary general of the UN, nominated in 1972, was the lawyer Helvi Sipilä from Finland. She was given woman-specific tasks, among them the preparation of the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁹ In the 1990s, the concept of gender became more widely adopted, and the issue of men and masculinities was given a prominent role in Finnish equality politics. Nordic gender equality became a brand to be actively promoted internationally.²⁰

17 Maiju Wuokko, Niklas Jensen-Eriksen, Henrik Tala, Elina Kuorelahti and Aaro Sahari *Loputtomat kihlajaiset: Yritykset ja kolmikantakorporatismi Suomessa 1940–2020* [Endless Engagement: Business and Tripartite Corporatism in Finland in 1940–2020] (Siltala 2020) records the history of tripartite corporatism and income policy agreements.

18 The Equal Remuneration Convention C100 (1951) was ratified in 1960, and the Discrimination (Employment and Occupation) Convention C111 (1958) in 1970.

19 Marjaana Jauhola and Minna Lyytikäinen, ‘Kutistettu feminismi? Suomen ulkosuhteiden tasa-arvopoliittikka kylmän sodan YK-feminismistä 2010-luvun tolkkutasa-arvoon’ [Shrunken Feminism? Equality Politics in Finnish Foreign Affairs from the UN Feminism of the Cold War to the Common-Sense Equality of the 2010s] in Johanna Kantola, Paula Koskinen Sandberg, and Hanna Ylöstalo (eds), *Tasa-arvo muutoksessa* [Equality in Transformation] (Gaudeamus 2020).

20 Pirjo Markkola, ‘Nordic Gender Equality: Between Administrative Cooperation and Global Branding’, in Jani Marjanen, Johan Strang, and Mary Hilson (eds), *Contesting Nordicness: From Scandinavianism to the Nordic Brand* (De Gruyter 2022).

That Finland's approach to gender equality relied on social politics is apparent in the fact that responsibility for gender equality was assigned to the Ministry of Social Affairs and Health. The focus of equality policies was, in Nancy Fraser's terms, more on redistribution than recognition.²¹ Unlike feminists in many other countries, Finnish second-wave feminists believed in influencing social structures from within, through cooperation among state officials, women's organizations, and researchers mobilized to solve social issues.²² The expansion of the welfare state between the 1970s and the 1990s advanced social rights and created a new balance of responsibility between public and private actors.²³ Cooperation on equality between women and men was institutionalized in the 1970s, and since 1978 the Nordic Council of Ministers has regularly approved an action plan for Nordic equality policies. Such politics from above were referred to as 'state feminism'.²⁴

That Finland's anti-discrimination law was originally limited to discrimination on the ground of sex may be explained by the country's nationalist traditions and low level of immigration. Finland may be considered an epitome of the nation-state,²⁵ with a uniform national culture and a tendency to superimpose 'society' and 'state'.²⁶ Finland gained independence from the Russian Empire in 1917, following cultural and political nation-building in the 19th century. Nations are 'imagined communities'²⁷ with real-life effects. Finland was the only state among the new

21 Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (Verso 2004).

22 Anna Elomäki, Johanna Kantola, Anu Koivunen, and Hanna Ylöstalo, 'Samettikolmiosta uuteen politisoitumiseen: Muuttuva feministinen toimijuus' [From Velvet Triangles to a New Political Activism: Changing Feminist Agency], in Johanna Kantola, Paula Koskinen Sandberg, and Hanna Ylöstalo (eds), *Tasa-arvopolitiikan suunnanmuutoksia* [Changes of Direction in Equality Politics] (Gaudeamus 2020).

23 Even care of the elderly was to a great extent transferred to the public sector. In 1970, the legal responsibility of grown-up children to support their parents was removed. Spouses continued to be responsible for maintaining each other during a marriage, but, in practice, maintenance from one spouse to another had become a dead letter. Parents remained responsible for the maintenance of their under-age children.

24 The idea that 'state feminism' was a form of feminism typical for the Nordic states was much discussed within the political sciences. The term originated from Helga Hernes's *Welfare State and Woman Power: Essays in State Feminism* (Norwegian University Press 1987).

25 Finnish nationalism was created consciously in the 19th century. The motivations and aims of the nationalist movement were expressed by the maxim of A. I. Arwidsson (1791–1858): 'We no longer may be Swedes; we do not want to become Russians; so let us be Finns.' The nation-building stressed the need of the Finnish Swedish-speaking elites to adopt the Finnish language but encouraged nationalism also by emphasizing the shared history, culture, and religion of the population, in contrast to Russia.

26 In the Nordic conceptual universe, social problems are often seen as something to be addressed by the 'society', meaning public authority and the state; see Edling (n 12) 11.

27 Scholarship on nation-states stresses that nations may be built on various grounds, such as shared history, common language, ethnic origin, religion, or some other quality used as the distinctive ground for unity. They certainly are in many ways 'imagined communities' in the pejorative sense used by Benedict Anderson in *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (Verso 1983).

eastern European states that emerged at the end of World War I in former territories of the Austrian, Russian, and Turkish empires to survive the aftermath of World War II. A strong nation-state may be assumed to boost the solidarity needed for the welfare state project.²⁸ Finnish nationalism has democratic roots, but nationalism also motivates anti-democratic politics and exclusion of others, as discussed below.

Promoting gender equality in Finland has often involved social policies that guarantee services that enable women's paid work.²⁹ The Nordic welfare state has been presented as women-friendly, in contrast to conservative welfare states organized around a male breadwinner/female homemaker model.³⁰ Critics note, however, that the claim to women-friendliness rests on a selective image of women as middle-class heterosexual mothers. Nor is the welfare state necessarily a good employer. The Finnish welfare state (or the public sector) employs a great number of women at low pay. Accordingly, the welfare state may be held partly responsible for the broad gender pay gap in the country.³¹

2.3 Gender equal laws and policies: Different phases

Important social policy measures were adopted in the 1970s and 1980s. A family leave system providing for universal mandatory maternity, paternity, and parental leave with income-related benefits was introduced in gradual steps from the 1960s onwards, first through an extension of maternity leave and then through the introduction of paternity and parental leave. Several governments, the parliament, and Finnish labour market organizations debated these steps.³² Until 1976, spouses

28 For theoretical discussions on the relation of the nation-state and welfare state policies, see Peter Flora, Stein Kuhnle, and Derek Urwin (eds), *State Formation, Nation-Building, and Mass Politics in Europe: The Theory of Stein Rokkan* (Oxford University Press 1999).

29 Margaretha Mickwitz, Agneta von Essen, and Elisabeth Norgren (eds), *Roolien murtajat: Tasa-arvokeskustelua 1960-luvulta 2000-luvulle* [Breakers of Gender Roles: Equality Discussions from the 1960s to the 2000s] (Gaudeamus 2008).

30 Anette Borchorst and Birte Siim, 'Woman-Friendly Policies and State Feminism: Theorizing Scandinavian Gender Equality' (2008) 9(2) *Feminist Theory* 207. The feminist discussion highlighted gendered characteristics of the different models of the welfare state described by Esping-Andersen (n 11).

31 Milja Saari, Johanna Kantola, and Paula Koskinen Sandberg, 'Implementing Equal Pay Policy: Clash between Gender Equality and Corporatism' (2021) 28(2) *Social Politics: International Studies in Gender, State & Society* 265 <<https://academic.oup.com/sp/article/28/2/265/5511609>> accessed 21 January 2023.

32 Family-related leaves were introduced gradually, first through the extension of maternity leave in the 1970s. Paternity and parental leaves were introduced in the 1980s. See Anita Haataja, 'Suomalainen äitiys-, isyys' ja vanhempainvapaajärjestel [The Finnish System of Maternity, Paternity and Parental Leave] in Anna-Maija Castrén (ed.), *Työn ja perheen tasapaino: sääntelyä, tutkimusta ja kehittämistä* [Balance of Work and Family: Regulation, Research and Development] (University of Helsinki 2007). Labour market organizations were highly involved in the debate. Many collective agreements provide pay for some periods of family-related leave. The income-related benefits paid through social insurance do not compensate fully for the loss of income during such periods of leave.

were taxed together, which did not encourage spouses with lower income (usually wives) to work outside the home. Since then, spouses have been taxed separately. Mandatory universal social insurance legislated in the 1960s and 1970s consists of individual rather than family-based benefit schemes. Day-care for children was seen as a way to make it easier for mothers to enter the labour market. The first Act on Day-Care (36/1973) required municipalities to arrange day-care facilities. In 1985, the duty of municipalities to provide this service was turned into the right of parents to receive childcare, seen as mothers' ticket to paid work. The right to remain at home taking care of a child under three years of age, with a flat-rate benefit, was adopted simultaneously as a compromise with more traditional family-caring patterns. The right to home-care benefits remains in force and is an option almost exclusively used by mothers.

Up until the 1990s, Finland was a country of emigration, but since then immigration has increased. 'Old' minorities, such as the Swedish-speaking population and the Sami, enjoy political, cultural, and social protection that is not extended to the 'new' minorities³³ made up of EU citizens (mainly Estonians), Russians, and immigrants from crisis areas outside the EU. Gender equality politics grounded on national unity and social utility lose credibility when measured against increasing diversity.³⁴ In 2019, 8% of Finland's inhabitants were of foreign origin, with much higher percentages in major cities.³⁵

Neoliberal distaste for collective political aims and public institutional structures appeared in Finnish politics in the new millennium. At this point, the fact that Finland is a nation-state began to cause complications. Increasing immigration coincided with a turn towards growing income inequality. Income differentials that had decreased with the expansion of the welfare state remained stable in the 1980s and grew in the 1990s, although Finland remains a country with comparatively small income differentials.³⁶

The economic recession of the 1990s brought Finland's welfare state project into a crisis that weakened the social institutions and structures on which it was based. The state had been the main provider of social welfare, but in the 1990s the

33 Kevät Nousiainen, 'Minorities' Right to Day Care: Liberal Tolerance or Identity Maintenance?' in Dagmar Schieck and Anna Lawson (eds), *European Union Non-Discrimination Law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination* (Routledge 2011).

34 Nousiainen, 'Utility-Based Equality and Disparate Diversities' (n 16).

35 In 2019, 1% of the whole population but 25% of immigrants lived in Helsinki; see Helsinki Statistics, 'Population with Foreign Background in Helsinki' <<https://ulkomaalaistaustaisethelsingissa.fi/en/>> accessed 20 August 2021.

36 Measured by the most common indicator for income differentials, the gini coefficient, relative income differentials have grown from 1995 to 2021. The income of the lowest income decile grew 31% during that period, while the income of the highest income decile increased by 103%. The median rise of income for the whole population during that period was 52%; see Statistics Finland, 'Tuloerojen kehitys Suomessa – tuloerot kasvoivat vuonna 2021 [Development of Income Differentials in Finland: Income Differentials increased in 2021] <https://stat.fi/julkaisu/clubks9mb7xzkn0bumw1pbcgc6>> accessed 23 January 2023.

main responsibility for providing social services was relegated to the municipalities, which went from being subcontractors of the state to being entrepreneurs.³⁷ Social services that had mostly been provided by municipalities were outsourced.³⁸ Since 1990, the educational goals of day-care have been stressed, rather than the right of women to work in the labour market. Both municipal and state coordination of day-care was largely dismantled in the 1990s, owing to neoliberal ideas about the need for market-based coordination. The egalitarian ethos of Finland's welfare politics gave way to claims that such politics lead to passivity among citizens. In policy documents, gender equality was increasingly understood as equality of opportunities.³⁹

Right-wing populism gained ground in the 1990s, motivated by discontent against conceived social and economic loss caused by globalization and European integration. The populist Finns Party gained popularity among men in particular⁴⁰ and established a profile for itself as a party opposed to immigration.⁴¹ Closing the borders against immigration was presented as the only way of protecting the welfare state. The party and its supporters hold nationalist values and opinions⁴² and stress conservative family values. Small right-wing extremist groups were activated when a higher number of asylum-seekers arrived in Finland in 2015.⁴³ Finnish populists claim they represent a silent majority of the 'people' against national and European elites.⁴⁴

37 Elina Palola and Antti Parpo, 'Kunnallista sopeutumisen politiikkaa' [Municipal Policies of Adaptation] in Elina Palola and Vappu Karjalainen (eds), *Sosiaalipolitiikka – hukassa vai uuden jäljillä* [Social Politics: Lost or Heading for Innovation] (National Institute for Health and Welfare 2011).

38 Helena Blomberg, 'Do Cutbacks Pay Off? Perceived Changes in the Standard of Municipal Services and Attitudes towards Services among Citizens and Municipal Decision Makers in Finland' (2002) 8(3) *International Journal of Social Welfare* 206.

39 Katri Hellsten, 'Onko puhe Suomesta pohjoismaisena hyvinvointivaltiona perusteltua' [Is It Appropriate to Talk About Finland as a Nordic Welfare State] in Palola and Karjalainen (n 37).

40 The Finns Party election programme for 2019, 'Vote Finland Back', declares that 'the Finnish government is for the Finns' and that 'the Finnish people ... must always come first and foremost in its policies and actions'; see <https://www.perussuomalaiset.fi/wp-content/uploads/2019/06/Eduskuntavaaliohjelma-2019_SU_In_English_1.pdf> accessed 8 January 2022.

41 Supporters of the Finns Party differ from the supporters of other parties through their negative attitudes towards immigration and multiculturalism, sexual minorities, and environmental policies. The supporters of the Finns Party are opposed to more immigration, which they consider a problem for Finland. They are more often men than women. See Aleksi Suuronen, Kimmo Grönlund, and Rasmus Sirén, 'Puolueiden äänestäjät' [Voters in Different Parties] in Sami Borg, Elina Kestilä-Kekkonen, and Hanna Wass (eds), *Politiikan ilmastonmuutos: Eduskuntavaalitutkimus 2019* [Climate Change in Politics: Finnish National Election Study 2019] (Ministry of Justice 2020).

42 Jussi Martinen, *Mikä perussuomalaisia vaivaa* [What Is It That Bothers the Finns Party Members] (Vastapaino 2021).

43 One of these groups, the Nordic Resistance Movement, a Nordic group with national member associations, opposes multiculturalism, homosexuality, and immigration. The organization was prohibited by Finland's Supreme Court in 2020.

44 For a political analysis of global populism, see Jan-Werner Müller, *What Is Populism?* (University of Pennsylvania Press 2016).

In the 2010s, the concept of the Nordic welfare model was increasingly explained in cultural rather than political and economic terms. Extremist groups could identify as ‘Nordic Freedom’ or ‘the Nordic Resistance Movement’.⁴⁵ For such political actors, Finnish equality between women and men is a thing to be proud of as an expression of Finland’s cultural values and ethnic inheritance, but it should not be understood in terms of gender or as a principle that involves intersectional discrimination or LGBT rights. Inequality became treated as a characteristic of immigrants, and equality as an inherently Finnish characteristic. Gender equality was thus harnessed to create differences and utilized in anti-immigration and anti-Islamic discourses. When the number of asylum-seekers grew tenfold in 2015, the media quickly framed the issue as a social crisis that threatened security and welfare. Sexual crimes and harassment became behaviour deemed culturally typical for immigrants, not for Finns.⁴⁶ Equality bodies and feminist and human rights organizations demanded rights for trans and LGBT people and campaigned for legislative amendments as part of their agenda.

As a core concept in modern societies, equality is necessarily a contested term. Traditionally, equality politics were based on economic and social interests and driven by right- and left-wing political parties. Today, political divisions are increasingly based on identities and values. A chasm has opened up between the different meanings given to gender equality. For the opposites on the new political map, gender, LGBT rights, diversity, and intersectionality are concepts to be used as shibboleths through which to distinguish friend from foe.

The position of Finnish trade unions weakened considerably when industrial production moved to countries with lower labour costs. New jobs and workplaces tend to be established within the field of private services, often provided by small employers who offer non-permanent, often part-time jobs. These new circumstances threaten the ability of trade unions to negotiate good conditions for work. The employers’ organization EK (Confederation of Finnish Industries) seeks to negotiate local collective agreements. Employees at the local level face more difficult negotiations.⁴⁷ After almost 50 years of comprehensive corporatist policies in Finland, the tripartite model of income policy agreements came to an end in 2016, when EK⁴⁸ changed its rules to exclude centralized collective agreements.

45 Johan Strang, Jani Marjanen, and Mary Hilson, ‘A Rhetorical Perspective on Nordicness: From Creating Unity to Exporting Models’ in Marjanen, Strang, and Hilson (n 20).

46 Sociologist Sara Farris refers to ‘femonationalism’ as making use of feminism and gender equality to support anti-immigrationist and Islamist speech; see Veronika Honkasalo and Titus Hjelm, ‘Tasa-arvo erojen tuottajana ja eriarvoisuuden oikeuttajana: Femonationalismi, turvapaikanhakijat ja media’ [Equality in Creating Difference and Justifying Inequality: Femonationalism, Asylum-Seekers and Media] in Kantola, Sandberg, and Ylöstalo (n 22).

47 Ville Kainulainen, ‘Prekaari palvelutyö ja ammattiyhdistystoiminnan muutospainee’ [Precarious Service Work and Pressures to Change Trade Union Activities] in Kantola, Sandberg, and Ylöstalo (n 22).

48 The Confederation of Finnish Industries (EK) represents the interests of the Finnish business community both nationally and internationally. It represents 20 member associations and 15,300 member companies that employ a total of 900,000 employees.

Even after that decision, the social partners are considered the government's legitimate parties when it comes to preparing reforms that affect working life, including anti-discrimination law. The repercussions of the withdrawal of the employers' organization EK from the tripartite model have been felt in the preparation of subsequent legislation, however, as will be discussed below in the context of equal pay legislation.

Cuts in social spending were made by the government led by Prime Minister Juha Sipilä (Centre Party) (2015–2019).⁴⁹ According to critics, Sipilä's government made 'women pay the bill' for the delayed national effects of the global financial crisis of 2007–2009. The far-right Finns Party, one of the parties in the coalition, sought to impress its conservative values and male standards upon governance in general.⁵⁰ To help Finland's export industry in its efforts to compete with international competitors, the government sought to achieve lower pay costs through a tripartite agreement to freeze pay levels, lengthen working hours, and reduce employer costs. Most trade unions were persuaded to make collective agreements that reduced employee rights. In practice, these agreements were implemented to the letter in the public sector, while not all private-sector employers increased working time or cut wages. The overall aim was a 'Finnish model' of income policy, where the export sector would lead pay levels.⁵¹ The implementation of such a model within Finland's gender-segregated labour market has meant that women working in the public sector cannot demand pay rises to close the gender pay gap.

In 2016, cuts in social spending led Prime Minister Sipilä's government to limit the subjective right to day-care by making both parents' full-time activity (work or education) a condition for access to full-time day-care for their children. Children of an unemployed parent had access to only half-time care, and the costs for parents of day-care rose. Service provision was targeted for concrete cuts in social spending.⁵² Given that the unemployment rate for immigrants is higher than that for persons born in Finland, and the unemployment rate for non-Finnish-speaking mothers of small children much higher than that of non-Finnish-speaking fathers,⁵³

49 The government of Prime Minister Juha Sipilä consisted of the Centre Party, Kokoomus, and the Finns Party. The Finns Party divided into two parties in 2017, and only a fragment of the party remained in the government until 2019. Following the division of the Finns Party, the government continued in power with its original government programme.

50 Johanna Kantola, Paula Sandberg Koskinen, and Hanna Ylöstalo, 'Johdanto' [Introduction] in Kantola, Sandberg and Ylöstalo (n 22), 10.

