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FLASH REPORT

Country:	Norway
Title:	First case brought before the Equality Tribunal by the Equality Ombud- discrimination of female inmates in a Norwegian prison
Date:	2 November 2020
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Context	
Issue at stake:	Discrimination of female inmates in a Norwegian prison
Grounds of discrimination:	Sex, Gender
Field of application:	Goods and services, Other field
Source:	National equality body
Applicable law:	Gender Equality and Anti Discrimination Act (GEADA) ¹

Content

In a case from June 2020, the Equality and Anti- Discrimination Tribunal (Equality Tribunal) concluded that the Norwegian Correctional Service discriminates female inmates, contrary to Article 6 of GEADA, by not giving them equal services/opportunities as male inmates in a prison in Tromsø, a city in the north of Norway.

Case 19/114²

Tromsø prison is a prison for both men and women and has departments with both high and low security levels. The prison has a ward for women which consists of four places with a lower security level. However, the prison does not have its own ward for women who serve their sentence at a high security level. Nor is there a penitentiary department for women serving their sentence at a high security level.

The prison has a department which consists of 10 cells called the 'custody department', where convicted inmates are placed (as opposed to the penitentiary department). Both women and men can be placed in the custody department. The organization of the prison means that female inmates who serve time at a high security level, serve time in prison together with men in the custody department. Women who serve time at lower security level may also be placed at the custody department together with men, if there are no more places available at the lower security level.

The Equality and Anti-Discrimination Ombud (Equality Ombud) complained to the Equality Tribunal that the Correctional Service acts contrary to the prohibition against direct discrimination on the grounds of sex (as prohibited by Article 6 of GEADA) by not giving female inmates equal opportunities as male inmates in Tromsø prison. The Equality Ombud

¹ Act of 2017- 06-16-51; <https://lovdata.no/dokument/NLE/lov/2017-06-16-51> (English).

² Statement from the Equality Tribunal of 9. June 2020; <https://diskrimineringsnemnda.no/media/2413/sak-19-114.pdf>.

argued that the fact that the female prisoners serving at high level of security have to serve time in the custody department together with men is discrimination based on sex. The way the prison is organized leads to female inmates being locked in the cells with less access to the prison community than men. Some of the female inmates spend 23 hours in their cells. Nor do they receive the same access to employment or education facilities as the male inmates.

The Equality Ombud also argued that the Correctional Service must put in place extra measures and schemes to be able to offer women in the prison work and fellowship. The Ombud furthermore argued that the differential treatment was not lawful according to Article 9 of GEADA.

The Correctional Service did not agree. Female inmates receive the same offer of employment and activity as male, and lock-in takes place by department and not based on gender. For security reasons some moderations are made, including that women are offered self-study under the auspices of the school instead of classroom teaching. In addition, active measures are taken to counteract isolation, for example by allowing female prisoners to eat some meals together.

The Equality Tribunal concluded unanimous that female inmates in Tromsø prison are 'treated worse' than male prisoners in the prison contrary to Article 6 of GEADA, because female prisoners are placed in the custody department due to the absence of their own penitentiary department for female inmates serving at high security. The Equality Tribunal mention both direct and indirect discrimination in the beginning of the statement, but its not clear if the Tribunal rules direct or indirect discrimination in the case.

The Equality Tribunal also found that the custody department is much more restrictive than the penitentiary department, and the Equality Tribunal therefore concluded that there was reason to believe that female inmates in general are treated worse than male inmates. The Equality Tribunal also pointed out that the Correctional Service neither denied that the offer in the prison wasn't identical for women and men, and claimed that it had implemented measures to compensate for the women who had to to serve time in the custody department. The Equality Tribunal found that these compensatory measures implemented by the Correctional Service were not sufficient to prove that discrimination does not take place according to Article 9 of GEADA.

Key points of analysis: The conclusion of the Equality Tribunal is important because discrimination of female inmates has been a concern in Tromsø prison for many years. However, this seems not to be a problem in this prison only, but a general problem in prisons in Norway.

This is also the first case the Equality Ombud has brought to the Equality Tribunal on its own initiative after the amendment of the Equality and Anti-Discrimination Ombud Act (EAOA) in 2018 where the Ombud no longer handles individual complaints, but according to Article 5 of EAOA shall work to promote genuine equality and prevent discrimination in all sectors of society, this includes guidance in individual cases and bringing cases before the Equality Tribunal.

Internet link source: <https://diskrimineringsnemnda.no/media/2413/sak-19-114.pdf> (Only in Norwegian).