51 Miika Kyla-Laa, 'Sivutettu sukupuoli: Kilpailukykysojimus, julkinen sektori ja tasa-arvopuhe eduskunnassa' [Neglected Gender: Contract for Competitiveness, Public Sector and Equality Speak in the Parliament] in Kantola, Sandberg, and Ylöstalo (n 22), 188.

52 Marja Lindberg, Mikael Nygård, Janne Autto, Axel Rappe, and Emily Gichuchi, 'Toimeentulosta investointimaailmaan? Lapsiperheiden hyvinvointi ja perhepolitiikka Suomen hallitusareenalla vuosina 2007–2019' [From Subsistence to a World of Investments? Welfare of Families with Children and Family Politics in Finnish Government 2007–2019] (2020) 62(3) *Politiikka* 251.

53 Hanna Sutela, 'Lähi-Idästä ja Afrikasta kotoisin olevien naisten kotoutumiseen kiinnitettävä huomiota' [We Need to Pay Attention to the Integration of Women from the Near East and Africa] Asiantuntija- ja ajankohtaisblogi [Statistics Finland] 12 May 2016 <<https://www.stat.fi/tietotrendit>

cutting the right to day-care was especially detrimental to immigrant women and children, who risked facing intersectional discrimination as a result. Many Finnish municipalities did not implement the Sipilä government's policy of limiting full-time access to day-care.

At the time of writing, political leaders at both the national and the EU level are pushing gender equality policies that are more ambitious than those of their predecessors. The European Commission is currently promoting policies against pay inequality and gender-based violence. Gender equality has returned to national politics. The Government Programme of Finland's current prime minister, Sanna Marin, seeks to promote national gender equality through traditional economic and social rights as well as the protection of women's integrity. The subjective parental right to day-care has been reinstated, and a reform of the family leave system carried out. Extensive reforms of criminal law and victim services were promised under the new government's programme, and these have already been implemented to some extent, as discussed in Section 2.7.

2.4 Three phases in the development of anti-discrimination and equality law

2.4.1 Introduction

In this section, I will discuss three phases in the development of Finnish gender equality and anti-discrimination law, but first it is necessary to explain a few words from the terminology of Finnish equality law. *Tasa-arvolaki*, the Finnish Act on Equality between Women and Men, uses the word *tasa-arvo*, denoting 'equal value', for equality. The Non-Discrimination Act (*yhdenvertaisuuslaki*), which covers other grounds of discrimination, uses the word *yhdenvertaisuus*, which contains an element of comparison (*vertailu*). Before the introduction of the Non-Discrimination Act, *tasa-arvo* often connoted political and social substantive equality, whereas *yhdenvertaisuus* was used in the context of formal legal equality (typically, equality before the law).⁵⁴ The different terms used in these contexts may reflect a wish to distinguish more substantive aims from a merely formal requirement of equality. If such a distinction was intended, it has little ground in law, as several grounds of discrimination under Finnish equality and non-discrimination law both enjoy protection against discrimination and require positive action.

/artikkelit/2016/lahi-idasta-ja-afrikasta-kotoisin-olevien-naisten-kotoutumiseen-kiinmitettava-huomiota/> accessed 10 February 2023.

54 Kevät Nousiainen, 'Käsitteellisiä välineitä tasa-arvon erittelyyn' [Conceptual Tools for Analysing Equality] in Johanna Kantola, Kevät Nousiainen, and Milja Saari (eds), *Tasa-arvo toisin nähtynä: Oikeuden ja politiikan näkökulmia tasa-arvoon ja yhdenvertaisuuteen* [Equality Considered in Another Way: Legal and Political Insights into Gender Equality and Non-discrimination] (Gaud-eamus 2012).

2.4.2 *The first phase of equality law*

The first phase culminated in the enactment of the Act on Equality between Women and Men of 1986, which remains in force despite numerous amendments made during the following decades (in 1988, 1992, 1995, 1997, 2001, 2005, 2009, 2011, 2014, and 2016). The original act was strongly influenced by the CEDAW Convention,⁵⁵ and duties to carry out positive action were a hallmark of the act. Authorities and employers were obliged to promote equality, and equality in education was to be ensured.

Unlike the CEDAW Convention, the Act on Equality prohibits not just discrimination against women but also discrimination against men, but the aim was also to ‘improve the position of women in working life in particular’.⁵⁶ The choice of a symmetrical prohibition on discrimination was not contested. Unlike, for example, in Norway, there was little pressure to adopt woman-specific legislation. Finnish women’s organizations understood equality of the sexes as an aim pursued by both women and men acting side by side.⁵⁷ Radical feminism was limited to academic scholars and small feminist groups. Anti-discrimination law to promote equality was not brought to the political agenda by national minority-rights groups. The contents of the Act on Equality were largely defined by labour market organizations through preparatory works carried out in a tripartite fashion (i.e., state, employer, and employee organizations negotiating the outcome).⁵⁸

Under Section 7 of the original act, both ‘putting women and men in a different position on the ground of sex’ and measures that put ‘women and men *de facto* clearly in a different position’ were prohibited as discrimination. The wording used differs from the wording of Article 1 of CEDAW, but it contains the idea that both differential treatment on the grounds of sex and treatment that has the ‘effect of impairing or nullifying’ women’s rights were discriminatory. These two definitions aimed at prohibiting direct and indirect discrimination. Interestingly, the act did not stipulate that discriminatory treatment must have a detrimental effect on the person discriminated against.

However, only discrimination in working life carried a sanction (compensation). Section 8 of the original act prohibited discrimination in working life in relation to recruitment, pay, treatment at work, and dismissal. While the provisions have been amended several times, the initial structure remains: the act contains a general but not justiciable prohibition on and definition of discrimination with a

55 Kevät Nousiainen and Merja Pentikäinen, ‘Rise and Fall of CEDAW in Finland: Time to Reclaim Its Impetus’ in Anne Hellum and Henriette Aasen Sinding (eds), *Women’s Human Rights* (Cambridge University Press 2013).

56 Laki naisten ja miesten välisestä tasa-arvosta [Act on Equality between Women and Men] 609/1986, original, Section 1.

57 Milja Saari, ‘Rintaa rinnan Suomea kehittämättä’ [Developing Finland Side by Side] in Mika Helander and Mats Nylund (eds), *Palkka työstä: Ay-liike ja edunvalvonnan uudet muodot* [Pay for Work: Trade Unions and New Forms of Promotion of Interests] (Into 2012).

58 Anu Pylkkänen, ‘Muodollisen tasa-arvon pitkä historia ja sen sisäänrakennetut erot’ [The Long History of Formal Equality, Differences Built in It] in Kantola, Nousiainen and Saari (n 54).

broad material scope, along with narrower, specific prohibitions covered by a right to compensation on the part of the victim.

Under Section 9(2) of the Act on Equality, Finland's policy of mandatory male conscription was defined as non-discriminatory. Voluntary military service for women was introduced in 1995. Extending mandatory service to women has been proposed from time to time. Section 127 of the Finnish Constitution requires all Finnish citizens to participate in or assist in the military defence of the country. The mandatory male conscription is an exception to the equality principle that keeps alive ideas on male and female citizenship that have linked male citizenship to military duties and female citizenship to motherhood since the time of the French Revolution.⁵⁹

The first equality body, the Council for Gender Equality, was established in 1972 as a parliamentary advisory body. Simultaneously with the passing of the Act on Equality, the office of Ombud for Equality was put in place to monitor the implementation of the act in all areas of life covered by its terms.

2.4.3 The second phase of equality law

The end of the Cold War formed the context for the second phase of the development of equality law in Finland. Finnish membership of the Council of Europe (1989) and the European Union (1995) introduced more formalistic non-discrimination provisions into Finnish law. Many Finnish gender equality activists worried that gender equality would suffer under EU law, which was known for its lack of positive action and social policies. Many feminists were disgusted by the *Kalanke* case (C-450/93), in which the European Court of Justice held that positive measures were derogations from the formal principle of equality, which should be interpreted strictly. The Court later moderated its position but retained a cautious approach. A provision allowing positive measures was added to the Treaty of Amsterdam (1997), however, and the Treaty also strengthened gender mainstreaming in EU policies. Some lacunae in social policy were closed by means of 'social dialogue' – that is, agreements made by European Union-level social partners,⁶⁰ which were later turned into directives. The first EU law on parental leave, for example, was achieved through such social dialogue in 1995. Since Finland became a member of the EU, EU gender equality law has had a strong impact on Finnish law. In the 1990s, EU law concentrated on gender equality in the labour market. In other areas, such as combating violence against women, the EU

59 Joan Wallach Scott, 'French Feminists and the Rights of "Man": Olympe de Gouges's Declarations' (1989) 28(1) *History Workshop* 1.

60 European social partners are EU-level management and employment organizations that are engaged in 'European social dialogue', a procedure under Articles 154 and 155 of the Treaty on the Functioning of the European Union. An agreement by the European social partners may under certain conditions be turned by Council decisions into binding legislation. One organization (ETUC) represents employees. On the employer side, one organization represents private firms (BUSINESS EUROPE), another small businesses (UEAPME), and a third public employers (CEEP).

used soft-law measures only. With the expansion of the EU's mandate to legislate, however, the situation has altered.⁶¹

The direct effect of EU non-discrimination law and the direct applicability of the European Human Rights Convention are apparent in Finnish legislation in many ways. Definitions of discrimination have been amended to conform to EU law. The European Court of Justice developed the doctrine of indirect discrimination in its case law in the 1990s.⁶² The Act on Equality has been amended several times owing to the requirements of EU law. In 1992, an explicit statement to the effect that discrimination on the ground of pregnancy was sex discrimination was added to the act. In Finnish case law, discrimination on the ground of pregnancy had previously been considered a specific form of discrimination that could lead to compensation under the Employment Contracts Act, but not under the Act on Equality.⁶³ Under EU law, discrimination on the ground of pregnancy had been classed as direct discrimination by the European Court of Justice.⁶⁴ In 1995, the Act on Equality was further amended with reference to EU law.⁶⁵ Prevention of harassment on the ground of sex and sexual harassment was also added to the duties of employers, owing to recommendations from both the ILO and the EU.⁶⁶

Increasing attention to individual human rights was reflected in the reforms of the Finnish Constitution carried out in 1995 and 1999.⁶⁷ The 1995 reform introduced Chapter 2 on 'Basic Rights and Liberties' to the Constitution. The reformulated Section 6 on equality consists of four subsections, the first stating the general principle of equality before the law and the second containing the prohibition of discrimination. The prohibition defines discrimination as differential treatment of an individual on explicitly listed grounds or on the basis of any 'other reason that concerns his or her person'. The constitutional definition strengthened the tradition of stressing differential rather than detrimental or 'less favourable' treatment, terms used by EU law. The third subsection of Section 6 requires equal treatment of children, and the fourth subsection contains a duty to promote (substantive) gender equality 'in societal activity and working life, especially in the determination of pay and the other terms of employment'

61 Johanna Kantola and Kevät Nousiainen, 'European unionin tasa-arvopolitiikka' [Equality Politics of the European Union] in Kantola, Nousiainen, and Saari (n 54).

62 Cases *Rinner-Kuhn* C-171/88, *Nimz* C-184/1989 and *Kowalska* C-33/1989.

63 Government Bill HE 63/1992 vp. Hallituksen esitys Eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain 9 ja 14 §:n muuttamisesta [Government Bill to the Parliament on the Amendment of Sections 9 and 14 of the Act on Equality between Women and Men].

64 Case *Dekker* C-177/88.

65 Amendments were made to implement directives 75/117/EEC, 76/207/EEC, 79/7/EEC, 86/378/EEC, and 86/613/EEC on equal pay, equal treatment at work, social protection, social security in professions, and equal treatment of self-employed persons, respectively.

66 Government Bill HE 90/1994 vp. Hallituksen esitys eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta [Government Bill to the Parliament on the Amendment of the Act on Equality between Women and Men].

67 Suomen perustuslaki [The Constitution of Finland] 731/1999. In 1995, a chapter on basic rights was adopted. It became Chapter 2 of the Constitution in the 1999 reform.

by legal provisions. Chapter 2 was incorporated into the Constitution as part of the total constitutional reform of 1999. A shift towards a more individualistic understanding of fundamental rights took place with the passing of the new Constitution, but it is worth noting that the promotion of gender equality was still defined in terms of social and economic rights.

Traditionally, the Nordic position regarding judicially protected rights and judicial review has been followed in Finland. Rights-based constitutionalism has gained ground since the late 1980s. The new Finnish Constitution combined parliamentary, judicial, and supranational forms of review. The traditional preview of legislation by the Constitutional Committee of the parliament was complemented by a new constitutional provision on judicial review (Section 92). The turning point for admitting judicial review was the signing of the European Convention on Human Rights. With EU membership, Finnish courts were granted the power to review national law in relation to its compatibility with EU law.⁶⁸ Provisions under Chapter 2 of the Constitution define the rights and liberties of ‘everyone’ and should be understood as coinciding with human rights and be interpreted in line with key human rights instruments.

Positive measures under the Act on Equality were made more explicit through the requirement that larger employers not just promote gender equality but also draw up an equality plan for the promotion of gender equality.⁶⁹ As positive action under Finnish law has never included quotas in the context of working life, EU law restrictions on quotas had little impact.

2.4.4 *The third phase of equality law*

As the EU offers little in the field of social welfare law, anti-discrimination law tends to become the standard for social inclusion and welfare.⁷⁰ In the wake of the financial crisis of 2007–2008, EU policies required cuts in social spending. Such policies were economically detrimental for women in many ways. On the other hand, EU anti-discrimination law expanded. The ‘2000 Directives’⁷¹ expanded EU anti-discrimination law by requiring protection in relation to four new grounds of discrimination. The implementation of the EU’s ‘2000 Directives’ expanded the

68 Juha Lavapuro, Tuomas Ojanen, and Martin Scheinin, ‘Rights-Based Constitutionalism in Finland and the Development of Pluralist Constitutional Review’ (2011) 9(2) *International Journal of Constitutional Law* 505.

69 Government Bill HE 90/1994 vp. Hallituksen esitys eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta [Government Bill to the Parliament on Amendments to the Act on Equality between Women and Men].

70 Kevät Nousiainen, ‘Anti-Discrimination Law Setting the Standard for Social Europe?’ in Kerstin Ahlfors and Niklas Bruun (eds), *The New Foundations of Labour Law* (Peter Lang 2017).

71 The Race Directive (2000/43/EC) and the Framework Directive (2000/78/EC) were adopted soon after the Treaty of Amsterdam had mandated the EU to combat discrimination on several grounds by ‘hard’ legislation that should be implemented in all member-states.

personal scope of prohibited discrimination in many European states and often led to a unification of former ‘single track’ equality laws and bodies.⁷²

In Finland, discrimination on any grounds other than sex was prohibited by the Non-Discrimination Act in 2004. This act was adopted hastily for the purpose of implementing Directives 2000/43/EC and 2000/78/EC. Already at the time of the act’s adoption, the Finnish parliament required that it be amended within a short space of time, as it implemented the ‘2000 Directives’ incorrectly. Among other reasons, expanding anti-discrimination law to cover grounds other than gender was originally motivated by a desire to enhance efforts to combat multiple and intersectional discrimination. In the first phase of the preparatory works for an amended Non-Discrimination Act, the idea of unifying Finland’s two non-discrimination acts (the Act on Equality and the Non-Discrimination Act) was discussed,⁷³ but was abandoned as the preparatory work for the law proceeded. There were many reasons for this. Conciliating constitutional ambitions, corporatist motivations, and feminist fears about the possibility that unified legislation would lead to a weakening of the protection of gender equality was difficult.

Section 6(2) of the new Finnish Constitution prohibits discrimination on an open-ended list of grounds, which gave grounds to require that anti-discrimination law should provide protection against discrimination on an open list of discrimination grounds in an equal manner. Most national anti-discrimination acts cover only a limited number of grounds. Similarly, EU law only requires prohibition against a limited number of discrimination grounds.⁷⁴ It is difficult to extend similar protection to discrimination grounds, such as race, gender, and all other possible grounds, nor does international human rights law require that all discrimination grounds be treated similarly. After ten years of preparatory work, the new Non-Discrimination Act (1325/2014) was finally passed and came into force on 1 January 2015. Section 8 of this act follows the Constitution in prohibiting discrimination on an open list of grounds, but access to compensation differs depending on the ground. Compensation for discrimination is available only to the extent required under EU law.

Gender discrimination continues to be covered by the Act on Equality, but all other discrimination grounds are protected under the Non-Discrimination Act. Equality bodies were partly unified, as the former Gender Equality Board was merged with the Non-Discrimination Board into a new Non-Discrimination and

72 Johanna Kantola and Kevät Nousiainen, ‘Institutionalising Intersectionality in Europe: Introducing the Theme’ (2009) 11(4) *International Feminist Journal of Politics* 459.

73 Johanna Kantola and Kevät Nousiainen, ‘Pussauskoppiin? Tasa- ja yhdenvertaisuuslakien yhdistämisestä [To the Kissing Booth? On Unification of the Act on Equality and the Non-Discrimination Act]’ (2008) (2) *Naistutkimus* 6.

74 Directive 2000/43/EC, which prohibits discrimination on the ground of racial or ethnic origin, has a broader material scope than Directive 2000/78/EC, which is limited to the field of employment and covers the grounds of religion or belief, disability, age, and sexual orientation.

Equality Tribunal.⁷⁵ The Non-Discrimination Ombud monitors implementation of the Non-Discrimination Act, except in issues related to working life, which are monitored by occupational safety officials. The Ombud for Equality continues to monitor the Act on Equality. No provisions on intersectional or multiple discrimination were added to the Act on Equality. However, according to the preparatory works for the Non-Discrimination Act, the Non-Discrimination Ombud monitors intersectional discrimination.

The result of such an approach is problematic.⁷⁶ A two-track model of anti-discrimination law was chosen, with separate legislation and enforcement bodies for gender and other forms of discrimination.⁷⁷ The material scope of protection against discrimination varies across different grounds of discrimination, both under the EU's 2000 Directives and in the national legislation put in place to implement them. Although expansion of the number of prohibited grounds allows better insight into multiple and intersectional discrimination, the separation of acts and their material scopes according to different grounds for discrimination creates a complicated system.⁷⁸

New positions related to gender equality have since been attached to the office of the Non-Discrimination Ombud, rather than the Ombud for Equality. These include the National Rapporteur on Trafficking in Human Beings (2009) and the Rapporteur on Violence Against Women (2022).

Discrimination claims decided by the Non-Discrimination and Equality Board usually concern ethnicity and age.⁷⁹ In public discussion, claiming discrimination has become more common, with issues such as differential treatment of vaccinated and unvaccinated persons recently in focus. Under international human rights law, the margin of appreciation allowed to states in cases of differential treatment varies according to the ground of discrimination. Certain discrimination grounds, including gender, are covered by their own specific human rights instruments, and derogations from the prohibition on discrimination must not involve discrimination on certain grounds even under public emergencies. The current discussion in the media seems to stress the equality of all grounds of discrimination, rather than equality of human beings.

75 Laki yhdenvertaisuus- ja tasa-arvolautakunnasta [Act on Non-Discrimination and Equality Tribunal] 1327/214. Even after the reform, the name of the body in Finnish continues to be *lautakunta*, which should be translated 'Board', but the body itself refers to itself as the 'Tribunal', which refers to a body with a mandate to decide on cases; see the website <<https://www.yvtltk.fi/en/>>.

76 Kevät Nousiainen, 'When Does More Become Less? Proliferation and Hierarchy of Grounds in Finnish Non-Discrimination Law' (2014) (2) *European Journal of Social Law* 210.

77 The Non-Discrimination Act 2004 was replaced by a new version in 2014.

78 Johanna Kantola and Kevät Nousiainen, 'The European Union: Initiator of a New European Anti-discrimination Regime?' in Andrea Krizsan, Hege Skjeie, and Judith Squires (eds), *Institutionalizing Intersectionality? The Changing Nature of European Equality Regimes* (Palgrave MacMillan 2012).

79 For case reports of the Board, see 'Decisions' <<https://www.yvtltk.fi/en/index/opinionsanddecisions/decisions.html>>.

Directive 2004/113/EC extended protection against gender discrimination to access to goods and services. Section 7 of the Act on Equality was reformulated in 2005, and the material scope of the act covered by compensation was expanded to implement EU law.⁸⁰ The amendment also introduced the duty to conduct gender mainstreaming under the provision on the duty of officials to promote equality. The provision on employers' duty to conduct equality planning was also amended. The definition of discrimination under Section 7 of the act was extended through the inclusion of definitions of direct and indirect discrimination that follow EU law. Sexual harassment and harassment on the ground of sex were defined as discrimination.⁸¹

An important extension to the personal scope of the Act on Equality was made in 2014 when the prohibition on discrimination was extended to cover differential treatment on the grounds of gender identity and expression of gender. The comparator in cases of such discrimination is a person 'whose characteristics do not include these features [i.e. physical or social transgender attributes]'.⁸² Discrimination was also extended to discrimination by association, as well as situations in which discrimination is based on (falsely) assumed characteristics. As noted above, responsibility for intersectional discrimination was assigned to the Non-Discrimination Ombud.

The emphasis on the use of social policies to promote gender equality was largely abandoned in the era of neoliberal politics, which stress the individual's right to equality of opportunity. A turn to anti-discrimination rather than social politics⁸³ can be understood as a shift from a politics of equality to a politics of identity, a turn described by Nancy Fraser in the US context.⁸⁴ The rise of right-wing populism strengthened this tendency.⁸⁵ The idea of welfare state services as a tool for gender equality grew dimmer also in Finland. As an example, provision of day-care for children, which once was a major feminist aim, has given way to an emphasis on the idea that day-care is provided as a right of children to early

80 Several members of parliament questioned whether it was necessary to extend justiciable protection to access to goods and services in the expert hearings of the parliament's Employment and Equality Committee.

81 Government Bill HE 195/2004 Hallituksen esitys eduskunnalle laiksi naisten ja miesten välisestä tasa-arvosta annetun lain muuttamisesta [Government Bill to the Parliament for Non-Discrimination Act and Related Acts].

82 Government Bill HE 19/2014 Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja siihen liittyviksi laeiksi [Government Bill to the Parliament for Non-Discrimination Act and Related Acts] 57, 120.

83 Kevät Nousiainen, 'For Equality or against Discrimination' in Vesa Puuronen (ed), *New Challenges to the Welfare Society* (University of Joensuu 2004); Kevät Nousiainen 'What Is Happening to Nordic Women's Income through Labour, Social Protection and Family?' in Krister Ståhlberg (ed), *The Nordic Countries and Europe: 2, Social Sciences* (Nordic Council of Ministers 2001).

84 In what Fraser describes as Act Two of the drama of feminist policies, when broader egalitarian aims give way to narrower goals of 'recognition' and identity politics; see Nancy Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso 2013).

85 Kantola, Sandberg and Ylöstalo (n 50), 10.

education. In 2013, day-care and pre-school education were transferred from the Ministry of Social Affairs and Health to the Ministry of Education.⁸⁶ The changes did not diminish the reliance of women on such services, however, as became clear in the spring of 2020 when kindergartens were closed owing to the COVID-19 pandemic.

In 2012, the introduction of a provision on citizens' initiatives in the Finnish Constitution⁸⁷ established a channel through which civil society actors could bring legislative proposals to the parliament. This development has been important for proposals related to equality. So far, the parliament has accepted an initiative on same-sex marriage (2014), an initiative on genital mutilation (2019), and an initiative to increase self-determination in abortion law (2022). In addition, the concurrence of a citizens' initiative on a consent-based definition of rape with a similar government initiative led to the passing of new legislation (2022).

The positions of Ombud for Equality and Non-Discrimination Ombud were transferred to the Ministry of Justice in 2014. The Council for Gender Equality and the Gender Equality Unit (the body mandated to prepare government policies on equality) remained under the aegis of the Ministry of Social Affairs. As gender equality policies have traditionally been considered mainly in terms of social policies, the distinction between equality politics and law remains rather vague. In social scientific terms, inequality is usually considered as marginalization, which may be ameliorated by social policies.⁸⁸

Such a distinction is not made by all men's movement activists. 'Men' is not a homogeneous category, and different 'men's movements' have different relations with feminism. National, global, and transnational developments divide men's movements in relation to feminism.⁸⁹ The Finnish men's movement consists of both pro-feminist and other groups that demand more attention be paid to men's access to equality and discrimination against men. Since 1988, the Council for Gender Equality has had a Subcommittee on Men and Gender Equality. Some men's studies scholars claim that discrimination against men continues to go unnoticed and that equality bodies refuse to take steps against mandatory male military

86 Kirsi Alila, Mervi Eskelinen, Eila Estola, Tarja Kahiluoto, Jarmo Kinos, Hanna-Mari Pekuri, Minna Polvinen, Reetta Laaksonen, and Kirsi Lamberg, *Varhaiskasvatuksen historia, nykytila ja kehittämisen suuntalinjat* [History, Present and Development of Pre-School Education] (Työryhmämuitioita ja selvityksiä [Ministry of Education and Culture] 2014).

87 Government Bill 46/2011 vp Hallituksen esitys Eduskunnalle kansalaisaloitelaksi [Government Bill to the Parliament on Act on Citizens' Initiative] was adopted in 2012. Five Finnish citizens may make a proposition for legislation, which may be supported through an electronic service. A proposal that is supported by a minimum of 50,000 citizens may be submitted to the parliament. Signatures must be collected within a period of six months. An initiative may propose the enactment or drafting of new legislation, or the amendment or repeal of existing legislation.

88 Kevät Nousiainen, 'Käsitteellisiä välineitä tasa-arvon erittelyyn' [Conceptual Tools for Analysing Equality] (n 54).

89 Jeff Hearn 'Men, (Pro-)Feminism, Organizing and Organizations' (2003) 3 *Finnish Journal of Business Economics* 350.

service, discrimination in the context of divorce and child custody,⁹⁰ or recorded marginalization of men.⁹¹

Boys' and young men's underachievement in education and male health problems are listed as issues requiring anti-discrimination measures,⁹² even though it is difficult to point out a party or 'source' that is responsible for these disadvantages, as required under anti-discrimination law. In its opinion on the Ombud for Equality's report to the parliament in 2022, the Central Association of Men's Organizations in Finland demanded that Section 1 of the Act on Equality be amended, as it requires promoting the position of women in society, particularly in working life. The section follows the wording of Section 6 of the Constitution. The Association found it improper that the Ombud speaks about gendered violence against women, as both men and women should be equally considered both victims and perpetrators. The Association also demanded that factors that improve boys' welfare and educational achievements should be listed as equality aims by the Ombud, and that men's organizations should receive state funding equal to that of women's organizations, which comprise a far greater number of associations and members.⁹³

Among politicians, value conservatives have refused to promote certain international and national aims and policies, such as reform of the legislation on legal recognition of the gender of transsexuals. New feminist NGOs and groups have appeared, and traditional women's organizations with their established state contacts have stagnated. In a situation where gender has become a politically contested issue, national consensus on gender equality has lost ground.⁹⁴

2.5 Finnish equality and anti-discrimination law today

2.5.1 The scope of application of the Act of Equality

The material scope of the Act on Equality is quite broad, as the act applies to all fields of life, save those explicitly excluded under Section 2. Excluded areas include the activities of religious communities, family, and other private relations, and the acts of members of parliament and the president. The right of religious

90 Pasi Malmi, *Discrimination against Men: Appearance and Causes in the Context of a Modern Welfare State* (Lapland University Press 2009) 404–405.

91 Arno Kotro and Hannu Sepponen (eds), *Mies vailla tasa-arvoa* [Man without Equality] (Tammi 2007).

92 Since 2011, the Finnish men's movement has been organized under the Central Association of Men's Organizations in Finland, an umbrella organization for both pro- and anti-feminist men's associations.

93 Central Association of Men's Organizations in Finland, *Lausunto tasa-arvovaltuutetun kertomuksesta eduskunnalle 2022* [Opinion on the Equality Ombud's Report to the Parliament] <https://asiakas.kotisivukone.com/files/miesjarjestojenkeskusliitto.kotisivukone.com/Lausunnot_6_2022_alkaen/MJKL_Lausunto_Tasa-arvovaltuutetun_kertomuksesta_eduskunnalle_2022.pdf> accessed 20 January 2023.

94 Elomäki and others (n 22).

communities to define what is acceptable in terms of gender equality varies considerably. Since the Lutheran Church, which is the largest religious community in Finland, opted to allow women to become priests, the Act on Equality has been applied to discrimination in access to Church offices.

The Ombud for Equality has referred to the exclusion of private relations from the material scope of the Act on Equality as a ground for not having a mandate concerning violence against women. The exclusion has thus helped to uphold a widely shared understanding that violence against women is not a form of discrimination. From the start of 2022, the Non-Discrimination Ombud became the host for the National Rapporteur on Violence against Women. The responsibilities of this position include studies on such violence and reporting to the government and parliament on the issue. Sexual harassment and harassment on the ground of sex remain under the Act on Equality and supervision by the Ombud for Equality. The position of National Rapporteur on Trafficking in Human Beings was relocated under the Non-Discrimination Ombud at an even earlier date, as the Non-Discrimination Ombud is also responsible for promoting the rights of foreign nationals and monitoring the removal of foreigners to be deported from Finland. The separation of the monitoring of gender-based discrimination from reporting on violence against women and trafficking may obscure the gendered nature of violence further in national policies. The exclusion of members of parliament has protected them from accusations of sexual harassment. Persons employed as personal assistants to members of parliament have reported such harassment.⁹⁵

Even setting these issues aside, the width of the material scope of the Act on Equality is somewhat delusory. Section 7 defines discrimination on the ground of sex. The prohibition applies to the whole material scope of the act as well as the monitoring mandate of the Equality Ombud. The provision may have an impact on administrative law, as the prohibition on discrimination also applies to public authorities. Section 7 does not provide a victim of discrimination a justiciable right to demand compensation for discrimination, however. Section 7 has legal effect only through the monitoring of legality by the Ombud for Equality and other authorities tasked with such activity. In most respects, the victim of discrimination has a right to compensation only to the extent that it is required by EU law. Discrimination in certain contexts of life – in working life (Section 8), in educational institutions (Section 8b), in trade unions (Section 8c), and in access to goods and services (Section 8e) – is justiciable and may lead to compensation for the victim.

95 Harassment has been revealed in studies conducted by the parliament and the Finnish Broadcasting Company, YLE. In 2017, a YLE study found that 14% of personal assistants had experienced sexual harassment; see *YLE News* (12 December 2017) <<https://yle.fi/uutiset/3-9972340>> accessed 20 August 2022.

2.5.2 Protected discrimination grounds

The aim of the Act on Equality is to prevent discrimination on the ground of sex and to promote equality between women and men, especially in working life. Following a 2014 amendment, the act also aims to prevent discrimination on the ground of gender identity or expression of gender. The act uses the word *sukupuoli* (sex) to refer to what is here translated as ‘gender’. A similar choice has been made, for example, in the translation of the Istanbul Convention to Finnish, where ‘gender-based violence against women’ could be understood as ‘sex-based violence against women’ in the Finnish translation.

In 2014, two Subsections (5 and 6) were added to Section 3, which contains the definitions of terms used in the act. Gender identity is defined as ‘the person’s own experience of (his or her) gender’ (*sukupuoli*), and expression of gender as ‘articulating one’s gender [*sukupuoli*] by clothing, behaviour or in some other similar manner’. Gender identity (or sex identity) and expression of gender (or sex) are now defined as discrimination grounds falling under the Act on Equality. Discrimination on the ground of sexual orientation is protected under the Non-Discrimination Act. The arrangement resembles the one under EU law, where gender discrimination and other protected discrimination grounds come under different sets of directives.

The provisions of the Act on Equality do not expressly refer to gender reassignment. However, since gender reassignment concerns gender identity and the expression of gender, the provisions protect persons who have undergone gender reassignment. There is no further definition of *sukupuoli* (gender) beyond the recognition that it may be expressed through the choice of clothes and other similar means. Although there is no legal definition of transgender, intersex, or non-binary characteristics, gender identity and a person’s own experience of gender seem to cover these characteristics.

The most problematic aspect of Finnish legislation concerning transgender, intersex, and non-binary persons has been the Act on Legal Recognition of the Gender of a Transsexual (563/2002), which formally required infertility and extensive medical examinations as preconditions for gender reassignment surgery. Under the act, legal recognition of reassignment was tied to the medical procedure. In 2013, the Ombud for Equality found that the requirement of infertility violates constitutional rights.⁹⁶ In its 2018 report to the parliament, the Ombud demanded a reform of the act,⁹⁷ and the present government’s Action Plan for Gender Equality promised legislation that would increase self-determination in gender reassignment, remove the requirement of infertility, and separate the legal from the medical reassignment procedure.⁹⁸ Simultaneously, a citizens’ initiative demanded that

96 Equality Ombudsman’s opinion, TAS/297/2013.

97 K22/2018 Equality Ombudsman’s Report to the Parliament, 20 December 2018.

98 Ministry of Social Affairs and Health, ‘Suomi tasa-arvon mallimaaksi: Hallituksen tasa-arvo-ohjelma 2020–2023’ [Finland to Become a Model for Equality: The Government Action Plan for Gender Equality 2020–2023] (2020) 35, 46 <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162588/STM_2020_35_J.pdf?sequence=6&isAllowed=y> accessed 21 August 2022.

individuals under the age of 18 should have the right to decide their legal sex. The initiative received the 50,000 signatures needed for an initiative to proceed to the parliament in just one day in April 2021.⁹⁹ In September 2022, a government bill for new legislation was finally submitted to the parliament.¹⁰⁰ The new act on gender recognition was adopted by the parliament in February 2023. The act limits the right to legal sex reassignment to persons over 18.

There is no explicit prohibition of multiple and intersectional discrimination under Finnish anti-discrimination law. The preparatory works for the amended Non-Discrimination Act (135/2014) note that a person discriminated against on multiple grounds may refer to the Non-Discrimination Act but also has access to the remedies provided under the Act on Equality.¹⁰¹ Such a solution does not benefit all victims of multiple or intersectional discrimination, as the rules concerning access to the National Non-Discrimination and Equality Tribunal are different for victims of sex discrimination and victims of discrimination on other grounds. The scope of protection also varies according to the ground.

The Ombud for Equality's 2018 report to the parliament¹⁰² addressed the European Commission Recommendation (EU) 2018/951 on standards for equality bodies and noted that the Finnish bodies do not meet the required standards. In 2019, the Non-Discrimination Ombud published a policy brief entitled 'Multiple Discrimination and the Need to Identify It Better'.¹⁰³ The brief notes that such discrimination may be common, but often not recognized, and that it often involves gender. The 2022 reports of both the Ombud for Equality and the Non-Discrimination Ombud address the problems faced by victims of intersectional discrimination, particularly the issue of how pay discrimination on multiple grounds lies outside the Non-Discrimination Ombud's mandate, as occupational safety authorities monitor work-related discrimination on all grounds under the terms of the Non-Discrimination Act.¹⁰⁴ The Ombud for Equality has requested a

99 *YLE News*, 'Kansalaisaloite translain uudistamisesta keräsi 50 000 kannattajaa vauhdilla' [Citizens' Initiative for Reform of the Trans Act Speedily Gathered 50,000 Proponents] (9 September 2021) <<https://yle.fi/uutiset/3-11873108>> accessed 10 January 2022.

100 Government Bill HE 189/2022 vp Hallituksen esitys eduskunnalle laiksi sukupuolen vahvistamisesta ja siihen liittyviksi laeiksi [Government Bill to the Parliament for an Act on Gender Recognition and Related Legislation].

101 Government Bill HE 19/2014 vp Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja siihen liittyviksi laeiksi [Government Bill to the Parliament for a Non-Discrimination Act and Related Legislation] 121.

102 Equality Ombudsman's Report to the Parliament (n 97).

103 Ministry of Justice, 'Multiple Discrimination and the Need to Understand It Better' (Discrimination in Finland, Policy Brief 2, 2019) <<https://yhdenvertaisuus.fi/documents/5232670/5376058/Policy+Brief+moniperusteinen+syryint%C3%A4+EN/cb153ed3-ad4a-fd32-8bec-bd2c7580240f/Policy+Brief+moniperusteinen+syryint%C3%A4+EN.pdf?t=1660546558590>> accessed 21 January 2023.

104 The Non-Discrimination Ombud has pointed out the problem of multiple and intersectional discrimination, for example, in an opinion on the context of an amendment to the Act on Equality, VN/11746/2020. Both the Ombud for Equality and the Non-Discrimination Ombud have noted that their mandates differ for no legitimate reason; see the Ombud for Equality's Report

mandate to act in intersectional discrimination cases involving sex, gender identity, or gender expression.¹⁰⁵

Few cases dealing with intersectional discrimination have been brought before Finnish courts. While occupational safety directorates have a mandate to monitor legislation on discrimination grounds other than gender, some of the cases dealt with may *de facto* involve intersectional or multiple discrimination even though such terms are not explicitly mentioned in the documents related to the case. Few studies have focused on the recognition and elimination of multiple discrimination in general, even though the issue has long been the subject of discussions.¹⁰⁶

The Non-Discrimination Ombud has begun to monitor algorithmic discrimination, as such discrimination often involves multiple discrimination grounds. One case concerning algorithmic discrimination has been brought before the Non-Discrimination and Equality Tribunal by the Non-Discrimination Ombud. In this case, a credit company had made decisions regarding which applicants would be granted loans by awarding points based on the sex, place of residence, age, and native language of applicants – which are all grounds of discrimination under Finnish law – rather than on an individual analysis of an applicant’s income and economic position. The Tribunal found that discrimination on the grounds of sex, native language, age, and place of residence had taken place.¹⁰⁷

2.5.3 Definition of discrimination

The Finnish Act on Equality repeats the definitions provided by EU law, with some differences. The definitions of direct and indirect discrimination are inserted under Section 7 of the act. Direct discrimination is defined under Section 7(2) as ‘treating women and men differently on the ground of gender’ or ‘treating someone differently for reasons of pregnancy or childbirth’. ‘Treating someone differently on the ground of gender identity or gender expression’ is also defined as direct discrimination. The definition makes no reference to a comparator, nor does it require that differential treatment is less favourable. It also avoids any open reference to

to the Parliament 2022, 29 <[https://tasa-arvo.fi/documents/25249985/26183599/TAS+lausunto+TyV+tasa-arvoaltuutetun+kertomus+\(1\).pdf/dad6e2a8-de9e-4b88-7ea7-a2661ead81ae/TAS+lausunto+TyV+tasa-arvoaltuutetun+kertomus+\(1\).pdf?t=1653489719119](https://tasa-arvo.fi/documents/25249985/26183599/TAS+lausunto+TyV+tasa-arvoaltuutetun+kertomus+(1).pdf/dad6e2a8-de9e-4b88-7ea7-a2661ead81ae/TAS+lausunto+TyV+tasa-arvoaltuutetun+kertomus+(1).pdf?t=1653489719119)> accessed 28 November 2022; and the Non-Discrimination Ombud’s Opinion on the Ombud for Equality’s Report to the Parliament 2022 <<https://syrjinta.fi/-/yhdenvertaisuusvaltuutetun-lausunto-tasa-arvoaltuutetun-kertomuksesta-eduskunnalle>> accessed 23 August 2022.

105 Ombud for Equality’s Opinion to the Parliament’s Employment and Equality Committee 2022 <<https://tasa-arvo.fi/-/lausunto-eduskunnan-tyoelama-ja-tasa-arvoaliokunnalle-yhdenvertaisuusvaltuutetun-kertomuksesta-eduskunnalle-2022-k-7-2022-vp-tas-270-2022->> accessed 23 August 2022.

106 Outi Lepola, *Koko ajan jännittyneenä: Moniperusteinen syrjintä seksuaali- ja sukupuoli vähemmistöjen kokemana* [Tense All the Time: Multiple Discrimination Experienced by Sexual and Sex Minorities] (Report 51/2018, Ministry of Justice 2018) 26.

107 Non-Discrimination and Equality Tribunal, Decision 216/2017, 21 March 2018.

a ‘comparable situation’ and thus places less emphasis on the need to present a comparator. Some type of comparison is still required to establish that a person has received differential treatment, however, and the more specific provisions on various forms of prohibited discrimination may require that a comparator be presented. The fact that the definition of direct discrimination was introduced into the Act on Equality long after the enactment of provisions on specific forms of discrimination, such as pay discrimination, were in place makes legal interpretation of those provisions somewhat difficult.

In Section 7(3), indirect discrimination on the ground of sex is defined, in line with EU law, as ‘treating a person 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 ground of gender’. Unlike the definition in EU law, the Finnish definition does not require that the person should suffer a ‘particular disadvantage’, which is required under the definition of indirect discrimination in Directive 2006/54/EC.¹⁰⁸ Under Finnish law, any disadvantage is sufficient. Within EU case law, ‘particular disadvantage’ has been demonstrated statistically or in some cases through the use of qualitative reasoning. The requirement limits the relevance of the concept of indirect discrimination. The potential of the concept of indirect sex discrimination has accordingly not been fully realized in the EU member-states¹⁰⁹ – including Finland.

Even ‘treating someone differently on the ground of parenthood or family responsibilities’ is classed as indirect discrimination under the Act on Equality but could also be considered direct discrimination under the Non-Discrimination Act, as the list of prohibited grounds under the latter is open-ended and thus covers even parenthood. No compensation would be available under the Non-Discrimination Act, however.¹¹⁰ While men become victims of discrimination on the ground of pregnancy only in exceptional cases,¹¹¹ they may suffer indirect discrimination

108 See Article 2(1)b of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (recast).

109 Jule Mulder, *Indirect Sex Discrimination in Employment: Theoretical Analysis and Reflections on the CJEU Case Law and National Application of the Concept of Indirect Discrimination* (European Commission Directorate-General for Justice and Consumers 2022), 87–90.

110 The definition of differential treatment due to parenthood and childcare does not give a justiciable right under the Act on Equality except in the context of the specific prohibitions on discrimination, such as Section 8 on discrimination in working life. These do not include the right to family-related leave, but Section 7(3) would be useful in the case of an employer’s prohibitive attitude towards a father’s family leave.

111 What is thought to be the first time in which a person registered as a man gave birth after having undergone gender reassignment was in 2018. Legislation then in force in Finland required infertility as a condition for gender reassignment, but hormone treatments do not necessarily lead to infertility. See *Helsingin Sanomat*, ‘Mieheksi sukupuolensa korjannut synnytti ensimmäistä kertaa Suomessa’ [A Man Who Had Undergone Gender Reassignment Gave Birth for the First Time in Finland] (Helsinki, 4 April 2018) <<https://www.hs.fi/kotimaa/art-2000005628271.htm>> accessed 10 February 2023. New legislation passed in 2022 defines the person who has given birth to a

on the ground of parenthood and childcare. Section 7(4) sets out various factors that might be regarded as justifying indirect discrimination: the means mentioned under Section 7(3) are not considered discriminatory if they are used to achieve an acceptable objective and if they are appropriate to and necessary for achieving that objective. In principle, under EU law, direct discrimination may not be justified. The issue of justification or ‘acceptable reasons’ for detrimental treatment is somewhat obscure under Finnish law, as the general prohibition on discrimination that contains definitions of direct and indirect discrimination and the specific provisions on various forms of discrimination should be read together.

Few cases of indirect discrimination come before Finnish courts. Statistical evidence has been used to establish indirect sex discrimination, for example, in Case TT:1998-34,¹¹² a judgement of the Labour Court on indirect discrimination. In this case, under the terms of a collective agreement, pay increases were determined on the basis of experience, and all ‘lawful absences from work’ not exceeding 30 days were to be included in the calculation. Although the condition was apparently gender-neutral, it disproportionately disadvantaged women, as women were often on maternity leave for longer than 30 days and statistically took parental leave significantly more often than men. The Labour Court found that both maternity leave and parental leave were to be counted as time in the calculation of pay benefits.

In Case KKO 2004:59, the Supreme Court applied the objective justification test, in a more limited manner than that required by EU law. A municipality had made redundant only some of its employees, which it justified by reference to economic difficulties. The personnel made redundant worked in departments (social and health) in which more than 90% of the employees were female, and not in departments where more than 90% of the employees were male. The Supreme Court found that the disproportionate redundancies of women could not be justified by budget restrictions alone. However, according to the Supreme Court, since the budget objectives were set for all departments without discrimination, and the expenditure of the female-dominated departments had been higher than that of the male-dominated departments, the measure had not been discriminatory because there were objective grounds for saving expenses. Unlike the lower courts before it, the Supreme Court did not consider EU law in its judgement and has been criticized in the legal literature for failing to apply the EU objective justification test. The Court should have considered whether budgetary grounds were sufficient to justify the measure by comparing them with several EU cases. The Court did not consider whether it was necessary to dismiss only female employees, or whether

child as the child’s mother. In the case of fertility treatment for couples consisting of two women, parenthood is determined on the basis of consent; see Vanhemmuuslaki [Act on Parenthood] (775/2022).

112 The case is available at <<http://www.finlex.fi/fi/oikeus/tt/1998/19980034>> accessed 10 February 2023.

the economic objective could have been achieved by means of non-discriminatory measures.¹¹³

Further prohibitions concern discrimination in working life (Section 8), victimization (Section 8a), discrimination in educational institutions (Section 8b) and labour-market organizations (Section 8c), workplace harassment (Section 8d), and discrimination in access to and supply of goods and services (Section 8e). Authorities and actors that violate these provisions are required to compensate the victim(s) of discrimination.

2.5.4 *Sexual harassment and harassment on the ground of sex*

Section 7 of the Act on Equality prohibits sexual harassment and harassment on the ground of gender, which are both classified as discrimination under the act. Sexual harassment is defined as unwanted verbal, non-verbal, or physical conduct of a sexual nature by which a person's psychological or physical integrity is violated intentionally or factually, in particular through the creation of an intimidating, hostile, degrading, humiliating, or offensive atmosphere. Harassment on the ground of gender is unwanted conduct that is not of a sexual nature but that is related to the gender of the person, their gender identity, or their gender expression, 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. Employers, educational institutions, labour market organizations, and providers of goods and services are guilty of discrimination if they neglect to take action to eliminate harassment of which they are aware. The victim must show that harassing conduct has taken place, that it has been unwanted, that it has been detrimental, and that the employer or other responsible party has received information of harassment but not taken measures against it.

The international *#MeToo* campaign revealed the weaknesses of existing protection against sexual harassment. The campaign found support in Finland among artists, especially in filmmaking, theatre, and music. Encouraged by a Swedish example, a group of women collected a list of 1,244 signatures of people who alleged that they had suffered from sexual harassment and published it.¹¹⁴ An actor who had actively mentioned names of harassers was investigated by the police for suspected defamation, following calls for her investigation by men she had mentioned. The police investigation, however, did not lead to prosecution. A singer named as a harasser was dismissed from a musical production, and the artistic director of the national ballet was dismissed for harassment. The singer brought a case of defamation against

113 Outi Anttila, *Kohti tosiasiallista tasa-arvoa? Sukupuolisyrjinnän kiellot oikeudellisen pluralismin aikana* [Towards De Facto Equality? Prohibitions of Sex Discrimination in the Period of Legal Pluralism] (Suomalainen lakimiesyhdistys 2012), 306–308. For justifications of indirect discrimination, see Dagmar Schiek, 'Indirect Discrimination' in Dagmar Schiek, Lisa Waddington, and Mark Bell (eds), *Materials, Cases and Texts on National, Supranational and International Non-Discrimination Law* (Hart Publishing 2007), 323, 456–460.

114 Heidi Lindén and working group, *#Metoo vallankumous: Miten hiljaisuus rikottiin* [The *#Metoo* Revolution: How Silence Was Broken] (Like 2018).

women who in 2017 had claimed in Facebook and Twitter that he had committed sexual crimes, and four women were sentenced for defamation by the Helsinki District Court in 2018.¹¹⁵ Some male punk artists accused of harassment made apologies, while others denied having committed the crimes of which they were accused. One artist's lawyer reported a crime of aggravated defamation to the police. All texts on the campaign account were soon removed by the webmaster. The legal repercussions of the campaign seem to have fallen on the women who alleged harassment rather than on the men they accused. The alleged victims were unable to provide the types of evidence required by law, and the statute of limitations had in some cases made criminal law action impossible.

ILO Convention No. 190 of 2019 requires that states parties realize the right of everyone to a world of work free of harassment and violence. Members are to adopt an inclusive and gender-responsive approach to the development of laws and policies to achieve this aim, in consultation with social partners. The tripartite consultation and preparations that led to ratification of the Convention caused little stir in Finland. Trade unions raised no objections to ratification, although they stressed that the protection of employees against harassment and violence at the workplace required under the Convention was by no means at an adequate level. Finland's employer organizations saw that nothing in the Convention created new responsibilities for employers to prevent violence. The employer organization representing small enterprises regarded the existing Finnish legislation on harassment and violence as rather inclusive and saw no grounds for legislative amendments.¹¹⁶ The government aimed at ratification in 2022 but has announced that ratification will not take place during the remaining electoral period.

Woman ministers in Prime Minister Sanna Marin's coalition government have been targets of coordinated abusive messages on the Internet, as a study on politically motivated abusive language found in February 2021. The study sought to assess the level of automated or international political activity in Twitter. The main topics triggering abusive messages were measures taken against the COVID-19 pandemic, immigration, Finnish–EU relations, and socially liberal politics. A 'startling portion of this abuse' contained sexist and sexually explicit language. Many users focused on abusing the government, with the bulk of abusive messaging originating from clusters of right-wing accounts.¹¹⁷

115 Leena Ylimutka, 'Tomi Metsäketo voitti Me too -käräjät: Neljä naista sai rikostuomion kunnianloukkauksesta' [Tomi Metsäketo Won the Case: Four Women Were Sentenced for Defamation] *Iltalehti* (5 October 2018) <<https://www.iltalehti.fi/viihdeuutiset/a/32e0e238-08f6-4b11-b84a-23c26eef6064>> accessed 21 January 2023.

116 Ministry of Health and Social Affairs, 'Summary of Opinions concerning the ILO Violence and Harassment Convention, 2019 (No. 190)' <https://api.hankeikkuna.fi/asiakirjat/80c4721a-834f-44e8-9e72-ec643e615a85/6fe6a4d7-aa35-4124-9f10-85277118b716/YHTEENVETO_20200102094317.PDF> accessed 24 August 2022.

117 Kristina van Sant, Rolf Fredheim, and Gundars Bergmanis-Korats, *Abuse of Power: Coordinated Online Harassment of Finnish Government Ministers* (NATO Strategic Communications Centre of Excellence, 24 January 2021) <<https://stratcomcoe.org/publications/abuse-of-power-coordinated-online-harassment-of-finnish-government-ministers/5>, accessed 28 August 2022.

The prohibition of harassment under the Act on Equality in no way covers new types of online violence against women in public positions. With the 2022 reform of Chapter 20 of the Criminal Code, which covers sexual crimes, however, protection against non-consensual touching was introduced (Sections 3 and 4). The amended provision on harassment also covers sexual acts in the form of verbal acts and messages that violate the sexual autonomy of a person, and the provision against harassment was extended to verbal acts and online harassment (Sections 6 and 7). Online hate speech against women in positions of power was one of the reasons behind a proposal to amend the Criminal Code provision on general aggravating factors by adding the gender of the victim to the list of discriminatory motivations (such as race, colour, ethnic origin) already mentioned in the provision. The government bill, however, did not propose amending the Criminal Code provision on hate speech by adding gender to the definition of the crime.¹¹⁸

2.5.5 Positive action

Compared with similar legislation in other countries, the original Act on Equality was stronger in terms of positive duties than in terms of its prohibition of discrimination. The present Act on Equality contains provisions on positive duties for authorities, employers, and educational institutions. A new positive duty for these actors was added to the act in 2014: to prevent discrimination on the ground of gender identity and expression of gender. This positive duty is to be taken into account when employers and educational institutions prepare equality plans. The duty requires measures on the part of officials, educational institutions, and employers.

The positive equality duties set out within the Act on Equality have constitutional support. Since the constitutional reform of 1995, Section 6(4) of the Constitution explicitly requires the promotion of equality of the sexes in societal activities and working life, especially in the determination of pay and other terms of employment, ‘as provided in more detail by an Act’. The reference to secondary legislation refers to the Act on Equality but can also include other legislation. For example, amendments of the Criminal Code aimed at reducing violence against women may be necessary for the promotion of gender equality. Preparatory works for the provision further note that even the principle of (formal) equality under Section 6(1) involves the duty to promote equality.

Sections 6, 6(a), and 6(b) of the Act on Equality require employers to implement positive action: all employers have a duty to promote equality within the scope of their resources. This requires employers to take action to ensure that both women and men apply for jobs; to employ women and men at various levels and provide them with equal career paths; to promote equality in working conditions, particularly pay; to develop working conditions suitable for both women and men; to facilitate combining working and family life for both women and men, with particular attention to working-time arrangements; and to prevent gender-based discrimination.

118 Government Bill HE 7/2021 vp Hallituksen esitys eduskunnalle rikoslain muuttamisesta [Government Bill to the Parliament on Amending the Criminal Code].

Employers with 30 employees or more must produce an equality plan every second year. The plan is not submitted to an authority but must be made public in the workplace. The plan can be a separate document or incorporated into personnel, educational, or safety-at-work plans. It must list positive-action measures concerning pay and other conditions of work and is to be drafted in cooperation with an employee representative, who should be given appropriate resources to participate in and influence the planning process. The plan should include an analysis of gender equality in the workplace and a pay audit that addresses the classification, pay, and pay differentials of women and men. The plan must also list the actions required to ensure equality and equal pay and include an assessment of earlier actions and their effects. A recent study shows that the majority of organizations draw up an equality plan and a pay survey, but the scope and quality of these plans vary considerably.¹¹⁹ The pay-transparency measures contained in Section 6(b) of the Act on Equality and an attempt to amend them are discussed in detail below in the context of pay discrimination.

Although several provisions impose positive-action duties upon authorities, employers, and educational institutions in line with the Constitution, problems arise as a result of their relatively weak implementation and monitoring. The weakness of positive duties lies in the impunity attached to their violation. The Ombud for Equality monitors equality planning and may set a date by which the duty to produce equality plans must be fulfilled or submit a complaint regarding violation to the Non-Discrimination and Equality Tribunal.

Perhaps the most effective of the positive duties established by the Act of Equality is set out in Section 4(a), which requires that state committees and other similar bodies, as well as municipal and regional bodies whose members are not elected but nominated, must ensure that whichever sex is under-represented on those bodies must make up at least 40% of their members. The provision was initially adopted in 1986, but then required only that ‘both women and men’ were members of these types of bodies. After the Supreme Administrative Court found that only one woman on a municipal body was enough to fulfil the requirement, the provision was amended by adding a quota. The quota provision was quite contested, and many women have feared being given the label of ‘quota women’ when nominated to a position in a body. The legitimacy of the provision has grown with time, however,¹²⁰ and it has had a certain spill-over effect in other areas of life. Nongovernmental organizations with no legal obligation to follow the provision often do so in practice.

Boards of publicly owned companies must be made up of equal numbers of women and men. This provision, however, has not been extended to the boards of private companies owing to opposition from businesses. The Chambers of

119 Henna Attila and Hanna Koskinen, *Työpaikkojen tasa-arvosuunnitelmat ja palkkakartoitukset 2020* [Equality Plans and Pay Audits in 2020] (Ministry of Social Affairs and Health 2020).

120 Mervi Parviainen, *Tasa-arvoa laskimella* [Gender Equality by Calculator] (Edita Publishing 2006). Parviainen carried out a survey among respondents from 150 municipalities, asking about the implementation of the quota provision and the extent to which it has promoted gender equality.

Commerce responded to calls to extend the quota provision to private companies by recommending gender-balanced representation through self-regulation rather than mandatory legislation. Since 2003, the national Code of Conduct for listed companies has required that both sexes must be represented on their boards, but no quota is set in the self-regulatory code.¹²¹ Listed companies are to follow the ‘comply or explain’ rule when reporting on the requirements of the Code of Conduct. In 2022, women made up 31% of the members of all company boards.¹²²

2.6 Equality bodies, monitoring, access to justice, and remedies

2.6.1 *Criteria for effective access to justice and remedies*

A report by the EU’s Fundamental Rights Agency (FRA) on access to justice in discrimination cases declares that effectively combating discrimination requires that people recognize when they have suffered a violation, are emboldened to seek redress, and have accessible and effective remedies.¹²³ EU law requires the creation of equality bodies with certain powers. Such bodies, either courts or quasi-judicial bodies, may promote equality and/or adjudicate. Different types of intermediaries may be involved in the process, such as nongovernmental organizations, trade unions, and lawyers. Complainants expect legal advice and support, while equality bodies complain that they lack sufficient resources to assist the alleged victims.¹²⁴ Combating discrimination benefits from strategic litigation, which differs from classical litigation in that it strives to bring about changes in the law by winning a case that may become a positive precedent. Strategic litigation and access to justice, in general, are impeded by a lack of suitable cases, as well as long and costly procedures and a lack of legal aid.¹²⁵

Finland’s anti-discrimination law relies heavily on monitoring by equality bodies. There is no independent access to a low-threshold remedy for victims of gender discrimination. Compensation claims in gender discrimination cases remain individual, with no class action or standing for nongovernmental organizations available. Labour market organizations act as gatekeepers to crucial remedies. Strategic litigation has little institutional support and is uncommon.

121 Keskuskauppakamari [Finnish Chamber of Commerce], ‘Naiset pörssiyritysten hallituksissa 2020’ [Women on the Boards of Listed Companies 2020] <<https://kauppakamari.fi/wp-content/uploads/2020/06/Naisjohtajakatsaus-06-2020.pdf>> accessed 28 August 2020.

122 Keskuskauppakamari [Finnish Chamber of Commerce], ‘Naiset pörssiyritysten hallituksissa 2022’ [Women on the Boards of Directors of Listed Companies 2022] <https://kauppakamari.fi/wp-content/uploads/2022/07/Naisjohtajakatsaus_062022.pdf> accessed 29 August 2022.

123 European Union Agency for Fundamental Rights, *Access to Justice in Cases of Discrimination in the EU: Steps to Further Equality* (FRA 2012).

124 *Ibid.*, 58.

125 Marion Guerrero, *Strategic Litigation in EU Gender Equality Law* (European Commission Directorate-General for Justice and Consumers 2020).

2.6.2 Equality bodies

The Ombud for Equality is an independent equality body with a mandate to monitor, analyse, promote, and support equal treatment.¹²⁶ The Ombud is to monitor the implementation of the Act on Equality; promote its aims through initiatives, advice, and guidelines; follow how *de facto* gender equality is realized; conciliate among parties in discrimination cases; and assist victims of gender discrimination in compensation cases. The Ombud is mandated to assist victims in court (Section 3 of the Act on the Ombud for Equality), but the mandate is restricted to cases that the Ombud views as having ‘considerable importance for implementation of the Act on Equality’. The Ombud does not have powers to bring cases on his or her own initiative. The provision on assistance to victims is something of a dead letter, however, as the Ombud has never assisted a victim in a court case, citing lack of resources and the possible procedural costs for the victim if a case is lost as the reason for this. The Ombud reports to the government every year and to the parliament every four years.

The Non-Discrimination and Equality Tribunal¹²⁷ is a quasi-judicial body that has competence to deal with cases under both the Non-Discrimination Act and the Act on Equality. The mandate of the Non-Discrimination and Equality Tribunal in cases of gender discrimination has remained unchanged from that of its predecessor, the Gender Equality Board. A victim of gender discrimination (unlike a victim of discrimination based on other prohibited grounds) cannot submit a case to the Tribunal independently: the Act on Equality permits cases of sex discrimination to be submitted only by the Ombud for Equality or the main labour market organizations, in which case the Tribunal only has a mandate to prohibit the continuation of a discriminatory act. No compensation to the victims of discrimination can be ordered by the Tribunal. The mandate of the Ombud for Equality was extended to cover conciliation between parties in 2014, but the Tribunal needs to confirm such conciliations.

On the other hand, the Tribunal has a mandate concerning employment-related gender discrimination if a case is brought to it by the Ombud for Equality or a labour market organization, but no mandate to address employment-related discrimination that is based on other discrimination grounds. Discrimination related to working life on grounds other than gender is monitored by Finland’s occupational health authorities. The disparity between victims of gender discrimination and victims of other forms of discrimination in relation to access to the Tribunal has no justification in international or constitutional legal standards.

Individual litigation for compensation remains the main remedy available in cases of gender discrimination. Finnish procedural law restricts strategic litigation by civil society organizations, as only parties to a case have legal standing rights. Class action is not allowed in discrimination cases. The Ombud for Equality does

126 Laki tasa-arvovaltuutetusta [Act on the Ombudsman for Equality] 1328/2014.

127 Laki yhdenvertaisuus- ja tasa-arvolautakunnasta [Act on the Non-Discrimination and Equality Board] 1327/2014.

not, in practice, assist victims in court, but possible monetary or legal assistance may be provided by trade unions or other organizations or by private insurance schemes. The evidence required to prove discrimination is often difficult to obtain, despite a provision on the burden of proof that shifts the onus to the respondent once a plaintiff has provided sufficient evidence for an assumption that discrimination has taken place to be established (Section 9[a] of the Act on Equality).

There is no upper limit under Finnish law on the amount of compensation that may be ordered in cases of discrimination, except in cases of recruitment discrimination. The amount of compensation that is granted depends on the possible compensation available under other pieces of legislation, as well as on the type of discrimination that has occurred and its duration. The sum may be lowered or even reduced to zero if that is considered fair, depending on the economic position of the discriminator, whether attempts to address the impact of the discrimination have been made, or other circumstances (Section 11 of the Act on Equality). A victim of discrimination in recruitment to a municipal or state office may make an appeal to the administrative court to have the illegal decision overturned, under the Act on State Officials (750/750) and the Act on Municipal Officials (304/2003). A favourable court decision in such cases does not mean that the person is automatically nominated to the office in question, however. Instead, a new decision on the relevant appointment must be made.

The costs of litigation are high and continue to rise. A study analysed costs in civil law cases in 2019 and compared them with findings from earlier studies. Where the parties were equal (i.e., were either both private persons or both corporations), the parties won and lost in even numbers. Where a corporation faced a private person, the corporation was more often the winning side. Costs for a private party in 2019 were three times what they had been in 1995, and in labour law cases between employers and employees the costs had risen 80% since 2008. The monetary interests in cases that end up in the courts are far higher than was previously the case. Free legal aid is available only to people with very low income.¹²⁸

Victims of gender discrimination thus have formal access to the courts, but the costs of litigation are prohibitive. The losing party pays both the costs of the other party and their own costs. According to a recent study, 103 gender discrimination cases involving violation of the Act on Equality between Women and Men were brought to district courts in the period 2015–2019. Of these, the plaintiff (victim) won in 18 (or 17%) and lost in 50 cases; a conciliation was reached in 22 cases; and 13 cases were dismissed.¹²⁹ The study showed that compensation claims are seldom brought to court by victims of gender discrimination, and fewer than one in

128 Laura Sarasoja and Chris Carling, *Oikeudenkäyntikulut pääkäsitellyssä ratkaistuissa riita-asioissa 2019* [Legal Costs in Court Cases 2019] (Edilex 2020). Earlier studies on litigation costs have been carried out in 1997, 2005, and 2009.

129 Kati Nieminen, Laura Jauhola, Outi Lepola, Kati Rantala, Risto Karinen, and Tuomas Luukonen, *Aidosti yhdenvertaiset: Yhdenvertaisuuslain arviointi* [Truly Equal: Assessment of the Non-Discrimination Act] (Publications of the Government's Analysis, Assessment, and Research Activities 2020: 50, Prime Minister's Office, 2020), 61.

five of such cases are won. The study was undertaken to assess the need for amendment of the Non-Discrimination Act, but the researchers recommended that the Act on Equality and the Non-Discrimination Act should both be amended simultaneously, taking into account international and EU criteria and comparisons with other Nordic states to indicate how provisions on the monitoring of the acts should and could be amended to increase its effectiveness.¹³⁰

The parliament's Employment and Equality Committee presented detailed comments to the 2022 reports by the Equality and Non-Discrimination Ombuds.¹³¹ Both reports described the deficiencies in the monitoring of prohibitions on discrimination and the legal remedies available under the Act on Equality and the Non-Discrimination Act. The Committee noted that it is problematic that the Ombud for Equality has no mandate in relation to intersectional discrimination. Cases concerning gender equality are seldom brought to court, evidently owing to the high costs of litigation and the low amounts of compensation granted. The Ombud for Equality has made no use of its mandate to represent victims in court, owing to lack of resources and because the victim would be responsible for the other party's costs if a case were lost. The Employment and Equality Committee stressed that individual court procedures are not an efficient means for addressing collective forms of discrimination, such as pay discrimination. According to the Committee, the Ombud should have an independent mandate to bring cases of discrimination to court, and the possibility of giving trade unions and other organizations legal standing in discrimination cases should be examined. The Non-Discrimination and Equality Tribunal should be given powers to order compensation for a victim of gender discrimination, and consideration should be given to the question of whether victims should be given the right to submit cases to the Tribunal themselves. The Employment and Equality Committee also stressed the need to develop low-threshold legal remedies for victims.¹³²

Part 2: In-depth studies on current gender equality issues

2.7 Gendered violence against women

2.7.1 Nordic paradox with a vengeance

The 'Nordic paradox' is that, against expectation, gender equal Nordic countries have high levels of gender-based violence against women. In a 2014 survey by the FRA, Denmark, Finland, and Sweden were among the EU member-states

130 Outi Anttila and Kevät Nousiainen, *Selvitys tasa-arvolain valvontasäännösten toimivuudesta* [Study on the Effectivity of the Provisions on Monitoring the Act on Equality] (Ministry of Social Affairs and Health 2013) <http://www.stm.fi/c/document_library/get_file?folderId=6511574&name=DLFE-28645.pdf> accessed 29 August 2022.

131 Equality and Employment Committee Report TyVM 8/2022 vp on the Report of the Ombud for Equality to the Parliament K 1/2022.

132 Equality and Employment Committee Report (n 131), 8–19.

with the highest prevalence of violence against women.¹³³ Nordic states have a high prevalence of sexual violence.¹³⁴ An average of 30% of women in these countries had experienced intimate partner violence, which is higher than the EU average of 22%, according to the 2017 Gender Equality Index in the EU. The assumption that gender equality has already been achieved may have prevented efforts to address protection of women's integrity, reflecting the tendency of women to become 'trapped in equality'.¹³⁵ The assumedly 'strong Finnish woman' has since the postwar period been reluctantly presented as a victim in Finnish politics.¹³⁶

In certain ways, the Nordic paradox has roots in the ideals of the Nordic welfare state. A comparison of the Nordic and British political approaches to gender-based violence reveals that violence against women was understood to require different political policies. Where British politics relied on criminal and civil law measures, the Finnish approach was based on social policy measures.¹³⁷ An international comparison of implementation of the CEDAW Convention shows that gender neutrality is typical for the Finnish approach.¹³⁸ I suggest that stable social conditions have helped to reduce violence in Finnish society, and criminal policies have successfully reduced the prison population. These developments are related to welfare state policies. On the other hand, the same criminal policies have hindered recognition of violence against women as a social problem and, moreover, as a form of discrimination and violation of human rights.

2.7.2 Violence in Finland: A gendered phenomenon

Crime is a highly gendered aspect of Finnish life. Of persons suspected of crime, between 74% and 96% are men, depending on the type of crime. Men are also in a clear majority among those convicted of crimes. In terms of punishments, circa 4,500 men and fewer than 500 women were sentenced to imprisonment in 2019. Even victims of violent crimes are more often men than women, while victims of sexual crimes are preeminently women. When the perpetrator is the victim's

133 See Table 2.1 in European Union Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey – Main Results* (FRA 2015).

134 Marie Bruvik Heinskov, May-Len Skilbrei, and Kari Stefansen (eds), *Rape in the Nordic Countries: Continuity and Change* (Routledge 2019).

135 Pylkkänen, *Trapped in Equality* (n 2) 78.

136 Suvi Ronkainen, 'Kenen ongelma väkivalta on? Suomalainen hyvinvointivaltio ja väkivallan toimijuus' [Whose Problem Is Violence? The Finnish Welfare State and the Agency of Violence] *Yhteiskuntapolitiikka* (2008) 4, 388, 391–392.

137 Johanna Kantola, *Feminists Theorize the State* (Palgrave Macmillan 2006).

138 The dissertation by Susanne Zwingel includes case studies on Chile and Finland; see Susanne Zwingel, *How Do International Women's Rights Norms Become Effective in Domestic Contexts: An Analysis of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (Bochum 2005) <<https://hss-opus.ub.ruhr-uni-bochum.de/opus4/frontdoor/deliver/index/docId/701/file/diss.pdf>> accessed 3 September 2022.

present or former partner, the victims of violent crimes are mostly women, and women victims of violence receive physical injuries more often than men.¹³⁹

Comparing the level of violent crime in societies is far from simple, owing to varying legal definitions and levels of hidden crime. The number of homicides is considered the most reliable basis for comparison. Homicide rates in Europe are comparatively low in global terms and have declined from premodern times.¹⁴⁰ Historically, the rate of homicides in Finland in the 18th century was on a level similar to that of western Europe, but while the rate of homicides fell in the other Nordic states during the industrial age, their rate rose in Finland, especially in the context of political unrest and war.¹⁴¹ In the 20th century, unlike other Nordic countries, Finland underwent both a civil war (1918) and a long active involvement in World War II (1939–1940, 1941–1944). Unlike in most European countries, the war in Finland took place at the frontier, as the country was not occupied at any point. Traumas caused by warfare accumulated among men. The effects were felt in Finnish culture in the following decades,¹⁴² also in the form of high levels of violence. Mandatory military service for males has also had an impact on men's identities.¹⁴³ Finland has kept military defence at a high level since the end of the Cold War. Since the war in Ukraine, the level of military preparedness has risen further.

Although the level of homicides has diminished during the last decades, Finland still has a higher rate of homicides in comparison with other Nordic states. The number of victims of homicide is three times that of Iceland and Norway, and one-third higher than in Denmark and Sweden.¹⁴⁴

Most homicides committed in Finland are literally homicides: acts committed by men against other men. During 2010–2018, in 60% of cases a man had killed another man. Only 2% of homicides were connected to organized crime. The number of crimes of domestic violence has changed but little compared with the overall fluctuation in levels of violent crime. The majority of women victims were killed

139 Statistics Finland, *Sukupuolten tasa-arvo Suomessa 2021* (n 1), 138–144.

140 Lethal violence has declined in Europe over 600 years. The homicide rate in Europe fluctuated in the 1990s, but it declined by 6% in 2002–2017; see United Nations Office on Drugs and Crime, *UNODC Global Study on Homicide: Homicide Trends, Patterns and Criminal Justice Response* (UNODC 2019).

141 Hans von Hofer and Tapio Lappi-Seppälä, 'The Development of Crime in Light of Finnish and Swedish Criminal Justice Statistics' (2014) 43(1) *Crime and Justice* 169; Janne Kivivuori and Matti Lehti, 'Homicide in Finland and Sweden' in Tapio Lappi-Seppälä and Michael Tonry (eds), *Crime and Justice in Scandinavia* (University of Chicago Press 2011), 40.

142 Marja Tuominen, *Me ollaan kaikki sotilaiden lapsia: Sukupuolihegemonian kriisi 1960-luvun suomalaisessa kulttuurissa* [We Are All Soldiers' Children: The Crisis in the 1960s Gender Hegemony in Finnish Culture] (Otava 1991).

143 Arto Jokinen, *Panssaroitu maskuliinisuus: Mies, väkivalta ja kulttuuri* [Armoured Masculinity: Man, Violence and Culture] (Tampere University Press 2000), 127–202.

144 Maria Wemrell, Sara Stjernlöf, Justine Aenishänslin, Marisol Lila, Enrique Gracia, and Anna-Karin Ivert, 'Towards Understanding the Nordic Paradox: A Review of Qualitative Interview Studies on Intimate Partner Violence against Women (IPVAW)' (2019) (13)6 *Sweden's Sociology Compass* <<https://doi.org/10.1111/soc4.12699>> accessed 20 August 2022.

by a present or former partner.¹⁴⁵ As elsewhere in the world, women are killed more seldom than men, but they bear the greatest burden in terms of intimate partner violence.¹⁴⁶ The term ‘femicide’ never became common in Finland.

2.7.3 ‘*Humane Nordic criminal policy*’ and violence against women

The Nordic paradox is even more perplexing owing to the tradition of impunity in cases of gendered violence against women. Impunity of partner violence was the rule in most or all cultures in the past. Also, Finnish penal law was traditionally lenient on violence against spouses and allowed rape in marriage.¹⁴⁷ Finnish equality policies of the 1970s and 1980s paid little attention to subjective integrity in general. Unlike in many Western societies, feminists did not stress a need for shelters or reform of criminal law. Criminal law allowed impunity of violence against women in various ways.¹⁴⁸ Legal amendments have been made slowly since the 1990s, mainly owing to external pressure.

One of the reasons for the delayed response to the need to address violence against women may be the (in itself) admirable attempt to bring Finnish criminal law more into line with the other Nordic countries. Not only was violence more prevalent in Finland in the postwar period but also the Finnish Criminal Code (39/1889) required, and courts issued, prison sentences that were longer than those of Finland’s Nordic counterparts. In consequence, the prison population in Finland was much larger.

In 1962, the Scandinavian Research Council for Criminology was established. As a science based on empirical studies of criminality, criminology was seen as an important means for improving criminal policies. The Finnish Institute of Criminology, established in 1963 under the Ministry of Justice,¹⁴⁹ cooperated keenly with its Nordic counterparts and played an important role in the development of Finnish criminal law policies. A paradigmatic change of criminal policies followed. Criminal policies focused on reducing the number of prisoners and succeeded in cutting the number of the prison population by half between

145 Martti Lehti, *Henkirikoskatsaus 2020* [Homicides 2020] (Kriminologian ja oikeuspolitiikan instituutti Katsauksia 2020) <https://helda.helsinki.fi/bitstream/handle/10138/319479/Katsauksia_41_Lehti_2020.pdf?sequence=1&isAllowed=y> accessed 20 August 2022.

146 United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-Related Killings of Women and Girls* (UNODC 2018) 18.

147 Kevät Nousiainen and Anu Pylkkänen, *Sukupuoli ja oikeuden yhdenvertaisuus* [Gender and Legal Equality] (Forum Iuris 2001). For early modern Europe, see Satu Lidman, *Gender, Violence and Attitudes: Lessons from Early Modern Europe* (Routledge 2018).

148 Heini Kainulainen and Johanna Niemi, ‘Parisuhdeväkivallan tunnistaminen rikosoikeudellisessa järjestelmässä’ [Recognition of Violence in Intimate Relationships in the Criminal Law System] in Johanna Niemi, Heini Kainulainen, and Päivi Honkatukia (eds), *Sukupuolistunut väkivalta: Oikeudellinen ja poliittinen ongelma* [Gendered Violence: A Legal and a Political Problem] (Vas-tapaino 2017).

149 Later, the Institute was renamed the National Research Institute of Legal Policy, and later still turned into an institute under the Faculty of Social Sciences of Helsinki University.

1970 and 1990.¹⁵⁰ The focus was on perpetrators, who were viewed almost as vicarious sufferers for failures of social welfare. Victims of crimes received little attention.¹⁵¹

Decriminalization was an important tool, especially in relation to acts considered wrong on moral grounds – such as homosexuality, pornography, and blasphemy – and sexual crimes motivated by absolutist, fixed sexual morals. Even punishments for rape were thought to be too harsh, as changing sexual mores had allegedly made the violation involved in rape less severe. Chapter 20 of the Criminal Code, which deals with sexual crimes, was amended in 1970, with preparatory works arguing that the criminal law was not a valid means through which to regulate sexual life. Homosexual acts between adults were decriminalized in 1971 (by comparison, decriminalization took place in Sweden in 1944). Preparatory works for the amendment launched the principle that became the standard for criminal policy, namely, that criminal law should be the *ultima ratio* or last resort of social policy, to be used only when all other policies fail. A total reform of Finland's criminal law was initiated in 1972. Proposals made in the 1970s became the basis for subsequent reform.¹⁵²

The ethos of Finnish – or Nordic – criminal policies is to avoid punitive policies. 'Moderate' penal policies are believed to go together with high levels of social trust and political legitimacy, as well as a strong welfare state. In terms of keeping incarceration at a low level, such an approach has been a success: as prisoner rates rose in 30 years from 1975 in the USA by 320%, the prisoner rate in the Nordic states remained stable.¹⁵³ 'Humane Nordic criminal policy' became the default position of Finnish criminal law experts from the 1960s onward, and also required that criminal policy be left to such experts, as the media and lay opinions tend to call for strict order and harsh punishments. Such a development forced feminist critics of criminal policies into a problematic corner: by demanding protection of women's integrity under the criminal law, or even demanding new criminalizations, feminists came to be counted among bloodthirsty laypersons.

150 Tapio Lappi-Seppälä, 'Inkeri Anttila ja kriminaalipolitiikan murrosvuodet' [Inkeri Anttila and the Turning Point in Criminal Politics] in Raimo Lahti (ed), *Inkeri Anttila (1916–2013): Rikosoikeuden uudistajan ammatillinen ura ja vaikutus* [Inkeri Anttila (1916–2013): The Career and Impact of a Renovator of Criminal Law] (Forum Iuris 2016), 167–171.

151 This is no new finding. Tove Stang Dahl described the invisibility of women victims in Nordic criminology and criminal law more than 40 years ago; see Tove Stang Dahl, 'Kvinner som ofre' [Women as Victims] (1979) 66(1–2) *Nordisk tidskrift for kriminalvidenskap* 56.

152 Lappi-Seppälä (n 150), 177–191.

153 The development was quite radical, as Finland went from having a level of prison sentences that exceeded the high one in the USA to having 40–60 prisoners per 10,000 inhabitants, while the US figure rose to over 700 per 10,000 inhabitants; see Tapio Lappi-Seppälä, 'Explaining National Differences in the Use of Imprisonment' in Sonja Snacken and Els Dumortier (eds), *Resisting Punitiveness in Europe* (Routledge 2011); Tapio Lappi-Seppälä, 'Penal Policy and Prisoner Rates in Scandinavia' in Kimmo Nuotio (ed), *Festschrift in Honour of Raimo Lahti* (Faculty of Law, University of Helsinki 2007).

There has been no lack of feminist analyses of penal law,¹⁵⁴ but Finnish criminal law theory has found it difficult to incorporate feminist approaches into the doctrine of criminal law,¹⁵⁵ which is based on male patterns of behaviour. The *ultima ratio* principle makes it difficult to add new crimes to the Criminal Code. Instead, criminal law experts maintain that existing definitions of crime cover acts of violence against women, since, for example, deprivation of liberty covers trafficking in human beings and assault covers female genital mutilation.

2.7.4 *The impact of international law*

Combating violence against women (wife-battering, sexual crimes), which elsewhere became an important target of feminist politics in the 1970s, gained recognition in Finland first in the 1990s, and then owing to international pressure. The Council for Gender Equality created a subcommittee on violence against women (1990–1998) to chart its prevalence and existing measures against it, largely because Finland’s first report to CEDAW in 1989 led to embarrassing questions about the lack of such measures. The Council found that policies to be adopted could be based on Nordic experiences. At that time, under Finnish criminal law, assault ‘in a private place’, rape, and other sexual or gender-based crimes were not indictable offences. Protection orders were not available, and support services to victims were scarce. Only in the 1990s did violence against women begin to be culturally defined as a crime, rather than being viewed as a social problem.¹⁵⁶

Pressure for recognition of violence against women as a violation of human rights began to be felt in the 1990s. The recognition of violence against women as a human rights violation in human rights law was hindered and delayed by

154 See, for example, Johanna Niemi-Kiesiläinen, *Rikosprosessi ja parisuhdeväkivalta* [Criminal Law Procedure and Intimate Violence] (WSOY 2004); Minna Ruuskanen, *Hätävarjelu ja parisuhdeväkivalta: Rikosoikeudellinen ja diskurssianalyttinen tutkimus* [Intergender Violence and Self-Defence] (Suomalainen lakimiesyhdistys 2005); Helena Jokila, *Tahdonvastainen suostumus ja liiallisen luottamuksen hinta: Raiskauksen ja muiden seksuaalirikosten oikeudellisen tiedon konstruktio* [Consent against One’s Will and the Price of Undue Trust: The Legal Constructions of Knowledge in Finnish Sexual Crimes] (Suomalainen lakimiesyhdistys 2010); Johanna Niemi, Heini Kainulainen, and Päivi Honkatukia (eds), *Sukupuolistunut väkivalta: Oikeudellinen ja sosiaalinen ongelma* [Gendered Violence: A Legal and Social Problem] (Vastapaino 2017); Tuuli Hong, *Kunniaan liittyvän väkivallan uhrin oikeudellinen asema* [Legal Position of Victims in Honour-Related Crimes] (Annales Turku University 2020).

155 See, for example, Sakari Melander’s dissertation that examined whether it is possible to construct a theory of criminalization built on the model of moral theory. An excursion to feminist critique lies somewhat outside the overall framework of the dissertation and is not integrated into the overall argumentation. Sakari Melander, *Kriminalisointiteoria: Rangaistavaksi saamisen oikeudelliset rajoitukset* [A Theory on Criminalization: Legal Constraints to Criminal Legislation] (Suomalainen lakimiesyhdistys 2008).

156 Saara Kuusinen, ‘Väkivaltajaosto: Naisiin kohdistuvan väkivallan vastustamistyötä 1990–1998’ [Violence Section: Action against Violence against Women 1990–1998] in *TANE: n aiheet ja vaiheet – tasa-arvoasiain neuvottelukunta 40 vuotta* [40 Years of the Council for Gender Equality] (Council for Gender Equality 2012).

the reluctance of scholars of international law to adopt a different view on the responsibility of states in the field of criminal law and the absence of women in the institutions of international law.¹⁵⁷ The traditional role of human rights law within criminal law is to protect the rights of persons suspected and/or accused of crime against repression by the state, not to set a standard for the duty of states to prevent crime. A profound change in theoretical and practical orientation in human rights law has taken place since the 1990s, as exemplified by General Recommendations 19 (1992) and 35 (2017) to the CEDAW Convention. In these instruments, the CEDAW Committee framed violence against women as discrimination under the Convention and a violation of human rights to be combated by states with due diligence. The Council of Europe's Istanbul Convention (2011)¹⁵⁸ requires states to adopt criminal policies to eradicate such violence.

The European Court of Human Rights had already adopted a similar position in its case law, with the case *M.C. v. Bulgaria* of 2003 laying down that states bound by the European Human Rights Convention have a positive duty to amend their criminal codes to ensure that rape is defined in terms of lack of consent on the part of the victim, rather than in terms of coercion by the perpetrator.¹⁵⁹ Nordic criminal law experts regarded this case with disbelief. When Sweden's Professor Madeleine Leijonhufvud proposed in a 2008 report that lack of voluntariness should be taken as the main criterion for definitions of sexual crimes and backed up her position by reference to *M.C. v. Bulgaria*, the Swedish government found such a reform unnecessary. Several criminal law experts doubted that a positive duty under international human rights law could possibly require more effective criminal law to protect victims, as human rights law existed for the purpose of limiting governments' abuse of criminal law.¹⁶⁰ Finnish criminal law specialists echoed Swedish reactions to the case.

International human rights bodies disagreed with the above-mentioned experts. Under the CEDAW and Istanbul Conventions, states parties have an obligation to take necessary legislative and other measures to prevent, investigate, punish, and

157 Hilary Charlesworth, Christine Chinkin, and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85(4) *American Journal of International Law* 613; Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).

158 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210.

159 In the case, the European Human Rights Court stresses that states have a positive duty to criminalize all sexual acts undertaken without consent; see case of *M.C. v. Bulgaria*, Judgement 4 December 2003, *supra* 166.

160 For example, Petter Asp took a position opposite to that of Leijonhufvud on the question of whether the case laid down a positive duty for states parties to the European Convention of Human Rights to implement criminal law reform; see Peter Asp, 'M.C. v. Bulgaria: A Swedish Perspective' in (2009) 54 *Scandinavian Studies in Law* 191. P. O. Träskman, a Finnish-born criminal law professor in Sweden, held that feminists had made a total mistake in promoting such a view in Anna Norée, Catharina Durling Sitten, Susanne Wenneberg, and Josef Zila (eds), *Festschrift till Madeleine Leijonhufvud* [Festschrift for Madeleine Leijonhufvud] (Norteds Juridik, 2009).

provide reparation in cases of acts of gendered violence against women, under a duty of due diligence.¹⁶¹ The CEDAW Committee has repeatedly highlighted Finland's insufficient measures against violence against women. In 2014, the Committee requested that Finland direct economic resources to implementation of such measures, establish a coordinating body, amend its rape legislation, and provide better access to shelters. Finland was requested to reply to the Committee's concluding observations by as early as 2016 (the normal cycle of reporting being four years).¹⁶²

The pressure from the CEDAW Committee had some effect. The first explicit Action Plan against Violence against Women (2010–2015) was motivated by human rights concerns, whereas earlier action plans had been directed against 'violence in intimate relations'. The new plan followed the principle of the 'three Ps' (prevention, protection, prosecution) required by the main human rights instruments against violence against women, paying particular attention to victims and their need for support and services, although it did not define violence against women or gendered violence against women. The plan consisted of 66 separate measures. However, no separate budget was provided for these measures. The coordinator of the Action Plan resigned in 2014, and the plan was discontinued after 2015. Of the ten recommendations of the CEDAW Committee, seven were implemented in part, while implementation of two failed. Only one recommendation was fully implemented: ratification of the Istanbul Convention.¹⁶³

Finland signed the Istanbul Convention in 2011 and ratified it in 2015, but the working group tasked with preparing the ratification conducted no analysis of the possible changes that might be required for its implementation.¹⁶⁴ The requirements of the Istanbul Convention are in many respects the same as those under the CEDAW Convention. Many of the requirements of these instruments had not been fulfilled at the time of Finland's ratification of the Istanbul Convention, contrary to what was assumed by the government in power at the time. Since then, government actors, including the Ministry of Justice, have become more aware of the extent of gendered violence against women in Finland and of the frequent observations made by human rights bodies, including the CEDAW Committee and GREVIO,¹⁶⁵

161 See Article 5 of the Istanbul Convention.

162 7th Periodic Report of Finland (CEDAW/C/FIN/CO/7).

163 Anna Lindfors, *Naisiin kohdistuva väkivalta, Suomi ja CEDAW: Tutkielma naisiin kohdistuvaa väkivaltaa koskeva kansainvälisen sitoumuksen toimeenpanosta Suomessa* [Violence against Women, Finland and CEDAW: A Study of the Implementation of an International Commitment to Combat Violence against Women] (Master's degree thesis, University of Helsinki 2016).

164 Kevät Nousiainen and Merja Pentikäinen, 'Väkivallan vastaisen sopimuksen kivinen ratifointi Suomessa' [The Rocky Road to Finnish Ratification of the Convention against Violence against Women] (2013) 4 *Oikeus* 455.

165 GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) is the independent expert body that monitors the implementation of the Istanbul Convention. GREVIO makes evaluation visits to evaluate reports by states parties and draws up evaluation reports. There is no individual complaints mechanism under the Istanbul Convention.

over the last few years. A national Action Plan for the Istanbul Convention was produced in 2017.¹⁶⁶

One of the requirements under the Istanbul Convention is that definitions of sexual crimes should be based on lack of consent on the part of the victim, not on violence by the perpetrator. In 1999, when the chapter on sexual crimes in the Finnish Criminal Code was amended, rape was defined as coercion to sexual intercourse, although in the preparatory works for the amendment sexual crimes were conceived as violations of the victim's sexual autonomy. In 2014, at the time when ratification of the Istanbul Convention was under preparation, the provisions on sexual crimes were amended again. However, despite pressure from human rights and women's organizations, lack of consent was not adopted as the basis for the definition of rape. Sexual autonomy was understood in contrast to sexual moralism. Provisions were written using gender-neutral language.¹⁶⁷

The first GREVIO report on Finland¹⁶⁸ noted the use of gender-neutral terminology in the Action Plan and found little reference to experiences of women victims of crimes covered by the Istanbul Convention or to the need to address the gendered nature of such crimes. It also noted that there were no specific guidance tools on how to address violence against women as a gender-based crime, and that statistics showed low reporting rates, high rates of attrition, and low conviction rates in cases involving violence against women. Criminal law provisions assumed to cover the requirements of the Convention did not adequately cover all forms of violence against women.¹⁶⁹ The report also found that existing legislation on sexual crimes did not fully capture the realities of women experiencing sexual violence and their responses. As a result, not all forms of sexual violence were criminalized, as required by the Convention. High thresholds of evidentiary standards of physical resistance were required, with the focus being on the victim's behaviour rather than the accused's actions. GREVIO also noted with concern that the penalties that might be imposed for sexual crimes were very low, especially in cases of sexual abuse of a child.¹⁷⁰ GREVIO 'strongly encouraged' Finland to speedily reform Chapter 20 of its Criminal Code, which covers sexual crimes.¹⁷¹

Changes in Swedish policy also had an impact on the Finnish approach. After the Swedish definition of rape was amended in 2018 to base it on lack of consent, the Finnish Ministry of Justice nominated a working group to prepare a reform

166 Ministry of Social Affairs and Health, *Istanbulin sopimuksen toimeenpanosuunnitelma 2018–2021* [Action Plan for the Istanbul Convention] (Ministry of Social Affairs and Health 2017).

167 Minni Leskinen, 'Raiskaus 2010-luvulla: Yhä vain väkisinmakaamista?' [Rape in the 2010s: Still Intercourse by Force?] in Johanna Niemi, Heini Kainulainen, and Päivi Honkatukia (eds), *Sukupuolistunut väkivalta: Oikeudellinen ja sosiaalinen ongelma* [Gendered Violence: A Legal and Social Problem] (Vastapaino 2017).

168 GREVIO Baseline Evaluation Report Finland 2019 <<https://rm.coe.int/grevio-report-on-finland/168097129d>> accessed 20 January 2023.

169 *Ibid.*, supra 5 and 153 of the Baseline Report.

170 *Ibid.*, supra 166.

171 *Ibid.*, supra 169.

of Chapter 20 of the Criminal Code. Several Finnish NGOs submitted a citizen's initiative on reform of the law on rape to the parliament in 2019.¹⁷² The Swedish reform was presented and assessed in legal literature,¹⁷³ and the Finnish government commissioned a study on professional and lay views on punishments in certain types of crimes. The study found that lay people did not favour more severe punishment than law professionals across all types of crime, but that they did regard violence against women as deserving more severe punishments than judges thought justified.¹⁷⁴ The Ombud for Equality added pressure by recommending in his 2018 report to the parliament that a comprehensive gender assessment of the Criminal Code, including its provisions on sexual crimes, should be carried out.¹⁷⁵

The political decision to begin a reform of the Criminal Code's chapter on sexual crimes was also a reaction to the high number of asylum-seekers (or migrants) in 2015. The media followed crime statistics and reported on the nationality of the perpetrators.¹⁷⁶ When the minister of justice initiated a process of amending the Criminal Code in 2018, the motivation was not merely to enhance protection of women but also to introduce harsher punishments, with immigrant perpetrators in mind. According to a study commissioned by the government, immigrant men are over-represented among persons suspected of rape and sexual abuse of a child, and the degree of their over-representation has risen steadily since the beginning of the 2010s.¹⁷⁷ A more clear-cut turn in equality politics took place with the change of government. In 2019, Juha Sipilä's centre-right government resigned and was replaced by a left-centre coalition led by Sanna Marin. Marin's Government Programme framed violence against women as a rule-of-law issue, with an emphasis on the need to enhance the position of crime victims. Many of the measures promised had been required by the CEDAW Committee and GREVIO. The Government Programme also promised reform of the Criminal Code's provisions on sexual

172 Citizens initiative KAA 2/2019 Raiskauksen määritelmä suostumusperusteiseksi -Suostumus 2018 [Definition of Rape to Be Based on Consent – Consent 2018].

173 Minni Leskinen, 'Uusi pohjoismainen seksuaalirikosoikeus? Ruotsin lainsäädännöllisten valintojen hyödynnettävyydestä Suomessa' [New Nordic Sexual Offences Law: On the Applicability of Swedish Legislative Solutions in Finland] (2020) 3–4 *Lakimies* 373.

174 Juha Kääriäinen, *Seitsemän rikostapausta: Käräjätuomareiden arvioima rangaistuskäytäntö ja väestön rangaistusvalinnat* [Seven Crime Cases: Evaluations of Punishment by District Court Judges and the Population at Large] (Helsinki University, Institute of Criminology and Social Policy 2017).

175 Ombud for Equality's Report to the Parliament 2018 (n 97), 91–101.

176 For example, on 12 December 2018, the daily newspaper *Ilta-lehti* 12 published an article by Mika Koskinen entitled 'IL selvitti: Irakilaisten osuus peräti 12 prosenttia Suomessa vuonna 2017 tehdyistä raiskauksista' [*Ilta-lehti* Investigated: Iraqi Perpetrators of 12% of the Rapes Committed in Finland 2017]. The tabloid had listed the number of immigrants sentenced for sexual offences by nationality, as well as the percentage of these offenders among immigrants by country of origin residing in Finland.

177 Teemu Viihkonen, Markus Kaakinen, and Tommi Hoikkala, *Seksuaalirikosten tekijät, tekotilanteet ja ennaltaehkäisemisen mahdollisuudet* [Perpetrators, Crime Situations, and Possibility of Prevention] (Publications of the Government's Analysis, Assessment and Research Activities 2021:56, Prime Minister's Office 2021), 32–35.

crimes, whose definitions would be based on lack of consent rather than coercion, and a reassessment of whether sanctions for the most serious sexual and violent crimes were proportional to the injury they caused or appropriate in comparison with other crimes.¹⁷⁸ A reform proposal that was presented in spring 2020 went through a number of amendments¹⁷⁹ before being passed in July 2022.

Mere reform of the Criminal Code provisions on sexual crimes cannot achieve much without proper implementation, however. NGOs (Amnesty Finland in particular) and researchers have noted that sexual crimes are seldom reported to the Finnish police, and, when they are, the police investigation seldom leads to a conviction. In 2008, Amnesty International published a study on rape and human rights in the Nordic states, showing very low investigation and conviction figures.¹⁸⁰ Amnesty Finland has since carried out several surveys of key persons in Finnish municipalities¹⁸¹ on measures taken against violence against women at the local level, showing that local decision-makers pay little attention to national recommendations and policies. In 2019, Amnesty Finland published a study on rape victims' access to justice.¹⁸² On the basis of prevalence studies carried out by the Institute of Criminology and Legal Policy¹⁸³ and the European Fundamental Rights Agency, the study found that between 41,000 and 62,000 women become victims of sexual violence each year, but in one year only 358 cases were brought to court, and in 209 of these the perpetrator was convicted. The study recommended not only legislative reform but also the provision of adequate resources to the police, prosecutors, and courts as well as resources to support centres for rape victims. In 2020, researchers at Turku University conducted a study of cases of reported rape (as defined under Sections 1–5 of Chapter 20 of the Criminal Code) that had not been investigated or where the perpetrators had been acquitted. The reasons for attrition were manifold, but the study revealed problematic issues regarding the interpretation and application of the Criminal Code. In many cases, the consent

178 The Government Programme's measures concerning violence against women are listed under the title 'Safe and Secure Finland Built on the Rule of Law' <<https://valtioneuvosto.fi/en/marin/government-programme/safe-and-secure-finland-built-on-the-rule-of-law>> accessed 20 January 2022.

179 HE 13/2022 vp Hallituksen esitys eduskunnalle seksuaalirikoksia koskevaksi lainsäädännöksi [Government Bill to the Parliament for Legislation on Sexual Crimes].

180 Amnesty International, *Case Closed: Rape and Human Rights in the Nordic Countries* <<https://amnesty.dk/wp-content/uploads/media/1557/case-closed.pdf>> accessed 15 January 2022.

181 Satu Lidman and experts from Finnish Amnesty, 'Amnestyn seurantatutkimus 2021' [Amnesty Follow-Up Study] <<https://www.amnesty.fi/uploads/2021/05/amnestyn-seurantatutkimus-2021.pdf>> accessed 15 January 2021.

182 Otava Piha, *Oikeuksien arpapeli: Naisiin kohdistuvat raiskausrikokset ja uhrien oikeuksien toteutuminen Suomessa* [Lottery of Justice: Crimes of Rape against Women and Realization of Women's Rights in Finland] (Amnesty Finland 6 March 2019) <https://www.amnesty.fi/uploads/2021/03/oikeuksien-arpapeli_final.pdf> accessed 20 October 2022.

183 The Institute of Criminology and Legal Policy (Krimo) at the University of Helsinki is the main Finnish research body on criminology.

of the victim was the key issue in the court procedure, and often the threshold of evidence needed for conviction was very high.¹⁸⁴

Failures in police investigation have led to interventions by the authorities. In 2019, Deputy Chancellor of Justice Mikko Puumalainen found that the police had failed to report a case of domestic violence. In 2020, Parliamentary Ombudsman Petri Jääskeläinen found that the police had acted illegally in many ways when it did not investigate the alleged rape of a 16-year-old girl. The girl's inquiries had not been answered, nor had she been directed to victim support services. In January 2022, Puumalainen promised in a press release to launch an examination of police investigation of sexual and domestic violence to ascertain whether there are general problems in the investigation of such crimes.¹⁸⁵

2.7.5 *Change in sight?*

There are signs that international pressure and public opinion are changing Finnish criminal policies. The position of Rapporteur on Violence against Women was established and placed under the Non-Discrimination Ombud in 2022. The Action Plan for Combating Violence against Women for 2020–2023 is in many ways related to the requirements of the Istanbul Convention. Officials involved in criminal investigation and court procedure are to be educated with the aid of existing materials to recognize violence and take preventive action – as demanded by GREVIO. The due diligence standard, or the state's responsibility to take measures against non-state actors to protect human rights, is increasingly evoked in the context of minimum standards on anti-discrimination and violence against women.¹⁸⁶ Increasing pressure as a result of EU policies against violence against women has also had an impact.

The present government promised several amendments to legislation that is relevant to violence against women in its programme. Some, but not all, of these have

184 Daniela Alaattinoğlu, Heini Kainulainen, and Johanna Niemi, *Raiskausrikosten eteneminen rikosprosessissa* [How Cases of Rape Move Forward in the Criminal Procedure] (University of Turku 2020) <<https://www.utu.fi/fi/yliopisto/oikeustieteellinen-tiedekunta/tutkimus/katsauksia-ja-tutkimusraportteja>> accessed 28 October 2022.

185 Paavo Teittinen, 'Poliisin seksuaali- ja lähisuhdeväkivaltatutkinnassa isoja ongelmia – apulaisoikeuskansleri käynnistää selvityksen' [Huge Problems in Police Investigations on Sexual and Intimate Partner Violence: Vice Chancellor of Justice Starts an Investigation] *Helsingin Sanomat* (Helsinki, 29 January 2022) <<https://www.hs.fi/kotimaa/art-2000008575023.html>> accessed 8 February 2023.

186 Rebecca Cook proposed that the CEDAW Convention set a standard of due diligence; see Rebecca Cook, 'Obligations to Adopt Temporary Special Measures under CEDAW' in Ineke Boerefijn, Fons Coomens, Jenny Goldschmidt, Rikki Holtmaat, and Ria Wolleswinkel (eds), *Temporary Special Measures: Accelerating De Facto Equality of Women under Article 4(1) UN Convention on the Elimination of all Forms of Discrimination against Women* (Intersentia 2003). Sandra Fredman has developed the doctrine of positive duties under human rights law; see Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford University Press 2008). Human rights instruments and case law provide the standard to be followed by states in combating violence against women.

been realized. The biggest effort was the reform of the Criminal Code provisions on sexual crimes. Other amendments have fared less well. A memorandum on criminalization of forced marriage¹⁸⁷ found that crimes of trafficking and coercion cover even forced marriage. Criminal law amendments on hate speech promised in the Government Programme resulted in the addition of sexist motivation to the list of aggravating grounds for all crimes set out in the Criminal Code, which lists many other discriminatory grounds, such as race and colour. However, no changes to the Criminal Code provision on hate speech itself were proposed. The provision on hate speech in its present form concerns speech against ‘groups of people’, and the law preparators found it unsuitable to extend the provision to sex.¹⁸⁸ That meting out aggravated punishment for crimes with a sexist motivation was added to the Criminal Code was important as such; however, as there is no specific provision regarding hate speech on sexist grounds, it does not address the problem of increasing hate speech against women.

2.8 Gender pay gap and pay discrimination

2.8.1 The Finnish gender pay gap is deep

Women’s mean earnings per month in 2019 were 3,229 euros, those of men 3,838 euros. Women earned 84% of what men earned in full-time work. The gender pay gap in Finland (16.6% in 2019 according to Eurostat statistics) is greater than the European average,¹⁸⁹ and it is larger than the gap in the other Nordic countries except Iceland. Statistics Finland measures the gender pay gap using the average regular monthly pay of full-time employees, which does not include overtime or part-time earnings.¹⁹⁰

Working patterns are gendered: In 2020, the employment rate among persons aged between 15 and 64 in Finland was 70.7% for women, 72.5% for men. The employment gap between women and men is at its broadest in the age group 25–34 years (73.5% for women and 82.5% for men), which is explained by an unequal use of family leaves in families. Women work part-time more often than men (22% vs 10%) and for different reasons. Female part-time workers often cannot find full-time work, and almost all persons working part-time owing to family reasons are women. Men often work part-time during their studies. More women than men

187 Ministry of Justice, ‘Arviomuistio avioliittoon pakottamisen rangaistavuudesta’ [Memorandum on the Punishability of Forcing a Person to Enter into Marriage] (Ministry of Justice, Memorandums and Statements 2021: 29).

188 Government Bill HE 7/2021 Hallituksen esitys eduskunnalle laiksi rikoslain muuttamisesta [Government Bill on Amendment of the Criminal Code].

189 Eurostat Statistics Explained, ‘Gender Pay Gap Statistics’ <https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Gender_pay_gap_levels_vary_significantly_across_EU> accessed 9 March 2021.

190 Statistics Finland, ‘Average Monthly Earnings by Sector and Gender, 2000–2021’ <https://pxweb2.stat.fi/PxWeb/pxweb/en/StatFin/StatFin__ati/statfin_ati_pxt_122k.px/> accessed 20 October 2022.

(19% vs 13%) work under fixed-term contracts, most commonly at parenting age. Men on average work longer weekly hours than women (38 hours versus 32 hours per week).¹⁹¹ The pay gap is broader if measured using an indicator based on overall income, not by an indicator based on the number of full days worked. When part-time pay and bonuses are included, the pay gap is around 24%. Women are more highly educated than men, but that fact does not lead to high income. The disadvantage of women's lower pay is often explained by reference to the 'wrong choices' made by girls and women: by choosing education in health and educational studies, they allegedly choose low pay and, as a result, low pensions at the end of their working lives.

The labour market is highly gender-segregated: women work in health, education, administration, and services; men in science and technology, transport, construction work, and heavy industry. In 2019, the fields of health and social services (86% women), education (68% women), and catering (68% women) were dominated by women employees, whereas fields with a male majority included construction work (91% men), transport and storage (80% men), and industry and the provision of electricity, gas, water and waste management (75% men). Less than 10% of employees work in occupations with balanced gender participation.¹⁹² Men tend to work in the private and women in the public sector. Women employees working for the municipalities and private service providers earn less than men working in the private sector and for the state. The pay gap in Finland is broader in the private than in the public sector.¹⁹³ On the other hand, public-sector employees in Finland, as in Denmark, Norway, and Sweden, are paid less than similar employees in the private sector. In Finland, the private–public pay gap is around 5%, but the differentials are greatest in areas with high employment rates.¹⁹⁴

Pay equality policies have concentrated on decreasing gender segregation in the labour market and increasing men's participation in childcare.¹⁹⁵ Pay discrimination as a cause for the pay gap tends to be ignored or denied.

191 Finnish Institute for Health and Welfare, 'Työllisyys ja työsuhteet sukupuolittain' [Employment and Employment Contracts by Gender] <<https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/tyo-ja-toimeentulo/tyollisyys-ja-tyosuhteet-sukupuolittain>> accessed 20 March 2021.

192 Finnish Institute for Health and Welfare, 'Ammattialojen sukupuolen mukainen segregatio [Professional Segregation by Gender]' <<https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/tyo-ja-toimeentulo/ammattialojen-sukupuolen-mukainen-segregaatio>> accessed 20 January 2023.

193 Centre for Equality Information, 'Sukupuolten palkkaero' [The Gender Pay Gap], 21 December 2020 <<https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/tyo-ja-toimeentulo/sukupuolten-palkkaero>> accessed 9 March 2021.

194 Terhi Maczulskij and Eetu Isotalo, 'Yksityisen ja kuntasektorin väliset palkkaerot – onko maakunnalla väliä?' [Pay Differentials between Private and Municipal Sectors: Does the County Matter?] (2021) 86(1) *Yhteiskuntapolitiikka* 16.

195 These topics are prominent in the tripartite Equal Pay Programme 2020–2023. The parties involved in the programme-based measures are the Ministry of Social Affairs and Health, the Ministry of Education and Culture, the Ministry of Economic Affairs and Employment, and central labour market organizations; see Ministry of Social Affairs and Health, 'Samanpalkkaisuusohjelma 2020–2023' [Equal Pay Programme 2020–2023], <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162623/STM_2020_38_rap.pdf?sequence=1&isAllowed=y> accessed 24 October 2022.

2.8.2 *Historical roots of the persistent pay gap*

On average, Finnish women have a longer and stronger presence in the labour market than women in the European Union.¹⁹⁶ In a country of small farms, women needed to participate in agricultural work. During wartime, women replaced men in many jobs. The formation of the welfare state took place during a period when pay was openly differentiated by gender, with different pay categories for men and women in use. The open differentiation came to an end by the 1970s, with the implementation of ILO Convention No. 100.¹⁹⁷ Finland's accession to the Convention in 1963 led to implementation through the removal of collective agreement clauses that differentiated between men and women explicitly, but no assessment of the value of the work done by women and men was made. Structures and practices in the labour markets continued to favour the primacy of the male norm, and pay differentials remained high.¹⁹⁸ Nevertheless, the gender pay gap diminished rather quickly until the 1980s, though the rate of decrease has since slowed. The undervaluation of women's work remained hidden behind seemingly gender-neutral collective agreements. The growth of the welfare state brought work especially to women, and the level of pay in public-sector jobs in welfare services was low. The generally shared understanding of the proper pay levels in social and health services, which are predominantly staffed by women, was established at that point.¹⁹⁹

Finnish women are more highly educated than men, but the educational choices of both women and men reflect the gendered nature of the labour market. Furthermore, even men and women with the same education receive different earnings already at the start of their careers. Women's careers develop more slowly and less often lead to managerial positions, even in fields where a majority of the employees are women. Men tend to hold leading positions in business, whereas women lead activities such as personnel management, communications, and legal affairs.²⁰⁰ In occupations with higher pay levels, the pay gap is broader than in

196 The Finnish Centre for Pensions provides gender-segregated statistics on all income on which pensions are based. Part-time and fixed-term work, as well as taking family leaves, are more common among women; see Outi Viitamaa-Tervonen, 'Samapalkkaisuudesta' [On Equal Pay] in Outi Viitamaa-Tervonen, Niklas Bruun, Anja Nummijärvi, Kevät Nousiainen, and Paula Koskinen Sandberg, *Samapalkkaisuuden perusteet ja edistäminen* [Grounds and Promotion of Equal Pay] (Sosiaali- ja terveysministeriö [Ministry of Social Affairs and Health] 2019).

197 Equal Remuneration Convention (1951), International Labour Organization Convention No. 100.

198 Finland's implementation of the Convention resembles that in other developed countries; see Paula Määttä, *The ILO Principle of Equal Pay and Its Implementation* (Tampere University Press 2008).

199 Anneli Anttonen, 'Hyvinvointivaltion ystävälliset kasvot' [The Benevolent Face of the Welfare State] in Anneli Anttonen, Lea Henriksson, and Riiitta Nätkin (eds), *Naisten hyvinvointivaltio* [Women's Welfare State] (Vastapaino 1994); Paula Koskinen Sandberg, 'The Corporatist Regime, Welfare State Employment, and Gender Pay Inequity' (2018) 26(1) *NORA – Nordic Journal of Feminist and Gender Research* 36.

200 Centre for Equality Information, 'Johtamisen ja urakehityksen tasa-arvokysymyksiä' [Equality Issues in Leadership and Career Development] 29 June 2020 <<https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/tyo-ja-toimeentulo/johtamisen-ja-urakehityksen-tasa-arvokysymyksiä>> accessed 9 March 2021.

those with lower pay levels. Women entering ‘male’ occupations face discrimination, and the dismantling of masculine privilege gives rise to men experiencing discrimination.²⁰¹

Collective agreements have an important role in pay formation. Collective agreements often are binding *erga omnes*. The strong tradition of collective agreements in Finland has helped to freeze the undervaluation of women’s pay. The tripartite income policy agreements of 1968–2008 were based on similar pay rises in all fields. Percentual rises in all fields deepened the pay gap between women and men. Traditional forms of undervaluation of women’s work became a part of formal structures whose gendered nature remains invisible.²⁰²

The strong position of collective bargaining is weakening, however. The percentage of employees who are organized has decreased over the years (73.3% in 1995, 64.6% in 2013, and 55.1% in 2017). Notably, women have been more organized than men throughout this period.²⁰³ The employers’ central organization EK changed its rules in 2016 to exclude national, centralized collective agreements, leaving the activity to field-specific unions. A 2020–2021 collective agreement for technology industries left pay to be negotiated locally, at the workplace or employer level. Such developments indicate a weakening of Finland’s corporatist traditions.

Finnish equal pay policies and preparatory works for amendments on equal pay have been heavily dominated by the social partners. Any legislation that might affect the labour market has traditionally been prepared in tripartite equal pay policies, with the state and central unions for employers and employees participating in the process. The preparation of legislative amendments on equal pay has been heavily dominated by the cooperation of the social partners, who hold on to their prerogative despite the weakening of their power in other areas. In 2016, the social partners agreed on a new model for collective agreements. The ‘agreement on competitiveness’ required that the highest pay rises be awarded to the export sector to support national price competitiveness of export prices. The aim was also to reduce public expenditure. The agreement increased working time and cut public-sector

201 A survey on discrimination among persons with university degrees in technology highlighted the contradictory experiences of women and men working in the technology field; see Susanna Bairah and Sanna Putila “‘Pätevät naiset eivät etene’ vai ‘naisia suositaan’? Sukupuoleen perustuvan syrjinnän ristiriitaiset kokemukset tekniikan korkeakoulutettujen ryöpaikoilla” [‘Competent Women Are Not Promoted’ or ‘Women Are Given Preferential Treatment’? Contradictory Experiences of Gender-Based Discrimination in the Workplaces of University-Educated Technology Professionals] (2021) 19(4) *Työelämän tutkimus* 595.

202 Paula Koskinen Sandberg, Maria Törnroos, and Roosa Kohvakka, ‘The Institutionalised Undervaluation of Women’s Work: The Case of Local Government Sector Collective Agreements’ (2017) 32 *Work, Employment and Society* 707.

203 The figures are from studies carried out by Statistics Finland, presented in Lasse Ahtiainen, *Palkansaajien järjestäytyminen vuonna 2019* [Employees’ Membership in Trade Unions in 2019] (Ministry of Economic Affairs and Employment 2019) 46–47 <https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161433/TEM_10_2019_Palkansaajien%20jarjestaytyminen.pdf?sequence=1&isAllowed=y> accessed 20 October 2021.

holiday bonuses.²⁰⁴ Statistics Finland estimated that the agreement would reduce pay far more in the public than in the private sector.²⁰⁵ Employer representatives considered the agreement a success in terms of competitiveness.²⁰⁶ Public-sector employee trade unions claimed that working conditions in the public sector deteriorated as a result of the agreement and have since demanded compensation.

In 2007, a trade union representing nurses secured a considerable pay rise for its members after it threatened strike action. The agreement that was reached, however, covered only the members of one of several unions that represent nurses.²⁰⁷ A member of another union, also a nurse, who did not get a pay rise claimed discrimination on the ground of trade union membership. The Supreme Court found that both employers and organized employees are bound by their collective agreements, and that the conditions of one collective agreement may be better than those of another. The claimant had chosen their union freely and was not an active trade union member. According to the Court, there had been no discrimination on the ground of union membership and the Act on Equality had no relevance to the case. However, as the claimant's work was equal to or of equal value to that of the comparator, the employer had a duty under the Employment Contracts Act to treat them equally, and the employer had an obligation to prevent permanent pay differentials between them. As the employer had harmonized its pay system within the following two years, the claim for compensation had no merit.²⁰⁸

The latest collective agreement negotiations in 2022 were difficult, especially in the public sector. Public-sector trade union leaders stressed in January 2022 that all public-sector employees should be awarded a considerable pay rise, as the public sector had been left behind in comparison with the private sector, mainly owing to extra pay rises in the private sector that went beyond what had been specified in collective agreements. The unions pointed to labour shortages in many public-sector occupations.²⁰⁹ Later, public-sector unions signed a three-year agreement that guarantees relatively high pay rises and links wages in the public sector to pay rises

204 On 29 February 2016, the employer organization Confederation of Finnish Industries announced that an agreement had been reached among the social partners; see 'Neuvottelutulos: Kilpailukykysojimus' [Negotiated Agreement: Agreement on Competitiveness] <<https://ek.fi/wp-content/uploads/neuvottelutulos-290216-klo-0045.pdf>> accessed 23 January 2023.

205 Harri Nummila, 'Kilpailukykysojimus muuttaa ansiotasoindeksin laskentaa' [The Competitiveness Agreement May Change Calculation of Income Level] (Statistics Finland blogs, 6 April 2017) <<https://www.stat.fi/tietotrendit/artikkelit/2017/kilpailukykysojimus-muuttaa-ansiotasoindeksin-laskentaa/>> accessed 20 October 2022.

206 For example, a report by the Research Institute of the Finnish Economy (ETLA), which is supported by employer organizations and foundations, presented a study according to which the agreement improved national economic competitiveness considerably; see Antti Kauhanen and Markku Lehmus, *Työaika, työllisyys ja kilpailukyky* [Working Time, Employment and Competiveness] (ETLA reports 92, 12 August 2019).

207 Olli Ainola, 'Kypsyyskoe läpäisty?' [Maturity Test Passed?] *YLE News* (19 November 2007) <<https://yle.fi/a/3-5810515>> accessed 10 February 2023.

208 Supreme Court KKO 2013:10, supra 11, 14, 17, 27–30.

209 Communication by all central public-sector trade unions, 18 January 2022 <<https://www.jhl.fi/2022/01/18/juko-jyty-ja-jhl-palkankorotukset-kuuluvat-kaikille/>> accessed 20 August 2022.

in industries and export branches.²¹⁰ Nurses' trade unions refused to accept this agreement, however, and demanded that their members receive pay rises higher than those granted to members of other public-sector unions, threatening strikes in intensive care units. The government drew up legislation to prohibit the strikes and curtail the right to resign from tasks considered necessary for patient safety,²¹¹ and the parliament quickly passed the act. Under the new law, if unions fail to safeguard care, an employer may order individual health-care workers to work.²¹² The employers' representative organization EK held that high public-sector pay rises would be disastrous for the national economy.²¹³ In October 2022, the nurses signed a compromise agreement.

2.8.3 *Explanations of the gender pay gap and measures against it*

Equal pay policies in Finland have involved tripartite action plans since 2006. These plans have been based on the assumption that gender segregation of the labour market is the main reason for the pay gap. The action plans have been evaluated and found rather ineffective.²¹⁴ Positive action has been required on the part of employers under the Act on Equality. Such measures have been rather ineffective, as an ILO expert committee noted in its observations on Finland in 2017, as the concept of 'equal work' has been interpreted too narrowly. The CEDAW Committee has also recommended more active measures for pay equity.²¹⁵ An expectation that pay systems based on job evaluations would help to establish the equal value of work by women and men seems optimistic, as evaluations of demands and performance

210 Communication by all central public-sector trade unions, 8 June 2022 <<https://www.jhl.fi/2022/06/08/tallinen-on-kolmevuotinen-sote-sopimus-ja-sen-palkkaohjelma/>> accessed 20 August 2022.

211 Else-Mai Kirvesniemi (executive director for Tehy, the largest trade union for health and social care professionals), 'Hoitajien perusoikeudet 2022: Ei palkkatasa-arvoa, ei lakko-oikeutta, ei oikeutta vaihtaa työnantajaa' [Nurses' Fundamental Rights 2022: No Equal Pay, No Right to Strike, No Right to Change Employer] <<https://www.tehy.fi/fi/blogit/hoitajien-perusoikeudet-2022-ei-palkkatasa-arvoa-ei-lakko-oikeutta-ei-oikeutta-vaihtaa>> accessed 20 October 2022.

212 HE 130/2022 vp Hallituksen esitys eduskunnalle laiksi välttämättömän terveydenhoidon ja kotihoidon turvaamisesta työtaistelun aikana [Government Bill to the Parliament on an Act to Secure Necessary Health and Home Care during Strike]. The Act on Patient Security was passed in a very short period of time.

213 Employer union representatives were 'furious' about public-sector pay rises that broke the 'unwritten rule' that public-sector employees should not receive higher pay rises than private-sector employees. The private export sector trade union allegedly also tried to overturn the public health sector collective agreement, according to Teemu Muhonen, 'Vientialat mieluummin rapauttavat Suomen kilpailukyvn kuin hyväksyvät kuntatyöntekijöiden suuremmat palkankorotukset' [Export Sector Would Rather Hurt Finnish Competitiveness Than Accept Higher Pay Rises for Municipal Workers], *Helsingin Sanomat* (Helsinki, 8 June 2022) <<https://www.hs.fi/politiikka/art-200008868134.html>> accessed 10 February 2023.

214 Kevät Nousiainen, 'Country Report Gender Equality: How Are EU Rules Transposed into National Law? Finland 2022' (European Commission Directorate-General for Justice and Consumers 2022), 23–24.

215 Niklas Bruun, 'Samapalkkaisuuden perustaa säännöstävä kansainvälinen normisto' [International Provisions That Regulate the Basis of Equal Pay] in Viitamaa-Tervonen and others (n 196).

may be carried out within groups of equal (similar) jobs, omitting comparisons of jobs that may be of equal value.

Women's organizations emphasize direct and indirect discrimination, pregnancy-related discrimination, part-time and fixed-term work, and women's care responsibilities as causes for the pay gap. There is broad agreement in Finland that the gender pay gap has several causes. The Centre for Gender Equality Information lists gender segregation of jobs and education, lower pay levels in municipal jobs, and gendered use of family leaves as causes for the pay gap.²¹⁶ In recent years, two prominent means for promoting equal pay have been stressed: increased pay transparency and reform of the provisions on family-related leave.²¹⁷

Undoubtedly, the gender pay gap is a many-headed hydra that must be combated through various measures. It is remarkable, however, that discrimination is seldom named as a cause for the gap in Finnish discussions. Even when discrimination is mentioned, the focus is on 'unexplained pay differentials', a term coined by economists. The website of the Centre for Gender Equality Information defines such 'unexplained pay differentials' as the pay differentials between women and men in the same age class, with similar education, in similar fields and jobs. The unexplained pay differential in 2018, counted at the most detailed level and taking into account similarities of fields, was 6.7% in men's favour.²¹⁸ The discussion relies on arguments from economics rather than law. Employer organizations often refer to studies that show that when comparisons of women's and men's pay are carried out among persons performing exactly the same jobs in the same field, pay differentials are even narrower or non-existent. When pay discrimination is assumed to coincide with 'unexplained pay differentials', the question of equal pay for work of equal value falls outside the frame of study. Indirect discrimination may also fall out of focus. Work of equal value may be carried out under the same or different collective agreements. Under EU law, the employer may not justify unequal pay for work of equal value by reference to collective agreement provisions.

2.8.4 Provisions on pay discrimination and positive action for equal pay

Under Section 8(3) of the Act on Equality, an employer applying pay or other terms of employment in such a way that one or more employees find themselves in a less favourable position on the ground of their gender than one or more other employees in the employer's service performing the same work or work of equal

216 Centre for Gender Equality Information, 'Gender Equality: Work and Income: Pay Gap' <<https://thl.fi/en/web/gender-equality/gender-equality-in-finland/work-and-income>> accessed 10 February 2023.

217 Naisjärjestöjen keskusliitto [The National Council of Women of Finland], 'Toimintasuunnitelma 2021' [Action Plan 2021] <<https://naisjarjestot.fi/wp-content/uploads/2020/12/Toimintasuunnitelma-2021-hyvaksyty-16.11.2020.pdf>> accessed 20 August 2022.

218 Centre for Gender Equality Information, 'Sukupuolten palkkaero' [Gender Pay Differentials] <<https://thl.fi/fi/web/sukupuolten-tasa-arvo/tasa-arvon-tila/tyo-ja-toimeentulo/sukupuolten-palkkaero>> accessed 23 January 2023.

value constitutes discrimination. There are no definitions in the act of equal work or work of equal value, although the preparatory works note that examples of work of equal value may be quite dissimilar.

Like most EU member-states, Finland follows an ‘individual legal strategy’ in providing a legal remedy for pay discrimination: the victim may bring a case of pay discrimination to court and demand compensation. The victim must show that a comparator or comparators of the opposite sex are paid more for equal work, or work of equal value, which requires access to comparator pay information, as well as information on other circumstances of the comparator’s work. The burden of proof shifts to the employer once the victim has been able to show ‘facts that make it possible to presume that discrimination has taken place’ (Section 9a of the Act on Equality). The claimant alleging discrimination must show that they have been placed at a disadvantage in comparison with at least one person or a group of persons who perform equal work or work of equal value.

The standard on when the burden of proof turns to the defendant in pay discrimination cases changed with the so-called judge cases. In earlier case law, the claimant was allowed to select a comparator, and if they could show that they were in a less favourable position in regard to the comparator, the burden of proof turned to the defendant. In 2000, judges were brought under a new collective agreement and divided into different pay categories. Both women and men judges complained about their pay categories and claimed discrimination at court. The Supreme Court found that in order to establish an assumption of discrimination and shift the burden of proof, the claimant must present proof of a causal connection between having been put into a lower pay category and their sex. As the claimants were both women and men, their lower pay could not be caused by their sex.²¹⁹

Proof may be difficult to obtain in pay discrimination cases. Under Section 10 of the Act on Equality, an employee who suspects they are a victim of pay discrimination may require a written explanation from the employer, and the employer must provide the employee with an explanation on the grounds of their pay, along with ‘the information that is necessary so that the employee may estimate whether the prohibition of pay discrimination has been violated’. The employee is not entitled to receive information on the pay of a comparator, only information on their own pay. If the comparator consents to make their pay information available, a shop steward may receive this information, under Section 10(4) of the Act on Equality. If there is reason to suspect pay discrimination, the shop steward may receive information concerning an individual employee’s pay and conditions of work, if that person consents, and on groups of employees in a manner that has been agreed upon. If an individual employee’s pay information has been given, they must be informed of that fact. The shop steward may not divulge pay information to others. If the comparator refuses access to their pay information, the shop steward may ask for it via the Ombud for Equality (Section 17[3]). The procedure is rather complicated, and the option is in practice not in use. It is problematic that the victim has

219 Supreme Court Case KKO:2009:78, supra 13–16.

no individual right to receive pay information that is necessary for establishing pay discrimination.

A positive duty to conduct equality planning was introduced for employers in 1995. The preparatory works for the provision state that employers should provide information on women's and men's pay and pay structures on an annual basis and identify factors that cause unequal pay for equal work or work of equal value. The provision had little effect in practice. In a 2005 amendment of the Act on Equality, pay audits (*palkkakartoitus*) were made mandatory (Section 6a). The mandatory duty was made more explicit by a separate provision (Section 6b) in 2015. The Finnish provisions were inspired by Swedish provisions on pay audits (*lönekartläggning*) but are not similar to them. The constitutional duty to promote equality (Section 6[4] of the Constitution) was also a motivation for these legal amendments.

The parliament expected that the amendment of the pay-survey provision would be explicit on how comparisons of work of equal value should be carried out, and that comparisons should be made across collective agreements. Even information on individual pay should be available for the surveys. According to the legal provision, pay surveys should ensure that there are no 'unjustified pay differences between women and men working for the same employer and engaged in either the same work or work of equal value'. If the analysis of different employee groups defined by competence, duties, or some other ground reveals 'clear' pay differences, the employer must analyse their causes. The 'main pay components' must be analysed separately. If differentials cannot be justified, the employer must rectify the situation. The preparatory works for the provision note that attention should be paid to groups doing work of equal value and also define such work. Comparisons across collective agreements are also referred to in the preparatory works. On the other hand, groupings already used by the employer can be used. The provisions are unclear, which is explained by the conflicting interests represented in the preparation of the law.²²⁰

The amendment of 2015 did not meet the parliament's expectations. The tripartite working group nominated to prepare the amendment opted to exclude a number of measures that might challenge established patterns of pay formation: access of employees to pay information, assessment of equal value of jobs, comparisons across collective agreements, and comparison of all pay components.²²¹ The promotion of pay transparency was on the agenda of the European Commission and was also adopted as a political goal in Finland.

220 Anja Nummijärvi, 'Palkkakartoitukset samapalkkaisuuden toteutumista edistämässä?' [Pay Audits Promoting Equal Pay?] in Viitamaa-Tervonen and others (n 196).

221 Paula Koskinen Sandberg, 'Non-Decision Making in the Reform of Equal Pay Policy: The Case of Finnish Gender Equality Legislation' (2016) 35(4) *Equality, Diversity and Inclusion: An International Journal* 280.

2.8.5 Failed amendment of the pay transparency reform

In 2018, the Ombud for Equality was requested by the Ministry of Social Affairs and Health to write a report on pay transparency. The Ombud's 2018 report²²² contains an analysis of the legal prerequisites of pay transparency, including the need to achieve the right balance between the requirements of the equal pay principle and the right to privacy and data protection. The divulgence of individual pay information should be prescribed by law, and the information should be processed in ways that comply with the requirements of the EU's General Data Protection Regulation (GDPR). Individual pay information should be available even without the comparator's consent, as such information is necessary for a victim of discrimination's right to access to justice and effective remedy. The Norwegian legislation on access to individual pay data was pointed out as a model for legislation. The Ombud's report recommended that transparency should be enhanced by legislative means. A working group set up in 2019 proposed legal amendments in that year, but the government resigned before a bill to implement the amendments could be prepared. The proposed amendments show a Nordic path-dependency rather than the influence of EU law. The European Commission's recommendation on pay transparency²²³ did not motivate new policies.

In its Government Programme, Sanna Marin's administration promised to combat discrimination by increasing pay transparency through legislative means. Provisions on the right of staff, staff representatives and individual employees to access pay information and to address pay discrimination more effectively were on the agenda.²²⁴ A new tripartite working group was nominated in 2020 and published its report in 2021.²²⁵ The report proposed the types of legislative amendments that had been promised. However, the main employer's organization, EK, withdrew from the working group in November 2020, claiming that the ministry representatives had not honoured the tradition of tripartite cooperation in the drafting of the legislation: the working group should have started with a clean slate in the preparation of new laws. The ministry stated that the aim was to follow the Government Programme. Representatives for small private, municipal, state, and church employers presented dissenting opinions, claiming that the working

222 Kevät Nousiainen 'Palkka-avoimuuden oikeudelliset edellytykset' [Legal Prerequisites of Pay Transparency] in Jukka Maarianvaara, *Selvitys palkka-avoimudesta* [Report on Pay Transparency] (Ministry of Social Affairs and Health 2018) <http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161103/R_41_18_Selvitys_palkka-avoimudesta.pdf?sequence=1&isAllowed=y> accessed 7 December 2022.

223 European Commission Recommendation of 7 March 2014 on Strengthening the Principle of Equal Pay between Men and Women through Transparency (2014/124/EU).

224 See Section 3.5 of the 2019 Government Programme <<https://valtioneuvosto.fi/en/marin/government-programme/finland-built-on-trust-and-labour-market-equality>> accessed 21 January 2023.

225 Ministry of Social Affairs and Health, 'Palkka-avoimuuden lisääminen tasa-arvolaisissa. Työryhmän loppuraportti' [Advancing Pay Transparency Through the Act on Equality] (Sosiaali- ja terveystieteiden ministeriön raportteja ja muistioita [Ministry of Social Affairs and Health 2021]) <<http://urn.fi/URN:ISBN:978-952-00-7189-9>> accessed 20 August 2020.

group's proposals were unnecessary and detrimental in many ways. The media coverage largely echoed employers' opinions: that the proposed amendments were unnecessary, as pay discrimination was already prohibited; pay discrimination is no problem, as gender equality in Finland is excellent; and access to individual pay information would only foster envy and strife at the workplace. The minister responsible for gender equality announced in August 2022 that preparatory works for legislation on pay transparency had been dropped, as there was no consensus on the main points of the reform – particularly on the right of an individual employee to receive comparator pay information.²²⁶

The European Commission is currently pursuing pay transparency legislation, since a soft law instrument for pay transparency²²⁷ failed to achieve its objective. In 2021, the Commission presented a hard law proposal for a directive on pay transparency as a part of other measures aimed at reducing the gender pay gap.²²⁸ The proposed directive would establish mutual standards and measures for member-states, including the duty to introduce methodologies for assessing and comparing the value of work with a set of objective criteria. The Finnish parliament received the government's so-called u-brief on the Commission's proposal for a directive in May 2021.²²⁹ The government stated in the brief that it was in favour of the measures proposed by the Commission, though it admitted that proposals concerning law enforcement would be a challenge for Finnish legislation. In hearings of the parliament's Equality and Employment Committee, employer representatives claimed that the proposal lacked any legal basis and would require bureaucratic and ill-suited amendments to Finnish gender equality law, stressing that the gender pay gap was caused by gender segregation in the labour market, not discrimination. Trade union representatives supported the government's standpoint, as did the only expert heard besides the social partners.²³⁰

In its present form, Finnish equality law goes further than the Commission's proposals in that it provides for better access to comparator pay information, even though the victim currently does not have a right as an individual to access that information. The Act on Equality also requires employers with more than 30 employees to carry out a pay audit, whereas the Commission's proposal to establish a duty to carry out pay audits would affect only employers of at least 250 workers. The Commission proposal would provide the victim no access to an

226 *YLE*, 'Sukupuolten välistä palkkatasa-arvoa tavoitellut uudistus pysähtyi hallituksen erimielisyyksiin' [The Reform Aiming at Equal Pay Failed Owing to Government Disagreement] (15 August 2022) <<https://yle.fi/uutiset/3-12577314>> accessed 20 August 2022.

227 European Commission Recommendation of 7 March 2014 (n 223).

228 Proposal for a Directive of the European Parliament and of the Council to Strengthen the Application of the Principle of Equal Pay for Equal Work or Work of Equal Value between Men and Women through Pay Transparency and Enforcement Mechanisms. COM(2021) 93 final.

229 The Finnish procedure for informing the parliament involves a 'u-brief', a government document that informs the parliament about a European Union proposal or issue that would require parliamentary decision-making.

230 Expert opinions concerning U 23/2021 vp <https://www.eduskunta.fi/FI/vaski/KasittelytiedotValt-iopaivaasia/Sivut/U_23+2021_asiantuntijalausunnot.aspx> accessed 20 August 2022.

individual comparator's pay information, only access to average pay levels broken down by sex. The proposal does not explicitly prohibit disclosure of co-workers' pay to another worker, but the information may be divulged to workers' representatives or the equality body only. Yet the discussion on the directive proposal in the parliament shows that EU legislation on pay transparency would be opposed by Finnish employer representatives. The prerogative of the social partners to define equality law seems to effectively block reforms that seek to use transparency as a means for combating pay discrimination.

Part 3: Options and limits of gender equality and anti-discrimination law

2.9 Reflections and observations

This chapter on Finnish equality law and politics has revealed a number of paradoxes. In certain areas of life, such as political and educational achievements, women do very well in Finland. Women gained access to parliamentary politics very early, but it took a long time to achieve parity of women and men in parliamentary representation. Political representation, as such, is not enough to change all power relations in society and administration. The provision of the Act on Equality that requires that nominated members of state and municipal bodies shall consist of both women and men, later strengthened to require a minimum quota, has, with time, enhanced the principle of gender parity in committees, councils, and other bodies whose members are nominated (not elected). It seems that gains in gender equality in the public sphere take time.

The chapter has also described how the composition of the national government affects Finland's gender equality policies. A government 'by women' shows more willingness to carry out reforms 'for women' than a traditional government 'by men'. The chapter has also shown, however, that institutionalized power structures efficiently direct the reform process and prevent reforms that they consider detrimental to their interests. Wishes expressed by the parliament and governmental programmes give way to established understandings on the *justum pretium* or 'just price' for men's and women's work.

Given that access to the labour market was a primary goal for the women's movement in the 1960s and 1970s, it seems paradoxical that the inclusion of women in paid work remains far from complete. Women work in traditional women's occupations and branches, with low pay and often under strenuous working conditions. Anti-discrimination should provide some means for tackling the gender pay gap and opening up more varied careers for women. However, pay discrimination, discrimination at recruitment, and pregnancy-related discrimination are not in focus in Finland's equality politics.

In the first phase of equality politics in Finland, prominent measures for equality included the provision of various social services, such as day-care for children. The utility of women seeking paid work was readily recognized, as so many women were already working in the labour market or on family farms in the 1960s and 1970s. Introducing anti-discrimination law was more difficult: it seems that little

need for such legislation was felt. The Act on Equality between Women and Men was adopted perhaps more as a way of demonstrating Finland's willingness to join the UN's CEDAW Convention than as a result of internal political pressure. The act does not provide victims of discrimination effective access to justice. The social partners act as gatekeepers that decide whether a gender discrimination case goes to the low-threshold equality body and also as arbiters in the preparation of anti-discrimination law.

During the decades since the end of the Cold War, international human rights standards and EU legislation have provided standards and requirements for national actors to follow. Both Finnish anti-discrimination law and international standards on gendered violence against women have led, albeit with a certain amount of delay, to changes in national legislation. The implementation of such standards reveals a national tendency to forgo demands for gender sensitivity. Finnish law relies on gender-neutral formulations, which seem to be based on cultural understandings of gender. The understanding of gender as a multidimensional phenomenon has increased within Finnish equality law, but, so far, there is little legal support for victims of intersectional discrimination.

As shown in this chapter, the disadvantages that women face are often explained through reference to their educational and career choices and gendered childcare patterns. The strong emphasis on gender neutrality in legal and social policies is a paradox given that gendered patterns are so highly visible in social life. Male disadvantage receives attention in equality politics, but it is rarely expected that men should make different choices to overcome disadvantage.

The case study on equal pay shows that it is extremely difficult for women employees in the public sector to negotiate pay rises that exceed those negotiated by (male) workers in the export sector – even when the desperate shortage of workers in health care and education shows that the labour market mechanism is unable to balance demands for labour.

Violence against women was not addressed until the ongoing development of international human rights law made it practically impossible not to act on the issue. Gender neutrality has been a constant hallmark of Finnish equality law and Finnish legislation in general. While international treaties, such as the Istanbul Convention, allow gender-neutral norms to be used in national implementation, in practice Finnish gender neutrality entails a lack of gender-sensitive implementation.